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Education

34

PARTS 300 to 399

Revised as of July 1, 1997

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OF GENERAL APPLICABILITY
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AS OF JULY 1, 1997

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 34 CFR 300.1 *refers to title 34, part 300, section 1.*

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Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

July 1, 1997.

THIS TITLE

Title 34—EDUCATION is presently composed of three volumes (parts 1 to 299, parts 300 to 399, and part 400 to End). The contents of these volumes represent all regulations codified under this title of the CFR as of July 1, 1997.

A redesignation table appears in the Finding Aids section of the last volume.

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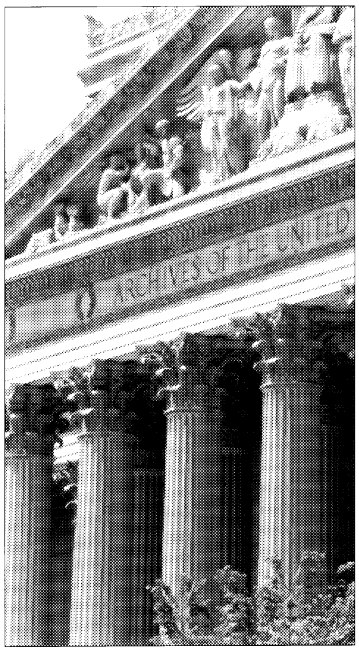

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Title 34—Education

(This book contains parts 300 to 399)

Part

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CHAPTER III—Office of Special Education and Rehabilitative Services, Department of Education 300

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APPENDIX A TO PART 300—[RESERVED]
APPENDIX B TO PART 300—[RESERVED]
APPENDIX C TO PART 300—NOTICE OF INTERPRETATION

AUTHORITY: 20 U.S.C. 1411–1420, unless otherwise noted.

SOURCE: 57 FR 44798, Sept. 29, 1992, unless otherwise noted.

Subpart A—General

PURPOSE, APPLICABILITY, AND REGULATIONS THAT APPLY TO THIS PROGRAM

§300.1 Purpose.

The purpose of this part is—

(a) To ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist States and localities to provide for the education of all children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate those children.

(Authority: 20 U.S.C. 1401 Note)

§300.2 Applicability to State, local, and private agencies.

(a) *States.* This part applies to each State that receives payments under Part B of the Act.

(b) *Public agencies within the State.* The State plan is submitted by the State educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of children with disabilities. These would include:

(1) The State educational agency;

(2) Local educational agencies and intermediate educational units;

(3) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for students with deafness or students with blindness); and

(4) State correctional facilities.

(c) *Private schools and facilities.* Each public agency in the State is responsible for ensuring that the rights and protections under this part are given to children referred to or placed in private schools and facilities by that public agency. (See §§300.400–300.402)

(Authority: 20 U.S.C. 1412(1), (6); 1413(a); 1413(a)(4)(B))

NOTE: The requirements of this part are binding on each public agency that has direct or delegated authority to provide special education and related services in a State that receives funds under Part B of the Act, regardless of whether that agency is receiving funds under Part B.

§300.3 Regulations that apply.

The following regulations apply to this program:

(a) 34 CFR part 76 (State-Administered Programs) except for §§76.780–76.782.

(b) 34 CFR part 77 (Definitions).

(c) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(d) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(e) 34 CFR part 81 (General Education Provisions Act— Enforcement).

(f) 34 CFR part 82 (New Restrictions on Lobbying).

(g) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(h) 34 CFR part 86 (Drug-Free Schools and Campuses).

(i) The regulations in this part—34 CFR part 300 (Assistance to States for Education of Children with Disabilities).

(Authority: 20 U.S.C. 1221e-3(a)(1))

DEFINITIONS

NOTE 1: Definitions of terms that are used throughout these regulations are included in

this subpart. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections in which they are defined:

Appropriate professional requirements in the State (§ 300.153(a)(1))
Average per pupil expenditure in public elementary and secondary schools in the United States (§ 300.701(c))
Consent (§ 300.500)
Destruction (§ 300.560)
Direct services (§ 300.370(b)(1))
Education records (§ 300.560)
Evaluation (§ 300.500)
First priority children (§ 300.320(a)) Highest requirements in the State applicable to a specific profession or discipline (§ 300.153(a)(2))
Independent educational evaluation (§ 300.503(a)(3)(i))
Individualized education program (§ 300.340)
Participating agency, as used in the IEP requirements in §§ 300.346 and 300.347 (§ 300.340(b))
Participating agency, as used in the confidentiality requirements in §§ 300.560–300.576 (§ 300.560)
Party or parties (§ 300.584(a))
Personally identifiable (§ 300.500)
Private school children with disabilities (§ 300.450)
Profession or discipline (§ 300.153(a)(3))
Public expense (§ 300.503(a)(3)(ii))
Second priority children (§ 300.320(b))
Special definition of ''State'' (§ 300.700)
State-approved or recognized certification, licensing, registration, or other comparable requirements (§ 300.153(a)(4))
Support services (§ 300.370(b)(2))

NOTE 2: Below are abbreviations for selected terms that are used throughout these regulations:

''FAPE'' means ''free appropriate public education.''
''IEP'' means ''individualized education program.''
''IEU'' means ''intermediate educational unit.''
''LEA'' means ''local educational agency.''
''LRE'' means ''least restrictive environment.''
''SEA'' means ''State educational agency.''

As appropriate, each abbreviation is used interchangeably with its nonabbreviated term.

§ 300.4 Act.

As used in this part, ''Act'' means the Individuals with Disabilities Education Act, formerly the Education of the Handicapped Act.

(Authority: 20 U.S.C. 1400)

§ 300.5 Assistive technology device.

As used in this part, ''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 children with disabilities.

(Authority: 20 U.S.C. 1401(a)(25))

§ 300.6 Assistive technology service.

As used in this part, ''assistive technology service'' means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes —

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

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

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

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

(Authority: 20 U.S.C. 1401(a)(26))

NOTE: The definitions of ''assistive technology device'' and ''assistive technology service'' used in this part are taken directly from section 602(a)(25)–(26) of the Act, but in accordance with Part B, the statutory reference to ''individual with a disability'' has been replaced with ''child with a disability.'' The Act's definitions of ''assistive technology device'' and ''assistive technology service'' incorporate verbatim the definitions of these terms used in the Technology-

Related Assistance for Individuals with Disabilities Act of 1988.

§300.7 Children with disabilities.

(a)(1) As used in this part, the term ''children with disabilities'' means those children evaluated in accordance with §§300.530–300.534 as having mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities, and who because of those impairments need special education and related services.

(2) The term ''children with disabilities'' for children aged 3 through 5 may, at a State's discretion, include children—

(i) Who are experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) Who, for that reason, need special education and related services.

(b) The terms used in this definition are defined as follows:

(1) ''Autism'' means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance, as defined in paragraph (b)(9) of this section.

(2) ''Deaf-blindness'' means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) ''Deafness'' means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(4) ''Hearing impairment'' means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(5) ''Mental retardation'' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(6) ''Multiple disabilities'' means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

(7) ''Orthopedic impairment'' means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(8) ''Other health impairment'' means having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes that adversely affects a child's educational performance.

(9) ''Serious emotional disturbance'' is defined as follows:

(i) The term means a condition exhibiting one or more of the following

characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance—

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have a serious emotional disturbance.

(10) ''Specific learning disability'' means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) ''Speech or language impairment'' means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance.

(12) ''Traumatic brain injury'' means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(13) ''Visual impairment including blindness'' means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(a)(1))

NOTE: If a child manifests characteristics of the disability category ''autism'' after age 3, that child still could be diagnosed as having ''autism'' if the criteria in paragraph (b)(1) of this section are satisfied.

§ 300.8 Free appropriate public education.

As used in this part, the term ''free appropriate public education'' means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include preschool, elementary school, or secondary school education in the State involved; and

(d) Are provided in conformity with an IEP that meets the requirements of §§ 300.340–300.350.

(Authority: 20 U.S.C. 1401(a)(18))

§ 300.9 Include.

As used in this part, the term ''include'' means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(Authority: 20 U.S.C. 1417(b))

§ 300.10 Intermediate educational unit.

As used in this part, the term ''intermediate educational unit'' means any public authority, other than an LEA, that—

(a) Is under the general supervision of an SEA;

(b) Is established by State law for the purpose of providing free public education on a regional basis; and

(c) Provides special education and related services to children with disabilities within that State.

(Authority: 20 U.S.C. 1401(a)(23))

§300.11 Local educational agency.

(a) [Reserved]

(b) For the purposes of this part, the term ''local educational agency'' also includes intermediate educational units.

(Authority: 20 U.S.C. 1401(a)(8))

§300.12 Native language.

As used in this part, the term ''native language'' has the meaning given that term by section 703(a)(2) of the Bilingual Education Act, which provides as follows:

The term ''native language,'' when used with reference to an individual of limited English proficiency, means the language normally used by that individual, or in the case of a child, the language normally used by the parents of the child.

(Authority: 20 U.S.C. 3283(a)(2); 1401(a)(22))

NOTE: Section 602(a)(22) of the Act states that the term ''native language'' has the same meaning as the definition from section 703(a)(2) of the Bilingual Education Act. (The term is used in the prior notice and evaluation sections under §300.505(b)(2) and §300.532(a)(1).) In using the term, the Act does not prevent the following means of communication:

(1) In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

(2) For individuals with deafness or blindness, or for individuals with no written language, the mode of communication would be that normally used by the individual (such as sign language, braille, or oral communication).

§300.13 Parent.

As used in this part, the term ''parent'' means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with §300.514. The term does not include the State if the child is a ward of the State.

(Authority: 20 U.S.C. 1415)

NOTE: The term ''parent'' is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

§300.14 Public agency.

As used in this part, the term ''public agency'' includes the SEA, LEAs, IEUs, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(2)(B); 1412(6); 1413(a))

§300.15 Qualified.

As used in this part, the term ''qualified'' means that a person has met SEA approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which he or she is providing special education or related services.

(Authority: 20 U.S.C. 1417(b))

§300.16 Related services.

(a) As used in this part, the term ''related services'' means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

(1) ''Audiology'' includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-

reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) ''Counseling services'' means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) ''Early identification and assessment of disabilities in children'' means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) ''Medical services'' means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(5) ''Occupational therapy'' includes—

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(6) ''Parent counseling and training'' means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) ''Physical therapy'' means services provided by a qualified physical therapist.

(8) ''Psychological services'' includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning.

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) ''Recreation'' includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(10) ''Rehabilitation counseling services'' means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(11) ''School health services'' means services provided by a qualified school nurse or other qualified person.

(12) ''Social work services in schools'' includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program.

(13) ''Speech pathology'' includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(14) ''Transportation'' includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(a)(17))

NOTE: With respect to related services, the Senate Report states:

The Committee bill provides a definition of related services, making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

(S. Rep. No. 94–168, p. 12 (1975))

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education.

There are certain kinds of services that might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors, and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

§300.17 Special education.

(a)(1) As used in this part, the term ''special education'' means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, and is considered special education rather than a related service under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(b) The terms in this definition are defined as follows:

(1) ''At no cost'' means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) ''Physical education'' is defined as follows:

(i) The term means the development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adaptive physical education, movement education, and motor development.

(Authority: 20 U.S.C. 1401(a)(16))

(3) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(16))

NOTE 1: The definition of special education is a particularly important one under these regulations, since a child does not have a disability under this part unless he or she needs special education. (See the definition of children with disabilities in §300.7.) The definition of related services (§300.16) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no related services, and the child is not a child with a disability and is therefore not covered under the Act.

NOTE 2: The above definition of vocational education is taken from the Vocational Education Act of 1963, as amended by Public Law 94–482. Under that Act, ''vocational education'' includes industrial arts and

consumer and homemaking education programs.

[57 FR 44798, Sept. 29, 1992; 57 FR 48694, Oct. 27, 1992]

§ 300.18 Transition services.

(a) As used in this part, ''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 post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

(b) The coordinated set of activities described in paragraph (a) of this section must—

(1) Be based on the individual student's needs, taking into account the student's preferences and interests; and

(2) Include—

(i) Instruction;

(ii) Community experiences;

(iii) The development of employment and other post-school adult living objectives; and

(iv) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(Authority: 20 U.S.C. 1401(a)(19))

NOTE: Transition services for students with disabilities may be special education, if they are provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education. The list of activities in paragraph (b) is not intended to be exhaustive.

[57 FR 44798, Sept. 29, 1992; 57 FR 48694, Oct. 27, 1992]

Subpart B—State Plans and Local Educational Agency Applications

STATE PLANS—GENERAL

§ 300.110 Condition of assistance.

In order to receive funds under part B of the Act for any fiscal year, a State must submit a State plan to the Secretary through its SEA, which plan shall be effective for a period of 3 fiscal years.

(Authority: 20 U.S.C. 1231g, 1412, 1413)

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.111 Content of plan.

Each State plan must contain the provisions required in §§ 300.121–300.154.

[57 FR 48694, Oct. 27, 1992]

STATE PLANS—CONTENTS

§ 300.121 Right to a free appropriate public education.

(a) Each State plan must include information that shows that the State has in effect a policy that ensures that all children with disabilities have the right to FAPE within the age ranges and timelines under § 300.122.

(b) The information must include a copy of each State statute, court order, State Attorney General opinion, and other State documents that show the source of the policy.

(c) The information must show that the policy—

(1) Applies to all public agencies in the State;

(2) Applies to all children with disabilities;

(3) Implements the priorities established under §§ 300.320–300.324; and

(4) Establishes timelines for implementing the policy, in accordance with § 300.122.

(Authority: 20 U.S.C. 1412(1), (2)(B), (6); 1413(a)(1))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.122 Timelines and ages for free appropriate public education.

(a) *General.* Each State plan must include in detail the policies and procedures that the State will undertake or has undertaken in order to ensure that FAPE is available for all children with disabilities aged 3 through 18 within the State not later than September 1,

1978, and for all children with disabilities aged 3 through 21 within the State not later than September 1, 1980.

(b) *Documents relating to timelines.* Each State plan must include a copy of each State statute, court order, Attorney General decision, and other State documents that demonstrate that the State has established timelines in accordance with paragraph (a) of this section.

(c) *Exception.* The requirement in paragraph (a) of this section does not apply to a State with respect to children with disabilities aged 3, 4, 5, 18, 19, 20, or 21 to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State.

(d) *Documents relating to exceptions.* Each State plan must—

(1) Describe in detail the extent that the exception in paragraph (c) of this section applies to the State; and

(2) Include a copy of each State law, court order, and other documents that provide a basis for the exception.

(Authority: 20 U.S.C. 1412(2)(B))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.123 Full educational opportunity goal.

Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, in order to ensure that the State has a goal of providing full educational opportunity to all children with disabilities aged birth through 21.

(Authority: 20 U.S.C. 1412(2)(A))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.124 [Reserved]

§ 300.125 Full educational opportunity goal—timetable.

Each State plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all children with disabilities.

(Authority: 20 U.S.C. 1412(2)(A))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.126 Full educational opportunity goal—facilities, personnel, and services.

Each State plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all children with disabilities.

(Authority: 20 U.S.C. 1412(2)(A))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.127 Priorities.

Each State plan must include information that shows that —

(a) The State has established priorities that meet the requirements of §§ 300.320–300.324;

(b) The State priorities meet the timelines under § 300.122; and

(c) The State has made progress in meeting those timelines.

(Authority: 20 U.S.C. 1412(3))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.128 Identification, location, and evaluation of children with disabilities.

(a) *General requirement.* Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, to ensure that—

(1) All children with disabilities, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently

receiving needed special education and related services.

(b) *Information.* Each State plan must:

(1) Designate the State agency (if other than the SEA) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section.

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation.

(3) Describe the extent that—

(i) The activities described in paragraph (a) of this section have been achieved under the current State plan; and

(ii) The resources named for these activities in that plan have been used.

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b)(1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes.

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to ensure that the SEA obtains—

(i) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures.

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(Authority: 20 U.S.C. 1412(2)(C))

NOTE 1: The State is responsible for ensuring that all children with disabilities are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. Collection and use of data are subject to the confidentiality requirements of §§ 300.560–300.576.

NOTE 2: Under both Parts B and H of the Act, States are responsible for identifying, locating, and evaluating infants and toddlers from birth through 2 years of age who have disabilities or who are suspected of having disabilities. In States where the SEA and the State's lead agency for the Part H program are different and the Part H lead agency will be participating in the child find activities described in paragraph (a) of this section, the nature and extent of the Part H lead agency's participation must, under paragraph (b)(2) of this section, be included in the State plan. With the SEA's agreement, the Part H lead agency's participation may include the actual implementation of child find activities for infants and toddlers. The use of an interagency agreement or other mechanism for providing for the Part H lead agency's participation would not alter or diminish the responsibility of the SEA to ensure compliance with all child find requirements, including the requirement in paragraph (a)(1) of this section that all children with disabilities who are in need of special education and related services are evaluated.

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.129 Confidentiality of personally identifiable information.

(a) Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, in order to ensure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) The Secretary shall use the criteria in §§ 300.560–300.576 to evaluate the policies and procedures of the State under paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

NOTE: The confidentiality regulations were published in the FEDERAL REGISTER in final form on February 27, 1976 (41 FR 8603–8610), and met the requirements of Part B of the Act. Those regulations are incorporated in §§ 300.560–300.576.

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.130 Individualized education programs.

(a) Each State plan must include information that shows that each public agency in the State maintains records of the IEP for each child with disabilities, and each public agency establishes, reviews, and revises each program as provided in §§ 300.340–300.350.

(b) Each State plan must include—

(1) A copy of each State statute, policy, and standard that regulates the

manner in which IEPs are developed, implemented, reviewed, and revised; and

(2) The procedures that the SEA follows in monitoring and evaluating those programs.

(Authority: 20 U.S.C. 1412(4), 1413(a)(1))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.131 Procedural safeguards.

Each State plan must include procedural safeguards that ensure that the requirements of §§ 300.500–300.514 are met.

(Authority: 20 U.S.C. 1412(5)(A))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.132 Least restrictive environment.

(a) Each State plan must include procedures that ensure that the requirements of §§ 300.550–300.556 are met.

(b) Each State plan must include the following information:

(1) The number of children with disabilities in the State, within each disability category, who are participating in regular education programs, consistent with §§ 300.550–300.556.

(2) The number of children with disabilities who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment.

(Authority: 20 U.S.C. 1412(5)(B))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.133 Protection in evaluation procedures.

Each State plan must include procedures that ensure that the requirements of §§ 300.530–300.534 are met.

(Authority: 20 U.S.C. 1412(5)(C))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.134 Responsibility of State educational agency for all educational programs.

(a) Each State plan must include information that shows that the requirements of § 300.600 are met.

(b) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other documents that show compliance with that paragraph.

(Authority: 20 U.S.C. 1412(6))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.135 [Reserved]

§ 300.136 Implementation procedures—State educational agency.

Each State plan must describe the procedures the SEA follows to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

(Authority: 20 U.S.C. 1412(6))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.137 Procedures for consultation.

Each State plan must include an assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities and parents of children with disabilities.

(Authority: 20 U.S.C. 1412(7)(A))

§ 300.138 Other Federal programs.

Each State plan must provide that programs and procedures are established to ensure that funds received by the State or any public agency in the State under any other Federal program, including subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, under which there is specific authority

for assistance for the education of children with disabilities, are used by the State, or any public agency in the State, only in a manner consistent with the goal of providing FAPE for all children with disabilities, except that nothing in this section limits the specific requirements of the laws governing those Federal programs.

(Authority: 20 U.S.C. 1413(a)(2))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.139 Comprehensive system of personnel development.

Each State plan must include the procedures required under §§ 300.380–300.383.

(Authority: 20 U.S.C. 1413(a)(3))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.140 Private schools.

Each State plan must include policies and procedures that ensure that the requirements of §§ 300.400–300.403 and §§ 300.450–300.452 are met.

(Authority: 20 U.S.C. 1413(a)(4))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.141 Recovery of funds for misclassified children.

Each State plan must include policies and procedures that ensure that the State seeks to recover any funds provided under part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act.

(Authority: 20 U.S.C. 1413(a)(5))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.142–300.143 [Reserved]

§ 300.144 Hearing on application.

Each State plan must include procedures to ensure that the SEA does not take any final action with respect to an application submitted by an LEA before giving the LEA reasonable notice and an opportunity for a hearing under § 76.401(d) of this title.

(Authority: 20 U.S.C. 1413(a)(8))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.145 Prohibition of commingling.

Each State plan must provide assurance satisfactory to the Secretary that funds provided under part B of the Act are not commingled with State funds.

(Authority: 20 U.S.C. 1413(a)(9))

NOTE: This assurance is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of the part B funds. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures).)

§ 300.146 Annual evaluation.

Each State plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of children with disabilities, including evaluation of IEPs.

(Authority: 20 U.S.C. 1413(a)(11))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.147 State advisory panel.

Each State plan must provide that the requirements of §§ 300.650–300.653 are met.

(Authority: 20 U.S.C. 1413(a)(12))

§ 300.148 Policies and procedures for use of part B funds.

Each State plan must set forth policies and procedures designed to ensure that funds paid to the State under part B of the Act are spent in accordance with the provisions of part B, with particular attention given to sections

611(b), 611(c), 611(d), 612(2), and 612(3) of the Act.

(Authority: 20 U.S.C. 1413(a)(1))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.149 Description of use of part B funds.

(a) *State allocation.* Each State plan must include the following information about the State's use of funds under § 300.370 and § 300.620:

(1) A list of administrative positions, and a description of duties for each person whose salary is paid in whole or in part with those funds.

(2) For each position, the percentage of salary paid with those funds.

(3) A description of each administrative activity the SEA will carry out during the next school year with those funds.

(4) A description of each direct service and each support service that the SEA will provide during the next period covered by the State plan with those funds, and the activities the State advisory panel will undertake during that period with those funds.

(b) *Local educational agency allocation.* Each State plan must include—

(1) An estimate of the number and percent of LEAs in the State that will receive an allocation under this part (other than LEAs that submit a consolidated application);

(2) An estimate of the number of LEAs that will receive an allocation under a consolidated application;

(3) An estimate of the number of consolidated applications and the average number of LEAs per application; and

(4) A description of direct services that the SEA will provide under § 300.360.

(Authority: 20 U.S.C.1412(6))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.150 State-level nonsupplanting.

Each State plan must provide assurance satisfactory to the Secretary that funds provided under this part will be used so as to supplement and increase the level of Federal (other than funds available under this part), State, and local funds—including funds that are not under the direct control of the SEA or LEAs — expended for special education and related services provided to children with disabilities under this part and in no case to supplant those Federal (other than funds available under this part), State, and local funds unless a waiver is granted in accordance with § 300.589.

(Authority: 20 U.S.C. 1413(a)(9))

NOTE: This requirement is distinct from the LEA nonsupplanting provision already contained in these regulations at § 300.230. Under this State-level provision, the State must assure that part B funds distributed to LEAs and IEUs will be used to supplement and not supplant other Federal, State, and local funds (including funds not under the control of educational agencies) that would have been expended for special education and related services provided to children with disabilities in the absence of the part B funds. The portion of part B funds that are not distributed to LEAs or IEUs under the statutory formula (20 U.S.C. 1411(d)) are not subject to this nonsupplanting provision. See 20 U.S.C. 1411(c)(3). States may not permit LEAs or IEUs to use part B funds to satisfy a financial commitment for services that would have been paid for by a health or other agency pursuant to policy or practice but for the fact that these services are now included in the IEPs of children with disabilities.

(H.R. Rep. No. 860, 99th Cong., 21–22 (1986))

§ 300.151 Additional information if the State educational agency provides direct services.

If an SEA provides FAPE for children with disabilities or provides them with direct services, its State plan must include the information required under §§ 300.226, 300.227, 300.231, and 300.235.

(Authority: 20 U.S.C. 1413(b))

§ 300.152 Interagency agreements.

(a) Each State plan must set forth policies and procedures for developing and implementing interagency agreements between—

(1) The SEA; and

(2) All other State and local agencies that provide or pay for services required under this part for children with disabilities.

(b) The policies and procedures referred to in paragraph (a) of this section must—

(1) Describe the role that each of those agencies plays in providing or paying for services required under this part for children with disabilities; and

(2) Provide for the development and implementation of interagency agreements that—

(i) Define the financial responsibility of each agency for providing children with disabilities with FAPE;

(ii) Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and

(iii) Establish procedures under which LEAs may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreements or otherwise implement the provisions of the agreements.

(Authority: 20 U.S.C. 1413(a)(13))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.153 Personnel standards.

(a) As used in this part:

(1) *Appropriate professional requirements in the State*n means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and

(ii) Establish suitable qualifications for personnel providing special education and related services under this part to children and youth with disabilities who are served by State, local, and private agencies (see § 300.2).

(2) *Highest requirements in the State applicable to a specific profession or discipline* means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) *Profession or discipline* means a specific occupational category that—

(i) Provides special education and related services to children with disabilities under this part;

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

(iii) Has a required scope of responsibility and degree of supervision.

(4) *State approved or recognized certification, licensing, registration, or other comparable requirements* means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each State plan must include policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State plan must include the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the SEA, and available to the public.

(e) In identifying the highest requirements in the State for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children and youth with disabilities must be considered.

(Authority: 20 U.S.C. 1413(a)(14))

NOTE: The regulations require that the State use its own existing highest requirements to determine the standards appropriate to personnel who provide special education and related services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part. In some instances, States will be required to show that they are taking steps to retrain or to hire personnel to meet the standards adopted by the SEA that are based on requirements for practice in a specific profession or discipline that were established by other State agencies. States in this position need not, however, require personnel providing services under this part to apply for and obtain the license, registration, or other comparable credential required by other agencies of individuals in that profession or discipline. The regulations permit each State to determine the specific occupational categories required to provide special education and related services and to revise or expand these categories as needed. The professions or disciplines defined by the State need not be limited to traditional occupational categories.

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§300.154 Transition of individuals from part H to part B.

Each State plan must set forth policies and procedures relating to the smooth transition for those individuals participating in the early intervention program under part H of the Act who will participate in preschool programs assisted under this part, including a method of ensuring that when a child turns age 3 an IEP, or, if consistent with sections 614(a)(5) and 677(d) of the Act, an individualized family service plan, has been developed and implemented by the child's third birthday.

(Authority: 20 U.S.C. 1413(a)(15))

LOCAL EDUCATIONAL AGENCY APPLICATIONS—GENERAL

§300.180 Submission of application.

In order to receive payments under part B of the Act for any fiscal year, an LEA must submit an application to the SEA.

(Authority: 20 U.S.C. 1414(a))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§300.181 [Reserved]

§300.182 The excess cost requirement.

An LEA may only use funds under part B of the Act for the excess costs of providing special education and related services for children with disabilities.

(Authority: 20 U.S.C. 1414(a)(1), (a)(2)(B)(i))

§300.183 Meeting the excess cost requirement.

(a) An LEA meets the excess cost requirement if it has on the average spent at least the amount determined under §300.184 for the education of each of its children with disabilities. This amount may not include capital outlay or debt service.

(Authority: 20 U.S.C. 1402(20); 1414(a)(1))

NOTE: *The excess cost requirement* means that the LEA must spend a certain minimum amount for the education of its children with disabilities before part B funds are used. This ensures that children served with part B funds have at least the same average amount spent on them, from sources other than part B, as do the children in the school district taken as a whole.

The minimum amount that must be spent for the education of children with disabilities is computed under a statutory formula. Section 300.184 implements this formula and gives a step-by-step method to determine the minimum amount. Excess costs are those costs of special education and related services that exceed the minimum amount. Therefore, if an LEA can show that it has (on the average) spent the minimum amount for the education of each of its children with disabilities, it has met the excess cost requirement, and all additional costs are excess costs. Part B funds can then be used to pay for these additional costs, subject to the other requirements of part B (priorities, etc.). In the Note under §300.184, there is an example of how the minimum amount is computed.

§ 300.184 Excess costs—computation of minimum amount.

The minimum average amount that an LEA must spend under § 300.183 for the education of each of its children with disabilities is computed as follows:

(a) Add all expenditures of the LEA in the preceding school year, except capital outlay and debt service—

(1) For elementary school students, if the child with a disability is an elementary school student; or

(2) For secondary school students, if the child with a disability is a secondary school student.

(b) From this amount, subtract the total of the following amounts spent for elementary school students or for secondary school students, as the case may be—

(1) Amounts the agency spent in the preceding school year from funds awarded under part B of the Act and titles I and VII of the Elementary and Secondary Education Act of 1965; and

(2) Amounts from State and local funds that the agency spent in the preceding school year for—

(i) Programs for children with disabilities;

(ii) Programs to meet the special educational needs of educationally deprived children; and

(iii) Programs of bilingual education for limited English proficient children.

(c) Divide the result under paragraph (b) of this section by the average number of students enrolled in the agency in the preceding school year—

(1) In its elementary schools, if the child with a disability is an elementary school student; or

(2) In its secondary schools, if the child with a disability is a secondary school student.

(Authority: 20 U.S.C. 1414(a)(1))

NOTE: The following is an example of how an LEA might compute the average minimum amount it must spend for the education of each of its children with disabilities, under § 300.183. This example follows the formula in § 300.184. Under the statute and regulations, the LEA must make one computation for children with disabilities in its elementary schools and a separate computation for children with disabilities in its secondary schools. The computation for elementary school students with disabilities would be done as follows:

a. First, the LEA must determine its total amount of expenditures for elementary school students from all sources—local, State, and Federal (including part B)—in the preceding school year. Only capital outlay and debt service are excluded.

Example: An LEA spent the following amounts last year for elementary school students (including its elementary school students with disabilities):

(1) From local tax funds	$2,750,000
(2) From State funds	7,000,000
(3) From Federal funds	750,000
	10,500,000

Of this total, $500,000 was for capital outlay and debt service relating to the education of elementary school students. This must be subtracted from total expenditures:

	$10,500,000
	−500,000
Total expenditures for elementary school students (less capital outlay and debt service)	10,000,000

b. Next, the LEA must subtract amounts spent for:

(1) Programs for children with disabilities;

(2) Programs to meet the special educational needs of educationally deprived children; and

(3) Programs of bilingual education for limited English proficient children.

These are funds that the LEA actually spent, not funds received last year but carried over for the current school year.

Example: The LEA spent the following amounts for elementary school students last year:

(1) From funds under chapter 1 of title I of the Elementary and Secondary Education Act of 1965	300,000
(2) From a special State program for educationally deprived children	200,000
(3) From a grant under part B	200,000
(4) From State funds for the education of children with disabilities	500,000
(5) From a locally-funded program for children with disabilities	250,000
(6) From a grant for a bilingual education program under title VII of the Elementary and Secondary Education Act of 1965	150,000
Total	1,600,000

(An LEA would also include any other funds it spent from Federal, State, or local

sources for the three basic purposes: Children with disabilities, educationally deprived children, and bilingual education for limited English proficient children.)

This amount is subtracted from the LEA's total expenditure for elementary school students computed above:

$10,000,000
−1,600,000

8,400,000

c. The LEA next must divide by the average number of students enrolled in the elementary schools of the agency last year (including its students with disabilities).

Example: Last year, an average of 7,000 students were enrolled in the agency's elementary schools. This must be divided into the amount computed under the above paragraph: $8,400,000/7,000 students = $1,200/student.

This figure is in the minimum amount the LEA must spend (on the average) for the education of each of its students with disabilities. Funds under part B may be used only for costs over and above this minimum. In this example, if the LEA has 100 elementary school students with disabilities, it must keep records adequate to show that it has spent at least $120,000 for the education of those students (100 students times $1,200/student), not including capital outlay and debt service.

This $120,000 may come from any funds except funds under part B, subject to any legal requirements that govern the use of those other funds.

If the LEA has secondary school students with disabilities, it must do the same computation for them. However the amounts used in the computation would be those the LEA spent last year for the education of secondary school students, rather than for elementary school students.

§ 300.185 Computation of excess costs—consolidated application.

The minimum average amount under § 300.183, if two or more LEAs submit a consolidated application, is the average of the combined minimum average amounts determined under § 300.184 in those agencies for elementary or secondary school students, as the case may be.

(Authority: 20 U.S.C. 1414(a)(1))

§ 300.186 Excess costs—limitation on use of part B funds.

(a) The excess cost requirement prevents an LEA from using funds provided under part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b) of this section.

(b) The excess cost requirement does not prevent an LEA from using part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the age ranges three, four, five, eighteen, nineteen, twenty, or twenty-one, if no local or State funds are available for nondisabled children in that age range. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services.

(Authority: 20 U.S.C. 1402(20); 1414(a)(1))

§ 300.187–300.189 [Reserved]

§ 300.190 Consolidated applications.

(a) [Reserved]

(b) *Required applications.* An SEA may require LEAs to submit a consolidated application for payments under part B of the Act if the SEA determines that an individual application submitted by an LEA will be disapproved because—

(1) The agency's entitlement is less than the $7,500 minimum required by section 611(c)(4)(A)(i) of the Act (§ 300.360(a)(1)); or

(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of children with disabilities.

(c) *Size and scope of program.* The SEA shall establish standards and procedures for determinations under paragraph (b)(2) of this section.

(Authority: 20 U.S.C. 1414(c)(1))

§ 300.191 [Reserved]

§ 300.192 State regulation of consolidated applications.

(a) The SEA shall issue regulations with respect to consolidated applications submitted under this part.

(b) The SEA's regulations must—

(1) Be consistent with sections 612(1)–(7) and 613(a) of the Act; and

(2) Provide participating LEAs with joint responsibilities for implementing

programs receiving payments under this part.

(Authority: 20 U.S.C. 1414(c)(2)(B))

(c) If an IEU is required by State law to carry out this part, the joint responsibilities given to LEAs under paragraph (b)(2) of this section do not apply to the administration and disbursement of any payments received by the IEU. Those administrative responsibilities must be carried out exclusively by the IEU.

(Authority: 20 U.S.C. 1414(c)(2)(C))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.193 State educational agency approval; disapproval.

(a)–(b) [Reserved]

(c) In carrying out its functions under this section, each SEA shall consider any decision resulting from a hearing under §§ 300.506–300.513 that is adverse to the LEA involved in the decision.

(Authority: 20 U.S.C. 1414(b)(3))

§ 300.194 Withholding.

(a) If an SEA, after giving reasonable notice and an opportunity for a hearing to an LEA, decides that the LEA in the administration of an application approved by the SEA has failed to comply with any requirement in the application, the SEA, after giving notice to the LEA, shall—

(1) Make no further payments to the LEA until the SEA is satisfied that there is no longer any failure to comply with the requirement; or

(2) Consider its decision in its review of any application made by the LEA under § 300.180; or

(3) Both.

(b) [Reserved]

(Authority: 20 U.S.C. 1414(b)(2))

LOCAL EDUCATIONAL AGENCY APPLICATIONS—CONTENTS

§ 300.220 Child identification.

Each application must include procedures that ensure that all children residing within the jurisdiction of the LEA who have disabilities, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated, including a practical method for determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(Authority: 20 U.S.C. 1414(a)(1)(A))

NOTE: The LEA is responsible for ensuring that all children with disabilities within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and institutions within that jurisdiction. Collection and use of data are subject to the confidentiality requirements of §§ 300.560–300.576.

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.221 Confidentiality of personally identifiable information.

Each application must include policies and procedures that ensure that the criteria in §§ 300.560–300.574 are met.

(Authority: 20 U.S.C. 1414(a)(1)(B))

§ 300.222 Full educational opportunity goal—timetable.

Each application must—

(a) Include a goal of providing full educational opportunity to all children with disabilities, aged birth through 21; and

(b) Include a detailed timetable for accomplishing the goal.

(Authority: 20 U.S.C. 1414(a)(1)(C), (D))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.223 Facilities, personnel, and services.

Each application must provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal in § 300.222.

(Authority: 20 U.S.C. 1414(a)(1)(E))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.224 Personnel development.

Each application must include procedures for the implementation and use of the comprehensive system of personnel development established by the SEA under § 300.139.

(Authority: 20 U.S.C. 1414(a)(1)(C)(i))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.225 Priorities.

Each application must include priorities that meet the requirements of §§ 300.320–300.324.

(Authority: 20 U.S.C. 1414(a)(1)(C)(ii))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.226 Parent involvement.

Each application must include procedures to ensure that, in meeting the goal under § 300.222, the LEA makes provision for participation of and consultation with parents or guardians of children with disabilities.

(Authority: 20 U.S.C. 1414(a)(1)(C)(iii))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.227 Participation in regular education programs.

(a) Each application must include procedures to ensure that to the maximum extent practicable, and consistent with §§ 300.550–300.553, the LEA provides special services to enable children with disabilities to participate in regular educational programs.

(b) Each application must describe—

(1) The types of alternative placements that are available for children with disabilities; and

(2) The number of children with disabilities within each disability category who are served in each type of placement.

(Authority: 20 U.S.C. 1414(a)(1)(C)(iv))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.228 [Reserved]

§ 300.229 Excess cost.

Each application must provide assurance satisfactory to the SEA that the LEA uses funds provided under part B of the Act only for costs that exceed the amount computed under § 300.184 and that are directly attributable to the education of children with disabilities.

(Authority: 20 U.S.C. 1414(a)(2)(B))

§ 300.230 Nonsupplanting.

(a) Each application must provide assurance satisfactory to the SEA that the LEA uses funds provided under part B of the Act to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities, and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section, the total amount or average per capita amount of State and local school funds budgeted by the LEA for expenditures in the current fiscal year for the education of children with disabilities must be at least equal to the total amount or average per capita amount of State and local school funds actually expended for the education of children with disabilities in the most recent preceding fiscal year for which the information is available. Allowance may be made for—

(1) Decreases in enrollment of children with disabilities; and

(2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities.

(Authority: 20 U.S.C. 1414(a)(2)(B))

§ 300.231 Comparable services.

(a) Each application must provide assurance satisfactory to the SEA that the LEA meets the requirements of this section.

(b) An LEA may not use funds under part B of the Act to provide services to children with disabilities unless the LEA uses State and local funds to provide services to those children that,

taken as a whole, are at least comparable to services provided to other children with disabilities in that LEA.

(c) Each LEA shall maintain records that show that the LEA meets the requirement in paragraph (b) of this section.

(Authority: 20 U.S.C. 1414(a)(2)(C))

NOTE: Under the ''comparability'' requirement, if State and local funds are used to provide certain services, those services must be provided with State and local funds to all children with disabilities in the LEA who need them. Part B funds may then be used to supplement existing services, or to provide additional services to meet special needs. This, of course, is subject to the other requirements of the Act, including the priorities under §§ 300.320–300.324.

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.232–300.234 [Reserved]

§ 300.235 Individualized education programs.

Each application must include procedures to assure that the LEA complies with §§ 300.340–300.350.

(Authority: 20 U.S.C. 1414(a)(5))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.236 [Reserved]

§ 300.237 Procedural safeguards.

Each application must provide assurance satisfactory to the SEA that the LEA has procedural safeguards that meet the requirements of §§ 300.500–300.515.

(Authority: 20 U.S.C. 1414(a)(7))

§ 300.238 Use of Part B funds.

Each application must describe how the LEA will use the funds under part B of the Act during the next school year.

(Authority: 20 U.S.C. 1414(a))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.239 [Reserved]

§ 300.240 Other requirements.

Each local application must include additional procedures and information that the SEA may require in order to meet the State plan requirements of §§ 300.121–300.153.

(Authority: 20 U.S.C. 1414(a)(6))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

APPLICATION FROM SECRETARY OF THE INTERIOR

§ 300.260 Submission of application; approval.

(a) In order to receive a grant under this part, the Secretary of the Interior shall submit an application that—

(1) Meets the requirements of section 612(1), 612(2)(C)–(E), 612(4), 612(5), 612(6), and 612(7) of the Act (including monitoring and evaluation activities);

(2) Meets the requirements of section 613(a), (2), (3), (4)(B), (5), (6), (7), (10), (11), (12), (13), (14), and (15), 613(b), and 613(e) of the Act;

(3) Meets the requirements of section 614(a)(1)(A)–(B), (2)(A), (C), (3), (4), (5), and (7) of the Act;

(4) Meets the requirements of this part that implement the sections of the Act listed in paragraphs (a)(1)–(3) of this section.

(5) Includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with LEAs, tribes and tribal organizations, and other private and Federal service providers;

(6) Includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures required under paragraphs (a)(1)–(3) of this section;

(7) Includes an assurance that the Secretary of the Interior will provide such information as the Secretary may require to comply with section 618(b)(1)

of the Act, including data on the number of children and youth with disabilities served and the types and amounts of services provided and needed;

(8) Includes an assurance that, by October 1, 1992, the Secretaries of the Interior and Health and Human Services will enter into a memorandum of agreement, to be provided to the Secretary, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with SEAs and LEAs and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations. That agreement must provide for the apportionment of responsibilities and costs, including, but not limited to, those related to child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies, or both, as needed for a child to remain in school or a program; and

(9) Includes an assurance that the Department of the Interior will cooperate with the Department of Education in the latter's exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under the Act and will fulfill its duties under the Act.

(b) Sections 300.581–300.585 apply to grants available to the Secretary of the Interior under this part.

(Authority: 20 U.S.C. 1411(f))

§ 300.261 Public participation.

In the development of the application for the Department of the Interior, the Secretary of the Interior shall provide for public participation consistent with §§ 300.280–300.284.

(Authority: 20 U.S.C. 1411(f))

§ 300.262 Use of Part B funds.

(a)(1) The Department of the Interior may use five percent of its payment under § 300.709 in any fiscal year, or $350,000, whichever is greater, for administrative costs in carrying out the provisions of this part.

(2) The remainder of the payments to the Secretary of the Interior under § 300.709 in any fiscal year must be used in accordance with the priorities under §§ 300.320–300.324.

(b) Payments to the Secretary of the Interior under § 300.710 must be used in accordance with that section.

(Authority: 20 U.S.C. 1411(f))

§ 300.263 Applicable regulations.

The Secretary of the Interior shall comply with the requirements of §§ 300.301–300.303, §§ 300.305–300.307, and §§ 300.340–300.347, § 300.350, §§ 300.360–300.383, §§ 300.400–300.402, §§ 300.500–300.585, §§ 300.600–300.621, and §§ 300.660–300.662.

(Authority: 20 U.S.C. 1411(f)(2))

PUBLIC PARTICIPATION

§ 300.280 Public hearings before adopting a State plan.

Prior to its adoption of a State plan, the SEA shall—

(a) Make the plan available to the general public;

(b) Hold public hearings; and

(c) Provide an opportunity for comment by the general public on the plan.

(Authority: 20 U.S.C. 1412(7))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.281 Notice.

(a) The SEA shall provide notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the general public about—

(1) The purpose and scope of the State plan and its relation to part B of the Act;

(2) The availability of the State plan;

(3) The date, time, and location of each public hearing;

(4) The procedures for submitting written comments about the plan; and

(5) The timetable for developing the final plan and submitting it to the Secretary for approval.

(c) The notice must be published or announced—

(1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings; and

(2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1412(7))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.282 Opportunity to participate; comment period.

(a) The SEA shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The plan must be available for comment for a period of at least 30 days following the date of the notice under § 300.281.

(Authority: 20 U.S.C. 1412(7))

§ 300.283 Review of public comments before adopting plan.

Before adopting its State plan, the SEA shall—

(a) Review and consider all public comments; and

(b) Make any necessary modifications in the plan.

(Authority: 20 U.S.C. 1412(7))

§ 300.284 Publication and availability of approved plan.

After the Secretary approves a State plan, the SEA shall give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person.

(Authority: 20 U.S.C. 1412(7))

(Approved by the Office of Management and Budget under control number 1820–0600)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

Subpart C—Services

FREE APPROPRIATE PUBLIC EDUCATION

§ 300.300 Timelines for free appropriate public education.

(a) *General.* Each State shall ensure that FAPE is available to all children with disabilities aged 3 through 18 within the State not later than September 1, 1978, and to all children with disabilities aged 3 through 21 within the State not later than September 1, 1980.

(b) *Age ranges 3–5 and 18–21.* This paragraph provides rules for applying the requirement in paragraph (a) of this section to children with disabilities aged 3, 4, 5, 18, 19, 20, and 21:

(1) If State law or a court order requires the State to provide education for children with disabilities in any disability category in any of these age groups, the State must make FAPE available to all children with disabilities of the same age who have that disability.

(2) If a public agency provides education to nondisabled children in any of these age groups, it must make FAPE available to at least a proportionate number of children with disabilities of the same age.

(3) If a public agency provides education to 50 percent or more of its children with disabilities in any disability category in any of these age groups, it must make FAPE available to all its children with disabilities of the same age who have that disability. This provision does not apply to children aged 3 through 5 for any fiscal year for which the State receives a grant under section 619(a)(1) of the Act.

(4) If a public agency provides education to a child with a disability in any of these age groups, it must make FAPE available to that child and provide that child and his or her parents all of the rights under part B of the Act and this part.

(5) A State is not required to make FAPE available to a child with a disability in one of these age groups if—

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to nondisabled children in that age group; or

(ii) The requirement is inconsistent with a court order that governs the provision of free public education to children with disabilities in that State.

(c) *Children aged 3 through 21 on reservations.* With the exception of children identified in § 300.709(a)(1) and (2), the SEA shall be responsible for ensuring that all of the requirements of part B of the Act are implemented for all

children aged 3 through 21 on reservations.

(Authority: 20 U.S.C. 1411(f); 1412(2)(B); S. Rep. No. 94–168, p. 19 (1975))

NOTE 1: The requirement to make FAPE available applies to all children with disabilities within the State who are in the age ranges required under §300.300 and who need special education and related services. This includes children with disabilities already in school and children with less severe disabilities, who are not covered under the priorities under §300.321.

NOTE 2: In order to be in compliance with §300.300, each State must ensure that the requirement to identify, locate, and evaluate all children with disabilities is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with §§300.530–300.533. If, as a result of the evaluation, it is determined that a child needs special education and related services, an IEP must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.

NOTE 3: The requirement to identify, locate, and evaluate children with disabilities (commonly referred to as the ''child find system'') was enacted on August 21, 1974, under Pub. L. 93–380. While each State needed time to establish and implement its child find system, the four year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to ensure that the system is fully operational and effective on a Statewide basis.

Under the statute, the age range for the child find requirement (0–21) is greater than the mandated age range for providing FAPE. One reason for the broader age requirement under ''child find'' is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement that has the same age range as child find. Moreover, while a State is not required to provide FAPE to children with disabilities below the age ranges mandated under §300.300, the State may, at its discretion, extend services to those children, subject to the priority requirements of §§300.320–300.324.

§300.301 Free appropriate public education—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(Authority: 20 U.S.C. 1401 (18); 1412(2)(B))

§300.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(Authority: 20 U.S.C. 1412(2)(B); 1413(a)(4)(B))

NOTE: This requirement applies to placements that are made by public agencies for educational purposes, and includes placements in State-operated schools for children with disabilities, such as a State school for students with deafness or students with blindness.

§300.303 Proper functioning of hearing aids.

Each public agency shall ensure that the hearing aids worn by children with hearing impairments including deafness in school are functioning properly.

(Authority: 20 U.S.C. 1412(2)(B))

NOTE: The report of the House of Representatives on the 1978 appropriation bill includes the following statement regarding hearing aids:

In its report on the 1976 appropriation bill the Committee expressed concern about the condition of hearing aids worn by children in public schools. A study done at the Committee's direction by the Bureau of Education for the Handicapped reveals that up to one-third of the hearing aids are malfunctioning. Obviously, the Committee expects the Office of Education will ensure that hearing impaired school children are receiving adequate professional assessment, follow-up and services.

(Authority: H. R. Rep. No. 95–381, p. 67 (1977))

§ 300.304 Full educational opportunity goal.

(a) Each SEA shall ensure that each public agency establishes and implements a goal of providing full educational opportunity to all children with disabilities in the area served by the public agency.

(b) Subject to the priority requirements of §§ 300.320–300.324, an SEA or LEA may use part B funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

NOTE: In meeting the full educational opportunity goal, the Congress also encouraged LEAs to include artistic and cultural activities in programs supported under this part, subject to the priority requirements of §§ 300.320–300.324. This point is addressed in the following statements from the Senate Report on Public Law 94–142:

The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been unteachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges that local educational agencies include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool per se.

Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. Therefore, in light of the national policy concerning the use of museums in federally supported education programs enunciated in the Education Amendments of 1974, the Committee also urges local educational agencies to include museums in programs for the handicapped funded under this Act.

(Authority: S. Rep. No. 94–168, p. 13 (1975))

§ 300.305 Program options.

Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

NOTE: The above list of program options is not exhaustive, and could include any program or activity in which nondisabled students participate.

§ 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

§ 300.307 Physical education.

(a) *General.* Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.

(b) *Regular physical education.* Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) *Special physical education.* If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for those services to be provided through other public or private programs.

(d) *Education in separate facilities.* The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall

ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(Authority: 20 U.S.C. 1401(a)(16); 1412(5)(B); 1414(a)(6))

NOTE: The Report of the House of Representatives on Public Law 94–142 includes the following statement regarding physical education:

Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.

* * * * *

The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

(Authority: H. R. Rep. No. 94–332, p. 9 (1975))

§ 300.308 Assistive technology.

Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5–300.6, are made available to a child with a disability if required as a part of the child's—

(a) Special education under § 300.17;

(b) Related services under § 300.16; or

(c) Supplementary aids and services under § 300.550(b)(2).

(Authority: 20 U.S.C. 1412(2), (5)(B))

PRIORITIES IN THE USE OF PART B FUNDS

§ 300.320 Definitions of "first priority children" and "second priority children."

For the purposes of §§ 300.321–300.324, the term:

(a) *First priority children* means children with disabilities who—

(1) Are in an age group for which the State must make FAPE available under § 300.300; and

(2) Are not receiving any education.

(b) *Second priority children* means children with disabilities, within each disability category, with the most severe disabilities who are receiving an inadequate education.

(Authority: 20 U.S.C. 1412(3))

NOTE 1: After September 1, 1978, there should be no second priority children, since States must ensure, as a condition of receiving part B funds for fiscal year 1979, that all children with disabilities will have FAPE available by that date.

NOTE 2: The term *free appropriate public education*, as defined in § 300.8, means special education and related services that * * * ''are provided in conformity with an IEP'' * * *.

New first priority children will continue to be found by the State after September 1, 1978 through on-going efforts to identify, locate, and evaluate all children with disabilities.

§ 300.321 Priorities.

(a) Each SEA and LEA shall use funds provided under part B of the Act in the following order of priorities:

(1) To provide FAPE to first priority children, including the identification, location, and evaluation of first priority children.

(2) To provide FAPE to second priority children, including the identification, location, and evaluation of second priority children.

(3) To meet the other requirements of this part.

(b) The requirements of paragraph (a) of this section do not apply to funds that the State uses for administration under § 300.620.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii))

NOTE: SEAs as well as LEAs must use part B funds (except the portion used for State administration) for the priorities. A State may have to set aside a portion of its part B allotment to be able to serve newly identified first priority children.

After September 1, 1978, part B funds may be used—

(1) To continue supporting child identification, location, and evaluation activities;

(2) To provide FAPE to newly identified first priority children;

(3) To meet the full educational opportunity goal required under § 300.304, including

employing additional personnel and providing inservice training, in order to increase the level, intensity and quality of services provided to individual children with disabilities; and

(4) To meet the other requirements of part B.

§ 300.322 [Reserved]

§ 300.323 Services to other children.

If a State or an LEA is providing FAPE to all of its first priority children, that State or LEA may use funds provided under part B of the Act—

(a) To provide FAPE to children with disabilities who are not receiving any education and who are in the age groups not covered under § 300.300 in that State; or

(b) To provide FAPE to second priority children; or

(c) Both.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(2)(A)(ii))

§ 300.324 Application of local educational agency to use funds for the second priority.

An LEA may use funds provided under part B of the Act for second priority children, if it provides assurance satisfactory to the SEA in its application (or an amendment to its application)—

(a) That all first priority children have FAPE available to them;

(b) That the LEA has a system for the identification, location, and evaluation of children with disabilities, as described in its application; and

(c) That whenever a first priority child is identified, located, and evaluated, the LEA makes FAPE available to the child.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (c)(1)(B); 1414(a)(1)(C)(ii))

INDIVIDUALIZED EDUCATION PROGRAMS

§ 300.340 Definitions.

(a) As used in this part, the term *individualized education program* means a written statement for a child with a disability that is developed and implemented in accordance with §§ 300.341–300.350.

(b) As used in §§ 300.346 and 300.347, *participating agency* means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(Authority: 20 U.S.C. 1401(a)(20))

§ 300.341 State educational agency responsibility.

(a) *Public agencies.* The SEA shall ensure that each public agency develops and implements an IEP for each of its children with disabilities.

(b) *Private schools and facilities.* The SEA shall ensure that an IEP is developed and implemented for each child with a disability who—

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial school or other private school and receives special education or related services from a public agency.

(Authority: 20 U.S.C. 1412 (4), (6); 1413(a)(4))

NOTE: This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare) that provide special education to a child with a disability either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a child with a disability, that agency would be responsible for ensuring that an IEP is developed for the child.

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.342 When individualized education programs must be in effect.

(a) At the beginning of each school year, each public agency shall have in effect an IEP for every child with a disability who is receiving special education from that agency.

(b) An IEP must—

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 300.343.

(Authority: 20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5); Pub. L. 94–142, sec. 8(c) (1975))

NOTE: Under paragraph (b)(2) of this section, it is expected that the IEP of a child

with a disability will be implemented immediately following the meetings under §300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances that require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

§300.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability (or, if consistent with State policy and at the discretion of the LEA, and with the concurrence of the parents, an individualized family service plan described in section 677(d) of the Act for each child with a disability, aged 3 through 5).

(b) [Reserved]

(c) *Timeline.* A meeting to develop an IEP for a child must be held within 30 calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to review each child's IEP periodically and, if appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

(Authority: 20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5))

NOTE: The date on which agencies must have IEPs in effect is specified in §300.342 (the beginning of each school year). However, except for new children with disabilities (i.e., those evaluated and determined to need special education and related services for the first time), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect at the beginning of the school year, agencies could hold meetings either at the end of the preceding school year or during the summer prior to the next school year. Meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review and, if appropriate, revise each child's IEP. The timing of those meetings could be on the anniversary date of the child's last IEP meeting, but this is left to the discretion of the agency.

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§300.344 Participants in meetings.

(a) *General.* The public agency shall ensure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to §300.345.

(4) The child, if appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a child with a disability who has been evaluated for the first time, the public agency shall ensure—

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(c) *Transition services participants.* (1) If a purpose of the meeting is the consideration of transition services for a student, the public agency shall invite—

(i) The student; and

(ii) A representative of any other agency that is likely to be responsible for providing or paying for transition services.

(2) If the student does not attend, the public agency shall take other steps to ensure that the student's preferences and interests are considered; and

(3) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(Authority: 20 U.S.C. 1401(a)(19), (a)(20); 1412(2)(B), (4), (6); 1414(a)(5))

NOTE 1: In deciding which teacher will participate in meetings on a child's IEP, the

agency may wish to consider the following possibilities:

(a) For a child with a disability who is receiving special education, the teacher could be the child's special education teacher. If the child's disability is a speech impairment, the teacher could be the speech-language pathologist.

(b) For a child with a disability who is being considered for placement in special education, the teacher could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

For a child whose primary disability is a speech or language impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

NOTE 2: Under paragraph (c) of this section, the public agency is required to invite each student to participate in his or her IEP meeting, if a purpose of the meeting is the consideration of transition services for the student. For all students who are 16 years of age or older, one of the purposes of the annual meeting will always be the planning of transition services, since transition services are a required component of the IEP for these students.

For a student younger than age 16, if transition services are initially discussed at a meeting that does not include the student, the public agency is responsible for ensuring that, before a decision about transition services for the student is made, a subsequent IEP meeting is conducted for that purpose, and the student is invited to the meeting.

§ 300.345 Parent participation.

(a) Each public agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b)(1) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting and who will be in attendance;

(2) If a purpose of the meeting is the consideration of transition services for a student, the notice must also—

(i) Indicate this purpose;

(ii) Indicate that the agency will invite the student; and

(iii) Identify any other agency that will be invited to send a representative.

(c) If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the IEP.

(Authority: 20 U.S.C. 1401(a)(20); 1412 (2)(B), (4), (6); 1414(a)(5))

NOTE: The notice in paragraph (a) of this section could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c) of this section, the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.346 Content of individualized education program.

(a) *General.* The IEP for each child must include—

(1) A statement of the child's present levels of educational performance;

(2) A statement of annual goals, including short-term instructional objectives;

(3) A statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs;

(4) The projected dates for initiation of services and the anticipated duration of the services; and

(5) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(b) *Transition services.* (1) The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services as defined in §300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

(2) If the IEP team determines that services are not needed in one or more of the areas specified in §300.18 (b)(2)(i) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which the determination was made.

(Authority: 20 U.S.C. 1401 (a)(19), (a)(20); 1412 (2)(B), (4), (6); 1414(a)(5))

NOTE 1: The legislative history of the transition services provisions of the Act suggests that the statement of needed transition services referred to in paragraph (b) of this section should include a commitment by any participating agency to meet any financial responsibility it may have in the provision of transition services. See House Report No. 101–544, p. 11 (1990).

NOTE 2: With respect to the provisions of paragraph (b) of this section, it is generally expected that the statement of needed transition services will include the areas listed in §300.18 (b)(2)(i) through (b)(2)(iii). If the IEP team determines that services are not needed in one of those areas, the public agency must implement the requirements in paragraph (b)(2) of this section. Since it is a part of the IEP, the IEP team must reconsider its determination at least annually.

NOTE 3: Section 602(a)(20) of the Act provides that IEPs must include a statement of needed transition services for students beginning no later than age 16, but permits transition services to students below age 16 (i.e., ''* * * and, when determined appropriate for the individual, beginning at age 14 or younger.''). Although the statute does not mandate transition services for all students beginning at age 14 or younger, the provision of these services could have a significantly positive effect on the employment and independent living outcomes for many of these students in the future, especially for students who are likely to drop out before age 16. With respect to the provision of transition services to students below age 16, the Report of the House Committee on Education and Labor on Public Law 101–476 includes the following statement:

Although this language leaves the final determination of when to initiate transition services for students under age 16 to the IEP process, it nevertheless makes clear that Congress expects consideration to be given to the need for transition services for some students by age 14 or younger. The Committee encourages that approach because of their concern that age 16 may be too late for many students, particularly those at risk of dropping out of school and those with the most severe disabilities. Even for those students who stay in school until age 18, many will need more than two years of transitional services. Students with disabilities are now dropping out of school before age 16, feeling that the education system has little to offer them. Initiating services at a younger age will be critical. (House Report No. 101–544, 10 (1990).)

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§300.347 Agency responsibilities for transition services.

(a) If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

(b) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

(Authority: 20 U.S.C. 1401 (a)(18), (a)(19), (a)(20); 1412(2)(B))

§ 300.348 Private school placements by public agencies.

(a) *Developing individualized education programs.* (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with § 300.343.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(3) [Reserved]

(b) *Reviewing and revising individualized education programs.* (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative:

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.349 Children with disabilities in parochial or other private schools.

If a child with a disability is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall—

(a) Initiate and conduct meetings to develop, review, and revise an IEP for the child, in accordance with § 300.343; and

(b) Ensure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

(Authority: 20 U.S.C. 1413(a)(4)(A))

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.350 Individualized education program—accountability.

Each public agency must provide special education and related services to a child with a disability in accordance with an IEP. However, part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(Authority: 20 U.S.C. 1412(2)(B); 1414(a) (5), (6); Cong. Rec. at H7152 (daily ed., July 21, 1975))

NOTE: This section is intended to relieve concerns that the IEP constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the goals and objectives listed in the IEP. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

DIRECT SERVICE BY THE STATE EDUCATIONAL AGENCY

§ 300.360 Use of local educational agency allocation for direct services.

(a) An SEA may not distribute funds to an LEA, and shall use those funds to ensure the provision of FAPE to children with disabilities residing in the area served by the LEA, if the LEA, in any fiscal year—

(1) Is entitled to less than $7,500 for that fiscal year (beginning with fiscal year 1979);

(2) Does not submit an application that meets the requirements of §§ 300.220–300.240;

(3) Is unable or unwilling to establish and maintain programs of FAPE;

(4) Is unable or unwilling to be consolidated with other LEAs in order to

establish and maintain those programs; or

(5) Has one or more children with disabilities who can best be served by a regional or State center designed to meet the needs of those children.

(b) In meeting the requirements in paragraph (a) of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.

(c) The excess cost requirements of §§ 300.182–300.186 do not apply to the SEA.

(Authority: 20 U.S.C. 1411(c)(4); 1413(b); 1414(d))

NOTE: Section 300.360 is a combination of three provisions in the statute (Sections 611(c)(4), 613(b), and 614(d)). This section focuses mainly on the State's administration and use of local entitlements under part B.

The SEA, as a recipient of part B funds, is responsible for ensuring that all public agencies in the State comply with the provisions of the Act, regardless of whether they receive part B funds. If an LEA elects not to apply for its part B entitlement, the State would be required to use those funds to ensure that FAPE is made available to children residing in the area served by that local agency. However, if the local entitlement is not sufficient for this purpose, additional State or local funds would have to be expended in order to ensure that FAPE and the other requirements of the Act are met.

Moreover, if the LEA is the recipient of any other Federal funds, it would have to be in compliance with 34 CFR §§ 104.31–104.39 of the regulations implementing section 504 of the Rehabilitation Act of 1973. It should be noted that the term ''FAPE'' has different meanings under part B and section 504. For example, under part B, FAPE is a statutory term that requires special education and related services to be provided in accordance with an IEP. However, under section 504, each recipient must provide an education that includes services that are ''designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met * * *'' Those regulations state that implementation of an IEP, in accordance with part B, is one means of meeting the FAPE requirement.

§ 300.361 Nature and location of services.

The SEA may provide special education and related services under § 300.360(a) in the manner and at the location it considers appropriate. However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the LRE provisions of §§ 300.550–300.556).

(Authority: 20 U.S.C. 1414(d))

§ 300.370 Use of State agency allocations.

(a) The State may use the portion of its allocation that it does not use for administration under §§ 300.620–300.621—

(1) For support services and direct services in accordance with the priority requirements of §§ 300.320–300.324; and

(2) For the administrative costs of the State's monitoring activities and complaint investigations, to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during fiscal year 1985.

(b) For the purposes of paragraph (a) of this section—

(1) *Direct services* means services provided to a child with a disability by the State directly, by contract, or through other arrangements; and

(2) ''Support services'' includes implementing the comprehensive system of personnel development of §§ 300.380–300.383, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to FAPE for children with disabilities.

(Authority: 20 U.S.C. 1411 (b)(2), (c)(2))

§ 300.371 State matching.

Beginning with the period July 1, 1978-June 30, 1979, and for each following fiscal year, the funds that a State uses for direct and support services under § 300.370 must be matched on a program basis by the State from funds other than Federal funds. This requirement does not apply to funds that the State uses under § 300.360.

(Authority: 20 U.S.C. 1411 (c)(2)(B), (c)(4)(B))

NOTE: The requirement in § 300.371 would be satisfied if the State can document that the amount of State funds expended for each major program area (e.g., the comprehensive system of personnel development) is at least equal to the expenditure of Federal funds in that program area.

§ 300.372 Applicability of nonsupplanting requirement.

Beginning with funds appropriated for fiscal year 1979 and for each following fiscal year, the requirement in section 613(a)(9) of the Act, which prohibits supplanting with Federal funds, does not apply to funds that the State uses from its allocation under § 300.706(a) for administration, direct services, or support services.

(Authority: 20 U.S.C. 1411(c)(3))

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

§ 300.380 General.

Each State shall—

(a) Develop and implement a comprehensive system of personnel development that—

(1) Is consistent with the purposes of the Act and with the comprehensive system of personnel development described in 34 CFR § 303.360;

(2) Meets the requirements in §§ 300.381–300.383; and

(3) Is consistent with the provisions on personnel standards in § 300.153; and

(b) Include in its State plan a description of the personnel development system required in paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1413 (a)(3), (a)(14))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.381 Adequate supply of qualified personnel.

Each State plan must include a description of the procedures and activities the State will undertake to ensure an adequate supply of qualified personnel (as the term *qualified* is defined at § 300.15), including special education and related services personnel and leadership personnel, necessary to carry out the purposes of this part. The procedures and activities must include the development, updating, and implementation of a plan that—

(a) Addresses current and projected special education and related services personnel needs, including the need for leadership personnel; and

(b) Coordinates and facilitates efforts among SEA and LEAs, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities.

(Authority: 20 U.S.C. 1413(a)(3)(A))

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.382 Personnel preparation and continuing education.

Each State plan must include a description of the procedures and activities the State will undertake to ensure that all personnel necessary to carry out this part are appropriately and adequately prepared. The procedures and activities must include—

(a) A system for the continuing education of regular and special education and related services personnel to enable these personnel to meet the needs of children with disabilities under this part;

(b) Procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and

(c) Procedures for adopting, if appropriate, promising practices, materials, and technology, proven effective through research and demonstration.

(Authority: 20 U.S.C. 1413(a)(3)(B))

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.383 Data system on personnel and personnel development.

(a) *General.* The procedures and activities required in §§ 300.381 and 300.382 must include the development and maintenance of a system for determining, on an annual basis, the data required in paragraphs (b) and (c) of this section.

(b) *Data on qualified personnel.* (1) The system required by paragraph (a) of this section must enable each State to determine, on an annual basis—

(i) The number and type of personnel, including leadership personnel, employed in the provision of special education and related services, by profession or discipline;

(ii) The number and type of personnel who are employed with emergency, provisional, or temporary certification in each profession or discipline who do not hold appropriate State certification, licensure, or other credentials comparable to certification or licensure for that profession or discipline; and

(iii) The number and type of personnel, including leadership personnel, in each profession or discipline needed, and a projection of the numbers of those personnel that will be needed in five years, based on projections of individuals to be served, retirement and other departures of personnel from the field, and other relevant factors.

(2) The data on special education and related services personnel required in paragraph (b)(1) of this section must include audiologists, counselors, diagnostic and evaluation personnel, home-hospital teachers, interpreters for students with hearing impairments including deafness, occupational therapists, physical education teachers, physical therapists, psychologists, rehabilitation counselors, social workers, speech-language pathologists, teacher aides, recreation and therapeutic recreation specialists, vocational education teachers, work-study coordinators, and other instructional and noninstructional staff.

(3) The data on leadership personnel required by paragraph (b)(1) of this section must include administrators and supervisors of State or local agencies who are involved in the provision or supervision of services or activities necessary to carry out the purposes of this part.

(c) *Data on personnel development.* The system required in paragraph (a) of this section must enable each State to determine, on an annual basis, the institutions of higher education within the State that are preparing special education and related services personnel, including leadership personnel, by area of specialization, including—

(1) The numbers of students enrolled in programs for the preparation of special education and related services personnel administered by these institutions of higher education; and

(2) The numbers of students who graduated during the past year with certification or licensure, or with credentials to qualify for certification or licensure, from programs for the preparation of special education and related services personnel administered by institutions of higher education.

(Authority: 20 U.S.C. 1413(a)(3)(A))

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.384–300.387 [Reserved].

Subpart D—Private Schools

CHILDREN WITH DISABILITIES IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES

§ 300.400 Applicability of §§ 300.400–300.402.

Sections 300.401–300.402 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.401 Responsibility of State educational agency.

Each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency:

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§ 300.340–300.350;

(2) At no cost to the parents; and

(3) At a school or facility that meets the standards that apply to the SEA and LEAs (including the requirements of this part); and

(b) Has all of the rights of a child with a disability who is served by a public agency.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.402 Implementation by State educational agency.

In implementing § 300.401, the SEA shall—

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

(Authority: 20 U.S.C. 1413(a)(4)(B))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.403 Placement of children by parents.

(a) If a child with a disability has FAPE available and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under §§ 300.450–300.452.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of §§ 300.500–300.515.

(Authority: 20 U.S.C. 1412(2)(B); 1415)

CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

§ 300.450 Definition of "private school children with disabilities."

As used in this part, *private school children with disabilities* means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§ 300.400–300.402.

(Authority: 20 U.S.C. 1413(a)(4)(A))

§ 300.451 State educational agency responsibility.

The SEA shall ensure that—

(a) To the extent consistent with their number and location in the State, provision is made for the participation of private school children with disabilities in the program assisted or carried out under this part by providing them with special education and related services; and

(b) The requirements of 34 CFR 76.651–76.662 are met.

(Authority: 20 U.S.C. 1413(a)(4)(A))

§ 300.452 Local educational agency responsibility.

Each LEA shall provide special education and related services designed to meet the needs of private school children with disabilities residing in the jurisdiction of the agency.

(Authority: 20 U.S.C. 1413(a)(4)(A); 1414(a)(6))

PROCEDURES FOR BY-PASS

§ 300.480 By-pass—general.

(a) The Secretary implements a by-pass if an SEA is, and was on December 2, 1983, prohibited by law from providing for the participation of private school children with disabilities in the program assisted or carried out under this part, as required by section 613(a)(4)(A) of the Act and by §§ 300.451–300.452.

(b) The Secretary waives the requirement of section 613(a)(4)(A) of the Act and of §§ 300.451–300.452 if the Secretary implements a by-pass.

(Authority: 20 U.S.C. 1413(d)(1))

§ 300.481 Provisions for services under a by-pass.

(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including SEA officials, in the affected State to consider matters such as—

(1) The prohibition imposed by State law that results in the need for a by-pass;

(2) The scope and nature of the services required by private school children with disabilities in the State, and the number of children to be served under the by-pass; and

(3) The establishment of policies and procedures to ensure that private school children with disabilities receive services consistent with the requirements of section 613(a)(4)(A) of the Act, §§ 300.451–300.452, and 34 CFR §§ 76.651–76.662.

(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school children with disabilities in the State in a manner consistent with the requirements of section 613(a)(4)(A) of the Act and §§ 300.451–300.452 by providing services through one or more agreements with appropriate parties.

(c) For any fiscal year that a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying—

(1) A per child amount that may not exceed the amount per child provided by the Secretary under this part for all children with disabilities in the State for the preceding fiscal year; by

(2) The number of private school children with disabilities (as defined by §§ 300.7(a) and 300.450) in the State, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those children with disabilities.

(d) The Secretary deducts from the State's allocation under this part the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.

(Authority: 20 U.S.C. 1413(d)(2))

DUE PROCESS PROCEDURES

SOURCE: Sections 300.482 through 300.486 appear at 49 FR 48526, Dec. 12, 1984, unless otherwise noted.

§ 300.482 Notice of intent to implement a by-pass.

(a) Before taking any final action to implement a by-pass, the Secretary provides the affected SEA with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed by-pass in sufficient detail to allow the SEA to respond; and

(2) Advises the SEA that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the SEA by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(d)(3)(A))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.483 Request to show cause.

An SEA seeking an opportunity to show cause why a by-pass should not be implemented shall submit a written request for a show cause hearing to the Secretary.

(Authority: 20 U.S.C. 1413(d)(3)(A))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.484 Show cause hearing.

(a) If a show cause hearing is requested, the Secretary—

(1) Notifies the SEA and other appropriate public and private school officials of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing.

(b) At the show cause hearing, the designee considers matters such as—

(1) The necessity for implementing a by-pass;

(2) Possible factual errors in the written notice of intent to implement a by-pass; and

(3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all

steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order.

(d) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(e) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.485 Decision.

(a) The designee who conducts the show cause hearing—

(1) Issues a written decision that includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 15 days of the date the party receives the designee's decision.

(c) The Secretary adopts, reverses, or modifies the designee's decision and notifies the SEA of the Secretary's final action. That notice is sent by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.486 Filing requirements.

(a) Any written submission under § 300.482–300.485 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

(c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(d) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(Authority: 20 U.S.C. 1413(d)(3)(A))

[57 FR 56796, Nov. 30, 1992]

§ 300.487 Judicial review.

If dissatisfied with the Secretary's final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located. The procedures for judicial review are described in section 613(d)(3)(B)–(D) of the Act.

(Authority: 20 U.S.C. 1413(d)(3)(B)–(D))

[57 FR 44798, Sept. 29, 1992. Redesignated at 57 FR 56796, Nov. 30, 1992]

Subpart E—Procedural Safeguards

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

§ 300.500 Definitions of "consent," "evaluation," and "personally identifiable."

(a) As used in this part: *Consent* means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(b) *Evaluation* means procedures used in accordance with §§ 300.530–300.534 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or

procedures used with all children in a school, grade, or class.

(c) *Personally identifiable* means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's social security number or student number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415, 1417(c))

§ 300.501 General responsibility of public agencies.

Each SEA shall ensure that each public agency establishes and implements procedural safeguards that meet the requirements of §§ 300.500–300.515.

(Authority: 20 U.S.C. 1415(a))

§ 300.502 Opportunity to examine records.

The parents of a child with a disability shall be afforded, in accordance with the procedures of §§ 300.562–300.569, an opportunity to inspect and review all education records with respect to—

(a) The identification, evaluation, and educational placement of the child; and

(b) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(A))

§ 300.503 Independent educational evaluation.

(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) *Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.*

(ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.301.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under § 300.506 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the public agency in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(Authority: 20 U.S.C. 1415(b)(1)(A))

§ 300.504 Prior notice; parent consent.

(a) *Notice.* Written notice that meets the requirements of § 300.505 must be given to the parents of a child with a disability a reasonable time before the public agency—

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) *Consent; procedures if a parent refuses consent.* (1) Parental consent must be obtained before—

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a child with a disability in a program providing special education and related services.

(2) If State law requires parental consent before a child with a disability is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(3) If there is no State law requiring consent before a child with a disability is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in §§ 300.506–300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent. If it does so and the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under §§ 300.510–300.513.

(c) *Additional State consent requirements.* In addition to the parental consent requirements described in paragraph (b) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(d) *Limitation.* A public agency may not require parental consent as a condition of any benefit to the parent or the child except for the service or activity for which consent is required under paragraphs (b) or (c) of this section.

(Authority: 20 U.S.C. 1415(b)(1)(C), (D); 1412(2), (6))

NOTE 1: Any changes in a child's special education program after the initial placement are not subject to the parental consent requirements in paragraph (b)(1) of this section, but are subject to the prior notice requirement in paragraph (a) of this section and the IEP requirements of §§ 300.340–300.350.

NOTE 2: Paragraph (b)(2) of this section means that if State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures of §§ 300.506–300.508 to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

NOTE 3: If a State adopts a consent requirement in addition to those described in paragraph (b) of this section and consent is refused, paragraph (d) of this section requires that the public agency must nevertheless provide the services and activities that are not in dispute. For example, if a State requires parental consent to the provision of all services identified in an IEP and the parent refuses to consent to physical therapy services included in the IEP, the agency is not relieved of its obligation to implement those portions of the IEP to which the parent consents.

If the parent refuses to consent and the public agency determines that the service or activity in dispute is necessary to provide FAPE to the child, paragraph (c) of this section requires that the agency must implement its procedures to override the refusal. This section does not preclude the agency from reconsidering its proposal if it believes that circumstances warrant.

§ 300.505 Content of notice.

(a) The notice under § 300.504 must include—

(1) A full explanation of all of the procedural safeguards available to the parents under § 300.500, §§ 300.502–300.515, and §§ 300.562–300.569;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors that are relevant to the agency's proposal or refusal.

(b) The notice must be—

(1) Written in language understandable to the general public; and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the SEA or LEA shall take steps to ensure—

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice; and

(3) That there is written evidence that the requirements in paragraphs (c)(1) and (2) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(1)(D))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§300.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in §300.504(a)(1) and (2).

(b) The hearing must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if—

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(Authority: 20 U.S.C. 1415(b)(2))

NOTE: Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of children with disabilities, and the provision of FAPE to those children. Mediations have been conducted by members of SEAs or LEA personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under §§300.500–300.515.

§300.507 Impartial hearing officer.

(a) A hearing may not be conducted—

(1) By a person who is an employee of a public agency that is involved in the education or care of the child; or

(2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(Authority: 20 U.S.C. 1414(b)(2))

§300.508 Hearing rights.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses.

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing.

(4) Obtain a written or electronic verbatim record of the hearing.

(5) Obtain written findings of fact and decisions. The public agency, after deleting any personally identifiable information, shall—

(i) Transmit those findings and decisions to the State advisory panel established under §300.650; and

(ii) Make those findings and decisions available to the public.

(b) Parents involved in hearings must be given the right to—

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(Authority: 20 U.S.C. 1415(d))

§ 300.509 Hearing decision; appeal.

A decision made in a hearing conducted under § 300.506 is final, unless a party to the hearing appeals the decision under § 300.510 or § 300.511.

(Authority: 20 U.S.C. 1415(c))

§ 300.510 Administrative appeal; impartial review.

(a) If the hearing is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(b) If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record.

(2) Ensure that the procedures at the hearing were consistent with the requirements of due process.

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 300.508 apply.

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official.

(5) Make an independent decision on completion of the review.

(6) Give a copy of written findings and the decision to the parties.

(c) The SEA, after deleting any personally identifiable information, shall—

(1) Transmit the findings and decisions referred to in paragraph (b)(6) of this section to the State advisory panel established under § 300.650; and

(2) Make those findings and decisions available to the public.

(d) The decision made by the reviewing official is final unless a party brings a civil action under § 300.511.

(Authority: 20 U.S.C. 1415(c), (d); H. R. Rep. No. 94–664, at p. 49 (1975))

NOTE 1: The SEA may conduct its review either directly or through another State agency acting on its behalf. However, the SEA remains responsible for the final decision on review.

NOTE 2: All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in § 300.508 relating to hearings also apply.

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.511 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under § 300.510, and any party aggrieved by the decision of a reviewing officer under § 300.510, has the right to bring a civil action under section 615(e)(2) of the Act.

(Authority: 20 U.S.C. 1415)

§ 300.512 Timelines and convenience of hearings and reviews.

(a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review—

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415)

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§300.513 Child's status during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(Authority: 20 U.S.C. 1415(e)(3))

NOTE: Section 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

§300.514 Surrogate parents.

(a) *General.* Each public agency shall ensure that the rights of a child are protected when—

(1) No parent (as defined in §300.13) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method: (1) For determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) *Criteria for selection of surrogates.* (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate—

(i) Has no interest that conflicts with the interest of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraphs (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(B))

§300.515 Attorneys' fees.

Each public agency shall inform parents that in any action or proceeding under section 615 of the Act, courts may award parents reasonable attorneys' fees under the circumstances described in section 615(e)(4) of the Act.

(Authority: 20 U.S.C. 1415(b)(1)(D); 1415(e)(4))

PROTECTION IN EVALUATION PROCEDURES

§300.530 General.

(a) Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of §§300.530–300.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of children with disabilities must be selected and administered so as not to be racially or culturally discriminatory.

(Authority: 20 U.S.C. 1412(5)(C))

§300.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a child with a disability in a program providing special education and related services, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of §300.532.

(Authority: 20 U.S.C. 1412(5)(C))

§300.532 Evaluation procedures.

State educational agencies and LEAs shall ensure, at a minimum, that:

(a) Tests and other evaluation materials—

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer.

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(Authority: 20 U.S.C. 1412(5)(C))

NOTE: Children who have a speech or language impairment as their primary disability may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would: (1) Evaluate each child with a speech or language impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments, and (2) if necessary, make referrals for additional assessments needed to make an appropriate placement decision.

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall—

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Ensure that information obtained from all of these sources is documented and carefully considered;

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Ensure that the placement decision is made in conformity with the LRE rules in §§ 300.550–300.554.

(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.340–300.350.

(Authority: 20 U.S.C. 1412(5)(C); 1414(a)(5))

NOTE: Paragraph (a)(1) of this section includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to ensure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other children with disabilities, such as a child who has a severe articulation impairment as his primary disability. For such a child, the speech-language pathologist, in complying with the multiple source requirement, might use: (1) A standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.534 Reevaluation.

Each SEA and LEA shall ensure—

(a) That the IEP of each child with a disability is reviewed in accordance with §§ 300.340–300.350; and

(b) That an evaluation of the child, based on procedures that meet the requirements of § 300.532, is conducted every three years, or more frequently if conditions warrant, or if the child's parent or teacher requests an evaluation.

(Authority: 20 U.S.C. 1412(5)(c))

ADDITIONAL PROCEDURES FOR EVALUATING CHILDREN WITH SPECIFIC LEARNING DISABILITIES

§ 300.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of § 300.532, each public agency shall include on the multidisciplinary evaluation team—

(a)(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: 20 U.S.C. 1411 note)

§ 300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if—

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas—

(i) Oral expression;

(ii) Listening comprehension;

(iii) Written expression;

(iv) Basic reading skill;

(v) Reading comprehension;

(vi) Mathematics calculation; or

(vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of—

(1) A visual, hearing, or motor impairment;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

(Authority: 20 U.S.C. 1411 note)

§ 300.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1411 note)

§ 300.543 Written report.

(a) The team shall prepare a written report of the results of the evaluation.

(b) The report must include a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(c) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team

member must submit a separate statement presenting his or her conclusions.

(Authority: 20 U.S.C. 1411 note)

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

LEAST RESTRICTIVE ENVIRONMENT

§ 300.550 General.

(a) Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of §§ 300.550–300.556.

(b) Each public agency shall ensure—

(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(Authority: 20 U.S.C. 1412(5)(B); 1414(a)(1)(C)(iv))

§ 300.551 Continuum of alternative placements.

(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under § 300.17 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(5)(B))

§ 300.552 Placements.

Each public agency shall ensure that:

(a) The educational placement of each child with a disability—

(1) Is determined at least annually;

(2) Is based on his or her IEP; and

(3) Is as close as possible to the child's home.

(b) The various alternative placements included at § 300.551 are available to the extent necessary to implement the IEP for each child with a disability.

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.

(Authority: 20 U.S.C. 1412(5)(B))

NOTE: Section 300.552 includes some of the main factors that must be considered in determining the extent to which a child with a disability can be educated with children who are nondisabled. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to ensure that each child with a disability receives an education that is appropriate to his or her individual needs.

The requirements of § 300.552, as well as the other requirements of §§ 300.550–300.556, apply to all preschool children with disabilities who are entitled to receive FAPE. Public agencies that provide preschool programs for nondisabled preschool children must ensure that the requirements of § 300.552(c) are met. Public agencies that do not operate programs for nondisabled preschool children are not required to initiate such programs solely to satisfy the requirements regarding placement in the LRE embodied in §§ 300.550–300.556. For these public agencies, some alternative methods for meeting the requirements of §§ 300.550–300.556 include—

(1) Providing opportunities for the participation (even part-time) of preschool children with disabilities in other preschool programs operated by public agencies (such as Head Start);

(2) Placing children with disabilities in private school programs for nondisabled preschool children or private school preschool programs that integrate children with disabilities and nondisabled children; and

(3) Locating classes for preschool children with disabilities in regular elementary schools.

In each case the public agency must ensure that each child's placement is in the LRE in

which the unique needs of that child can be met, based upon the child's IEP, and meets all of the other requirements of §§ 300.340–300.350 and §§ 300.550–300.556.

The analysis of the regulations for section 504 of the Rehabilitation Act of 1973 (34 CFR part 104—Appendix, Paragraph 24) includes several points regarding educational placements of children with disabilities that are pertinent to this section:

1. With respect to determining proper placements, the analysis states: ''* * * it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs * * *.''

2. With respect to placing a child with a disability in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parents' right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home; and this issue may be raised by the parent under the due process provisions of this subpart.

§ 300.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.306, each public agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(Authority: 20 U.S.C. 1412(5)(B))

NOTE: Section 300.553 is taken from a requirement in the final regulations for section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the section 504 regulations includes the following statement: ''[This paragraph] specifies that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children.'' (34 CFR part 104—Appendix, Paragraph 24.)

§ 300.554 Children in public or private institutions.

Each SEA shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to ensure that § 300.550 is effectively implemented.

(Authority: 20 U.S.C. 1412(5)(B))

NOTE: Under section 612(5)(B) of the statute, the requirement to educate children with disabilities with nondisabled children also applies to children in public and private institutions or other care facilities. Each SEA must ensure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

§ 300.555 Technical assistance and training activities.

Each SEA shall carry out activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing § 300.550; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(Authority: 20 U.S.C. 1412(5)(B))

§ 300.556 Monitoring activities.

(a) The SEA shall carry out activities to ensure that § 300.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.550, the SEA shall—

(1) Review the public agency's justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action.

(Authority: 20 U.S.C. 1412(5)(B))

CONFIDENTIALITY OF INFORMATION

§ 300.560 Definitions.

As used in §§ 300.560–300.576—

Destruction means physical destruction or removal of personal identifiers

from information so that the information is no longer personally identifiable.

Education records means the type of records covered under the definition of education records in part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.561 Notice to parents.

(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of § 300.128, including—

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in part 99 of this title.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose

for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.566 Fees.

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.567 Amendment of records at parent's request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing under § 300.568.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.570 Hearing procedures.

A hearing held under § 300.568 must be conducted according to the procedures under § 99.22 of this title.

[57 FR 48694, Oct. 27, 1992]

§ 300.571 Consent.

(a) Parental consent must be obtained before personally identifiable information is—

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under part 99 of this title.

(c) The SEA shall include policies and procedures in its State plan that are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.129 and part 99 of this title.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

NOTE: Under § 300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b) of this section.

§ 300.574 Children's rights.

The SEA shall include policies and procedures in its State plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

NOTE: Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18.

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§300.575 Enforcement.

The SEA shall describe in its State plan the policies and procedures, including sanctions, that the State uses to ensure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§300.576 Department.

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), the Secretary shall apply the requirements of 5 U.S.C. 552a (b)(1)–(2), (4)–(11); (c); (d); (e)(1); (2); (3)(A), (B), and (D), (5)–(10); (h); (m); and (n), and the regulations implementing those provisions in part 5b of this title.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

DEPARTMENT PROCEDURES

§300.580 [Reserved]

§300.581 Disapproval of a State plan.

Before disapproving a State plan, the Secretary gives the SEA written notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c))

§300.582 Content of notice.

(a) In the written notice, the Secretary—

(1) States the basis on which the Secretary proposes to disapprove the State plan;

(2) May describe possible options for resolving the issues;

(3) Advises the SEA that it may request a hearing and that the request for a hearing must be made not later than 30 calendar days after it receives the notice of proposed disapproval; and

(4) Provides information about the procedures followed for a hearing.

(b) The Secretary sends the written notice to the SEA by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(c))

§300.583 Hearing official or panel.

(a) If the SEA 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.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(Authority: 20 U.S.C. 1413(c))

§300.584 Hearing procedures.

(a) As used in §§300.581–300.586 the term *party or parties* means the following:

(1) An SEA that requests a hearing regarding the proposed disapproval of its State plan under this part.

(2) The Department of Education official who administers the program of financial assistance under this part.

(3) A person, group or agency with an interest in and having relevant information about the case that has applied for and been granted leave to intervene by the Hearing Official or Panel.

(b) Within 15 calendar days after receiving a request for a hearing, the Secretary designates a Hearing Official or Panel and notifies the parties.

(c) The Hearing Official or Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Hearing Official or Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.

(2) The Hearing Official or Panel may schedule a prehearing conference of the Hearing Official or Panel and parties.

(3) Any party may request the Hearing Official or Panel to schedule a prehearing or other conference. The Hearing Official or Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Panel and the parties may consider subjects such as—

(i) Narrowing and clarifying issues;

(ii) Assisting the parties in reaching agreements and stipulations;

(iii) Clarifying the positions of the parties;

(iv) Determining whether an evidentiary hearing or oral argument should be held; and

(v) Setting dates for—

(A) The exchange of written documents;

(B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing;

(C) Further proceedings before the Hearing Official or Panel (including an evidentiary hearing or oral argument, if either is scheduled);

(D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or

(E) Completion of the review and the initial decision of the Hearing Official or Panel.

(5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties shall be prepared to discuss the subjects listed in paragraph (b)(4) of this section.

(7) Following a prehearing or other conference the Hearing Official or Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(d) The Hearing Official or Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(e) The Hearing Official or Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.

(g) The Hearing Official or Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Panel may examine witnesses.

(j) The Hearing Official or Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

(l) The Hearing Official or Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(m)(1) The parties shall present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Panel gives each party an opportunity to be represented by counsel.

(n) If the Hearing Official or Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Panel gives each party, in addition to the opportunity to be represented by counsel—

(1) An opportunity to present witnesses on the party's behalf; and

(2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.

(p)(1) The Hearing Official or Panel—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the hearing; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party shall file with the Hearing Official or Panel all written motions, briefs, and other documents and shall at the same time provide a copy to the other parties to the proceedings.

(Authority: 20 U.S.C. 1413(c))

§ 300.585 Initial decision; final decision.

(a) The Hearing Official or Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under § 300.582.

(b) The initial decision of a Panel is made by a majority of Panel members.

(c) The Hearing Official or Panel mails by certified mail with return receipt requested a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.

(d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Panel within 15 calendar days of the date the party receives the Panel's decision.

(e) The Hearing Official or Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Panel within seven calendar days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.

(g) The initial decision of the Hearing Official or Panel becomes the final decision of the Secretary unless, within 25 calendar days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.

(h) The Secretary may reject or modify the initial decision of the Hearing Official or Panel if the Secretary finds that it is clearly erroneous.

(i) The Secretary conducts the review based on the initial decision, the written record, the Hearing Official's or Panel's proceedings, and written comments. The Secretary may remand the matter for further proceedings.

(j) The Secretary issues the final decision within 30 calendar days after notifying the Hearing Official or Panel that the initial decision is being further reviewed.

§ 300.586 Filing requirements.

(a) Any written submission under §§ 300.582–300.585 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

(c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(d) If a document is filed by facsimile transmission, the Secretary, the Hearing Official, or the Panel, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(Authority: 20 U.S.C. 1413(c))

[57 FR 56796, Nov. 30, 1992]

§ 300.587 Judicial review.

If a State is dissatisfied with the Secretary's final action with respect to its State plan, the State may, within 60 calendar days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Authority: 20 U.S.C. 1416(b)(1))

[57 FR 44798, Sept. 29, 1992. Redesignated at 57 FR 56796, Nov. 30, 1992]

§ 300.588 [Reserved]

§ 300.589 Waiver of requirement regarding supplementing and supplanting with part B funds.

(a) Under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, SEAs and LEAs must ensure that Federal funds provided under this part are used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under this part and in no case to supplant those Federal, State, and local funds. The nonsupplanting requirement applies only to funds allocated to LEAs (See § 300.372).

(b) If the State provides clear and convincing evidence that all children with disabilities have FAPE available to them, the Secretary may waive in part the requirement under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Secretary in writing. The Secretary then provides the State with a finance and membership report form that provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of FAPE to all children with disabilities. The special study must include statements by a representative sample of organizations that deal with children with disabilities, and parents and teachers of children with disabilities, relating to the following areas—

(1) The adequacy and comprehensiveness of the State's system for identifying, locating, and evaluating children with disabilities;

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions; and

(3) The adequacy of the State's due process procedures.

(e) In its request for a waiver, the State shall include finance data relating to the availability of FAPE for all children with disabilities, including—

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year; and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Secretary considers the information that the State provides under paragraphs (d) and (e) of this section, along with any additional information he may request, or obtain through on-site reviews of the State's education programs and records, to determine if all children have FAPE available to them, and if so, the extent of the waiver.

(g) The State may request a hearing with regard to any final action by the Secretary under this section.

(Authority: 20 U.S.C. 1411(c)(3); 1413(a)(9)(B))

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

Subpart F—State Administration

GENERAL

§ 300.600 Responsibility for all educational programs.

(a) The SEA is responsible for ensuring—

(1) That the requirements of this part are carried out; and

(2) That each educational program for children with disabilities administered within the State, including each program administered by any other public agency—

(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

(ii) Meets the education standards of the SEA (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(c) This part may not be construed to limit the responsibility of agencies

other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

(Authority: 20 U.S.C. 1412(6))

NOTE: The requirement in §300.600(a) is taken essentially verbatim from section 612(6) of the statute and reflects the desire of the Congress for a central point of responsibility and accountability in the education of children with disabilities within each State. With respect to SEA responsibility, the Senate Report on Pub. L. 94–142 includes the following statements:

This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency * * *.

Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (S. Rep. No. 94–168, p. 24 (1975))

In meeting the requirements of this section, there are a number of acceptable options that may be adopted, including the following:

(1) Written agreements are developed between respective State agencies concerning SEA standards and monitoring. These agreements are binding on the local or regional counterparts of each State agency.

(2) The Governor's Office issues an administrative directive establishing the SEA responsibility.

(3) State law, regulation, or policy designates the SEA as responsible for establishing standards for all educational programs for individuals with disabilities, and includes responsibility for monitoring.

(4) State law mandates that the SEA is responsible for all educational programs.

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§300.601 Relation of part B to other Federal programs.

This part may not be construed to permit a State to reduce medical and other assistance available to children with disabilities, or to alter the eligibility of a child with a disability, under title V (Maternal and Child Health) or title XIX (Medicaid) of the Social Security Act, to receive services that are also part of FAPE.

(Authority: 20 U.S.C. 1413(e))

USE OF FUNDS

§300.620 Federal funds for State administration.

A State may use five percent of the total State allotment in any fiscal year under part B of the Act, or $450,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot be greater than twenty-five percent of the State's total allotment for the fiscal year under part B of the Act.

(Authority: 20 U.S.C. 1411(b), (c))

§300.621 Allowable costs.

(a) The SEA may use funds under §300.620 for—

(1) Administration of the State plan and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of children with disabilities;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilities;

(3) Technical assistance to LEAs with respect to the requirements of this part;

(4) Leadership services for the program supervision and management of special education activities for children with disabilities; and

(5) Other State leadership activities and consultative services.

(b) The SEA shall use the remainder of its funds under §300.620 in accordance with §300.370.

(Authority: 20 U.S.C. 1411(b), (c))

STATE ADVISORY PANEL

§ 300.650 Establishment.

(a) Each State shall establish, in accordance with the provisions of §§ 300.650–300.653, a State advisory panel on the education of children with disabilities.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

(c) If a State has an existing advisory panel that can perform the functions in § 300.652, the State may modify the existing panel so that it fulfills all of the requirements of §§ 300.650–300.653, instead of establishing a new advisory panel.

(Authority: 20 U.S.C. 1413(a)(12))

§ 300.651 Membership.

(a) The membership of the State advisory panel must be composed of persons involved in or concerned with the education of children with disabilities. The membership must include at least one person representative of each of the following groups—

(1) Individuals with disabilities;

(2) Teachers of children with disabilities;

(3) Parents of children with disabilities;

(4) State and local educational officials; and

(5) Special education program administrators.

(b) The State may expand the advisory panel to include additional persons in the groups listed in paragraph (a) of this section and representatives of other groups not listed.

(Authority: 20 U.S.C. 1413(a)(12))

NOTE: The membership of the State advisory panel, as listed in paragraphs (a)(1)–(5) of this section, is required in section 613(a)(12) of the Act. As indicated in paragraph (b) of this section, the composition of the panel and the number of members may be expanded at the discretion of the State. In adding to the membership, consideration could be given to having—

(1) An appropriate balance between professional groups and consumers (i.e., parents, advocates, and individuals with disabilities);

(2) Broad representation within the consumer-advocate groups, to ensure that the interests and points of view of various parents, advocates and individuals with disabilities are appropriately represented;

(3) Broad representation within professional groups (e.g., regular education personnel: special educators, including teachers, teacher trainers, and administrators, who can properly represent various dimensions in the education of children with disabilities; and appropriate related services personnel); and

(4) Representatives from other State advisory panels (such as vocational education).

If a State elects to maintain a small advisory panel (e.g., 10–15 members), the panel itself could take steps to ensure that it (1) consults with and receives inputs from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.

§ 300.652 Advisory panel functions.

The State advisory panel shall—

(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;

(b) Comment publicly on the State plan and rules or regulations proposed for issuance by the State regarding the education of children with disabilities and the procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Secretary in the performance of his responsibilities under section 618 of the Act.

(Authority: 20 U.S.C. 1413(a)(12))

§ 300.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the SEA. This report must be made available to the public in a manner consistent with other public reporting requirements of this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel

meetings for panel members or participants. The State may pay for these services from funds under §300.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under §300.620 for this purpose.

(Authority: 20 U.S.C. 1413(a)(12))

(Approved by the Office of Management and Budget under control number 1820–0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

STATE COMPLAINT PROCEDURES

§300.660 Adoption of State complaint procedures.

Each SEA shall adopt written procedures for:

(a) Resolving any complaint that meets the requirements of §300.662 by—

(1) Providing for the filing of a complaint with the SEA; and

(2) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint.

(b) Informing parents and other interested individuals about the procedures in §§300.660–300.662.

(Authority: 20 U.S.C. 2831(a))

(Approved by the Office of Management and Budget under control number 1820–0599)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§300.661 Minimum State complaint procedures.

Each SEA shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after a complaint is filed under §300.660(a) to—

(1) Carry out an independent on-site investigation, if the SEA determines that such an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of part B of the Act or of this part; and

(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) Procedures for effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

(d) The right of the complainant or the public agency to request the Secretary to review the SEA's final decision.

(Authority: 20 U.S.C. 2831(a))

(Approved by the Office of Management and Budget under control number 1820–0599)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§300.662 Filing a complaint.

An organization or individual may file a signed written complaint under the procedures described in §§300.600–300.661. The complaint must include—

(a) A statement that a public agency has violated a requirement of part B of the Act or of this part; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 2831(a))

(Approved by the Office of Management and Budget under control number 1820–0599)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

Subpart G—Allocation of Funds; Reports

ALLOCATIONS

§300.700 Special definition of the term "State."

For the purposes of §300.701, §300.702, and §§300.704–300.708, the term *State* does not include Guam, American

Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau.

(Authority: 20 U.S.C. 1411(a)(2))

§ 300.701 State entitlement; formula.

(a) The Secretary calculates the maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year as follows:

(1) If the State is eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of children with disabilities aged 3 through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(2) If the State is not eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of children with disabilities aged 6 through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(Authority: 20 U.S.C. 1411(a)(1))

(b) [Reserved]

(c) For the purposes of this section, the *average per pupil expenditure in public elementary and secondary schools in the United States,* means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the United States (which, for the purpose of this section, means the 50 States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(Authority: 20 U.S.C. 1411(a)(4))

§ 300.702 Limitations and exclusions.

(a) In determining the amount of a grant under § 300.701:

(1) If a State serves all children with disabilities aged 3 through 5 in the State, the Secretary does not count children with disabilities aged 3 through 17 in the State to the extent that the number of those children is greater than 12 percent of the number of all children aged 3 through 17 in the State.

(2) If a State does not serve all children with disabilities aged 3 through 5 in the State, the Secretary does not count children with disabilities aged 5 through 17 to the extent that the number of those children is greater than 12 percent of the number of all children aged 5 through 17 in the State.

(3) The Secretary does not count children with disabilities who are counted under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(b) For the purposes of paragraph (a) of this section, the number of children aged 3 through 17 and 5 through 17 in any State is determined by the Secretary on the basis of the most recent satisfactory data available.

(Authority: 20 U.S.C. 1411(a)(5))

§ 300.703 Ratable reductions.

(a) *General.* If the sums appropriated for any fiscal year for making payments to States under section 611 of the Act are not sufficient to pay in full the total amounts that all States are entitled to receive for that fiscal year, the maximum amount that all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

(Authority: 20 U.S.C. 1411(g)(1))

(b) *Reporting dates for local educational agencies and reallocations.* (1) In

any fiscal year that the State entitlement has been ratably reduced, and that additional funds have not been made available to pay in full the total of the amounts under paragraph (a) of this section, the SEA shall fix dates before which each LEA shall report to the State the amount of funds available to it under this part that it estimates it will expend.

(2) The amounts available under paragraph (a) of this section, or any amount that would be available to any other LEA if it were to submit an application meeting the requirements of this part, that the SEA determines will not be used for the period of its availability shall be available for allocation to those LEAs, in the manner provided in § 300.707, that the SEA determines will need and be able to use additional funds to carry out approved programs.

(Authority: 20 U.S.C. 1411(g)(2))

§ 300.704 Hold harmless provision.

No State shall receive less than the amount it received under part B of the Act for fiscal year 1977.

(Authority: 20 U.S.C. 1411(a)(1))

§ 300.705 Allocation for State in which by-pass is implemented for private school children with disabilities.

In determining the allocation under §§ 300.700–300.703 of a State in which the Secretary will implement a by-pass for private school children with disabilities under §§ 300.451–300.486, the Secretary includes in the State's child count—

(a) For the first year of a by-pass, the actual or estimated number of private school children with disabilities (as defined in §§ 300.7(a) and 300.450) in the State, as of the preceding December 1; and

(b) For succeeding years of a by-pass, the number of private school children with disabilities who received special education and related services under the by-pass in the preceding year.

(Authority: 20 U.S.C. 1411(a)(1)(A), 1411(a)(3), 1413(d))

§ 300.706 Within-State distribution: fiscal year 1979 and after.

Of the funds received under § 300.701 by any State for fiscal year 1979, and for each fiscal year after fiscal year 1979—

(a) 25 percent may be used by the State in accordance with § 300.620 and § 300.370; and

(b) 75 percent shall be distributed to the LEAs in the State in accordance with § 300.707.

(Authority: 20 U.S.C. 1411(c)(1))

§ 300.707 Local educational agency entitlement; formula.

From the total amount of funds available to all LEAs, each LEA is entitled to an amount that bears the same ratio to the total amount as the number of children with disabilities aged 3 through 21 in that agency who are receiving special education and related services bears to the aggregate number of children with disabilities aged 3 through 21 receiving special education and related services in all LEAs that apply to the SEA for funds under part B of the Act.

(Authority: 20 U.S.C. 1411(d))

§ 300.708 Reallocation of local educational agency funds.

If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by the local agency with State and local funds otherwise available to the local agency, the SEA may reallocate funds (or portions of those funds that are not required to provide special education and related services) made available to the local agency under § 300.707, to other LEAs within the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by the other LEAs.

(Authority: 20 U.S.C. 1414(e))

§ 300.709 Payments to the Secretary of the Interior for the education of Indian children.

(a) *General.* (1) The Secretary makes payments to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations, aged 5 through 21, who are enrolled in elementary and secondary schools for Indian children

operated or funded by the Secretary of the Interior.

(2) In the case of Indian students aged 3 through 5 who are enrolled in programs affiliated with Bureau of Indian Affairs (BIA) schools that are required by the States in which the schools are located to attain or maintain State accreditation and had State accreditation prior to October 7, 1991, the schools may count those children for the purpose of distribution of the funds provided under paragraph (a)(1) of this section to the Secretary of the Interior.

(3) The amount of the payment under paragraph (a)(1) of this section for any fiscal year is one percent of the aggregate amounts available to all States under this part for that fiscal year.

(b) *Responsibility for meeting the requirements of part B.* The Secretary of the Interior shall be responsible for meeting all of the requirements of part B of the Act for the children described in paragraph (a) of this section, in accordance with § 300.260.

(Authority: 20 U.S.C. 1411(f))

§ 300.710 Payments to the Secretary of the Interior for Indian tribes or tribal organizations.

(a) *General.* (1) Beginning with funds appropriated under part B of the Act for fiscal year 1992, the Secretary, subject to this section, makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortiums of those tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities, aged 3 through 5, on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior.

(2) The amount of the payment under paragraph (b)(1) of this section for any fiscal year is .25 percent of the aggregate amounts available for all States under this part for that fiscal year.

(3) None of the funds allocated under this section may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(b) *Distribution of funds.* The Secretary of the Interior shall distribute the total amount of the .25 percent under paragraph (a) of this section in accordance with section 611(f)(4) of the Act.

(Authority: 20 U.S.C. 1411(f))

§ 300.711 Entitlements to jurisdictions.

(a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau, (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99–658).

(b) Each jurisdiction under paragraph (a) of this section is entitled to a grant for the purposes set forth in section 601(c) of the Act. The amount to which those jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 percent of the aggregate of the amounts available to all States under this part for that fiscal year. Funds appropriated for those jurisdictions shall be allocated proportionately among them on the basis of the number of children aged 3 through 21 in each jurisdiction. However, no jurisdiction shall receive less than $150,000, and other allocations shall be ratably reduced if necessary to ensure that each jurisdiction receives at least that amount.

(c) The amount expended for administration by each jurisdiction under this section shall not exceed 5 percent of the amount allotted to the jurisdiction for any fiscal year, or $35,000, whichever is greater.

(Authority: 20 U.S.C. 1411(e))

REPORTS

§ 300.750 Annual report of children served—report requirement.

(a) The SEA shall report to the Secretary no later than February 1 of each year the number of children with disabilities aged 3 through 21 residing in

the State who are receiving special education and related services.

(Authority: 20 U.S.C. 1411(a)(3))

(b) The SEA shall submit the report on forms provided by the Secretary.

(Authority: 20 U.S.C. 1411(a)(3))

NOTE: It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make FAPE available. For example, while section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged 3 through 17 (in States that serve all children with disabilities aged 3 through 5) or 5 through 17 (in States that do not serve all children with disabilities aged 3 through 5), a State might find that 14 percent (or some other percentage) of its children have disabilities. In that case, the State must make FAPE available to all of those children with disabilities.

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.751 Annual report of children served—information required in the report.

(a) In its report, the SEA shall include a table that shows—

(1) The number of children with disabilities receiving special education and related services on December 1 of that school year;

(2) The number of children with disabilities aged 3 through 5 who are receiving FAPE;

(3) The number of those children with disabilities aged 6 through 21 within each disability category, as defined in the definition of ''children with disabilities'' in § 300.7; and

(4) The number of those children with disabilities aged 3 through 21 for each year of age (3, 4, 5, etc.).

(b) For the purpose of this part, a child's age is the child's actual age on the date of the child count: December 1.

(c) The SEA may not report a child aged 6 through 21 under more than one disability category.

(d) If a child with a disability aged 6 through 21 has more than one disability, the SEA shall report that child in accordance with the following procedure:

(1) A child with deaf-blindness must be reported under the category ''deaf-blindness.''

(2) A child who has more than one disability (other than deaf-blindness) must be reported under the category ''multiple disabilities.''

(Authority: 20 U.S.C. 1411(a)(3); (5)(A)(ii); 1418(b))

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

§ 300.752 Annual report of children served—certification.

The SEA shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

§ 300.753 Annual report of children served—criteria for counting children.

(a) The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that either—

(1) Provides them with both special education and related services; or

(2) Provides them only with special education if they do not need related services to assist them in benefitting from that special education.

(b) The SEA may not include children with disabilities in its report who—

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to assist them in benefitting from special education;

(4) Are counted by a State agency under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965; or

(5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under § 300.186(b).

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

NOTE 1: Under paragraph (a) of this section, the State may count children with disabilities in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

NOTE 2: Special education, by statutory definition, must be at no cost to parents. As of September 1, 1978, under the FAPE requirement, both special education and related services must be at no cost to parents.

There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Department expects that there would only be limited situations where special education would be clearly separate from regular education—generally, where speech services is the only special education required by the child. For example, the child's parents may have enrolled the child in a regular program in a private school, but the child might be receiving speech services in a program funded by the LEA. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in section 613(a)(4)(A) of the Act regarding private schools) to public agencies to provide services to children enrolled by their parents in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should understand, however, that if a public agency places or refers a child with a disability to a public or private school for educational purposes, special education includes the entire educational program provided to the child. In that case, parents may not be charged for any part of the child's education.

A State may not count Indian children on or near reservations and children on military facilities if it provides them no special education. If an SEA or LEA is responsible for serving these children, and does provide them special education and related services, they may be counted.

§ 300.754 Annual report of children served—other responsibilities of the State educational agency.

In addition to meeting the other requirements of §§ 300.750–300.753, the SEA shall—

(a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with § 300.750(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§ 300.750–300.753; and

(e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

NOTE: States should note that the data required in the annual report of children served are not to be transmitted to the Secretary in personally identifiable form. States are encouraged to collect these data in non-personally identifiable form.

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[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

APPENDIX A TO PART 300—[RESERVED]

APPENDIX B TO PART 300—[RESERVED]

APPENDIX C TO PART 300—NOTICE OF INTERPRETATION

I. Purpose of the IEP
II. IEP Requirements

§ 300.340 Definition

§ 300.341 State educational agency responsibility

1. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

§ 300.342 When individualized education programs must be in effect

3. In requiring that an IEP be in effect before special education and related services are provided, what does ''be in effect'' mean?

4. How much of a delay is permissible between the time an IEP of a child with a disability is finalized and when special education is provided?

5. For a child with a disability receiving special education for the first time, when

must an IEP be developed—before placement or after placement?

6. If a child with a disability has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

§ 300.343 Meetings

7. What is the purpose of the 30 day timeline in § 300.343(c)?

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

9. Must IEPs be reviewed or revised at the beginning of each school year?

10. How frequently must IEP meetings be held and how long should they be?

11. Who can initiate IEP meetings?

12. May IEP meetings be tape-recorded?

§ 300.344 Participants in meetings

(Agency representative)

13. Who can serve as the representative of the public agency at an IEP meeting?

14. Who is the representative of the public agency if a child with a disability is served by a public agency other than the SEA or LEA?

(The child's teacher)

15. For a child with a disability being considered for initial placement in special education, which teacher should attend the IEP meeting?

16. If a child with a disability is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

17. If a child with a disability in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?

18. If a child's primary disability is a speech impairment, must the child's regular teacher attend the IEP meeting?

19. If a child is enrolled in a special education class because of a primary disability and also receives speech-language pathology services, must both specialists attend the IEP meeting?

(The child, parents, other individuals)

20. When may representatives of teacher organizations attend IEP meetings?

21. When may a child with a disability attend an IEP meeting?

22. Do the parents of a student with a disability retain the right to attend the IEP meeting when the student reaches the age of majority?

23. Must related services personnel attend IEP meetings?

24. Are agencies required to use a case manager in the development of an IEP for a child with a disability?

25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

§ 300.345 Parent participation

26. What is the role of the parents at an IEP meeting?

27. What is the role of a surrogate parent at an IEP meeting?

28. Must the public agency let the parents know who will be at the IEP meeting?

29. Are parents required to sign IEPs?

30. If the parent signs the IEP, does the signature indicate consent for initial placement?

31. Do parents have the right to a copy of their child's IEP?

32. Must parents be informed at the IEP meeting of their right to appeal?

33. Does the IEP include ways for parents to check the progress of their children?

34. Must IEPs include specific checkpoint intervals for parents to confer with teachers and to revise or update their children's IEPs?

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

§ 300.346 Content of the individualized education program

(Present levels of educational performance)

36. What should be included in the statement of the child's present levels of educational performance?

(Annual goals and short term instructional objectives)

37. Why are goals and objectives required in the IEP?

38. What are annual goals in an IEP?

39. What are short term instructional objectives in an IEP?

40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?

41. Should there be a relationship between the goals and objectives in the IEP and those that are in the instructional plans of special education personnel?

42. When must IEP objectives be written—before placement or after placement?

43. Can short term instructional objectives be changed without initiating another IEP meeting?

(Specific special education and related services)

44. Must the IEP include all special education and related services needed by the

child or only those available from the public agency?

45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?

46. Must the public agency itself directly provide the services set out in the IEP?

47. Does the IEP include only special education and related services or does it describe the total education of the child?

48. If modifications are necessary for a child with a disability to participate in a regular education program, must they be included in the IEP?

49. When must physical education (PE) be described or referred to in an IEP?

50. If a child with a disability is to receive vocational education, must it be described or referred to in the student's IEP?

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

52. Must an IEP for a child with a disability indicate the extent that the child will be educated in the regular educational program?

(Projected dates/Evaluation)

53. Can the anticipated duration of services be for more than twelve months?

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

(Other IEP content questions)

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

56. Is there a prescribed format or length for an IEP?

57. Is it permissible to consolidate the IEP with the individualized service plan developed under another Federal program?

58. What provisions on confidentiality of information apply to IEPs?

§ 300.348 Private school placements by public agencies

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

§ 300.349 Children with disabilities enrolled in parochial or other private schools

§ 300.350 Individualized education programs—accountability

60. Is the IEP a performance contract?

AUTHORITY: Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411–1420), unless otherwise noted.

INDIVIDUALIZED EDUCATION PROGRAMS (IEPS)

Interpretation of Requirements of Part B of the Individuals with Disabilities Education Act

I. Purpose of the IEP

There are two main parts of the IEP requirement, as described in the Act and regulations: (1) The IEP meeting(s), where parents and school personnel jointly make decisions about an educational program for a child with a disability, and (2) the IEP document itself, that is, a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

a. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

b. The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning the special education needs of a child with a disability; first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.

c. The IEP sets forth in writing a commitment of resources necessary to enable a child with a disability to receive needed special education and related services.

d. The IEP is a management tool that is used to ensure that each child with a disability is provided special education and related services appropriate to the child's special learning needs.

e. The IEP is a compliance/monitoring document that may be used by authorized monitoring personnel from each governmental level to determine whether a child with a disability is actually receiving the FAPE agreed to by the parents and the school.

f. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes.

NOTE: The Act does not require that teachers or other school personnel be held accountable if a child with a disability does not achieve the goals and objectives set forth in the IEP. See § 300.350, Individualized education program—accountability.

II. IEP Requirements

This part (1) repeats the IEP requirements in §§ 300.340–300.350 of the regulations (boxed material), (2) provides additional clarification, as necessary, on sections or paragraphs of the regulations on which such clarification is needed, and (3) answers some questions regarding implementation of the IEP

requirements that are not expressly addressed in the regulations. These questions and clarifying information are presented in a question and answer format immediately after the particular section of the regulations that is presented.

§ 300.340 Definitions.

(a) As used in this part, the term *individualized education program* means a written statement for a child with a disability that is developed and implemented in accordance with §§ 300.341–300.350.

(b) As used in §§ 300.346 and 300.347, *participating agency* means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(Authority: 20 U.S.C. 1401(a)(20))

§ 300.341 State educational agency responsibility.

(a) *Public agencies.* The SEA shall ensure that each public agency develops and implements an IEP for each of its children with disabilities.

(b) *Private schools and facilities.* The SEA shall ensure that an IEP is developed and implemented for each child with a disability who—

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial school or other private school and receives special education or related services from a public agency.

(Authority: 20 U.S.C. 1412(4), (6); 1413(a)(4))

NOTE: This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare) that provide special education to a child with a disability either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a child with a disability, that agency would be responsible for ensuring that an IEP is developed for the child.

1. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

The answer will vary from State to State, depending upon State law, policy, or practice. In each State, however, the SEA is ultimately responsible for ensuring that each agency in the State is in compliance with the IEP requirements and the other provisions of the Act and regulations. (See § 300.600 regarding SEA responsibility for all education programs.)

The SEA must ensure that every child with a disability in the State has FAPE available, regardless of which agency, State or local, is responsible for the child. While the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), there can be no failure to provide FAPE due to jurisdictional disputes among agencies.

NOTE: Section 300.2(b) states that the requirements of the Act and regulations apply to all political subdivisions of the State that are involved in the education of children with disabilities, including (1) the SEA, (2) LEAs, (3) other State agencies (such as Departments of Mental Health and Welfare, and State schools for students with deafness or students with blindness), and (4) State correctional facilities.

The following paragraphs outline (1) some of the SEA's responsibilities for developing policies or agreements under a variety of interagency situations, and (2) some of the responsibilities of an LEA when it initiates the placement of a child with a disability in a school or program operated by another State agency:

a. SEA POLICIES OR INTERAGENCY AGREEMENTS. The SEA, through its written policies or agreements, must ensure that IEPs are properly written and implemented for all children with disabilities in the State. This applies to each interagency situation that exists in the State, including any of the following:

(1) When an LEA initiates the placement of a child in a school or program operated by another State agency (see ''LEA-Initiated Placements'' in paragraph ''b'', below); (2) when a State or local agency other than the SEA or LEA places a child in a residential facility or other program; (3) when parents initiate placements in public institutions; and (4) when the courts make placements in correctional facilities.

NOTE: This is not an exhaustive list. The SEA's policies must cover any other interagency situation that is applicable in the State, including placements that are made for both educational and for non-educational purposes.

Frequently, more than one agency is involved in developing or implementing an IEP of a child with a disability (e.g., when the LEA remains responsible for the child, even though another public agency provides the special education and related services, or when there are shared cost arrangements). It is important that SEA policies or agreements define the role of each agency involved in the situations described above, in order to resolve any jurisdictional problems that could delay the provision of FAPE to a child with a disability. For example, if a child is placed in a residential facility, any one or all of the following agencies might be involved in the development and/or implementation of the child's IEP: The child's

LEA, the SEA, another State agency, an institution or school under that agency, and the LEA where the institution is located.

NOTE: The SEA must also ensure that any agency involved in the education of a child with a disability is in compliance with the LRE provisions of the Act and regulations, and, specifically, with the requirement that the placement of each child with a disability (1) be determined at least annually, (2) be based on the child's IEP, and (3) be as close as possible to the child's home (§300.552(a), Placements.)

b. LEA-INITIATED PLACEMENTS. When an LEA is responsible for the education of a child with a disability, the LEA is also responsible for developing the child's IEP. The LEA has this responsibility even if development of the IEP results in placement in a State-operated school or program.

NOTE: The IEP must be developed before the child is placed. (See Question 5, below.) When placement in a State-operated school is necessary, the affected State agency or agencies must be involved by the LEA in the development of the IEP. (See response to Question 59, below, regarding participation of a private school representative at the IEP meeting.)

After the child enters the State school, meetings to review or revise the child's IEP could be conducted by either the LEA or the State school, depending upon State law, policy, or practice. However, both agencies should be involved in any decisions made about the child's IEP (either by attending the IEP meetings, or through correspondence or telephone calls). There must be a clear decision, based on State law, as to whether responsibility for the child's education is transferred to the State school or remains with the LEA, since this decision determines which agency is responsible for reviewing or revising the child's IEP.

2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

The ''placing'' State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, as indicated in Question 1, above, the SEA in the placing State is responsible for ensuring that the child has FAPE available.

§300.342 When individualized education programs must be in effect.

(a) At the beginning of each school year, each public agency shall have in effect an IEP for every child with a disability who is receiving special education from that agency.

(b) An IEP must—

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under §300.343.

(Authority: 20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5); Pub. L. 94–142, sec. 8(c) (1975))

NOTE: Under paragraph (b)(2) of this section, it is expected that the IEP of a child with a disability will be implemented immediately following the meetings under §300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances that require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

3. In requiring that an IEP be in effect before special education and related services are provided, what does ''be in effect'' mean?

As used in the regulations, the term *be in effect* means that the IEP (1) has been developed properly (i.e., at a meeting(s) involving all of the participants specified in the Act (parent, teacher, agency representative, and, if appropriate, the child)); (2) is regarded by both the parents and agency as appropriate in terms of the child's needs, specified goals and objectives, and the services to be provided; and (3) will be implemented as written.

4. How much of a delay is permissible between the time an IEP of a child with a disability is finalized and when special education is provided?

In general, no delay is permissible. It is expected that the special education and related services set out in a child's IEP will be provided by the agency beginning immediately after the IEP is finalized. The Note following §300.342 identifies some exceptions ((1) when the meetings occur during the summer or other vacation period, or (2) when there are circumstances that require a short delay, such as working out transportation arrangements). However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible following the meeting.

NOTE: Section 300.346(a)(4) requires that the IEP include the projected dates for initiation of services.

5. For a child with a disability receiving special education for the first time, when must an IEP be developed — before placement or after placement?

An IEP must be in effect before special education and related services are provided to a child. (§300.342(b)(1), emphasis added.) The appropriate placement for a given child with a disability cannot be determined until after decisions have been made about what the child's needs are and what will be provided. Since these decisions are made at the IEP meeting, it would not be permissible to

first place the child and then develop the IEP. Therefore, the IEP must be developed before placement. The above requirement does not preclude temporarily placing an eligible child with a disability in a program as part of the evaluation process—before the IEP is finalized—to aid in determining the most appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an interim IEP for the child that sets out the specific conditions and timelines for the trial placement. (See paragraph ''c'', below.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

NOTE: Once the IEP of the child with a disability is in effect and the child is placed in a special education program, the teacher might develop detailed lesson plans or objectives based on the IEP. However, these lesson plans and objectives are not required to be a part of the IEP itself. (See Questions 3743, below, regarding IEP goals and objectives.)

6. If a child with a disability has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

It would not be necessary for the new LEA to conduct an IEP meeting if:

(1) A copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new LEA determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the LEA or the parent believes that it is not appropriate, an IEP meeting would have to be conducted. This meeting should take place within a short time after the child enrolls in the new LEA (normally, within one week).

NOTE: The child must be placed in a special education program immediately after the IEP is finalized. (See Question 4, above.)

If the LEA or the parents believe that additional information is needed (e.g., the school records from the former LEA) or that a new evaluation is necessary before a final placement decision can be made, it would be permissible to temporarily place the child in an interim program before the IEP is finalized. (See Question 5, above.)

§ 300.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability (or, if consistent with State policy and at the discretion of the LEA, and with the concurrence of the parents, an individualized family service plan described in section 677(d) of the Act for each child with a disability, aged 3 through 5).

(b) [Reserved]

(c) *Timeline.* A meeting to develop an IEP for a child must be held within 30 calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to review each child's IEP periodically and, if appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

(Authority: 20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5))

NOTE: The date on which agencies must have IEPs in effect is specified in § 300.342 (the beginning of each school year). However, except for new children with disabilities (i.e., those evaluated and determined to need special education and related services for the first time), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency. In order to have IEPs in effect at the beginning of the school year, agencies could hold meetings either at the end of the preceding school year or during the summer prior to the next school year. Meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review and, if appropriate, revise each child's IEP. The timing of those meetings could be on the anniversary date of the child's last IEP meeting, but this is left to the discretion of the agency.

7. What is the purpose of the 30 day timeline in § 300.343(c)?

The 30 day timeline in § 300.343(c) ensures that there will not be a significant delay between the time a child is evaluated and when the child begins to receive special education. Once it is determined—through the evaluation—that a child has a disability, the public agency has up to 30 days to hold an IEP meeting.

NOTE: See Questions 4 and 5, above, regarding finalization of IEP and placement of the child.

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

Paragraph (e) of §300.532 (Evaluation procedures) provides that the evaluation of each child with a disability must be ''made by a multidisciplinary team or group of persons * * *''. The decisions regarding (1) whether the team members actually meet together, and (2) whether such meetings are separate from the IEP meeting are matters that are left to the discretion of State or local agencies.

In practice, some agencies hold separate eligibility meetings with the multidisciplinary team before the IEP meeting.

NOTE: When separate meetings are conducted, placement decisions would be made at the IEP meeting. However, placement options could be discussed at the eligibility meeting.

Other agencies combine the two steps into one. If a combined meeting is conducted, the public agency must include the parents as participants at the meeting. (See §300.345 for requirements on parent participation.)

NOTE: If, at a separate eligibility meeting, a decision is made that a child is not eligible for special education, the parents should be notified about the decision.

9. Must IEPs be reviewed or revised at the beginning of each school year?

No. The basic requirement in the regulations is that IEPs must be in effect at the beginning of each school year. Meetings must be conducted at least once each year to review and, if necessary, revise the IEP of each child with a disability. However, the meetings may be held anytime during the year, including (1) at the end of the school year, (2) during the summer, before the new school year begins, or (3) on the anniversary date of the last IEP meeting on the child.

10. How frequently must IEP meetings be held and how long should they be?

Section 614(a)(5) of the Act provides that each public agency must hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. The legislative history of the Act makes it clear that there should be as many meetings a year as any one child may need. (121 Cong. Rec. S20428–29 (Nov. 19, 1975) (remarks of Senator Stafford))

There is no prescribed length for IEP meetings. In general, meetings (1) will be longer for initial placements and for children who require a variety of complex services, and (2) will be shorter for continuing placements and for children who require only a minimum amount of services. In any event, however, it is expected that agencies will allow sufficient time at the meetings to ensure meaningful parent participation.

11. Who can initiate IEP meetings?

IEP meetings are initiated and conducted at the discretion of the public agency. However, if the parents of a child with a disability believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. The public agency should grant any reasonable request for such a meeting.

NOTE: Under §300.506(a), the parents or agency may initiate a due process hearing at any time regarding any matter related to the child's IEP.

If a child's teacher(s) feels that the child's placement or IEP services are not appropriate to the child, the teacher(s) should follow agency procedures with respect to (1) calling or meeting with the parents and/or (2) requesting the agency to hold another meeting to review the child's IEP.

12. May IEP meetings be tape-recorded?

The use of tape recorders at IEP meetings is not addressed by either the Act or the regulations. Although taping is clearly not required, it is permissible at the option of either the parents or the agency. However, if the recording is maintained by the agency, it is an education record, within the meaning of the Family Educational Rights and Privacy Act (''FERPA''; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR part 99) and part B (34 CFR §§300.560–300.575).

§300.344 Participants in meetings.

(a) *General.* The public agency shall ensure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to §300.345.

(4) The child, if appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a child with a disability who has been evaluated for the first time, the public agency shall ensure—

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(c) *Transition services participants.* (1) If a purpose of the meeting is the consideration of transition services for a student, the public agency shall invite—

(i) The student; and

(ii) A representative of any other agency that is likely to be responsible for providing or paying for transition services.

(2) If the student does not attend, the public agency shall take other steps to ensure that the student's preferences and interests are considered; and

(3) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(Authority: 20 U.S.C. 1401 (a)(19), (a)(20); 1412(2)(B), (4), (6); 1414(a)(5))

NOTE 1: In deciding which teacher will participate in meetings on a child's IEP, the agency may wish to consider the following possibilities:

(a) For a child with a disability who is receiving special education, the teacher could be the child's special education teacher. If the child's disability is a speech impairment, the teacher could be the speech-language pathologist.

(b) For a child with a disability who is being considered for placement in special education, the teacher could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

For a child whose primary disability is a speech or language impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

NOTE 2: Under paragraph (c), the public agency is required to invite each student to participate in his or her IEP meeting, if a purpose of the meeting is the consideration of transition services for the student. For all students who are 16 years of age or older, one of the purposes of the annual meeting will always be the planning of transition services, since transition services are a required component of the IEP for these students.

For a student younger than age 16, if transition services are initially discussed at a meeting that does not include the student, the public agency is responsible for ensuring that, before a decision about transition services for the student is made, a subsequent IEP meeting is conducted for that purpose, and the student is invited to the meeting.

13. Who can serve as the representative of the public agency at an IEP meeting?

The representative of the public agency could be any member of the school staff, other than the child's teacher, who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities. (Section 602(a)(20) of the Act.) Thus, the agency representative could be (1) a qualified special education administrator, supervisor, or teacher (including a speech-language pathologist), or (2) a school principal or other administrator—if the person is qualified to provide, or supervise the provision of, special education.

Each State or local agency may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not be vetoed at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (i.e., to make decisions about the specific special education and related services that the agency will provide to a particular child).

For a child with a disability who requires only a limited amount of special education, the agency representative able to commit appropriate resources could be a special education teacher, or a speech-language pathologist, other than the child's teacher. For a child who requires extensive special education and related services, the agency representative might need to be a key administrator in the agency.

NOTE: IEP meetings for continuing placements could be more routine than those for initial placements, and, thus, might not require the participation of a key administrator.

14. Who is the representative of the public agency if a child with a disability is served by a public agency other than the SEA or LEA?

The answer depends on which agency is responsible, under State law, policy, or practice, for any one or all of the following:

(1) The child's education, (2) placing the child, and (3) providing (or paying for the provision of) special education and related services to the child.

In general, the agency representative at the IEP meeting would be a member of the agency or institution that is responsible for the child's education. For example, if a State agency (1) places a child in an institution, (2) is responsible under State law for the child's education, and (3) has a qualified special education staff at the institution, then a member of the institution's staff would be the agency representative at the IEP meetings.

Sometimes there is no special education staff at the institution, and the children are served by special education personnel from the LEA where the institution is located. In this situation, a member of the LEA staff

would usually serve as the agency representative.

NOTE: In situations where the LEA places a child in an institution, paragraph ''b'' of the response to Question 1, above, would apply.

15. For a child with a disability being considered for initial placement in special education, which teacher should attend the IEP meeting?

The teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) the child's regular teacher. At the option of the agency, both teachers could attend. In any event, there should be at least one member of the school staff at the meeting (e.g., the agency representative or the teacher) who is qualified in the child's area of suspected disability.

NOTE: Sometimes more than one meeting is necessary in order to finalize a child's IEP. If, in this process, the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should ensure that the teacher is given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

16. If a child with a disability is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

In general, the teacher at the IEP meeting should be the child's special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should either provide the regular teacher with a copy of the IEP or inform the regular teacher of its contents. Moreover, the agency should ensure that the special education teacher, or other appropriate support person, is able, as necessary, to consult with and be a resource to the child's regular teacher.

17. If a child with a disability in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?

No. Only one teacher must attend. However, at the option of the LEA, additional teachers of the child may attend. The following points should be considered in making this decision:

a. Generally, the number of participants at IEP meetings should be small. Small meetings have several advantages over large ones. For example, they (1) allow for more open, active parent involvement, (2) are less costly, (3) are easier to arrange and conduct, and (4) are usually more productive.

b. While large meetings are generally inappropriate, there may be specific circumstances where the participation of additional staff would be beneficial. When the participation of the regular teachers is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of the child's participation in the regular education program), it would be appropriate for them to attend the meeting.

c. Although the child's regular teachers would not routinely attend IEP meetings, they should either (1) be informed about the child's IEP by the special education teacher or agency representative, and/or (2) receive a copy of the IEP itself.

18. If a child's primary disability is a speech impairment, must the child's regular teacher attend the IEP meeting?

No. A speech-language pathologist would usually serve as the child's teacher for purposes of the IEP meeting. The regular teacher could also attend at the option of the school.

19. If a child is enrolled in a special education class because of a primary disability, and also receives speech-language pathology services, must both specialists attend the IEP meeting?

No. It is not required that both attend. The special education teacher would attend the meeting as the child's teacher. The speech-language pathologist could either (1) participate in the meeting itself, or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

20. When may representatives of teacher organizations attend IEP meetings?

Under the Family Educational Rights and Privacy Act (''FERPA''; 20 U.S.C. 1232g) and implementing regulations (34 CFR part 99) and the confidentiality requirements of part B, officials of teacher organizations may not attend IEP meetings if personally identifiable information from the student's education records is discussed—except with the prior written consent of the parents. (See 34 CFR 99.30(a) and 300.571(a)(1).)

In addition, part B does not provide for the participation of representatives of teacher organizations at IEP meetings. The legislative history of the Act makes it clear that attendance at IEP meetings should be limited to those who have an intense interest in the child. (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph).) Since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, it would be inappropriate for such an official to attend an IEP meeting.

21. When may a child with a disability attend an IEP meeting?

Generally, a child with a disability should attend the IEP meeting whenever the parent decides that it is appropriate for the child to

do so. Whenever possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP and/or (2) directly beneficial to the child. The agency should inform the parents before each IEP meeting—as part of the notice of meeting required under §300.345(b)—that they may invite their child to participate.

NOTE: The parents and agency should encourage older children with disabilities (particularly those at the secondary school level) to participate in their IEP meetings.

22. Do the parents of a student with a disability retain the right to attend the IEP meeting when the student reaches the age of majority?

The Act is silent concerning any modification of the rights of the parents of a student with a disability when the student reaches the age of majority.

23. Must related services personnel attend IEP meetings?

No. It is not required that they attend. However, if a child with a disability has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. For example, when the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child.

NOTE: This written recommendation could be a part of the evaluation report.

24. Are agencies required to use a case manager in the development of the IEP of a child with a disability?

No. However, some agencies have found it helpful to have a special educator or some other school staff member (e.g., a social worker, counselor, or psychologist) serve as coordinator or case manager of the IEP process for an individual child or for all children with disabilities served by the agency. Examples of the kinds of activities that case managers might carry out are (1) coordinating the multidisciplinary evaluation; (2) collecting and synthesizing the evaluation reports and other relevant information about a child that might be needed at the IEP meeting; (3) communicating with the parents; and (4) participating in, or conducting, the IEP meeting itself.

25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

No specific person must represent the evaluation team. However, a speech-language pathologist would normally be the most appropriate representative. For many children whose primary disability is a speech impairment, there may be no other evaluation personnel involved. The note following §300.532 (Evaluation procedures) states:

Children who have a speech impairment as their primary disability may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each child with a speech impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments, and (2) if necessary, make referrals for additional assessments needed to make an appropriate placement decision.

§300.345 Parent participation.

(a) Each public agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b)(1) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting and who will be in attendance;

(2) If a purpose of the meeting is the consideration of transition services for a student, the notice must also—

(i) Indicate this purpose;

(ii) Indicate that the agency will invite the student; and

(iii) Identify any other agency that will be invited to send a representative.

(c) If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for

parents with deafness or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the IEP.

(Authority: 20 U.S.C. 1401(a)(20); 1412 (2)(B), (4), (6); 1414(a)(5))

NOTE: The notice in paragraph (a) of this section could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c) of this section, the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

26. What is the role of the parents at an IEP meeting? The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the discussion about the child's need for special education and related services, and (2) join with the other participants in deciding what services the agency will provide to the child.

NOTE: In some instances, parents might elect to bring another participant to the meeting, e.g., a friend or neighbor, someone outside of the agency who is familiar with applicable laws and with the child's needs, or a specialist who conducted an independent evaluation of the child.

27. What is the role of a surrogate parent at an IEP meeting?

A surrogate parent is a person appointed to represent the interests of a child with a disability in the educational decision-making process when that child has no other parent representation. The surrogate has all of the rights and responsibilities of a parent under part B. Thus, the surrogate parent is entitled to (1) participate in the child's IEP meeting, (2) see the child's education records, and (3) receive notice, grant consent, and invoke due process to resolve differences. (See §300.514, Surrogate parents.)

28. Must the public agency let the parents know who will be at the IEP meeting?

Yes. In notifying parents about the meeting, the agency ''must indicate the purpose, time, and location of the meeting, and *who will be in attendance*.'' (§300.345(b), emphasis added.) If possible, the agency should give the name and position of each person who will attend. In addition, the agency should inform the parents of their right to bring other participants to the meeting. (See Question 21, above, regarding participation of the child.) It is also appropriate for the agency to ask whether the parents intend to bring a participant to the meeting.

29. Are parents required to sign IEPs? Parent signatures are not required by either the Act or regulations. However, having such signatures is considered by parents, advocates, and public agency personnel to be useful.

The following are some of the ways that IEPs signed by parents and/or agency personnel might be used:

a. A signed IEP is one way to document who attended the meeting.

NOTE: This is useful for monitoring and compliance purposes.

If signatures are not used, the agency must document attendance in some other way.

b. An IEP signed by the parents is one way to indicate that the parents approved the child's special education program.

NOTE: If, after signing, the parents feel that a change is needed in the IEP, it would be appropriate for them to request another meeting. See Question 11, above.

c. An IEP signed by an agency representative provides the parents a signed record of the services that the agency has agreed to provide.

NOTE: Even if the school personnel do not sign, the agency still must provide, or ensure the provision of, the services called for in the IEP.

30. If the parent signs the IEP, does the signature indicate consent for initial placement?

The parent's signature on the IEP would satisfy the consent requirement concerning initial placement of the child (§300.504(b)(1)(ii)) only if the IEP includes a statement on initial placement that meets the definition of consent in §300.500:

Consent means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought * * *

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary * * * and may be revoked at any time.

31. Do parents have the right to a copy of their child's IEP?

Yes. Section 300.345(f) states that the public agency shall give the parent, on request, a copy of the IEP. In order that parents may know about this provision, it is recommended that they be informed about it at the IEP meeting and/or receive a copy of the IEP itself within a reasonable time following the meeting.

32. Must parents be informed at the IEP meeting of their right to appeal?

If the agency has already informed the parents of their right to appeal, as it is required to do under the prior notice provisions of the regulations (§§300.504–300.505), it would not

be necessary for the agency to do so again at the IEP meeting.

Section 300.504(a) of the regulations states that ''written notice that meets the requirements under §300.505 must be given to parents a reasonable time'' before the public agency proposes or refuses ''to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.''

Section 300.505(a) states that the notice must include ''(1) A full explanation of all of the procedural safeguards available to the parents under §300.500, §§300.502–300.515, and §§300.562–300.569.''

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be. If, during the IEP meeting, parents and school staff are unable to reach agreement, the agency should remind the parents that they may seek to resolve their differences through the due process procedures under the Act.

NOTE: Section 300.506(a) states that ''a parent or public educational agency may initiate a hearing on any matters described in §300.504(a) (1) and (2).''

Every effort should be made to resolve differences between parents and school staff without resort to a due process hearing (i.e., through voluntary mediation or some other informal step). However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing. (See §300.506. Impartial due process hearing.)

33. Does the IEP include ways for parents to check the progress of their children?

In general, the answer is yes. The IEP document is a written record of decisions jointly made by parents and school personnel at the IEP meeting regarding the special education program of a child with a disability. That record includes agreed upon items, such as goals and objectives, and the specific special education and related services to be provided to the child.

The goals and objectives in the IEP should be helpful to both parents and school personnel, in a general way, in checking on a child's progress in the special education program. (See Questions 37–43, below, regarding goals and objectives in the IEP.) However, since the IEP is not intended to include the specifics about a child's total educational program that are found in daily, weekly, or monthly instructional plans, parents will often need to obtain more specific, on-going information about the child's progress—through parent-teacher conferences, report cards and other reporting procedures ordinarily used by the agency.

34. Must IEPs include specific checkpoint intervals for parents to confer with teachers and to revise or update their children's IEPs?

No. The IEP of a child with a disability is not required to include specific ''checkpoint intervals'' (i.e., meeting dates) for reviewing the child's progress. However, in individual situations, specific meeting dates could be designated in the IEP, if the parents and school personnel believe that it would be helpful to do so.

Although meeting dates are not required to be set out in the IEP itself, there are specific provisions in the regulations and in this document regarding agency responsibilities in initiating IEP meetings, including the following:

(1) Public agencies must hold meetings periodically, but not less than annually, to review, and if appropriate, revise, each child's IEP (§300.343(d)); (2) there should be as many meetings a year as the child needs (see Question 10, above); and (3) agencies should grant any reasonable parental request for an IEP meeting (see Question 11, above).

In addition to the above provisions, it is expected that, through an agency's general reporting procedures for all children in school, there will be specific designated times for parents to review their children's progress (e.g., through periodic parent-teacher conferences, and/or the use of report cards, letters, or other reporting devices).

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

As a general rule, the agency and parents would agree to an interim course of action for serving the child (i.e., in terms of placement and/or services) to be followed until the area of disagreement over the IEP is resolved. The manner in which this interim measure is developed and agreed to by both parties is left to the discretion of the individual State or local agency. However, if the parents and agency cannot agree on an interim measure, the child's last agreed upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved. The following may be helpful to agencies if there are disagreements:

a. There may be instances where the parents and agency are in agreement about the basic IEP services (e.g., the child's placement and/or the special education services), but disagree about the provision of a particular related service (i.e., whether the service is needed and/or the amount to be provided). In such cases, it is recommended (1) that the IEP be implemented in all areas where there is agreement, (2) that the document indicate the points of disagreement, and (3) that procedures be initiated to resolve the disagreement.

b. Sometimes the disagreement is with the placement or kind of special education to be

provided (e.g., one party proposes a self-contained placement, and the other proposes resource room services). In such cases, the agency might, for example, carry out any one or all of the following steps:

(1) Remind the parents that they may resolve their differences through the due process procedures under part B; (2) work with the parents to develop an interim course of action (in terms of placement and/or services) that both parties can agree to until resolution is reached; and (3) recommend the use of mediation, or some other informal procedure for resolving the differences without going to a due process hearing. (See Question 32, above, regarding the right to appeal.)

c. If, because of the disagreement over the IEP, a hearing is initiated by either the parents or agency, the agency may not change the child's placement unless the parents and agency agree otherwise. (See §300.513, Child's status during proceedings.) The following two examples are related to this requirement:

(1) A child in the regular fourth grade has been evaluated and found to be eligible for special education. The agency and parents agree that the child has a specific learning disability. However, one party proposes placement in a self-contained program, and the other proposes placement in a resource room. Agreement cannot be reached, and a due process hearing is initiated. Unless the parents and agency agree otherwise, the child would remain in the regular fourth grade until the issue is resolved.

On the other hand, since the child's need for special education is not in question, both parties might agree—as an interim measure—(1) to temporarily place the child in either one of the programs proposed at the meeting (self-contained program or resource room), or (2) to serve the child through some other temporary arrangement.

(2) A child with a disability is currently receiving special education under an existing IEP. A due process hearing has been initiated regarding an alternative special education placement for the child. Unless the parents and agency agree otherwise, the child would remain in the current placement. In this situation, the child's IEP could be revised, as necessary, and implemented in all of the areas agreed to by the parents and agency, while the area of disagreement (i.e., the child's placement) is being settled through due process.

NOTE: If the due process hearing concerns whether or not a particular service should continue to be provided under the IEP (e.g., physical therapy), that service would continue to be provided to the child under the IEP that was in effect at the time the hearing was initiated, (1) unless the parents and agency agree to a change in the services, or (2) until the issue is resolved.

§300.346 Content of individualized education program.

(a) *General.* The IEP for each child must include—

(1) A statement of the child's present levels of educational performance;

(2) A statement of annual goals, including short-term instructional objectives;

(3) A statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs;

(4) The projected dates for initiation of services and the anticipated duration of the services; and

(5) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(b) *Transition services.* (1) The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services as defined in §300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

(2) If the IEP team determines that services are not needed in one or more of the areas specified in §300.18(b)(2)(i) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which the determination was made.

(Authority: 20 U.S.C. 1401(a)(19), (a)(20); 1412(2)(B), (4), (6); 1414(a)(5))

NOTE 1: The legislative history of the transition services provisions of the Act suggests that the statement of needed transition services referred to in paragraph (b) of this section should include a commitment by any participating agency to meet any financial responsibility it may have in the provision of transition services. See House Report No. 101–544, p. 11 (1990).

NOTE 2: With respect to the provisions of paragraph (b) of this section, it is generally expected that the statement of needed transition services will include the areas listed in §300.18(b)(2)(i) through (b)(2)(iii). If the IEP team determines that services are not needed in one of those areas, the public agency must implement the requirements in paragraph (b)(2) of this section. Since it is a part of the IEP, the IEP team must reconsider its determination at least annually.

NOTE 3: Section 602(a)(20) of the Act provides that IEPs must include a statement of needed transition services for students beginning no later than age 16, but permits transition services to students below age 16 (i.e., "* * * and, when determined appropriate for the individual, beginning at age 14

or younger.''). Although the statute does not mandate transition services for all students beginning at age 14 or younger, the provision of these services could have a significantly positive effect on the employment and independent living outcomes for many of these students in the future, especially for students who are likely to drop out before age 16. With respect to the provision of transition services to students below age 16, the Report of the House Committee on Education and Labor on Pub. L. 101–476 includes the following statement:

Although this language leaves the final determination of when to initiate transition services for students under age 16 to the IEP process, it nevertheless makes clear that Congress expects consideration to be given to the need for transition services for some students by age 14 or younger. The Committee encourages that approach because of their concern that age 16 may be too late for many students, particularly those at risk of dropping out of school and those with the most severe disabilities. Even for those students who stay in school until age 18, many will need more than two years of transitional services. Students with disabilities are now dropping out of school before age 16, feeling that the education system has little to offer them. Initiating services at a younger age will be critical. (House Report No. 101–544, 10 (1990).)

36. What should be included in the statement of the child's present levels of educational performance?

The statement of present levels of educational performance will be different for each child with a disability. Thus, determinations about the content of the statement for an individual child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points that should be taken into account in writing this part of the IEP:

a. The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected, including (1) academic areas (reading, math, communication, etc.), and (2) non-academic areas (daily life activities, mobility, etc.).

NOTE: Labels such as mental retardation or deafness may not be used as a substitute for the description of present levels of educational performance.

b. The statement should be written in objective measurable terms, to the extent possible. Data from the child's evaluation would be a good source of such information. Test scores that are pertinent to the child's diagnosis might be included, if appropriate. However, the scores should be (1) self-explanatory (i.e., they can be interpreted by all participants without the use of test manuals or other aids), or (2) an explanation should be included. Whatever test results are used should reflect the impact of the disability on the child's performance. Thus, raw scores would not usually be sufficient.

c. There should be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading level and points to a deficiency in a specific reading skill, this problem should be addressed under both (1) goals and objectives, and (2) specific special education and related services to be provided to the child.

37. Why are goals and objectives required in the IEP?

The statutory requirements for including annual goals and short term instructional objectives (section 602(a)(20)(B)), and for having at least an annual review of the IEP of a child with a disability (section 614(a)(5)) provide a mechanism for determining (1) whether the anticipated outcomes for the child are being met (i.e., whether the child is progressing in the special education program) and (2) whether the placement and services are appropriate to the child's special learning needs. In effect, these requirements provide a way for the child's teacher(s) and parents to be able to track the child's progress in special education. However, the goals and objectives in the IEP are not intended to be as specific as the goals and objectives that are normally found in daily, weekly, or monthly instructional plans.

38. What are annual goals in an IEP?

The annual goals in the IEP are statements that describe what a child with a disability can reasonably be expected to accomplish within a twelve month period in the child's special education program. As indicated under Question 36, above, there should be a direct relationship between the annual goals and the present levels of educational performance.

39. What are short term instructional objectives in an IEP?

Short term instructional objectives (also called IEP objectives) are measurable, intermediate steps between the present levels of educational performance of a child with a disability and the annual goals that are established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goals, and can serve as milestones for measuring progress toward meeting the goals.

In some respects, IEP objectives are similar to objectives used in daily classroom instructional plans. For example, both kinds of objectives are used (1) to describe what a given child is expected to accomplish in a particular area within some specified time period, and (2) to determine the extent that the child is progressing toward those accomplishments.

In other respects, objectives in IEPs are different from those used in instructional plans, primarily in the amount of detail they provide. IEP objectives provide general benchmarks for determining progress toward meeting the annual goals. These objectives should be projected to be accomplished over an extended period of time (e.g., an entire school quarter or semester). On the other hand, the objectives in classroom instructional plans deal with more specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. Classroom instructional plans generally include details not required in an IEP, such as the specific methods, activities, and materials (e.g., use of flash cards) that will be used in accomplishing the objectives.

40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?

IEP goals and objectives are concerned primarily with meeting the needs of a child with a disability for special education and related services, and are not required to cover other areas of the child's education. Stated another way, the goals and objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's disability that interfere with learning and educational performance in school. For example, if a child with a learning disability is functioning several grades below the child's indicated ability in reading and has a specific problem with word recognition, the IEP goals and objectives would be directed toward (1) closing the gap between the child's indicated ability and current level of functioning, and (2) helping the child increase the ability to use word attack skills effectively (or to find some other approach to increase independence in reading).

For a child with a mild speech impairment, the IEP objectives would focus on improving the child's communication skills, by either (1) correcting the impairment, or (2) minimizing its effect on the child's ability to communicate. On the other hand, the goals and objectives for a child with severe mental retardation would be more comprehensive and cover more of the child's school program than if the child has only a mild disability.

41. Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?

Yes. There should be a direct relationship between the IEP goals and objectives for a given child with a disability and the goals and objectives that are in the special education instructional plans for the child. However, the IEP is not intended to be detailed enough to be used as an instructional plan. The IEP, through its goals and objectives, (1) sets the general direction to be taken by those who will implement the IEP, and (2) serves as the basis for developing a detailed instructional plan for the child.

NOTE: See Question 56, below, regarding the length of IEPs.

42. When must IEP objectives be written—before placement or after placement?

IEP objectives must be written before placement. Once a child with a disability is placed in a special education program, the teacher might develop lesson plans or more detailed objectives based on the IEP; however, such plans and objectives are not required to be a part of the IEP itself.

43. Can short term instructional objectives be changed without initiating another IEP meeting?

No. Section 300.343(a) provides that the agency ''is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and *revising* the IEP of a child with a disability'' (emphasis added). Since a change in short term instructional objectives constitutes a revision of the child's IEP, the agency must (1) notify the parents of the proposed change (see §300.504(a)(1)), and (2) initiate an IEP meeting. Note, however, that if the parents are unable or unwilling to attend such a meeting, their participation in the revision of the IEP objectives can be obtained through other means, including individual or conference telephone calls (see §300.345(c)).

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?

Each public agency must provide FAPE to all children with disabilities under its jurisdiction. Therefore, the IEP for a child with a disability must include all of the specific special education and related services needed by the child—as determined by the child's current evaluation. This means that the services must be listed in the IEP even if they are not directly available from the local agency, and must be provided by the agency through contract or other arrangements.

45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?

Yes. The IEP of each child with a disability must include all services necessary to meet the child's identified special education and related services needs; and all services in the IEP must be provided in order for the agency to be in compliance with the Act.

46. Must the public agency itself directly provide the services set out in the IEP?

The public agency responsible for the education of a child with a disability could provide IEP services to the child (1) directly, through the agency's own staff resources, or (2) indirectly, by contracting with another public or private agency, or through other arrangements. In providing the services, the

agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see §300.301(a)). However, the services must be at no cost to the parents, and responsibility for ensuring that the IEP services are provided remains with the public agency.

47. Does the IEP include only special education and related services or does it describe the total education of the child?

The IEP is required to include only those matters concerning the provision of special education and related services and the extent that the child can participate in regular education programs. (NOTE: The regulations define special education as specially designed instruction to meet the unique needs of a child with a disability, and related services as those services that are necessary to assist the child to benefit from special education.) (See §§300.17 and 300.16, respectively.)

For some children with disabilities, the IEP will only address a very limited part of their education (e.g., for a child with a speech impairment, the IEP would generally be limited to the child's speech impairment). For other children (e.g., those with profound mental retardation), the IEP might cover their total education. An IEP for a child with a physical disability with no mental or emotional disability might consist only of specially designed physical education. However, if the child also has a mental or emotional disability, the IEP might cover most of the child's education.

NOTE: The IEP is not intended to be detailed enough to be used as an instructional plan. See Question 41, above.

48. If modifications are necessary for a child with a disability to participate in a regular education program, must they be included in the IEP?

Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP (e.g., for a child with a hearing impairment, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education.

49. When must physical education (PE) be described or referred to in the IEP?

Section 300.307(a) provides that physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE. The following paragraphs (1) set out some of the different PE program arrangements for students with disabilities, and (2) indicate whether, and to what extent, PE must be described or referred to in an IEP:

a. Regular PE with nondisabled students. If a student with a disability can participate fully in the regular PE program without any special modifications to compensate for the student's disability, it would not be necessary to describe or refer to PE in the IEP. On the other hand, if some modifications to the regular PE program are necessary for the student to be able to participate in that program, those modifications must be described in the IEP.

b. Specially designed PE. If a student with a disability needs a specially designed PE program, that program must be addressed in all applicable areas of the IEP (e.g., present levels of educational performance, goals and objectives, and services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the student's IEP.

c. PE in separate facilities. If a student with a disability is educated in a separate facility, the PE program for that student must be described or referred to in the IEP. However, the kind and amount of information to be included in the IEP would depend on the physical-motor needs of the student and the type of PE program that is to be provided.

Thus, if a student is in a separate facility that has a standard PE program (e.g., a residential school for students with deafness), and if it is determined—on the basis of the student's most recent evaluation—that the student is able to participate in that program without any modifications, then the IEP need only note such participation. On the other hand, if special modifications to the PE program are needed for the student to participate, those modifications must be described in the IEP. Moreover, if the student needs an individually designed PE program, that program must be addressed under all applicable parts of the IEP. (See paragraph ''b'', above.)

50. If a student with a disability is to receive vocational education, must it be described or referred to in the student's IEP?

The answer depends on the kind of vocational education program to be provided. If a student with a disability is able to participate in the regular vocational education program without any modifications to compensate for the student's disability, it would not be necessary to include vocational education in the student's IEP. On the other hand, if modifications to the regular vocational education program are necessary in order for the student to participate in that program, those modifications must be included in the IEP. Moreover, if the student needs a specially designed vocational education program, then vocational education must be described in all applicable areas of the student's IEP (e.g., present levels of educational performance, goals and objectives,

and specific services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the IEP.

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgment of the service provider) without holding another IEP meeting.

NOTE: The parents should be notified whenever this occurs.

52. Must the IEP of a child with a disability indicate the extent that the child will be educated in the regular educational program?

Yes. Section 300.346(a)(3) provides that the IEP for each child with a disability must include a ''statement of * * * the extent that the child will be able to participate in regular educational programs.'' One way of meeting this requirement is to indicate the percent of time the child will be spending in the regular education program with nondisabled students. Another way is to list the specific regular education classes the child will be attending.

NOTE: If a child with a severe disability, for example, is expected to be in a special classroom setting most of the time, it is recommended that, in meeting the above requirement, the IEP include any non-curricular activities in which the child will be participating with nondisabled students (e.g., lunch, assembly periods, club activities, and other special events).

53. Can the anticipated duration of services be for more than twelve months?

In general, the anticipated duration of services would be up to twelve months. There is a direct relationship between the anticipated duration of services and the other parts of the IEP (e.g., annual goals and short term instructional objectives), and each part of the IEP would be addressed whenever there is a review of the child's program. If it is anticipated that the child will need a particular service for more than one year, the duration of that service could be projected beyond that time in the IEP. However, the duration of each service must be reconsidered whenever the IEP is reviewed.

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

No. The evaluation procedures and schedules need not be included as a separate item in the IEP, but they must be presented in a recognizable form and be clearly linked to the short term instructional objectives.

NOTE: In many instances, these components are incorporated directly into the objectives.

Other Questions About the Content of an IEP

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

No. It is not permissible for an agency to present a completed IEP to parents for their approval before there has been a full discussion with the parents of (1) the child's need for special education and related services, and (2) what services the agency will provide to the child. Section 602(a)(20) of the Act defines the IEP as a written statement developed in any meeting with the agency representative, the teacher, the parent, and, if appropriate, the child.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommendation regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. The legislative history of Public Law 94–142 makes it clear that parents must be given the opportunity to be active participants in all major decisions affecting the education of their children with disabilities. (See, e.g., S. Rep. No. 168, 94th Cong. 1st Sess. 13 (1975); S. Rep. No. 455 (Conference Report), 94th Cong. 1st Sess. 47–50 (1975).)

56. Is there a prescribed format or length for an IEP?

No. The format and length of an IEP are matters left to the discretion of State and local agencies. The IEP should be as long as necessary to adequately describe a child's program. However, as indicated in Question 41, above, the IEP is not intended to be a detailed instructional plan. The Federal IEP requirements can usually be met in a one to three page form.

57. Is it permissible to consolidate the IEP with an individualized service plan developed under another Federal program?

Yes. In instances where a child with a disability must have both an IEP and an individualized service plan under another Federal program, it may be possible to develop a single, consolidated document only if: (1) It contains all of the information required in an IEP, and (2) all of the necessary parties participate in its development.

Examples of individualized service plans that might be consolidated with the IEP are: (1) The Individualized Care Plan (title XIX of the Social Security Act (Medicaid)), (2) the Individualized Program Plan (title XX of the Social Security Act (Social Services)), (3) the Individualized Service Plan (title XVI of the Social Security Act (Supplemental Security Income)), and (4) the Individualized Written Rehabilitation Plan (Rehabilitation Act of 1973).

58. What provisions on confidentiality of information apply to IEPs?

IEPs are subject to the confidentiality provisions of both (1) part B (section 617(c) of the Act; §§300.560–300.576 of the regulations), and (2) the Family Educational Rights and Privacy Act (''FERPA'', 20 U.S.C. 1232g) and implementing regulations in 34 CFR part 99. An IEP is an education record as that term is used in the FERPA and implementing regulations (34 CFR §99.3) and is, therefore, subject to the same protections as other education records relating to the student.

NOTE: Under §99.31(a) of the FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a student without the written consent of the parents if ''(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests * * *'' in that information.

§300.348 Private school placements by public agencies.

(a) *Developing individualized education programs.* (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with §300.343.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(3) [Reserved]

(b) *Reviewing and revising individualized education programs.* (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative;

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

(Authority: 20 U.S.C. 1413(a)(4)(B))

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

Generally, a child who requires placement in either a public or private residential school has already been receiving special education, and the parents and school personnel have often jointly been involved over a prolonged period of time in attempting to find the most appropriate placement for the child. At some point in this process (e.g., at a meeting where the child's current IEP is being reviewed), the possibility of residential school placement might be proposed—by either the parents or school personnel. If both agree, then the matter would be explored with the residential school. A subsequent meeting would then be conducted to finalize the IEP. At this meeting, the public agency must ensure that a representative of the residential school either (1) attends the meeting, or (2) participates through individual or conference telephone calls, or by other means.

§300.349 Children with disabilities in parochial or other private schools.

If a child with a disability is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall—

(a) Initiate and conduct meetings to develop, review, and revise an IEP for the child, in accordance with §300.343; and

(b) Ensure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

(Authority: 20 U.S.C. 1413(a)(4)(A))

§300.350 Individualized education program—accountability.

Each public agency must provide special education and related services to a child with a disability in accordance with an IEP. However, part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve

the growth projected in the annual goals and objectives.

(Authority: 20 U.S.C. 1412(2)(B); 1414(a)(5), (6); Cong. Rec. at H7152 (daily ed., July 21, 1975))

NOTE: This section is intended to relieve concerns that the IEP constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the goals and objectives listed in the IEP. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

60. Is the IEP a performance contract?

No. Section 300.350 makes it clear that the IEP is not a performance contract that imposes liability on a teacher or public agency if a child with a disability does not meet the IEP objectives. While the agency must provide special education and related services in accordance with the IEP of each child with a disability, the Act does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

AUTHORITY: 20 U.S.C. 1411–1420

(Catalog of Federal Domestic Assistance number 84.027, Assistance to States for Education of Children with Disabilities; 84.173 Preschool Grants Program)

[57 FR 48694, Oct. 27, 1992]

PART 301—PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

Subpart A—General

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301.1 What is the Preschool Grants for Children With Disabilities Program?
301.2 Who is eligible for an award?
301.3 What kinds of activities may be assisted?
301.4 What regulations apply?
301.5 What definitions apply?
301.6 Does part H of the Act apply to 2-year-old children with disabilities?

Subpart B—How Does a State Apply for a Grant?

301.10 How does a State become eligible to receive a grant?
301.11 When does a State apply for a grant?
301.12 What are the sanctions if a State does not meet the statutory timeline for making a free appropriate public education available to all preschool children with disabilities?

Subpart C—How Does the Secretary Make a Grant to a State?

301.20 What requirements apply to estimating the number of children with disabilities who will be served in order to receive funds from an excess appropriation?
301.21 How are adjustments made if a State overestimates or underestimates the increase in preschool children with disabilities served?

Subpart D—How Does a State Make a Subgrant to an Applicant?

301.30 How does a State distribute the grant money?
301.31 What is the amount of a subgrant to a local educational agency?
301.32 How are adjustments made to a local educational agency's subgrant?

AUTHORITY: 20 U.S.C. 1419, unless otherwise noted.

SOURCE: 54 FR 1646, Jan. 13, 1989, unless otherwise noted.

Subpart A—General

§ 301.1 What is the Preschool Grants for Children With Disabilities Program?

The Preschool Grants for Children With Disabilities program (Preschool Grants program) provides grants to States to assist them in—

(a) Providing special education and related services to children with disabilities aged 3 through 5 years, and, at a State's discretion, providing a free appropriate public education to 2-year-old children with disabilities who will reach age 3 during the school year;

(b) Planning and developing a statewide comprehensive delivery system for children with disabilities from birth through age 5 years; and

(c) Providing direct and support services to children with disabilities aged 3 through 5 years.

(Authority: 20 U.S.C. 1419)

[54 FR 1646, Jan. 13, 1989, as amended at 56 FR 54688, Oct. 22, 1991; 57 FR 44840, Sept. 29, 1992]

§ 301.2 Who is eligible for an award?

(a) The Secretary makes a grant to each State that submits an application that meets the requirements of this part.

(b) A State may make a subgrant to any local educational agency (LEA) and intermediate educational unit (IEU) that submits an approvable application to the State educational agency (SEA).

(Authority: 20 U.S.C. 1419)

§301.3 What kinds of activities may be assisted?

Under the Preschool Grants program, the Secretary makes a grant to a State to conduct the following activities:

(a) Provide subgrants to LEAs and IEUs to assist them in providing special education and related services to children with disabilities aged 3 through 5 years, and, if consistent with State policy, provide a free appropriate public education to 2-year-old children with disabilities who will reach age 3 during the school year, whether or not those children are receiving, or have received, services under part H of the Act.

(b) Plan and develop a statewide comprehensive service delivery system for children with disabilities from birth through age 5 years.

(c) Provide direct and support services from the SEA to children with disabilities aged 3 through 5 years, and, at the State's discretion, provide a free appropriate public education, in accordance with the Act, to 2-year-old children with disabilities who will reach age 3 during the school year, whether or not those children are receiving, or have received, services under part H.

(Authority: 20 U.S.C. 1419)

[54 FR 1646, Jan. 13, 1989, as amended at 56 FR 54688, Oct. 22, 1991; 57 FR 44840, Sept. 29, 1992]

§301.4 What regulations apply?

The following regulations apply to the Preschool Grants program:

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations—

(1) Part 76 (State-Administered Programs);

(2) Part 77 (Definitions that Apply to Department Regulations);

(3) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(5) Part 81 (General Education Provision Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying);

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 301.

(c) The regulations in 34 CFR part 300.

(Authority: 20 U.S.C. 1419)

[54 FR 1646, Jan. 13, 1989, as amended at 56 FR 54688, Oct. 22, 1991]

§301.5 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in the Act:

Intermediate educational unit
Local educational agency
State
State educational agency

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

Applicant
Application
Award
EDGAR
Fiscal year
Grant period
Secretary
Subgrant

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

Act means the Individuals with Disabilities Education Act, as amended.

Comprehensive service delivery system means a State's plans and procedures, including goals and objectives, for identifying all children with disabilities from birth through age 5 years and providing special education and related services to those children in accordance with State law, policy, or practice.

Excess appropriation means that portion of each appropriation for fiscal years 1987, 1988, and 1989 remaining after the maximum amount of funds for each child counted has been awarded to States based on the most recent child count of children with disabilities aged 3 through 5 years receiving special education and related services.

Part B child count means the child count required by section 611(a)(3) of the Act.

Preschool means the age range of 3 through 5 years.

(Authority: 20 U.S.C. 1402, 1419)

[54 FR 1646, Jan. 13, 1989, as amended at 56 FR 54688, Oct. 22, 1991]

§ 301.6 Does part H of the Act apply to 2-year-old children with disabilities?

Part H of the Act does not apply to any child with disabilities receiving a free appropriate public education, in accordance with part B of the Act, with funds received under the Preschool Grants program.

(Authority: 20 U.S.C. 1419(g))

[57 FR 44840, Sept. 29, 1992]

Subpart B—How Does a State Apply for a Grant?

§ 301.10 How does a State become eligible to receive a grant?

(a) For fiscal years 1988, 1989, and 1990 a State is eligible to receive a grant if—

(1) The Secretary approves its State plan under 34 CFR part 300;

(2) The State provides special education and related services to any children with disabilities aged 3 through 5 years; and

(3) The State submits an application to the Secretary that meets the requirements of this part.

(b) Beginning in fiscal year 1991, a State is eligible to receive a grant if—

(1) The Secretary approves its State plan under 34 CFR part 300;

(2) The State has policies and procedures in its State plan under 34 CFR part 300 that assure the provision of a free appropriate public education—

(i) For all children with disabilities aged 3 through 5 years in accordance with the requirements in 34 CFR part 300; and

(ii) For any 2-year-old children, provided services by the State under 301.30(b)(3) or by a LEA or IEU under 301.30(a)(2); and

(3) The State submits an application to the Secretary that meets the requirements in this part.

(Authority: 20 U.S.C. 1419 (a), (b))

[54 FR 1646, Jan. 13, 1989, as amended at 56 FR 54688, Oct. 22, 1991; 57 FR 44840, Sept. 29, 1992]

§ 301.11 When does a State apply for a grant?

(a) A State shall submit a Preschool Grants application effective for fiscal years 1988 and 1989.

(b) The State shall extend its FYs 1988–1989 application through FY 1990.

(c) For FY 1991 a State shall submit a one, two, or three year application. Thereafter the State shall submit its Preschool Grants application with the three-year State plan under 34 CFR part 300.

(Authority: 20 U.S.C. 1419 (a)(3), (b)(4))

§ 301.12 What are the sanctions if a State does not meet the statutory timeline for making a free appropriate public education available to all preschool children with disabilities?

If a State does not meet the requirements in section 619(b)(1) of the Act—

(a) The State is not eligible for a Preschool Grant;

(b) The State is not eligible for funds under 34 CFR part 300 for children with disabilities aged 3 through 5 years;

(c) No State, LEA, IEU, or other public institution or agency is eligible for a grant under parts C through G of the Act if the grant relates exclusively to programs, projects, and activities pertaining to children with disabilities aged 3 through 5 years; and

(d) The State is not eligible for funds for 3- through 5-year-old children served under 34 CFR part 302.

(Authority: 20 U.S.C. 1408; 1411(a)(1)(A); 1419(a)(b))

[54 FR 1646, Jan. 13, 1989, as amended at 56 FR 54688, Oct. 22, 1991]

Subpart C—How Does the Secretary Make a Grant to a State?

§301.20 What requirements apply to estimating the number of children with disabilities who will be served in order to receive funds from an excess appropriation?

(a) In order to receive funds from an excess appropriation based on an estimated increase in the number of children with disabilities aged 3 through 5 years who will be receiving special education and related services under part B of the Act on December 1 of the year following the most recent part B child count, a State must—

(1) Have an increase in the total number of children with disabilities aged 3 through 5 years served under both 34 CFR parts 300 and 302 from the previous year; and

(2) Have an increase from the previous year in the total number of children with disabilities aged 3 through 5 years served under 34 CFR part 300.

(b) Each State shall develop and implement procedures to estimate accurately the increase in the number of children with disabilities aged 3 through 5 years who will be receiving special education and related services under 34 CFR parts 300 and 302 by the count dates for these programs for the next fiscal year.

(c) The procedures for making an estimation in paragraph (b) of this section must be based upon estimates from LEAs and IEUs, and other available data, of the number of additional children with disabilities aged 3 through 5 years that LEAs and IEUs expect to be serving under 34 CFR parts 300 and 302 on December 1 of the year following the most recent part B child count.

(d) The State shall provide the estimates on forms provided by the Secretary no later than February 1 of the year in which the Secretary requires estimates.

(e) The State shall attach a copy of the procedures used to make the estimates under paragraph (c) of this section to the estimated count form.

(Approved by the Office of Management and Budget under control number 1820–0552)

(Authority: 20 U.S.C. 1419(a))

[54 FR 1646, Jan. 13, 1989, as amended at 56 FR 54688, Oct. 22, 1991]

§301.21 How are adjustments made if a State overestimates or underestimates the increase in preschool children with disabilities served?

If the actual number of additional children with disabilities aged 3 through 5 years counted as served on December 1 of the following year under 34 CFR parts 300 and 302 differs from the estimate submitted by a State in fiscal year 1987, 1988, or 1989, the Secretary increases or decreases the State's grant for the next fiscal year based upon the difference in the number of additional children with disabilities who were estimated to be served and the number actually served under 34 CFR part 300.

(Authority: 20 U.S.C. 1419(a)(2))

[54 FR 1646, Jan. 13, 1989, as amended at 56 FR 54688, Oct. 22, 1991]

Subpart D—How Does a State Make a Subgrant to an Applicant?

§301.30 How does a State distribute the grant money?

(a) A state shall distribute at least 75 percent of its grant to LEAs and IEUs to be used to provide:

(1) Special education and related services to children with disabilities aged 3 through 5 years; and

(2) If consistent with State policy, a free appropriate public education, in accordance with part B, to 2-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving or have received, services under part H of the Act.

(b) A State may use not more than 20 percent of the grant for—

(1) The planning and development of a statewide comprehensive service delivery system for children with disabilities from birth through age five years; and

(2) The provision of direct and support services for children with disabilities aged three through five years; and

(3) At the State's discretion, the provision of a free appropriate public education to two-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving, or have received, services under part H of the Act.

(c) A State may use not more than five percent of the grant for the costs of administering the grant.

(d) If a State provides services to preschool children with disabilities because some or all LEAs and IEUs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs or IEUs to provide special education and related services to children with disabilities aged three through five years, and to two-year-old children with disabilities in accordance with paragraph (b)(3) of this section, residing in the area served by those LEAs and IEUs.

(Authority: 20 U.S.C. 1414(d), 1419(c)(2), 1419(f))

[54 FR 1646, Jan. 13, 1989, as amended at 56 FR 54688, Oct. 22, 1991; 57 FR 44840, Sept. 29, 1992]

§ 301.31 What is the amount of a subgrant to a local educational agency?

From the amount of funds available to LEAs and IEUs in the State, each LEA and IEU is entitled to the sum of—

(a) An amount that bears the same ratio to the maximum amount awarded to the State based on the previous child count as the number of children with disabilities aged three through five years in that agency who were receiving special education and related services on the most recent part B child count bears to the aggregate number of children with disabilities aged three through five years receiving special education and related services on the most recent part B child count in all LEAs and IEUs that are entitled to Preschool Grants funds; and

(b) An amount that bears the same ratio to the State's excess appropriation, if any, as the LEA's or IEU's estimated count of additional children with disabilities aged three through five years who will be receiving special education and related services on the next part B child count bears to the aggregate number of additional children with disabilities aged three through five years who will be receiving special education and related services by the next part B child count in all LEAs and IEUs that are entitled to Preschool Grant funds.

(Authority: 20 U.S.C. 1419(c)(3))

[54 FR 1646, Jan. 13, 1989, as amended at 56 FR 54688, Oct. 22, 1991]

§ 301.32 How are adjustments made to a local educational agency's subgrant?

If the actual number of additional children with disabilities aged three through five years served under 34 CFR part 300 in fiscal year 1987, 1988, or 1989 differs from the estimate submitted by an LEA or IEU for that fiscal year, the State shall increase or decrease the LEA's or IEU's grant in the next fiscal year based upon the number of preschool children with disabilities who were actually served.

(Authority: 20 U.S.C. 1419(c)(3) (A), (B))

[54 FR 1646, Jan. 13, 1989, as amended at 56 FR 54688, Oct. 22, 1991]

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

Subpart A—General

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AUTHORITY: 20 U.S.C. 1471–1485, unless otherwise noted.

SOURCE: 58 FR 40959, July 30, 1993, unless otherwise noted.

Subpart A—General

PURPOSE, ELIGIBILITY, AND OTHER GENERAL PROVISIONS

§303.1 Purpose of the early intervention program for infants and toddlers with disabilities.

The purpose of this part is to provide financial assistance to States to—

(a) Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with disabilities and their families;

(b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

(c) Enhance the States' capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

(d) Enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

(Authority: 20 U.S.C. 1471)

§303.2 Eligible recipients of an award.

Eligible recipients include the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99–658).

(Authority: 20 U.S.C. 1401(a)(6), 1484)

§303.3 Activities that may be supported under this part.

Funds under this part may be used for the following activities:

(a) To plan, develop, and implement a statewide system of early intervention services for children eligible under this part and their families.

(b) For direct services for eligible children and their families that are not otherwise provided from other public or private sources.

(c) To expand and improve on services for eligible children and their families that are otherwise available, consistent with §303.527.

(d) To provide a free appropriate public education, in accordance with part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year.

(Authority: 20 U.S.C. 1473, 1479)

§303.4 Limitation on eligible children.

This part 303 does not apply to any child with disabilities receiving a free appropriate public education, in accordance with 34 CFR part 300, with funds received under 34 CFR part 301.

(Authority: 20 U.S.C. 1419(g))

§303.5 Applicable regulations.

(a) The following regulations apply to this part:

(1) The Education Department General Administrative Regulations (EDGAR), including—

(i) Part 76 (State Administered Programs), except for §76.103;

(ii) Part 77 (Definitions that Apply to Department Regulations);

(iii) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(iv) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(v) Part 81 (Grants and Cooperative Agreements under the General Education Provisions Act—Enforcement);

(vi) Part 82 (New Restrictions on Lobbying);

(vii) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Work Place (Grants)); and

(viii) Part 86 (Drug-Free Schools and Campuses).

(2) The regulations in this part 303.

(3) The following regulations in 34 CFR part 300 (Assistance to States for Children with Disabilities Program): §§300.560 through 300.576, and §§300.581 through 300.586.

(b) In applying the regulations cited in paragraphs (a)(1) and (a)(3) of this section, any reference to—

(1) *State educational agency* means the lead agency under this part;

(2) *Special education, related services, free appropriate public education, free public education,* or *education* means ''early intervention services'' under this part;

(3) *Participating agency,* when used in reference to a local educational agency or an intermediate educational agency, means a local service provider under this part;

(4) *Section 300.128* means §§ 303.164 and 303.321; and

(5) *Section 300.129* means § 303.460.

(Authority: 20 U.S.C. 1401–1418, 1420, 1483)

DEFINITIONS

NOTE: Sections 303.6–303.24 contain definitions, including a definition of ''natural environments'' in § 303.12(b)(2), that are used throughout these regulations. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections in which they are defined:

Appropriate professional requirements in the State (§ 303.361(a)(1))
Assessment (§ 303.322(b)(2))
Consent (§ 303.401(a))
Evaluation (§ 303.322(b)(1))
Frequency and intensity (§ 303.344(d)(2)(i))
Highest requirements in the State applicable to a profession or discipline (§ 303.361)(a)(2))
Individualized family service plan and IFSP (§ 303.340(b))
Impartial (§ 303.421(b))
Location (§ 303.344(d)(3))
Method (§ 303.344(d)(2)(ii))
Native language (§ 303.401(b))
Personally identifiable (§ 303.401(c))
Primary referral sources (§ 303.321(d)(3))
Profession or discipline (§ 303.361(a)(3))
Special definition of ''aggregate amount'' (§ 303.200(b)(1))
Special definition of ''infants and toddlers'' (§ 303.200(b)(2))
Special definition of ''State'' (§ 303.200(b)(3))
State approved or recognized certification, licensing, registration, or other comparable requirements (§ 303.361(a)(4))

§ 303.6 Act.

As used in this part, *Act* means the Individuals with Disabilities Education Act.

(Authority: 20 U.S.C. 1400)

§ 303.7 Children.

As used in this part, *children* means*infants and toddlers with disabilities* as that term is defined in § 303.16.

(Authority: 20 U.S.C. 1472(1))

§ 303.8 Council.

As used in this part, *Council* means the State Interagency Coordinating Council.

(Authority: 20 U.S.C. 1472(4))

§ 303.9 Days.

As used in this part, *days* means calendar days.

(Authority: 20 U.S.C. 1471–1485)

§ 303.10 Developmental delay.

As used in this part, *developmental delay* has the meaning given to that term by a State under § 303.300.

(Authority: 20 U.S.C. 1472(3))

§ 303.11 Early intervention program.

As used in this part, *early intervention program* means the total effort in a State that is directed at meeting the needs of children eligible under this part and their families.

(Authority: 20 U.S.C. 1471–1485)

§ 303.12 Early intervention services.

(a) *General.* As used in this part, *early intervention services* means services that—

(1) Are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child's development;

(2) Are selected in collaboration with the parents;

(3) Are provided—

(i) Under public supervision;

(ii) By *qualified* personnel, as defined in § 303.21, including the types of personnel listed in paragraph (e) of this section;

(iii) In conformity with an individualized family service plan; and

(iv) At no cost, unless, subject to § 303.520(b)(3), Federal or State law provides for a system of payments by families, including a schedule of sliding fees; and

(4) Meet the standards of the State, including the requirements of this part.

(b) *Natural environments.* (1) To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate.

(2) As used in paragraph (b)(1) of this section, *natural environments* means settings that are natural or normal for the child's age peers who have no disability.

(c) *General role of service providers.* To the extent appropriate, service providers in each area of early intervention services included in paragraph (d) of this section are responsible for—

(1) Consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area;

(2) Training parents and others regarding the provision of those services; and

(3) Participating in the multidisciplinary team's assessment of a child and the child's family, and in the development of integrated goals and outcomes for the individualized family service plan.

(d) *Types of services; definitions.* Following are types of services included under ''early intervention services,'' and, if appropriate, definitions of those services:

(1) *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 children with disabilities. *Assistive technology service* means a service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include—

(i) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(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 a child with disabilities or, if appropriate, that child's family; and

(vi) Training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.

(2) *Audiology* includes—

(i) Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques;

(ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(iii) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(v) Provision of services for prevention of hearing loss; and

(vi) Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(3) *Family training, counseling, and home visits* means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

(4) *Health services* (See §303.13).

(5) *Medical services only for diagnostic or evaluation purposes* means services

provided by a licensed physician to determine a child's developmental status and need for early intervention services.

(6) *Nursing services* includes—

(i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.

(7) *Nutrition services* includes—

(i) Conducting individual assessments in—

(A) Nutritional history and dietary intake;

(B) Anthropometric, biochemical, and clinical variables;

(C) Feeding skills and feeding problems; and

(D) Food habits and food preferences;

(ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (d)(7)(i) of this section; and

(iii) Making referrals to appropriate community resources to carry out nutrition goals.

(8) *Occupational therapy* includes services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include—

(i) Identification, assessment, and intervention;

(ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(9) *Physical therapy* includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include—

(i) Screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction;

(ii) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

(iii) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(10) *Psychological services* includes—

(i) Administering psychological and developmental tests and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and

(iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(11) *Service coordination services* means assistance and services provided by a service coordinator to a child eligible under this part and the child's family that are in addition to the functions and activities included under § 303.22.

(12) *Social work services* includes—

(i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(ii) Preparing a social or emotional developmental assessment of the child within the family context;

(iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents;

(iv) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are

provided) that affect the child's maximum utilization of early intervention services; and

(v) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

(13) *Special instruction* includes—

(i) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;

(iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(iv) Working with the child to enhance the child's development.

(14) *Speech-language pathology* includes—

(i) Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and

(iii) Provision of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

(15) *Transportation and related costs* includes the cost of travel (e.g., mileage, or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.

(16) *Vision services* means—

(i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(iii) Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.

(e) *Qualified personnel.* Early intervention services must be provided by qualified personnel, including—

(1) Audiologists;

(2) Family therapists;

(3) Nurses;

(4) Nutritionists;

(5) Occupational therapists;

(6) Orientation and mobility specialists;

(7) Pediatricians and other physicians;

(8) Physical therapists;

(9) Psychologists;

(10) Social workers;

(11) Special educators; and

(12) Speech and language pathologists.

(Authority: 20 U.S.C. 1401 (a)(25), and (a)(26), 1472(2); H.R. Rep. No. 198, 102d Cong., 1st Sess. 14 (1991); S. Rep. No. 84, 102d Cong., 1st Sess. 21–22 (1991))

NOTE: The lists of services in paragraph (d) and qualified personnel in paragraph (e) of this section are not exhaustive. Early intervention services may include such services as the provision of respite and other family support services. Qualified personnel may include such personnel as vision specialists, paraprofessionals, and parent-to-parent support personnel.

§303.13 Health services.

(a) As used in this part, *health services* means services necessary to enable a child to benefit from the other early intervention services under this part during the time that the child is receiving the other early intervention services.

(b) The term includes—

(1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and

(2) Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed

in the course of providing other early intervention services.

(c) The term does not include the following:

(1) Services that are—

(i) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or

(ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).

(2) Devices necessary to control or treat a medical condition.

(3) Medical-health services (such as immunizations and regular ''well-baby'' care) that are routinely recommended for all children.

(Authority: 20 U.S.C. 1472(2))

NOTE: The definition in this section distinguishes between the health services that are required under this part and the medical-health services that are not required. The IFSP requirements in subpart D of this part provide that, to the extent appropriate, these other medical-health services are to be included in the IFSP, along with the funding sources to be used in paying for the services or the steps that will be taken to secure the services through public or private sources. Identifying these services in the IFSP does not impose an obligation to provide the services if they are otherwise not required to be provided under this part. (See § 303.344(e) and the note 3 following that section.)

§ 303.14 IFSP.

As used in this part, *IFSP* means the individualized family service plan, as that term is defined in § 303.340(b).

(Authority: 20 U.S.C. 1477)

§ 303.15 Include; including.

As used in this part, *include* or *including* means that the items named are not all of the possible items that are covered whether like or unlike the ones named.

(Authority: 20 U.S.C. 1471–1485)

§ 303.16 Infants and toddlers with disabilities.

(a) As used in this part, *infants and toddlers with disabilities* means individuals from birth through age two who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

(i) Cognitive development.

(ii) Physical development, including vision and hearing.

(iii) Communication development.

(iv) Social or emotional development.

(v) Adaptive development; or

(2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(b) The term may also include, at a State's discretion, children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1472(1))

NOTE 1: The phrase ''a diagnosed physical or mental condition that has a high probability of resulting in developmental delay,'' as used in paragraph (a)(2) of this section, applies to a condition if it typically results in developmental delay. Examples of these conditions include chromosomal abnormalities; genetic or congenital disorders; severe sensory impairments, including hearing and vision; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; disorders secondary to exposure to toxic substances, including fetal alcohol syndrome; and severe attachment disorders.

NOTE 2: With respect to paragraph (b) of this section, children who are at risk may be eligible under this part if a State elects to extend services to that population, even though they have not been identified as disabled.

Under this provision, States have the authority to define who would be ''at risk of having substantial developmental delays if early intervention services are not provided.'' In defining the ''at risk'' population, States may include well-known biological and environmental factors that can be identified and that place infants and toddlers ''at risk'' for developmental delay. Commonly cited factors include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, and a history of abuse or neglect. It should be noted that ''at risk'' factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without these problems.

§303.17 Multidisciplinary.

As used in this part, *multidisciplinary* means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in §303.322 and development of the IFSP in §303.342.

(Authority: 20 U.S.C. 1476(b)(3), 1477(a))

§303.18 Parent.

As used in this part, *parent* means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with §303.406. The term does not include the State if the child is a ward of the State.

(Authority: 20 U.S.C. 1477)

NOTE: The term *parent* has been defined to include persons acting in the place of a parent, such as a grandparent or stepparent with whom a child lives, as well as persons who are legally responsible for the child's welfare. The definition in this section is identical to the definition used in the regulations under part B of the Act (34 CFR 300.13).

§303.19 Policies.

(a) As used in this part, *policies* means State statutes, regulations, Governor's orders, directives by the lead agency, or other written documents that represent the State's position concerning any matter covered under this part.

(b) State policies include—

(1) A State's commitment to develop and implement the statewide system (see §303.150);

(2) A State's eligibility criteria and procedures (see §303.300);

(3) A statement that, consistent with §303.520(b), provides that services under this part will be provided at no cost to parents, except where a system of payments is provided for under Federal or State law.

(4) A State's standards for personnel who provide services to children eligible under this part (see §303.361);

(5) A State's position and procedures related to contracting or making other arrangements with service providers under subpart F of this part; and

(6) Other positions that the State has adopted related to implementing any of the other requirements under this part.

(Authority: 20 U.S.C. 1471–1485)

§303.20 Public agency.

As used in this part, *public agency* includes the lead agency and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under this part and their families.

(Authority: 20 U.S.C. 1471–1485)

§303.21 Qualified.

As used in this part, *qualified* means that a person has met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.

(Authority: 20 U.S.C. 1472(2))

NOTE: These regulations contain the following provisions relating to a State's responsibility to ensure that personnel are qualified to provide early intervention services:

1. Section 303.12(a)(4) provides that early intervention services must meet State standards. This provision implements a requirement that is similar to a longstanding provision under part B of the Act (i.e., that the State educational agency establish standards and ensure that those standards are currently met for all programs providing special education and related services).

2. Section 303.12(a)(3)(ii) provides that early intervention services must be provided by qualified personnel.

3. Section 303.361(b) requires statewide systems to have policies and procedures relating to personnel standards.

§303.22 Service coordination (case management).

(a) *General.* (1) As used in this part, except in §303.12(d)(11), *service coordination* means the activities carried out by a service coordinator to assist and enable a child eligible under this part and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention program.

(2) Each child eligible under this part and the child's family must be provided with one service coordinator who is responsible for—

(i) Coordinating all services across agency lines; and

(ii) Serving as the single point of contact in helping parents to obtain the services and assistance they need.

(3) Service coordination is an active, ongoing process that involves—

(i) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan;

(ii) Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided;

(iii) Facilitating the timely delivery of available services; and

(iv) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility.

(b) *Specific service coordination activities.* Service coordination activities include—

(1) Coordinating the performance of evaluations and assessments;

(2) Facilitating and participating in the development, review, and evaluation of individualized family service plans;

(3) Assisting families in identifying available service providers;

(4) Coordinating and monitoring the delivery of available services;

(5) Informing families of the availability of advocacy services;

(6) Coordinating with medical and health providers; and

(7) Facilitating the development of a transition plan to preschool services, if appropriate.

(c) *Employment and assignment of service coordinators.* (1) Service coordinators may be employed or assigned in any way that is permitted under State law, so long as it is consistent with the requirements of this part.

(2) A State's policies and procedures for implementing the statewide system of early intervention services must be designed and implemented to ensure that service coordinators are able to effectively carry out on an interagency basis the functions and services listed under paragraphs (a) and (b) of this section.

(d) *Qualifications of service coordinators.* Service coordinators must be persons who, consistent with § 303.344(g), have demonstrated knowledge and understanding about—

(1) Infants and toddlers who are eligible under this part;

(2) Part H of the Act and the regulations in this part; and

(3) The nature and scope of services available under the State's early intervention program, the system of payments for services in the State, and other pertinent information.

(Authority: 20 U.S.C. 1472(2))

NOTE 1: If States have existing service coordination systems, the States may use or adapt those systems, so long as they are consistent with the requirements of this part.

NOTE 2: The legislative history of the 1991 amendments to the Act indicates that the use of the term ''service coordination'' was not intended to affect the authority to seek reimbursement for services provided under Medicaid or any other legislation that makes reference to ''case management'' services. See H.R. Rep. No. 198, 102d Cong., 1st Sess. 12 (1991); S. Rep. No. 84, 102d Cong., 1st Sess. 20 (1991).

§ 303.23 State.

Except as provided in § 303.200(b)(3), *State* means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the jurisdictions of Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99–658).

(Authority: 20 U.S.C. 1401(a)(6))

§ 303.24 EDGAR definitions that apply.

The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Award
Contract
Department
EDGAR
Fiscal year
Grant
Grantee
Grant period
Private
Public

Secretary

(Authority: 20 U.S.C. 1471–1485)

Subpart B—State Application for a Grant

GENERAL REQUIREMENTS

§303.100 Conditions of assistance.

(a) In order to receive funds under this part for any fiscal year, a State must—

(1) Have an approved application that contains the information required in this subpart for the year in which the State is applying; and

(2) Have on file with the Secretary the statement of assurances required under §§303.120 through 303.128.

(b) For years one through five, a State shall submit an annual application. Thereafter, a State may submit a three-year application.

(Authority: 20 U.S.C. 1478)

§303.101 How the Secretary disapproves a State's application or statement of assurances.

The Secretary follows the procedures in 34 CFR 300.581 through 300.586 before disapproving a State's application or statement of assurances submitted under this part.

(Authority: 20 U.S.C. 1478)

PUBLIC PARTICIPATION

§303.110 General requirements and timelines for public participation.

(a) Before submitting to the Secretary its application under this part, and before adopting a new or revised policy that is not in its current application, a State shall—

(1) Publish the application or policy in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for comment on the application or policy for at least 30 days during that period;

(2) Hold public hearings on the application or policy during the 60-day period required in paragraph (a)(1) of this section; and

(3) Provide adequate notice of the hearings required in paragraph (a)(2) of this section at least 30 days before the dates that the hearings are conducted.

(b) A State may request the Secretary to waive compliance with the timelines in paragraph (a) of this section. The Secretary grants the request if the State demonstrates that—

(1) There are circumstances that would warrant such an exception; and

(2) The timelines that will be followed provide an adequate opportunity for public participation and comment.

(Authority: 20 U.S.C. 1478(a)(4))

§303.111 Notice of public hearings and opportunity to comment.

The notice required in §303.110(a)(3) must—

(a) Be published in newspapers or announced in other media, or both, with coverage adequate to notify the general public throughout the State about the hearings and opportunity to comment on the application or policy; and

(b) Be in sufficient detail to inform the public about—

(1) The purpose and scope of the State application or policy, and its relationship to prt H of the Act;

(2) The length of the comment period and the date, time, and location of each hearing; and

(3) The procedures for providing oral comments or submitting written comments.

(Authority: 20 U.S.C. 1478(a)(4)(A))

§303.112 Public hearings.

Each State shall hold public hearings in a sufficient number and at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1478(a)(4))

§303.113 Reviewing and reporting on public comments received.

(a) *Review of comments.* Before adopting its application, and before the adoption of a new or revised policy not in the application, the lead agency shall—

(1) Review and consider all public comments; and

(2) Make any modifications it deems necessary in the application or policy.

(b) *Reporting on comments to the Secretary.* In submitting the State's application or policy to the Secretary, the lead agency shall include—

(1) A summary of the public comments received as a result of the activities required in §§ 303.110 through 303.112;

(2) The State's responses to those comments; and

(3) Copies of news releases, advertisements, and announcements used to provide notice.

(Authority: 20 U.S.C. 1478(a))

STATEMENT OF ASSURANCES

§ 303.120 General.

(a) A State's statement of assurances must contain the information required in §§ 303.121 through 303.128.

(b) Unless otherwise required by the Secretary, the statement is submitted only once, and remains in effect throughout the term of a State's participation under this part.

(c) A State may submit a revised statement of assurances if the statement is consistent with the requirements in §§ 303.121 through 303.128.

(Authority: 20 U.S.C. 1478(b))

§ 303.121 Reports and records.

The statement must provide for—

(a) Making reports in such form and containing such information as the Secretary may require; and

(b) Keeping such records and affording such access to those records as the Secretary may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(4))

§ 303.122 Control of funds and property.

The statement must provide assurance satisfactory to the Secretary that—

(a) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part; and

(b) A public agency will administer the funds and property.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(3))

§ 303.123 Prohibition against commingling.

The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(5)(A))

NOTE: As used in this part, *commingle* means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure. Under that general definition, it is clear that commingling is prohibited. However, to the extent that the funds from each of a series of Federal, State, local, and private funding sources can be identified—with a clear audit trail for each source—it is appropriate for those funds to be consolidated for carrying out a common purpose. In fact, a State may find it essential to set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity or function related to the State's early intervention program.

Thus, the assurance in this section is satisfied by the use of an accounting system that includes an ''audit trail'' of the expenditure of funds awarded under this part. Separate bank accounts are not required.

§ 303.124 Prohibition against supplanting.

(a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to supplement and increase the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and

their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for—

(1) Decreases in the number of children who are eligible to receive early intervention services under this part; and

(2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(5)(B))

§ 303.125 Fiscal control.

The statement must provide assurance satisfactory to the Secretary that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(6))

§ 303.126 Payor of last resort.

The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in § 303.527, including the requirements on—

(a) Nonsubstitution of funds; and

(b) Non-reduction of other benefits.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(2))

§ 303.127 Assurance regarding expenditure of funds.

The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part will be expended in accordance with the provisions of this part, including the requirements in § 303.3.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(1))

§ 303.128 Traditionally underserved groups.

The statement must include an assurance satisfactory to the Secretary that policies and practices have been adopted to ensure—

(a) That traditionally underserved groups, including minority, low-income, and rural families, are meaningfully involved in the planning and implementation of all the requirements of this part; and

(b) That these families have access to culturally competent services within their local geographical areas.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(7))

General Requirements for a State Application

§ 303.140 General.

A State's application under this part must contain the information required in §§ 303.141 through 303.148.

(Authority: 20 U.S.C. 1478(a))

§ 303.141 Information about the Council.

Each application must include information demonstrating that the State has established a State Interagency Coordinating Council that meets the requirements of subpart G of this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(3))

§ 303.142 Designation of lead agency.

Each application must include a designation of the lead agency in the State that will be responsible for the administration of funds provided under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(1))

§ 303.143 Designation regarding financial responsibility.

Each application must include a designation by the State of an individual or entity responsible for assigning financial responsibility among appropriate agencies.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(2))

§ 303.144 Assurance regarding use of funds.

Each application must include an assurance that funds received under this part will be used to assist the State to plan, develop, and implement the statewide system required under subparts D through F of this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475, 1478(a)(4))

§ 303.145 Description of use of funds.

(a) *General.* Each application must include a description of how a State proposes to use its funds under this part for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (d) of this section.

(b) *Administrative positions.* Each application must include—

(1) A list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part; and

(2) For each position, the percentage of salary paid with those funds.

(c) *Planning, development, and implementation activities.* Each application must include—

(1) A description of the nature and scope of each major activity to be carried out under this part in planning, developing, and implementing the statewide system of early intervention services; and

(2) The approximate amount of funds to be spent for each activity.

(d) *Direct services.* (1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, consistent with §§ 303.521 and 303.527.

(2) The description must include information about each type of service to be provided, including—

(i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations); and

(ii) The approximate amount of funds under this part to be used for the service.

(e) *Activities by other agencies.* If other agencies are to receive funds under this part, the application must include—

(1) The name of each agency expected to receive funds;

(2) The approximate amount of funds each agency will receive; and

(3) A summary of the purposes for which the funds will be used.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(4) and (a)(6))

§ 303.146 Information about public participation.

Each application must include the information on public participation that is required in § 303.113(b).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(5))

§ 303.147 Equitable distribution of resources.

(a) Each application must include a description of the procedures used by the State to ensure an equitable distribution of resources made available under this part among all geographic areas within the State.

(b) In determining equitable distribution of resources, a State must take into account the need for services across all geographical areas within the State.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(7))

§ 303.148 Transition to preschool programs.

Each application must include the policies and procedures used to ensure a smooth transition for individuals participating in the early intervention program under this part who are eligible for participation in preschool programs under part B of the Act, including—

(a) A description of how the families will be included in the transitional plans;

(b) A description of how the lead agency under this part will—

(1) Notify the appropriate local educational agency or intermediate educational unit in which the child resides; and

(2) Convene, with the approval of the family, a conference among the lead agency, the family, and the local educational agency or unit at least 90 days before the child's third birthday or, if earlier, the date on which the child is eligible for the preschool program under part B of the Act in accordance with State law, to—

(i) Review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(ii) Establish a transition plan; and

(c) If the State educational agency, which is responsible for administering preschool programs under part B of the Act, is not the lead agency under this part, an interagency agreement between the two agencies to ensure coordination on transition matters.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(8))

NOTE 1: Among the matters that should be considered in developing policies and procedures to ensure a smooth transition of children from one program to the other are the following:

- The financial responsibilities of all appropriate agencies, consistent with §§ 303.523 and 300.152.
- The responsibility for performing evaluations of children (see §§ 303.322 and 300.531).
- The development and implementation of an individualized education program (''IEP'') or an individualized family service plan (''IFSP'') for each child, consistent with the requirements of law (see § 303.344(h) and sections 613(a)(15) and 614(a)(5) of the Act).
- The coordination of communication between agencies and the child's family.
- The mechanisms to ensure the uninterrupted provision of appropriate services to the child.

NOTE 2: While the transition requirements of the Act and this section pertain to children who are eligible for preschool programs under part B, States are encouraged to adopt policies and procedures to facilitate a smooth transition of other children who are exiting the part H program as well.

SPECIFIC APPLICATION REQUIREMENTS FOR YEARS ONE THROUGH FIVE AND THEREAFTER

§ 303.149 Application requirements for first and second years.

A State's annual application for the first and second years of participation under this part must contain the information required in §§ 303.141 through 303.148.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475, 1478(a))

§ 303.150 Third year applications.

(a) *General.* A State's third year application under this part must contain the following:

(1) The information required in §§ 303.141 through 303.148.

(2) Either—

(i) The information and assurances regarding the statewide system of early intervention services, as required in paragraph (b) of this section; or

(ii) If the State is eligible for a waiver, a request for a waiver, in accordance with the requirements in § 303.151.

(3) Other information that the Secretary may require.

(b) *Adoption of policy on statewide system.* Each third year application must include information and assurances demonstrating to the satisfaction of the Secretary that—

(1) It is the policy of the State to develop and implement a statewide, comprehensive, coordinated, interagency, multidisciplinary system for providing early intervention services to all children eligible under this part and their families;

(2) The policy in paragraph (b)(1) of this section incorporates all of the components of the statewide system of early intervention services that are required under this part; and

(3) Subject to § 303.341(a), the statewide system will be in effect no later than the beginning of the State's fourth year of participation under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475(b), 1478(a))

§ 303.151 Waiver of the policy adoption requirement for the third year.

The Secretary may award a grant to a State under this part for the third year even if the State has not adopted the policy required in § 303.150(b), if the State, in its third year application, includes a statement requesting a waiver, including—

(a) Information demonstrating that the State has made a good faith effort to adopt a policy that meets the requirements in § 303.150(b)(1) and (b)(2);

(b) The reasons why the State was unable to meet the timeline for policy adoption, and the steps remaining before the policy will be adopted; and

(c) An assurance that, except as provided in § 303.341(a), the policy required in § 303.150(b)(1) and (b)(2) will be adopted and go into effect no later than the beginning of the State's fourth year of participation under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475(b)(2))

NOTE: An example of when the Secretary may grant a waiver is a situation in which a State's policy is awaiting action by the State legislature, but the legislative session does not commence until after the State's application must be submitted.

§ 303.152 Fourth year applications.

A State's application for the fourth year of participation under this part must contain—

(a) The information required in §§ 303.141 through 303.148;

(b) Information and assurances to demonstrate that—

(1) The requirements in § 303.150(b)(1) and (b)(2) are met; and

(2) Subject to § 303.341(a), the statewide system of early intervention services is in effect, or will be in effect no later than the beginning of the fourth year of the State's participation under this part;

(c) Information and assurances required in §§ 303.161 through 303.176; and

(d) Other information that the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475(b), 1478(a))

§ 303.153 States with mandates as of September 1, 1986, to serve children with disabilities from birth.

(a) Subject to the requirements in paragraph (b) of this section, a State that has in effect a State law, enacted before September 1, 1986, that requires the provision of a free appropriate public education to children with disabilities from birth through age two is eligible for a grant under this part for the first through the fourth year of its participation.

(b) A State meeting the conditions in paragraph (a) of this section must—

(1) Have on file with the Secretary a statement of assurances containing the information required in §§ 303.121 through 303.128;

(2) Submit an annual application for years one through four that contains the information in §§ 303.141 through 303.148;

(3) Meet the public participation requirements in §§ 303.110 through 303.113; and

(4) Provide a copy of the State law that requires the provision of a free appropriate public education to children with disabilities from birth through age two.

(c) In order to receive funds under this part for the fifth and succeeding years, the State must submit an application that meets the requirements in § 303.154.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475(d))

§ 303.154 Applications for year five and each year thereafter.

(a) *Fifth year application.* A State's application for the fifth year of its participation under this part must contain—

(1) The information and assurances required in §§ 303.141 through 303.148 and §§ 303.161 through 303.176;

(2) Information and assurances demonstrating to the satisfaction of the Secretary that the statewide system of early intervention services required in this part is in effect;

(3) A policy that, no later than the beginning of the fifth year of the State's participation, appropriate early intervention services will be available

to all children in the State who are eligible under this part and their families;

(4) A description of the services to be provided no later than the beginning of the fifth year, in accordance with the timetables under §303.302; and

(5) Other information that the Secretary may require.

(b) *Applications for succeeding years.* A State's applications for the succeeding years of participation under this program must contain information and assurances demonstrating to the satisfaction of the Secretary that the State will continue to meet all applicable conditions in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475(c), 1476(b)(2), and 1478(a))

§303.155 Differential funding.

Notwithstanding any other provision of this part, an eligible entity that is experiencing significant hardships in meeting the eligibility requirements for a grant under this part for the fourth or fifth year of participation may qualify for a grant for fiscal years 1990, 1991, or 1992 under section 675(e) of the Act.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475(e))

COMPONENTS OF A STATEWIDE SYSTEM—APPLICATION REQUIREMENTS FOR YEARS FOUR, FIVE, AND THEREAFTER

§303.160 Minimum components of a statewide system.

Each application must address the minimum components of a statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities on reservations. The minimum components of a statewide system are described in §§303.161 through 303.176.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(a), 1478(a)(9))

§303.161 State definition of developmental delay.

Each application must include the State's definition of ''developmental delay,'' as described in §303.300.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(1))

§303.162 Central directory.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has developed a central directory of information that meets the requirements in §303.301.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(7))

§303.163 Timetables for serving eligible children.

Each application must include an assurance that the timetables required in §303.302 have been established and will be met.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(2))

§303.164 Public awareness program.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has established a public awareness program that meets the requirements in §303.320.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(6))

§303.165 Comprehensive child find system.

Each application must include—

(a) The policies and procedures required in §303.321(b);

(b) Information demonstrating that the requirements on coordination in §303.321(c) are met;

(c) The referral procedures required in §303.321(d), and either—

(1) A description of how the referral sources are informed about the procedures; or

(2) A copy of any memorandum or other document used by the lead agency to transmit the procedures to the referral sources; and

(d) The timelines in § 303.321(e).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(5))

§ 303.166 Evaluation, assessment, and nondiscriminatory procedures.

Each application must include information to demonstrate that the requirements in §§ 303.322 and 303.323 are met.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(3); 1477 (a)(1), (d)(2), and (d)(3))

§ 303.167 Individualized family service plans.

Each application must include—

(a) An assurance that the IFSP requirements in § 303.341 will be met; and

(b) Information demonstrating that—

(1) The State's procedures for developing, reviewing, and evaluating IFSPs are consistent with the requirements in §§ 303.340, 303.342, 303.343 and 303.345; and

(2) The content of IFSPs used in the State is consistent with the requirements in § 303.344.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(4), 1477(d))

§ 303.168 Comprehensive system of personnel development (CSPD).

Each application must include information to show that the requirements in § 303.360(b) are met.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(8))

§ 303.169 Personnel standards.

(a) Each application must include policies and procedures that are consistent with the requirements in § 303.361.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(13))

§ 303.170 Procedural safeguards.

Each application must include procedural safeguards that—

(a) Are consistent with §§ 303.400 through 303.406, 303.420 through 303.425 and 303.460; and

(b) Incorporate either—

(1) The due process procedures in 34 CFR 300.506 through 300.512; or

(2) The procedures that the State has developed to meet the requirements in §§ 303.420(b) and 303.421 through 303.425.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(12))

§ 303.171 Supervision and monitoring of programs.

Each application must include information to show that the requirements in § 303.501 are met.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20. U.S.C. 1476(b)(9)(A))

§ 303.172 Lead agency procedures for resolving complaints.

Each application must include procedures that are consistent with the requirements in §§ 303.510 through 303.512.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.173 Policies and procedures related to financial matters.

Each application must include—

(a) Funding policies that meet the requirements in §§ 303.520 and 303.521;

(b) Information about funding sources, as required in § 303.522;

(c) Procedures to ensure the timely delivery of services, in accordance with § 303.525; and

(d) A procedure related to the timely reimbursement of funds under this part, in accordance with §§ 303.527(b) and 303.528.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9)(D) and (b)(9)(E), 1476(b)(11), 1481)

§ 303.174 Interagency agreements; resolution of individual disputes.

Each application must include—

(a) A copy of each interagency agreement that has been developed under § 303.523; and

(b) Information to show that the requirements in § 303.524 are met.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9)(E))

§ 303.175 Policy for contracting or otherwise arranging for services.

Each application must include a policy that meets the requirements in § 303.526.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(10))

§ 303.176 Data collection.

Each application must include procedures that meet the requirements in § 303.540.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(14))

PARTICIPATION BY THE SECRETARY OF THE INTERIOR

§ 303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations.

(a) The Secretary makes payments to the Secretary of the Interior for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior.

(b)(1) The Secretary of the Interior shall distribute payments under this part to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or combinations of those entities, in accordance with section 684(b) of the Act.

(2) A tribe or tribal organization is eligible to receive a payment under this section if the tribe is on a reservation that is served by an elementary or secondary school operated or funded by the Bureau of Indian Affairs (''BIA'').

(c)(1) Within 90 days after the end of each fiscal year the Secretary of the Interior shall provide the Secretary with a report on the payments distributed under this section.

(2) The report must include—

(i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year;

(ii) The amount of each payment; and

(iii) The date of each payment.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1484(b); H.R. Rep. No. 198, 102d Cong., 1st Sess. 22 (1991))

Subpart C—Procedures for Making Grants to States

§ 303.200 Formula for State allocations.

(a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(b) For the purpose of allotting funds to the States under paragraph (a) of this section—

(1) *Aggregate amount* means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under § 303.203 and to the jurisdictions under § 303.204;

(2) *Infants and toddlers* means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and

(3) *State* means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1484(c))

§ 303.201 Distribution of allotments from non-participating States.

If a State elects not to receive its allotment, the Secretary reallots those funds among the remaining States, in accordance with § 303.200(a).

(Authority: 20 U.S.C. 1484(d))

§ 303.202 Minimum grant that a State may receive.

No State receives less than 0.5 percent of the aggregate amount available under § 303.200 or $500,000, whichever is greater.

(Authority: 20 U.S.C. 1484(c)(1))

§ 303.203 Payments to the Secretary of the Interior.

The amount of the payment to the Secretary of the Interior under § 303.180 for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under § 303.204.

(Authority: 20 U.S.C. 1484(b))

§ 303.204 Payments to the jurisdictions.

From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in § 303.2 in accordance with their respective needs.

(Authority: 20 U.S.C. 1484(a))

§ 303.205 Differential funding grants.

Notwithstanding any other provision of this part, section 675(e) of the Act governs—

(a) The amount of any grant for fiscal year 1990, 1991, or 1992 under that subsection; and

(b) The reallotment of funds for those fiscal years.

(Authority: 20 U.S.C. 1475(e))

Subpart D—Program and Service Components of a Statewide System of Early Intervention Services

GENERAL

§ 303.300 State eligibility criteria and procedures.

Each statewide system of early intervention services must include the eligibility criteria and procedures, consistent with § 303.16, that will be used by the State in carrying out programs under this part.

(a) The State shall define *developmental delay* by—

(1) Describing, for each of the areas listed in § 303.16(a)(1), the procedures, including the use of informed clinical opinion, that will be used to measure a child's development; and

(2) Stating the levels of functioning or other criteria that constitute a developmental delay in each of those areas.

(b) The State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to determine the existence of a condition that has a high probability of resulting in developmental delay under § 303.16(a)(2).

(c) If the State elects to include in its system children who are at risk under § 303.16(b), the State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to identify those children.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1472(1), 1476(b)(1))

NOTE: Under this section and § 303.322(c)(2), States are required to ensure that informed clinical opinion is used in determining a child's eligibility under this part. Informed clinical opinion is especially important if there are no standardized measures, or if the standardized procedures are not appropriate for a given age or developmental area. If a given standardized procedure is considered to be appropriate, a State's criteria could include percentiles or percentages of levels of functioning on standardized measures.

§ 303.301 Central directory.

(a) Each system must include a central directory of information about—

(1) Public and private early intervention services, resources, and experts available in the State;

(2) Research and demonstration projects being conducted in the State; and

(3) Professional and other groups that provide assistance to children eligible under this part and their families.

(b) The information required in paragraph (a) of this section must be in sufficient detail to—

(1) Ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and

(2) Enable the parent of a child eligible under this part to contact, by telephone or letter, any of the sources listed in the directory.

(c) The central directory must be—

(1) Updated at least annually; and

(2) Accessible to the general public.

(d) To meet the requirements in paragraph (c)(2) of this section, the lead agency shall arrange for copies of the directory to be available—

(1) In each geographic region of the State, including rural areas; and

(2) In places and a manner that ensure accessibility by persons with disabilities.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(7))

NOTE: Examples of appropriate groups that provide assistance to eligible children and their families include parent support groups and advocate associations.

§ 303.302 Timetables for serving eligible children.

Except as provided in § 303.4, each system must include timetables for ensuring that appropriate early intervention services will be available to all infants and toddlers with disabilities in the State, including Indian infants and toddlers with disabilities on reservations, no later than the beginning of the fifth year of the State's participation under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1419(g), 1476(b)(2))

NOTE: Amendments to the Act made by Public Law 102–119 extend the State's duty to make services available to Indian children on reservations served by BIA schools. The State's obligation under prior law to make services available to other Indian children is unaffected by these amendments.

IDENTIFICATION AND EVALUATION

§ 303.320 Public awareness program.

Each system must include a public awareness program that focuses on the early identification of children who are eligible to receive early intervention services under this part and includes the preparation and dissemination by the lead agency to all primary referral sources of information materials for parents on the availability of early intervention services. The public awareness program must provide for informing the public about—

(a) The State's early intervention program;

(b) The child find system, including—

(1) The purpose and scope of the system;

(2) How to make referrals; and

(3) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and

(c) The central directory.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(6))

NOTE 1: An effective public awareness program is one that does the following:

1. Provides a continuous, ongoing effort that is in effect throughout the State, including rural areas;

2. Provides for the involvement of, and communication with, major organizations throughout the State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations;

3. Has coverage broad enough to reach the general public, including those who have disabilities; and

4. Includes a variety of methods for informing the public about the provisions of this part.

NOTE 2: Examples of methods for informing the general public about the provisions of this part include: (1) Use of television, radio, and newspaper releases, (2) pamphlets and posters displayed in doctors' offices, hospitals, and other appropriate locations, and (3) the use of a toll-free telephone service.

§ 303.321 Comprehensive child find system.

(a) *General.* (1) Each system must include a comprehensive child find system that is consistent with part B of the Act (see 34 CFR 300.128), and meets the requirements of paragraphs (b) through (e) of this section.

(2) The lead agency, with the advice and assistance of the Council, shall be responsible for implementing the child find system.

(b) *Procedures.* The child find system must include the policies and procedures that the State will follow to ensure that—

(1) All infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated; and

(2) An effective method is developed and implemented to determine which children are receiving needed early intervention services, and which children are not receiving those services.

(c) *Coordination.* (1) The lead agency, with the assistance of the Council, shall ensure that the child find system under this part is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, tribes and tribal organizations that receive payments under this part, and other tribes and tribal organizations as appropriate, including efforts in the—

(i) Program authorized under part B of the Act;

(ii) Maternal and Child Health program under title V of the Social Security Act;

(iii) Early Periodic Screening, Diagnosis and Treatment (EPSDT) program under title XIX of the Social Security Act;

(iv) Developmental Disabilities Assistance and Bill of Rights Act;

(v) Head Start Act; and

(vi) Supplemental Security Income program under title XVI of the Social Security Act.

(2) The lead agency, with the advice and assistance of the Council, shall take steps to ensure that—

(i) There will not be unnecessary duplication of effort by the various agencies involved in the State's child find system under this part; and

(ii) The State will make use of the resources available through each public agency in the State to implement the child find system in an effective manner.

(d) *Referral procedures.* (1) The child find system must include procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for—

(i) Evaluation and assessment, in accordance with §§ 303.322 and 303.323; or

(ii) As appropriate, the provision of services, in accordance with § 303.342(a) or § 303.345.

(2) The procedures required in paragraph (b)(1) of this section must—

(i) Provide for an effective method of making referrals by primary referral sources;

(ii) Ensure that referrals are made no more than two working days after a child has been identified; and

(iii) Include procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate the information, as described in § 303.320, prepared by the lead agency on the availability of early intervention services to parents of infants and toddlers with disabilities.

(3) As used in paragraph (d)(1) of this section, *primary referral sources* includes—

(i) Hospitals, including prenatal and postnatal care facilities;

(ii) Physicians;

(iii) Parents;

(iv) Day care programs;

(v) Local educational agencies;

(vi) Public health facilities;

(vii) Other social service agencies; and

(viii) Other health care providers.

(e) *Timelines for public agencies to act on referrals.* (1) Once the public agency receives a referral, it shall appoint a service coordinator as soon as possible.

(2) Within 45 days after it receives a referral, the public agency shall—

(i) Complete the evaluation and assessment activities in § 303.322; and

(ii) Hold an IFSP meeting, in accordance with § 303.342.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1472(2)(E)(vii), 1476(b)(5))

NOTE: In developing the child find system under this part, States should consider (1) tracking systems based on high-risk conditions at birth, and (2) other activities that are being conducted by various agencies or organizations in the State.

§ 303.322 Evaluation and assessment.

(a) *General.* (1) Each system must include the performance of a timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation, including

assessment activities related to the child and the child's family.

(2) The lead agency shall be responsible for ensuring that the requirements of this section are implemented by all affected public agencies and service providers in the State.

(b) *Definitions of evaluation and assessment.* As used in this part—

(1) *Evaluation* means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of ''infants and toddlers with disabilities'' in § 303.16, including determining the status of the child in each of the developmental areas in paragraph (c)(3)(ii) of this section.

(2) *Assessment* means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify—

(i) The child's unique strengths and needs and the services appropriate to meet those needs; and

(ii) The resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability.

(c) *Evaluation and assessment of the child.* The evaluation and assessment of each child must—

(1) Be conducted by personnel trained to utilize appropriate methods and procedures;

(2) Be based on informed clinical opinion; and

(3) Include the following:

(i) A review of pertinent records related to the child's current health status and medical history.

(ii) An evaluation of the child's level of functioning in each of the following developmental areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Communication development.

(D) Social or emotional development.

(E) Adaptive development.

(iii) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (c)(3)(ii) of this section, including the identification of services appropriate to meet those needs.

(d) *Family assessment.* (1) Family assessments under this part must be family-directed and designed to determine the resources, priorities, and concerns of the family related to enhancing the development of the child.

(2) Any assessment that is conducted must be voluntary on the part of the family.

(3) If an assessment of the family is carried out, the assessment must—

(i) Be conducted by personnel trained to utilize appropriate methods and procedures;

(ii) Be based on information provided by the family through a personal interview; and

(iii) Incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development.

(e) *Timelines.* (1) Except as provided in paragraph (e)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in § 303.321(e).

(2) The lead agency shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (e.g., if a child is ill), public agencies will—

(i) Document those circumstances; and

(ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with § 303.345 (b)(1) and (b)(2).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(3); 1477 (a)(1), (a)(2), (d)(1), and (d)(2))

NOTE: This section combines into one overall requirement the provisions on evaluation and assessment under the following sections of the Act: (1) section 676(b)(3) (timely, comprehensive, multidisciplinary evaluation), and (2) section 677(a) (1) and (2) (multidisciplinary and family-directed assessments).

The section also requires that the evaluation-assessment process be broad enough to obtain information required in the IFSP concerning (1) the family's resources, priorities, and concerns related to the development of the child (section 677(d)(2)), and (2) the

child's functioning level in each of the five developmental areas (section 677(d)(1)).

§ 303.323 Nondiscriminatory procedures.

Each lead agency shall adopt nondiscriminatory evaluation and assessment procedures. The procedures must provide that public agencies responsible for the evaluation and assessment of children and families under this part shall ensure, at a minimum, that—

(a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;

(b) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;

(c) No single procedure is used as the sole criterion for determining a child's eligibility under this part; and

(d) Evaluations and assessments are conducted by qualified personnel.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(3); 1477 (a)(1), (d)(2), and

INDIVIDUALIZED FAMILY SERVICE PLANS (IFSPS)

§ 303.340 General.

(a) Each system must include policies and procedures regarding individualized family service plans (IFSPs) that meet the requirements of this section and §§ 303.341 through 303.346.

(b) As used in this part, *individualized family service plan* and *IFSP* mean a written plan for providing early intervention services to a child eligible under this part and the child's family. The plan must—

(1) Be developed in accordance with §§ 303.342 and 303.343;

(2) Be based on the evaluation and assessment described in § 303.322; and

(3) Include the matters specified in § 303.344.

(c) *Lead agency responsibility*. The lead agency shall ensure that an IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part. If there is a dispute between agencies as to who has responsibility for developing or implementing an IFSP, the lead agency shall resolve the dispute or assign responsibility.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477)

NOTE: In instances where an eligible child must have both an IFSP and an individualized service plan under another Federal program, it may be possible to develop a single consolidated document, provided that it (1) contains all of the required information in § 303.344, and (2) is developed in accordance with the requirements of this part.

§ 303.341 Meeting the IFSP requirements for years four and five.

(a) *Fourth year requirements*. No later than the beginning of the fourth year of a State's participation under this part, the State shall ensure that—

(1) Evaluations and assessments are conducted in accordance with § 303.322;

(2) An IFSP is developed, in accordance with §§ 303.342(a) and 303.343(a), for each child determined to be eligible under this part and the child's family; and

(3) Service coordination services are available to each eligible child and the child's family.

(b) *Requirements for the fifth year*. No later than the beginning of the fifth year of a State's participation under this part, a current IFSP must be in effect and implemented for each eligible child and the child's family.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(2) and (b)(4), 1477(a)(2) and (c))

§ 303.342 Procedures for IFSP development, review, and evaluation.

(a) *Meeting to develop initial IFSP—timelines*. For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within the 45-day time period in § 303.321(e).

(b) *Periodic review*. (1) A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine—

(i) The degree to which progress toward achieving the outcomes is being made; and

(ii) Whether modification or revision of the outcomes or services is necessary.

(2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(c) *Annual meeting to evaluate the IFSP.* A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations conducted under §303.322(c), and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided.

(d) *Accessibility and convenience of meetings.* (1) IFSP meetings must be conducted—

(i) In settings and at times that are convenient to families; and

(ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

(2) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(e) *Parental consent.* The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained must be provided.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477)

NOTE: The requirement for the annual evaluation incorporates the periodic review process. Therefore, it is necessary to have only one separate periodic review each year (i.e., six months after the initial and subsequent annual IFSP meetings), unless conditions warrant otherwise.

Because the needs of infants and toddlers change so rapidly during the course of a year, certain evaluation procedures may need to be repeated before conducting the periodic reviews and annual evaluation meetings in paragraphs (b) and (c) of this section.

§303.343 Participants in IFSP meetings and periodic reviews.

(a) *Initial and annual IFSP meetings.* (1) Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:

(i) The parent or parents of the child.

(ii) Other family members, as requested by the parent, if feasible to do so;

(iii) An advocate or person outside of the family, if the parent requests that the person participate.

(iv) The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the public agency to be responsible for implementation of the IFSP.

(v) A person or persons directly involved in conducting the evaluations and assessments in §303.322.

(vi) As appropriate, persons who will be providing services to the child or family.

(2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including—

(i) Participating in a telephone conference call;

(ii) Having a knowledgeable authorized representative attend the meeting; or

(iii) Making pertinent records available at the meeting.

(b) *Periodic review.* Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477(b))

§ 303.344 Content of an IFSP.

(a) *Information about the child's status.* (1) The IFSP must include a statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development.

(2) The statement in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.

(b) *Family information.* With the concurrence of the family, the IFS must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child.

(c) *Outcomes.* The IFSP must include a statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timeliness used to determine—

(1) The degree to which progress toward achieving the outcomes is being made; and

(2) Whether modifications or revisions of the outcomes or services are necessary.

(d) *Early intervention services.* (1) The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section, including—

(i) The frequency, intensity, and method of delivering the services;

(ii) The natural environments, as described in § 303.12(b), in which early intervention services will be provided;

(iii) The location of the services; and

(iv) The payment arrangements, if any.

(2) As used in paragraph (d)(1)(i) of this section—

(i) *Frequency* and *intensity* mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and

(ii) *Method* means how a service is provided.

(3) As used in paragraph (d)(1)(iii) of this section, *location* means the actual place or places where a service will be provided.

(e) *Other services.* (1) To the extent appropriate, the IFSP must include—

(i) Medical and other services that the child needs, but that are not required under this part; and

(ii) The funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources.

(2) The requirement in paragraph (e)(1) of this section does not apply to routine medical services (e.g., immunizations and ''well-baby'' care), unless a child needs those services and the services are not otherwise available or being provided.

(f) *Dates; duration of services.* The IFSP must include—

(1) The projected dates for initiation of the services in paragraph (d)(1) of this section as soon as possible after the IFSP meetings described in § 303.342; and

(2) The anticipated duration of those services.

(g) *Service coordinator.* (1) The IFSP must include the name of the service coordinator from the profession most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(2) In meeting the requirements in paragraph (g)(1) of this section, the public agency may—

(i) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child's and family's IFSP; or

(ii) Appoint a new service coordinator.

(3) As used in paragraph (g)(1) of this section, the term *profession* includes ''service coordination.''

(h) *Transition from part H services.* (1) The IFSP must include the steps to be taken to support the transition of the child to—

(i) Preschool services under part B of the Act, in accordance with § 303.148, to the extent that those services are considered appropriate; or

(ii) Other services that may be available, if appropriate.

(2) The steps required in paragraph (h)(1) of this section include—

(i) Discussions with, and training of, parents regarding future placements and other matters related to the child's transition;

(ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; and

(iii) With parental consent, the transmission of information about the child to the local educational agency, to ensure continuity of services, including evaluation and assessment information required in § 303.322, and copies of IFSPs that have been developed and implemented in accordance with §§ 303.340 through 303.346.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477(d))

NOTE 1: With respect to the requirements in paragraph (d) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, early intervention services must be provided in natural environments (e.g., the home, child care centers, or other community settings) to the maximum extent appropriate to the needs of the child.

NOTE 2: Throughout the process of developing and implementing IFSPs for an eligible child and the child's family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child's development. It also is important that the degree to which the needs of the family are addressed in the IFSP process is determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other family members will accept or decline services under this part.

NOTE 3: The early intervention services in paragraph (d) of this section are those services that a State is required to provide to a child in accordance with § 303.12.

The ''other services'' in paragraph (e) of this section are services that a child or family needs, but that are neither required nor covered under this part. While listing the non-required services in the IFSP does not mean that those services must be provided, their identification can be helpful to both the child's family and the service coordinator, for the following reasons: First, the IFSP would provide a comprehensive picture of the child's total service needs (including the need for medical and health services, as well as early intervention services). Second, it is appropriate for the service coordinator to assist the family in securing the non-required services (e.g., by (1) determining if there is a public agency that could provide financial assistance, if needed, (2) assisting in the preparation of eligibility claims or insurance claims, if needed, and (3) assisting the family in seeking out and arranging for the child to receive the needed medical-health services).

Thus, to the extent appropriate, it is important for a State's procedures under this part to provide for ensuring that other needs of the child, and of the family related to enhancing the development of the child, such as medical and health needs, are considered and addressed, including determining (1) who will provide each service, and when, where, and how it will be provided, and (2) how the service will be paid for (e.g., through private insurance, an existing Federal-State funding source, such as Medicaid or EPSDT, or some other funding arrangement).

NOTE 4: Although the IFSP must include information about each of the items in paragraphs (b) through (h) of this section, this does not mean that the IFSP must be a detailed, lengthy document. It might be a brief outline, with appropriate attachments that address each of the points in the paragraphs under this section. It is important for the IFSP itself to be clear about (a) what services are to be provided, (b) the actions that are to be taken by the service coordinator in initiating those services, and (c) what actions will be taken by the parents.

§ 303.345 Provision of services before evaluation and assessment are completed.

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment in § 303.322, if the following conditions are met:

(a) Parental consent is obtained.

(b) An interim IFSP is developed that includes—

(1) The name of the service coordinator who will be responsible, consistent with § 303.344(g), for implementation of the interim IFSP and coordination with other agencies and persons; and

(2) The early intervention services that have been determined to be needed immediately by the child and the child's family.

(c) The evaluation and assessment are completed within the time period required in § 303.322(e).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477(c))

NOTE: This section is intended to accomplish two specific purposes: (1) To facilitate the provision of services in the event that a child has obvious immediate needs that are identified, even at the time of referral (e.g., a physician recommends that a child with cerebral palsy begin receiving physical therapy as soon as possible), and (2) to ensure that the requirements for the timely evaluation and assessment are not circumvented.

§ 303.346 Responsibility and accountability.

Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, part H of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477)

PERSONNEL TRAINING AND STANDARDS

§ 303.360 Comprehensive system of personnel development.

(a) Each system must include a comprehensive system of personnel development.

(b) The personnel development system under this part must—

(1) Be consistent with the comprehensive system of personnel development required under part B of the Act (34 CFR 300.380 through 300.387);

(2) Provide for preservice and inservice training to be conducted on an interdisciplinary basis, to the extent appropriate;

(3) Provide for the training of a variety of personnel needed to meet the requirements of this part, including public and private providers, primary referral sources, paraprofessionals, and persons who will serve as service coordinators; and

(4) Ensure that the training provided relates specifically to—

(i) Understanding the basic components of early intervention services available in the State;

(ii) Meeting the interrelated social or emotional, health, developmental, and educational needs of eligible children under this part; and

(iii) Assisting families in enhancing the development of their children, and in participating fully in the development and implementation of IFSPs.

(c) A personnel development system under this part may include—

(1) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers;

(2) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

(3) Training personnel to work in rural areas; and

(4) Training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program under this part to a preschool program under part B of the Act.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(8))

§ 303.361 Personnel standards.

(a) As used in this part—

(1) *Appropriate professional requirements in the State* means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services; and

(ii) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families who are served by State, local, and private agencies.

(2) *Highest requirements in the State applicable to a specific profession or discipline* means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) *Profession or discipline* means a specific occupational category that—

(i) Provides early intervention services to children eligible under this part and their families;

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

(iii) Has a required scope of responsibility and degree of supervision.

(4) *State approved or recognized certification, licensing, registration, or other comparable requirements* means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each statewide system must have policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing early intervention services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State's application for assistance under this part must include the steps the State is taking, the procedures for notifying public agencies and personnel of those steps, and the timelines it has established for the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing early intervention services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the lead agency, and available to the public.

(e) In identifying the ''highest requirements in the State'' for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children eligible under this part and their families must be considered.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(13))

NOTE: This section requires that a State use its own existing highest requirements to determine the standards appropriate to personnel who provide early intervention services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part.

The regulations permit each State to determine the specific occupational categories required to provide early intervention services to children eligible under this part and their families, and to revise or expand these categories as needed. The professions or disciplines need not be limited to traditional occupational categories.

Subpart E—Procedural Safeguards

GENERAL

§ 303.400 General responsibility of lead agency for procedural safeguards.

Each lead agency shall be responsible for—

(a) Establishing or adopting procedural safeguards that meet the requirements of this subpart; and

(b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.

(Authority: 20 U.S.C. 1480)

§ 303.401 Definitions of consent, native language, and personally identifiable information.

As used in this subpart—

(a) *Consent* means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;

(b) *Native language,* where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;

(c) *Personally identifiable* means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's or parent's social security number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1480)

§ 303.402 Opportunity to examine records.

In accordance with the confidentiality procedures in the regulations under part B of the Act (34 CFR 300.560 through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family.

(Authority: 20 U.S.C. 1480(4))

§ 303.403 Prior notice; native language.

(a) *General.* Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) *Content of notice.* The notice must be in sufficient detail to inform the parents about—

(1) The action that is being proposed or refused;

(2) The reasons for taking the action; and

(3) All procedural safeguards that are available under this part.

(c) *Native language.* (1) The notice must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that—

(i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(ii) The parent understands the notice; and

(iii) There is written evidence that the requirements of this paragraph have been met.

(3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

(Authority: 20 U.S.C. 1480(6) and (7))

§ 303.404 Parent consent.

(a) Written parental consent must be obtained before—

(1) Conducting the initial evaluation and assessment of a child under § 303.322; and

(2) Initiating the provision of early intervention services (see § 303.342(e)).

(b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent—

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(2) Understands that the child will not be able to receive the evaluation

and assessment or services unless consent is given.

(Authority: 20 U.S.C. 1480)

NOTE 1: In addition to the consent requirements in this section, other consent requirements are included in (1) §303.460(a), regarding the exchange of personally identifiable information among agencies, and (2) the confidentiality provisions in the regulations under part B of the Act (34 CFR 300.571) and 34 CFR part 99 (Family Educational Rights and Privacy), both of which apply to this part.

NOTE 2: Under §300.504(b) of the part B regulations, a public agency may initiate procedures to challenge a parent's refusal to consent to the initial evaluation of the parent's child and, if successful, obtain the evaluation. This provision applies to eligible children under this part, since the part B evaluation requirement applies to all children with disabilities in a State, including infants and toddlers.

§303.405 Parent right to decline service.

The parents of a child eligible under this part may determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with State law, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part.

(Authority: 20 U.S.C. 1480(3))

§303.406 Surrogate parents.

(a) *General.* Each lead agency shall ensure that the rights of children eligible under this part are protected if—

(1) No parent (as defined in §303.18) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of lead agency and other public agencies.* The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for—

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

(c) *Criteria for selecting surrogates.* (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate parent—

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate parent may not be an employee of any agency involved in the provision of early intervention or other services to the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

(e) *Responsibilities.* A surrogate parent may represent a child in all matters related to—

(1) The evaluation and assessment of the child;

(2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(3) The ongoing provision of early intervention services to the child; and

(4) Any other rights established under this part.

(Authority: 20 U.S.C. 1480(5))

IMPARTIAL PROCEDURES FOR RESOLVING INDIVIDUAL CHILD COMPLAINTS

§303.420 Administrative resolution of individual child complaints by an impartial decision-maker.

Each system must include written procedures for the timely administrative resolution of individual child complaints by parents concerning any of the matters in §303.403(a). A State may meet this requirement by—

(a) Adopting the due process procedures in 34 CFR 300.506 through 300.512 and developing procedures that meet the requirements of §303.425; or

(b) Developing procedures that—

(1) Meet the requirements in §§303.421 through 303.425; and

(2) Provide parents a means of filing a complaint.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480(1))

NOTE 1: Sections 303.420 through 303.425 are concerned with the adoption of impartial procedures for resolving individual child complaints (i.e., complaints that generally affect only a single child or the child's family). These procedures require the appointment of a decision-maker who is impartial, as defined in § 303.421(b), to resolve a dispute concerning any of the matters in § 303.403(a). The decision of the impartial decision-maker is binding unless it is reversed on appeal.

A different type of administrative procedure is included in §§ 303.510 through 303.512 of subpart F of this part. Under those procedures, the lead agency is responsible for (1) investigating any complaint that it receives (including individual child complaints and those that are systemic in nature), and (2) resolving the complaint if the agency determines that a violation has occurred.

NOTE 2: It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant's or toddler's development is so rapid that undue delay could be potentially harmful.

In an effort to facilitate resolution, States may wish, with parental concurrence, to offer mediation as an intervening step prior to implementing the procedures in this section. Although mediation is not required under either part B or part H of the Act, some States have reported that mediations conducted under part B have led to speedy resolution of differences between parents and agencies, without the development of an adversarial relationship and with minimal emotional stress to parents.

While a State may elect to adopt a mediation process, the State cannot require that parents use that process. Mediation may not be used to deny or delay a parent's rights under this part. The complaint must be resolved, and a written decision made, within the 30-day timeline in § 303.423.

§ 303.421 Appointment of an impartial person.

(a) *Qualifications and duties.* An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must—

(1) Have knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and

(2) Perform the following duties:

(i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) *Definition of impartial.* (1) As used in this section, *impartial* means that the person appointed to implement the complaint resolution process—

(i) Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480(1))

§ 303.422 Parent rights in administrative proceedings.

(a) *General.* Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under § 303.420.

(b) *Rights.* Any parent involved in an administrative proceeding has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;

(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480)

§303.423 Convenience of proceedings; timelines.

(a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency shall ensure that, not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480(1))

NOTE: Under part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (i.e., within 45 days after the receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (See 34 CFR 300.512.) Thus, if a State, in meeting the requirements of §303.420, elects to adopt the due process procedures under part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeline for the due process hearing for children who are eligible under this part—from 45 days to the 30-day timeline in this section. Because the needs of children in the birth-through-two-age range change so rapidly, quick resolution of complaints is important.

§303.424 Civil action.

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 680(1) of the Act.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480(1))

§303.425 Status of a child during proceedings.

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480(7))

CONFIDENTIALITY

§303.460 Confidentiality of information.

(a) Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law.

(b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the modifications specified in §303.5(b).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480(2), 1483)

NOTE: With the modifications referred to in paragraph (b) of this section, the confidentiality requirements in the regulations implementing part B of the Act (34 CFR 300.560 through 300.576) are to be used by public agencies to meet the confidentiality requirements under part H of the Act and this section (§303.460).

The part B provisions incorporate by reference the regulations in 34 CFR part 99 (Family Educational Rights and Privacy); therefore, those regulations also apply to this part.

Subpart F—State Administration

GENERAL

§303.500 Lead agency establishment or designation.

Each system must include a single line of responsibility in a lead agency that—

(a) Is established or designated by the Governor; and

(b) Is responsible for the administration of the system, in accordance with the requirements of this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.501 Supervision and monitoring of programs.

(a) *General.* Each lead agency is responsible for—

(1) The general administration and supervision of programs and activities receiving assistance under this part; and

(2) The monitoring of programs and activities used by the State to carry out this part, whether or not these programs or activities are receiving assistance under this part, to ensure that the State complies with this part.

(b) *Methods of administering programs.* In meeting the requirement in paragraph (a) of this section, the lead agency shall adopt and use proper methods of administering each program, including—

(1) Monitoring agencies, institutions, and organizations used by the State to carry out this part;

(2) Enforcing any obligations imposed on those agencies under part H of the Act and these regulations;

(3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and

(4) Correcting deficiencies that are identified through monitoring.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9)(A))

LEAD AGENCY PROCEDURES FOR RESOLVING COMPLAINTS

§ 303.510 Adopting complaint procedures.

Each lead agency shall adopt written procedures for—

(a) Resolving any complaint that any public agency is violating a requirement of part H of the Act or this part by—

(1) Providing for the filing of a complaint with the lead agency; and

(2) At the lead agency's discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency's decision on the complaint; and

(b) Informing parents and other interested individuals about the procedures in §§ 303.510 through 303.512.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9))

NOTE: Because of the interagency nature of part H of the Act, complaints received under these regulations could concern violations by (1) any public agency in the State that receives funds under this part (e.g., the lead agency and the Council), (2) other public agencies that are involved in the State's early intervention program, or (3) private service providers that receive part H funds on a contract basis from a public agency to carry out a given function or provide a given service required under this part. These complaint procedures are in addition to any other rights under State or Federal law. The lead agency must provide for the filing of a complaint with the lead agency and, at the lead agency's discretion, with a public agency subject to a right of appeal to the lead agency.

§ 303.511 An organization or individual may file a complaint.

An individual or organization may file a written signed complaint under § 303.510. The complaint must include—

(a) A statement that the State has violated a requirement of part H of the Act or the regulations in this part; and

(b) The facts on which the complaint is based.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.512 Minimum State complaint procedures.

Each lead agency shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after a complaint is filed under § 303.510(a) to—

(1) Carry out an independent on-site investigation, if the lead agency determines that such an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of part H of the Act or of this part; and

(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the lead agency's final decision.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) Procedures for effective implementation of the lead agency's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

(d) The right of the complainant or the public agency to request the Secretary to review the lead agency's final decision.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9))

POLICIES AND PROCEDURES RELATED TO FINANCIAL MATTERS

§ 303.520 Policies related to payment for services.

(a) *General.* Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State's early intervention program. The policies must—

(1) Meet the requirements in paragraph (b) of this section; and

(2) Be reflected in the interagency agreements required in § 303.523.

(b) *Specific funding policies.* A State's policies must—

(1) Specify which functions and services will be provided at no cost to all parents;

(2) Specify which functions or services, if any, will be subject to a system of payments, and include—

(i) Information about the payment system and schedule of sliding fees that will be used; and

(ii) The basis and amount of payments; and

(3) Include an assurance that—

(i) Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to parents; and

(ii) The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family; and

(4) Set out any fees that will be charged for early intervention services and the basis for those fees.

(c) *Procedures to ensure the timely provision of services.* No later than the beginning of the fifth year of a State's participation under this part, the State shall implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.521 Fees.

(a) *General.* A State may establish, consistent with § 303.12(a)(3)(iv), a system of payments for early intervention services, including a schedule of sliding fees.

(b) *Functions not subject to fees.* The following are required functions that must be carried out at public expense by a State, and for which no fees may be charged to parents:

(1) Implementing the child find requirements in § 303.321.

(2) Evaluation and assessment, as included in § 303.322, and including the functions related to evaluation and assessment in § 303.12.

(3) Service coordination, as included in §§ 303.22 and 303.344(g).

(4) Administrative and coordinative activities related to—

(i) The development, review, and evaluation of IFSPs in §§ 303.340 through 303.346; and

(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subparts D and F of this part.

(c) *States with mandates to serve children from birth.* If a State has in effect a State law requiring the provision of a free appropriate public education to children with disabilities from birth, the State may not charge parents for any services (e.g., physical or occupational therapy) required under that law

that are provided to children eligible under this part and their families.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1472(2))

§ 303.522 Identification and coordination of resources.

(a) Each lead agency is responsible for—

(1) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources; and

(2) Updating the information on the funding sources in paragraph (a)(1) of this section, if a legislative or policy change is made under any of those sources.

(b) The Federal funding sources in paragraph (a)(1) of this section include—

(1) Title V of the Social Security Act (relating to Maternal and Child Health);

(2) Title XIX of the Social Security Act (relating to the general Medicaid Program, and EPSDT);

(3) The Head Start Act;

(4) Parts B and H of the Act;

(5) Subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended;

(6) The Developmental Disabilities Assistance and Bill of Rights Act (Pub. L. 94–103); and

(7) Other Federal programs.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9)(B))

§ 303.523 Interagency agreements.

(a) *General.* Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved in the State's early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of this section.

(b) *Financial responsibility.* Each agreement must define the financial responsibility, in accordance with § 303.143, of the agency for paying for early intervention services (consistent with State law and the requirements of this part).

(c) *Procedures for resolving disputes.* (1) Each agreement must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved.

(2) The agreement with each agency must—

(i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(d) *Additional components.* Each agreement must include any additional components necessary to ensure effective cooperation and coordination among all agencies involved in the State's early intervention program.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9)(C) and (b)(9)(F))

NOTE: A State may meet the requirement in paragraph (c)(1) of this section in any way permitted under State law, including (1) providing for a third party (e.g., an administrative law judge) to review a dispute and render a decision, (2) assignment of the responsibility by the Governor to the lead agency or Council, or (3) having the final decision made directly by the Governor.

§ 303.524 Resolution of disputes.

(a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in § 303.523(c)(2)(ii).

(b)(1) During a dispute, the individual or entity responsible for assigning financial responsibility among appropriate agencies under § 303.143 (''financial designee'') shall assign financial responsibility to—

(i) An agency, subject to the provisions in paragraph (b)(2) of this section; or

(ii) The lead agency, in accordance with the ''payor of last resort'' provisions in § 303.527.

(2) If, during the lead agency's resolution of the dispute, the financial designee determines that the assignment of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made—

(i) The financial designee shall reassign the responsibility to the appropriate agency; and

(ii) The lead agency shall make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.

(c) To the extent necessary to ensure compliance with its action in paragraph (b)(2) of this section, the lead agency shall—

(1) Refer the dispute to the Council or the Governor; and

(2) Implement the procedures to ensure the delivery of services in a timely manner in accordance with §303.525.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476 (b)(9)(C) and (b)(9)(E))

§303.525 Delivery of services in a timely manner.

Each lead agency is responsible for the development of procedures to ensure that services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9)(D))

§303.526 Policy for contracting or otherwise arranging for services.

Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include—

(a) A requirement that all early intervention services must meet State standards and be consistent with the provisions of this part;

(b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and

(c) The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(10))

NOTE: In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and individuals meet the requirements of this part.

§303.527 Payor of last resort.

(a) *Nonsubstitution of funds.* Except as provided in paragraph (b)(1) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source but for the enactment of part H of the Act. Therefore, funds under this part may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.

(b) *Interim payments—reimbursement.* (1) If necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, funds under this part may be used to pay the provider of services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

(2) Payments under paragraph (b)(1) of this section may be made for—

(i) Early intervention services, as described in §303.12;

(ii) Eligible health services (see §303.13); and

(iii) Other functions and services authorized under this part, including child find and evaluation and assessment.

(3) The provisions of paragraph (b)(1) of this section do not apply to medical services or ''well-baby'' health care (see §303.13(c)(1)).

(c) *Non-reduction of benefits.* Nothing in this part may be construed to permit a State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (SSA) (relating to maternal

and child health) or title XIX of the SSA (relating to Medicaid for children eligible under this part) within the State.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1481)

NOTE: The Congress intended that the enactment of part H not be construed as a license to any agency (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of the program under this part. Thus, the Congress intended that other funding sources would continue, and that there would be greater coordination among agencies regarding the payment of costs.

The Congress further clarified its intent concerning payments under Medicaid by including in section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) an amendment to title XIX of the Social Security Act. That amendment states, in effect, that nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary of Health and Human Services to prohibit or restrict, payment under subsection (a) of section 1903 of the Social Security Act for medical assistance for covered services furnished to an infant or toddler with a disability because those services are included in the child's IFSP adopted pursuant to part H of the Act.

§ 303.528 Reimbursement procedure.

Each system must include a procedure for securing the timely reimbursement of funds used under this part, in accordance with § 303.527(b).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(11))

REPORTING REQUIREMENTS

§ 303.540 Data collection.

(a) Each system must include the procedures that the State uses to compile data on the statewide system. The procedures must—

(1) Include a process for—

(i) Collecting data from various agencies and service providers in the State;

(ii) Making use of appropriate sampling methods, if sampling is permitted; and

(iii) Describing the sampling methods used, if reporting to the Secretary; and

(2) Provide for reporting the data required under section 676(b)(14) of the Act, and other information that the Secretary may require, including information required under section 618 of the Act.

(b) The information required in paragraph (a)(2) of this section must be provided at the time and in the manner specified by the Secretary.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(14))

USE OF FUNDS FOR STATE ADMINISTRATION

§ 303.560 Use of funds by the lead agency.

A lead agency may use funds under this part that are reasonable and necessary for administering the State's early intervention program for infants and toddlers with disabilities.

(Authority: 20 U.S.C. 1473, 1476(b)(9))

Subpart G—State Interagency Coordinating Council

GENERAL

§ 303.600 Establishment of Council.

(a) A State that desires to receive financial assistance under this part shall establish a State Interagency Coordinating Council composed of at least 15 members but not more than 25 members, unless the State provides sufficient justification for a greater number of members in the application submitted under this part.

(b) The Council must be appointed by the Governor. The Governor shall ensure that the membership of the Council reasonably represents the population of the State.

(c) The Governor shall designate a member of the Council to serve as the chairperson of the Council or require the Council to do so. Any member of the Council who is a representative of the lead agency designated under § 303.500 may not serve as the chairperson of the Council.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(a))

NOTE: To avoid a potential conflict of interest, it is recommended that parent representatives who are selected to serve on the Council not be employees of any agency involved in providing early intervention services.

It is suggested that consideration be given to maintaining an appropriate balance between the urban and rural communities of the State.

§ 303.601 Composition.

(a) The Council must be composed as follows:

(1)(i) At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities.

(ii) At least one member must be a parent of an infant or toddler with a disability or a child with a disability aged six or younger.

(2) At least 20 percent of the members must be public or private providers of early intervention services.

(3) At least one member must be from the State legislature.

(4) At least one member must be involved in personnel preparation.

(5) At least one member must—

(i) Be from each of the State agencies involved in the provisions of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and

(ii) Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.

(6) At least one member must—

(i) Be from the State educational agency responsible for preschool services to children with disabilities; and

(ii) Have sufficient authority to engage in policy planning and implementation on behalf of that agency.

(7) At least one member must be from the agency responsible for the State governance of insurance, especially in the area of health insurance.

(b) The Council may include other members selected by the Governor, including a representative from the BIA or, where there is no school operated or funded by the BIA, from the Indian Health Service or the tribe or tribal council.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(b))

§ 303.602 Use of funds by the Council.

(a) *General.* Subject to the approval by the Governor, the Council may use funds under this part—

(1) To conduct hearings and forums;

(2) To reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives);

(3) To pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business;

(4) To hire staff; and

(5) To obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under this part.

(b) *Compensation and expenses of Council members.* Except as provided in paragraph (a) of this section, Council members shall serve without compensation from funds available under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1479, 1482 (c) and (d))

§ 303.603 Meetings.

(a) The Council shall meet at least quarterly and in such places as it deems necessary.

(b) The meetings must—

(1) Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend; and

(2) To the extent appropriate, be open and accessible to the general public.

(c) Interpreters for persons who are deaf and other necessary services must be provided at Council meetings, both for Council members and participants.

The Council may use funds under this part to pay for those services.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482 (c) and (d))

§ 303.604 Conflict of interest.

No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(f))

FUNCTIONS OF THE COUNCIL

§ 303.650 General.

(a) Each Council shall—

(1) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system;

(2) Assist the lead agency in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the State;

(3) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes—

(i) Seeking information from service providers, service coordinators, parents, and others about any Federal, State, or local policies that impede timely service delivery; and

(ii) Taking steps to ensure that any policy problems identified under paragraph (a)(3)(i) of this section are resolved; and

(4) To the extent appropriate, assist the lead agency in the resolution of disputes.

(b) Each Council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children aged birth to five, inclusive.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(e)(1)(A) and (e)(2))

§ 303.651 Advising and assisting the lead agency in its administrative duties.

Each Council shall advise and assist the lead agency in the—

(a) Identification of sources of fiscal and other support for services for early intervention programs under this part;

(b) Assignment of financial responsibility to the appropriate agency; and

(c) Promotion of the interagency agreements under § 303.523.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(e)(1)(A))

§ 303.652 Applications.

Each Council shall advise and assist the lead agency in the preparation of applications under this part and amendments to those applications.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(e)(1)(B))

§ 303.653 Transitional services.

Each Council shall advise and assist the State educational agency regarding the transition of toddlers with disabilities to services provided under part B of the Act, to the extent those services are appropriate.

(Approved by the Office of Management and Budget under control number 1820–0578)

(Authority: 20 U.S.C. 1482(e)(1)(C))

§ 303.654 Annual report to the Secretary.

(a) Each Council shall—

(1) Prepare an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for children eligible under this part and their families; and

(2) Submit the report to the Secretary by a date that the Secretary establishes.

(b) Each annual report must contain the information required by the Secretary for the year for which the report is made.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(e)(1)(D))

EXISTING COUNCILS

§303.670 Use of existing councils.

If a State established a Council before September 1, 1986, that is comparable to the requirements for a Council in this subpart (e.g., in terms of its composition, meetings, and functions), that Council is considered to be in compliance with these requirements. However, within four years after the date that a State accepts funds under this part, the State shall establish a Council that complies in full with the requirements of this subpart.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(g))

PART 304—REMOVAL OF ARCHITECTURAL BARRIERS TO INDIVIDUALS WITH DISABILITIES PROGRAM

Subpart A—General

Sec.
304.1 The Removal of Architectural Barriers to Individuals with Disabilities program.
304.2 Applicability of regulations in this part.
304.3 Regulations that apply to the Removal of Architectural Barriers to Individuals with Disabilities program.
304.4 Definitions.
304.5 Acronyms that are used.
304.6—304.9 [Reserved]

Subpart B—How Does an SEA or the Secretary of the Interior Apply for a Grant?

APPLICATION FROM AN SEA

304.10 Submission of an SEA application.
304.11 Content of SEA application.
304.12—304.14 [Reserved]

APPLICATION FROM THE SECRETARY OF THE INTERIOR

304.15 Submission of an application by the Secretary of the Interior.
304.16 Applicable regulations.
304.17—304.19 [Reserved]

Subpart C—How Does the Secretary Make a Grant?

304.20 Amount of a grant.
304.21 Reallocation of excess funds.
304.22—304.29 [Reserved]

Subpart D—How Does an LEA or IEU Apply to an SEA for a Subgrant?

304.30 Submission of an application to the SEA.
304.31 LEA and IEU applications.
304.32—304.39 [Reserved]

Subpart E—How Does an SEA Make a Subgrant?

304.40 Amount of a subgrant to an LEA or IEU.
304.41 Reallocation of excess funds.
304.42—304.49 [Reserved]

Subpart F—What Conditions Must Be Met by an SEA, LEA, or IEU?

304.50 Standards for the removal of architectural barriers.
304.51 Project priorities.
304.52 Project requirements.
304.53—304.59 [Reserved]

Subpart G—What Are the Administrative Responsibilities of an SEA?

304.60 Amount available for SEA administration.
304.61 Administrative responsibilities and allowable costs.
304.62—304.69 [Reserved]

AUTHORITY: 20 U.S.C. 1406, unless otherwise noted.

SOURCE: 50 FR 29330, July 18, 1985, unless otherwise noted.

Subpart A—General

§304.1 The Removal of Architectural Barriers to Individuals with Disabilities program.

The purpose of this part is to provide financial assistance to State educational agencies and, through them, to local educational agencies and intermediate educational units to remove architectural barriers to children with disabilities and other individuals with disabilities.

(Authority: 20 U.S.C. 1406)

[56 FR 54689, Oct. 22, 1991]

§304.2 Applicability of regulations in this part.

This part applies to assistance under section 607 of the Individuals with Disabilities Education Act.

(Authority: 20 U.S.C. 1406)

[56 FR 54689, Oct. 22, 1991]

§ 304.3 Regulations that apply to the Removal of Architectural Barriers to Individuals with Disabilities program.

The following regulations apply to assistance under the Removal of Architectural Barriers to Individuals with Disabilities program:

(a) The regulations in this part 304.

(b) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations—

(1) Part 76 (State-administered Programs);

(2) Part 77 (Definitions that Apply to Department Regulations);

(3) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(5) Part 81 (General Education Provisions Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying);

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(Authority: 20 U.S.C. 1406; 20 U.S.C. 3474(a))

[56 FR 54689, Oct. 22, 1991]

§ 304.4 Definitions.

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

Application
EDGAR
Fiscal year
Grant
Local educational agency
Project
Public
Secretary
State
State educational agency
Subgrant

(Authority: 20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR 300.5(a), 300.7, 300.13, and 300.14:

Children and disabilities
Intermediate educational unit
Related services
Special education

(Authority: 20 U.S.C. 1401(a)(1), (16), (17), (22))

(c) *Other definitions that apply to this part.* In addition to the definitions referred to in paragraphs (a) and (b), the following definitions apply to this part:

(1) *Alteration,* as applied to a building or structure, means a change or rearrangement in the structural parts or elements, or in the means of egress, or in moving from one location or position to another. It does not include normal maintenance and repair, reroofing, interior decoration, or changes to mechanical and electrical systems.

(Authority: 20 U.S.C. 1406, 41 CFR 101–19.603)

(2) *Equipment* includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(a)(5), 1406)

[50 FR 29330, July 18, 1985, as amended at 56 FR 54689, Oct. 22, 1991]

§ 304.5 Acronyms that are used.

The following acronyms are used in this part:

IEU stands for intermediate educational unit.

LEA stands for local educational agency.

SEA stands for State educational agency.

(Authority: 20 U.S.C. 1406)

§§304.6—304.9 [Reserved]

Subpart B—How Does an SEA or the Secretary of the Interior Apply for a Grant?

APPLICATION FROM AN SEA

§304.10 Submission of an SEA application.

In order to receive funds under this part, an SEA must submit an application to the Secretary for review and approval.

(Authority: 20 U.S.C. 1406)

§304.11 Content of SEA application.

(a) Each SEA shall include in its application assurances that—

(1) Funds received under this part will be used to pay the costs of altering existing buildings and equipment in accordance with the standards in §304.50;

(2) In using funds appropriated under Pub. L. 98–8, special consideration will be given to projects in areas experiencing high rates of unemployment; and

(Authority: Pub. L. 98–8, ''Education for the Handicapped'', 97 Stat. 27 (1983); S. Rep. No. 17, 98th Cong., 1st Sess. 33–34 (1983))

(3) Funds provided under this part that are appropriated under Pub. L. 98–8 will, to the extent practicable, be utilized in manner which maximizes immediate creation of new employment opportunities to individuals who were unemployed at least 15 of the 26 weeks immediately preceding March 24, 1983 (the date of enactment of Pub. L. 98–8).

(Authority: Pub. L. 98–8, section 101(c); 97 Stat. 31–32 (1983))

(b) Each SEA application must also include the following information:

(1) A description of the goals and objectives to be supported by the grant in sufficient detail for the Secretary to determine what will be achieved with the grant.

(2) The estimated number of LEAs and IEUs that will receive subgrants, and a description of the procedures and criteria the SEA will use to award subgrants to LEAs and IEUs, including any priorities established by the SEA under §304.51(b) (*see* §304.40 and subpart F, ''What Conditions Must Be Met by an SEA, LEA, or IEU?'').

(Approved by the Office of Management and Budget under control number 1820–0534)

(Authority: 20 U.S.C. 1406)

[50 FR 29330, July 18, 1985, as amended at 53 FR 6945, Mar. 3, 1988]

§§304.12—304.14 [Reserved]

APPLICATION FROM THE SECRETARY OF THE INTERIOR

§304.15 Submission of an application by the Secretary of the Interior.

In order to receive a grant under this part, the Secretary of the Interior shall submit an application that is consistent with the requirements under §304.11.

(Authority: 20 U.S.C. 1406)

[53 FR 6945, Mar. 3, 1988]

§304.16 Applicable regulations.

The Secretary of the Interior shall comply with all the requirements that apply to SEAs under subparts A, C, F, and G of this part.

(Authority: 20 U.S.C. 1406)

[53 FR 6945, Mar. 3, 1988]

§§304.17—304.19 [Reserved]

Subpart C—How Does the Secretary Make a Grant?

§304.20 Amount of a grant.

(a) For the purpose of this section—

(1) The term *Insular Area* means American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands; and

(2) The term *children with disabilities* means the number of children with disabilities determined by the Secretary—

(i) Under section 611 of the Act, to be receiving special education and related services; or

(ii) In average daily attendance at schools for children with disabilities or supported by a State agency within the meaning of section 1221 of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(b) The amount of an SEA's grant under this part for a State other than an Insular Area is determined by—

(1) Dividing the number of children with disabilities in that State by the total number of children with disabilities in all States submitting approvable applications under this part; and

(2) Multiplying that fraction by the amount of funds available for grants under this part minus the amount reserved under paragraphs (c) and (d) of this section.

(c) The Secretary reserves up to one-half of one percent of the aggregate of the amounts available under this part for grants to Insular Areas. Funds reserved by the Secretary for the Insular Areas are allocated proportionately among them on the basis of the number of children ages three through twenty-one in each Insular Area. However, no Insular Area may receive less than $15,000, and allocations within these jurisdictions are ratably reduced, if necessary, to ensure that each Insular Area receives at least that amount. Allocations within these jurisdictions are further ratably reduced if the amount reserved is insufficient to provide $15,000 to each Insular Area.

(d) From any appropriation enacted after September 30, 1986, the Secretary reserves up to 1.25 percent of the aggregate amount available under this part for a grant to the Secretary of the Interior to be used on reservations served by schools operated for Indian children by the Department of the Interior.

(Authority: 20 U.S.C. 1406)

[50 FR 29330, July 18, 1985, as amended at 53 FR 6945, Mar. 3, 1988; 56 FR 54689, Oct. 22, 1991]

§ 304.21 Reallocation of excess funds.

The Secretary may reallocate funds—or portions of those funds—made available to the Secretary of the Interior or to a State educational agency under this part if the Secretary determines that the Secretary of the Interior or the State educational agency cannot use the funds in a manner consistent with the requirements of applicable statutes and the regulations in this part. Any reallocation is made on the same basis as grants are determined under § 304.20.

(Authority: 20 U.S.C. 1406)

[53 FR 6945, Mar. 3, 1988]

§§ 304.22—304.29 [Reserved]

Subpart D—How Does an LEA or IEU Apply to an SEA for a Subgrant?

§ 304.30 Submission of an application to the SEA.

In order to receive funds under this part for any fiscal year, an LEA or IEU shall submit an application for a subgrant to the appropriate SEA.

(Authority: 20 U.S.C. 1406, 3474(a))

§ 304.31 LEA and IEU applications.

An LEA or IEU shall include in its application any information that is required by the SEA in order to fulfill its responsibilities under this part.

(Authority: 20 U.S.C. 1406, 3474(a))

§§ 304.32—304.39 [Reserved]

Subpart E—How Does an SEA Make a Subgrant?

§ 304.40 Amount of a subgrant to an LEA or IEU.

(a) The SEA shall determine the amount of a subgrant to an LEA or IEU based on—

(1) The size, scope, and quality of the proposed project; and

(2) Any other relevant criteria developed by the SEA and included in the SEA application approved by the Secretary.

(b) The SEA may establish minimum and maximum amounts for subgrants.

(Authority: 20 U.S.C.1406)

§ 304.41 Reallocation of excess funds.

(a) The SEA may reallocate funds provided for subgrants under this part if an LEA or IEU cannot use the funds in a manner consistent with the requirements of section 607 of the Individuals with Disabilities Education Act and the requirements in this part.

(b) The SEA shall reallocate funds in accordance with the criteria and priorities for approving subgrants in its approved application.

(Authority: 20 U.S.C. 1406)

[50 FR 29330, July 18, 1985, as amended at 56 FR 54689, Oct. 22, 1991]

§§304.42—304.49 [Reserved]

Subpart F—What Conditions Must Be Met by an SEA, LEA, or IEU?

§304.50 Standards for the removal of architectural barriers.

The alteration of existing buildings and equipment under this part must be done consistently with standards adopted by the General Services Administration (GSA) under Pub. L. 90–480, the Architectural Barriers Act of 1968. However, the dimensions set out in those standards may be modified as appropriate considering the age groups of the individuals who will use the buildings or equipment.

NOTE: On August 7, 1984, the GSA adopted new standards under the Architectural Barriers Act (49 FR 31528) and incorporated them by reference at 41 CFR 101–19.603 (49 FR 31625).

(Authority: 20 U.S.C. 1406)

§304.51 Project priorities.

(a) An SEA may establish priorities for the use of funds made available under this part. The SEA may, for example, give special consideration to projects that will meet the special needs of urban or rural locations, or that will facilitate the transition of children with disabilities and individuals with disabilities from school to work.

(b) The Secretary encourages States to use their funds for activities that will—

(1) Make available to children with disabilities the variety of educational programs and services available to nondisabled children in the area served by the LEA or IEU;

(2) Provide nonacademic and extracurricular services and activities in a manner that affords children with disabilities opportunity for participation in these services and activities; and

(3) Provide assessibility to individuals with disabilities involved in the education of children with disabilities or eligible to participate in programs administered by LEAs and IEUs.

(Authority: 20 U.S.C. 1406)

[50 FR 29330, July 18, 1985, as amended at 56 FR 54689, Oct. 22, 1991]

§304.52 Project requirements.

To the extent practicable, funds made available under this part that are appropriated under Pub. L. 98–8 must be utilized to create new employment opportunities for the unemployed, as required by Pub. L. 98–8, section 101(c).

(Authority: Pub. L. 98–8, sec. 101(c); 97 Stat. 31–32 (1983))

§§304.53—304.59 [Reserved]

Subpart G—What Are the Administrative Responsibilities of an SEA?

§304.60 Amount available for SEA administration.

An SEA may use up to five percent of its grant for the cost of administering funds provided under this part.

(Authority: 20 U.S.C. 1406)

§304.61 Administrative responsibilities and allowable costs.

Administrative costs under this part include—

(a) Planning of programs and projects assisted by funds under this part;

(b) Approval, supervision, monitoring, and evaluation by an SEA of the effectiveness of projects assisted by funds made available under this part; and

(c) Technical assistance that an SEA provides to LEAs and IEUs with respect to the requirements of this part.

(Authority: 20 U.S.C. 1406)

§§304.62—304.69 [Reserved]

PART 305—REGIONAL RESOURCE AND FEDERAL CENTERS

Subpart A—General

Sec.

305.1 What are the Regional Resource and Federal Centers?

305.2 Who is eligible to apply for an award under this program?
305.3 What regulations apply to this program?
305.4 What definitions apply to this program?
305.5—305.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

305.10 What kinds of services are provided by Regional Resource Centers under this part?
305.11 What kinds of services are provided by the Federal Center under this part?
305.12 What is the composition of the regions?
305.13—305.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

305.30 May the Secretary require the Centers to give priority to certain services?
305.31 What are the selection criteria for evaluating applications under this program?
305.32—305.39 [Reserved]

Subpart E—What Conditions Must Be Met by the Recipient of an Award?

305.40 What additional activities must each Center perform?
305.41—305.49 [Reserved]

AUTHORITY: 20 U.S.C. 1421, unless otherwise noted.

SOURCE: 49 FR 25997, June 25, 1984, unless otherwise noted.

Subpart A—General

§ 305.1 What are the Regional Resource and Federal Centers?

(a) This program supports the establishment and operation of Regional Resource Centers that focus on special education and related services and early intervention services. Regional Resource Centers shall provide consultation, technical assistance, and training, as requested, to State educational agencies and through those State educational agencies, to local educational agencies and to other appropriate public agencies providing special education and related services and early intervention services. The purpose of this assistance is to aid these agencies in providing early intervention, special education, and related services to infants, toddlers, children, and youth with disabilities and their families.

(b) This program also supports the establishment and operation of a Federal Center that provides assistance to the Regional Resource Centers in the delivery of technical assistance focusing on national priorities established by the Secretary.

(Authority: 20 U.S.C. 1421)

[53 FR 3525, Feb. 5, 1988, as amended at 56 FR 54689, Oct. 22, 1991]

§ 305.2 Who is eligible to apply for an award under this program?

The Secretary may provide assistance under this part through a grant to, or cooperative agreement or contract with—

(a) Institutions of higher education;

(b) Private nonprofit organizations;

(c) State educational agencies;

(d) Public agencies; or

(e) Combinations of these agencies and institutions, such as combinations including one or more local educational agencies within particular regions of the United States.

(Authority: 20 U.S.C. 1421)

[53 FR 3525, Feb. 5, 1988]

§ 305.3 What regulations apply to this program?

(a) The following regulations apply to grants and cooperative agreements for Regional Resource Centers:

(1) The regulations in this part 305.

(2) The Education Department General Administrative Regulations (EDGAR) at title 34 of the Code of Federal Regulations in—

(i) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(ii) Part 75 (Direct Grant Programs);

(iii) Part 77 (Definitions that Apply to Department Regulations);

(iv) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(v) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(vi) Part 81 (General Education Provisions Act—Enforcement);

(vii) Part 82 (New Restrictions on Lobbying);

(viii) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirement for Drug-Free Workplace (Grants)); and

(ix) Part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR chapter 34 apply to contracts for Regional Resource and Federal Centers.

(Authority: 20 U.S.C. 1421)

[53 FR 3525, Feb. 5, 1988, as amended at 56 FR 54690, Oct. 22, 1991]

§305.4 What definitions apply to this program?

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

Applicant
Application
Award
Budget period
Contract
EDGAR
Fiscal Year
Grant
Grant period
Local educational agency
Nonprofit
Private
Project
Project period
Public
Secretary
State
State educational agency

(Authority: 20 U.S.C. 1421; 20 U.S.C. 3474(a))

§§305.5—305.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§305.10 What kinds of services are provided by Regional Resource Centers under this part?

Each Regional Resource Center shall—

(a) Assist State educational agencies and through such State educational agencies, local educational agencies and other appropriate public agencies, through services such as consultation, technical assistance, and training, to provide more effectively special education, related services, and early intervention services to infants, toddlers, children, and youth with disabilities, and their families;

(b) Assist in identifying and solving persistent problems, and in identifying emerging issues and trends in providing quality special education, related services, and early intervention services to infants, toddlers, children, and youth with disabilities, and their families;

(c) Assist in developing, identifying, and replicating successful programs and practices that will improve special education, related services, and early intervention services to infants, toddlers, children, and youth with disabilities, and their families;

(d) Gather and disseminate information to all State educational agencies in the region and coordinate activities with other Regional Resource Centers and with other relevant programs and projects conducted by the Department;

(e) Assist in the improvement of information dissemination to, and training activities for, professionals and parents of infants, toddlers, children, and youth with disabilities; and

(f) Provide information to and training for agencies, institutions, and organizations regarding techniques and approaches for submitting applications for grants and cooperative agreements under this part and parts D through G of the Act.

(Authority: 20 U.S.C. 1421)

[53 FR 3525, Feb. 5, 1988, as amended at 56 FR 54690, Oct. 22, 1991; 58 FR 9462, Feb. 19, 1993]

§305.11 What kinds of services are provided by the Federal Center under this part?

The Federal Center shall—

(a) Provide a national perspective for establishing technical assistance activities within and across regions by identifying and synthesizing emerging issues and trends and establishing a panel to interpret this information. This panel must be broadly representative of the special education constituency, including representatives of State and local educational agencies,

parent organizations, consumer and advocacy organizations, professional organizations, and consumers, with particular attention being given to individuals from minority backgrounds. This information must be shared with Regional Resource Centers and State educational agencies and may serve as a basis for multi-State and multi-regional technical assistance activities;

(b) Assist in linking and coordinating the Regional Resource Centers with each other and with other technical assistance providers, including health-related entities as well as organizations representing persons with disabilities, professional organizations, and parent projects. Information from these activities must be shared with the Regional Resource Centers as well as the States;

(c) Provide information to, and training for, agencies, institutions, and organizations regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under parts C through G of the Act, and make that information available to the Regional Resource Centers on request;

(d) Give priority to providing technical assistance concerning the education of children with disabilities from minority backgrounds and exchanging information with and, if appropriate, cooperating with other centers addressing the needs of these children; and

(e) Provide assistance to State educational agencies, through Regional Resource Centers, for the training of hearing officers.

(Authority: 20 U.S.C. 1421)

[58 FR 9462, Feb. 19, 1993]

§ 305.12 What is the composition of the regions?

The Secretary establishes the following regions:

(a) Region 1: Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, and New Jersey.

(b) Region 2: Maryland, Delaware, Virginia, West Virginia, Washington, DC, Kentucky, Tennessee, North Carolina, and South Carolina.

(c) Region 3: Georgia, Alabama, Florida, Mississippi, Puerto Rico, the Virgin Islands, New Mexico, Texas, Oklahoma, Arkansas, and Louisiana.

(d) Region 4: Illinois, Ohio, Indiana, Pennsylvania, Wisconsin, Minnesota, and Michigan.

(e) Region 5: Montana, Wyoming, North Dakota, South Dakota, Utah, Colorado, Nebraska, Kansas, Iowa, Missouri, and the Bureau of Indian Affairs.

(f) Region 6: Oregon, Idaho, Washington, Alaska, California, Arizona, Nevada, the Republic of Palau, the Republic of the Marhsall Islands, the Federated States of Micronesia, Guam, American Samoa, Hawaii, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1421)

[49 25997, June 25, 1984, as amended at 53 FR 3525, Feb. 5, 1988. Redesignated at 58 FR 9462, Feb. 19, 1993]

§§ 305.13—305.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 305.30 May the Secretary require the Centers to give priority to certain services?

For any fiscal year, the Secretary may, in the application notice, require the Centers to give priority to one or more of the services listed in § 305.10 and § 305.11.

(Authority: 20 U.S.C. 1421)

[49 FR 25997, June 25, 1984, as amended at 58 FR 9463, Feb. 19, 1993]

§ 305.31 What are the selection criteria for evaluating applications under this program?

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum number of points for each criterion is stated in parentheses. The maximum score for all of the criteria is 100 points.

(a) *Need for the project.* (5 points) (1) The Secretary reviews each application for a Regional Resource Center for information that shows the needs of the States in the region and support for

the applicant's project by the agencies to be served by the project.

(2) The Secretary reviews each application for a Federal Center for information that identifies potential issues and trends of national concern and procedures for obtaining broad based input in validating, interpreting, synthesizing, and updating information on emerging issues and trends on a regular basis.

(b) *Capability of applicant.* (5 points) (1) The Secretary reviews each application for information that shows the capability of the applicant to fulfill the responsibilities of a Center under this part.

(2) In making this determination, the Secretary considers evidence of relevant experience which demonstrates the capacity to provide technical assistance to State educational agencies, commitment to the accomplishment of the project, and timely completion of previous comparable work.

(c) *Plan of operation.* (40 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(d) *Quality of key personnel.* (25 points) (1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d) (1) and (2) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590, Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and, to the extent possible, are objective and produce data that are quantifiable. For Regional Resource Centers, evaluation methods must include evaluation of changes in State capacity to work with local educational agencies to improve services for students with disabilities.

(g) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1421)

[49 FR 25997, June 25, 1984, as amended at 56 FR 54690, Oct. 22, 1991; 58 FR 9463, Feb. 19, 1993]

§§ 305.32—305.39 [Reserved]

Subpart E—What Conditions Must Be Met by the Recipient of an Award?

§ 305.40 What additional activities must each Center perform?

Each Regional Resource or Federal Center shall—

(a) Report a summary of materials produced or developed in the manner and at the time the Secretary may establish.

(b) Assist in the evaluation of the effectiveness of Regional Resource Center activities through cooperation with other projects under this part and with other appropriate projects such as the program evaluations under section 610(d) of the Act.

(c) Assure that the services provided are consistent with the priority needs identified by the States served by the Center.

(d) If appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the national Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

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(Authority: 20 U.S.C. 1409(g); 20 U.S.C. 1421)

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§§ 305.41—305.49 [Reserved]

PART 307—SERVICES FOR CHILDREN WITH DEAF-BLINDNESS

Subpart A—General

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AUTHORITY: 20 U.S.C. 1422, unless otherwise noted.

SOURCE: 49 FR 28364, July 11, 1984, unless otherwise noted.

Subpart A—General

§307.1 What is the Services for Children with Deaf-Blindness program?

This program supports projects that enhance services to children with deaf-blindness, particularly by providing technical assistance to State educational agencies, local educational agencies, designated lead agencies under part H, and others who are involved in the early intervention or education of children with deaf-blindness.

(Authority: 20 U.S.C. 1422)

[49 FR 28364, July 11, 1984, as amended at 56 FR 51585, Oct. 11, 1991]

§307.2 Who is eligible to apply for an award under the Services for Children with Deaf-Blindness program?

Public or nonprofit private agencies, institutions, or organizations, including an Indian tribe and the Bureau of Indian Affairs of the Department of the Interior (if acting on behalf of schools operated by the Bureau for children and students on Indian reservations) and tribally controlled schools funded by the Department of the Interior, may apply for an award under this part.

(Authority: 20 U.S.C. 1422)

[49 FR 28364, July 11, 1984, as amended at 56 FR 51585, Oct. 11, 1991]

§307.3 What regulations apply to the Services for Children with Deaf-Blindness program?

The following regulations apply to this program:

(a) The regulations in this part 307.

(b) The Education Department General Administrative Regulations (EDGAR) established in title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1422; 20 U.S.C. 3474(a))

[49 FR 28364, July 11, 1984, as amended at 56 FR 51585, Oct. 11, 1991]

§307.4 What definitions apply to the Services for Children with Deaf-Blindness program?

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

Applicant
Application
EDGAR
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary
State

(Authority: 20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR part 300.

Counseling services (§ 300.13(b)(2))
Evaluation (§ 300.500(c))
Free appropriate public education (§ 300.4)
Parent (§ 300.10)
Parent counseling and training (§ 300.13(b)(6))
Public agency (§ 300.11)
Related services (§ 300.13)
Special education (§ 300.14)

(Authority: 20 U.S.C. 1401 (1), (16), (17), and (18), and 20 U.S.C. 1424)

(c) *Other definitions.*

Children with deaf-blindness. For the purposes of this part, the term, *children with deaf-blindness,* means children and youth having auditory and visual impairments, the combination of which creates such severe communication and other developmental and learning needs that they cannot be appropriately educated without special education and related services, beyond those that would be provided solely for children with hearing impairments, visual impairments, or severe disabilities, to address their educational needs due to these concurrent disabilities. This term also means infants and toddlers with deaf-blindness.

Children with disabilities. (1) For the purposes of this part, the term *children with disabilities* means children—

(i) With mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) Who, for that reason, need special education and related services.

(2) For children aged three to five, inclusive, the term may, at State's discretion, include children—

(i) Who are experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) Who, for that reason, need special education and related services.

Infants and toddlers with deaf-blindness. For the purposes of this part, the term *infants and toddlers with deaf-blindness* means individuals from birth through age 2 who are experiencing developmental delays in hearing and vision, have a diagnosed physical or mental condition that has a high probability of resulting in developmental delays in hearing and vision, or are at risk of having substantial developmental delays in hearing and vision if early intervention services are not provided.

[49 FR 28364, July 11, 1984, as amended at 54 FR 15310, Apr. 17, 1989; 56 FR 51585, Oct. 11, 1991; 57 FR 28965, June 29, 1992]

§§ 307.5—307.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 307.10 What types of activities are considered for support under this part?

The Secretary may provide financial assistance under this part to support the following activities:

(a) Technical assistance to agencies, institutions, or organizations providing educational or early intervention services to children with deaf-blindness;

(b) Preservice or inservice training to paraprofessionals, professionals, or related services personnel preparing to serve, or serving, children with deaf-blindness;

(c) Replication of successful innovative approaches to providing educational, early intervention, or related services to children with deaf-blindness;

(d) Pilot projects that are designed to—

(1) Expand local educational agency capabilities by providing services to children with deaf-blindness that supplement services already provided to children and youth through State and local resources; and

(2) Encourage eventual assumption of funding responsibility by State and local authorities;

(e) Development, improvement, or demonstration of new or existing methods, approaches, or techniques that contribute to the adjustment, early

intervention, and education of children with deaf-blindness;

(f) Facilitation of parent involvement in the education of their children with deaf-blindness;

(g) Research to identify and meet the full range of special needs of those children;

(h) Technical assistance for transitional services, as described in §307.13; and

(i) A national clearinghouse for children with deaf-blindness as described in §307.15.

(Authority: 20 U.S.C. 1422)

[56 FR 51585, Oct. 11, 1991]

§307.11 What types of services and technical assistance by State and multi-State projects are considered for support under this part?

(a) The Secretary may provide financial assistance under this part to State and multi-State projects to support the following activities—

(1) Special education, early intervention, and related services, as well as vocational and transitional services, to children with deaf-blindness to whom States are not obligated to make available a free appropriate public education under part B of the Individuals with Disabilities Education Act and to whom the State is not providing those services under some other authority. These services may include the following:

(i) The diagnosis and educational evaluation of children who are likely to be diagnosed as having deaf-blindness;

(ii) Programs of adjustment, education, and orientation for children with deaf-blindness; and

(iii) Consultative, counseling, and training services for the families of children with deaf-blindness.

(iv) Preparation of a coordinated plan for each child with deaf-blindness served, describing all the services provided under paragraphs (a)(1) (i) through (iii) of this section. These services must be in accordance with other Federal and State programs.

(2) Technical assistance to public and private agencies, institutions, and organizations providing early intervention, educational, transitional, vocational, early identification, and related services to children with deaf-blindness, to assure that they may more effectively—

(i) Provide special education and related services, as well as vocational and transitional services, to those children with deaf-blindness to whom they are obligated to make available a free appropriate public education under part B of the Individuals with Disabilities Education Act or some other authority and provide early intervention services under part H of IDEA;

(ii) Provide preservice or inservice training to paraprofessionals, professionals or related services personnel preparing to serve, or serving, children with deaf-blindness;

(iii) Replicate successful, innovative approaches to providing early intervention, educational or related services to children with deaf-blindness;

(iv) Facilitate parental involvement in the education of their children with deaf-blindness;

(v) Provide consultative and counseling services for professionals, paraprofessionals, parents, and others who play a direct role in the lives of children with deaf-blindness, to enable them to understand the special problems of those children, and to assist in the provision of appropriate services to those children; and

(vi) Promote the integration of children with deaf-blindness with children with other disabilities and without disabilities.

(3) The services described in paragraph (a)(1) of this section to children with deaf-blindness to whom a State is obligated to make available a free appropriate public education under part B of the Individuals with Disabilities Education Act and to whom the State is providing those services under some other authority.

(b)(1) Each grantee under this section shall give priority in the use of project funds to the provision of services described in paragraph (a)(1) of this section and to the provision of technical assistance as described in paragraph (a)(2) of this section.

(i) Give first priority in the use of project funds to the provision of services described in paragraph (a)(1) of this section; and

(ii) Give second priority in the use of project funds to the provision of technical assistance to State educational agencies, as described in paragraph (a)(2) of this section.

(2) Any remaining funds may be used by the grantee, upon request of the State educational agency, for pilot projects.

(c) Each grantee under this section shall—

(1) Develop and implement procedures to evaluate the effectiveness of services to children with deaf-blindness which it provides under paragraph (a)(1) of this section;

(2) Provide technical assistance to the public and private agencies, institutions, and organizations served under paragraph (a)(2) of this section in the development and implementation of procedures for evaluating the effectiveness of services they provide to children with deaf-blindness; and

(3) Engage in on-going coordination with the State educational agency, the State's lead agency under part H of the IDEA, and other State agencies responsible for providing services to children with deaf-blindness, in the provision of services under this section.

(d) For the purpose of making awards under § 307.11, the Secretary may make awards for single or multi-State projects. Each State may be served through only one project.

(Authority: 20 U.S.C. 1422)

[49 FR 28364, July 11, 1984, as amended at 54 FR 15310, Apr. 17, 1989; 56 FR 51585, Oct. 11, 1991]

§ 307.12 What types of technical assistance to grantees under § 307.11 are considered for support under this part?

(a) The Secretary may provide financial assistance under this part for projects that establish and support programs for the provision of technical assistance on the activities authorized under § 307.11.

(b) Technical assistance services made available under this section must be requested by a grantee under § 307.11, the lead agency under part H, or a State educational agency, and may be extended at the request of the § 307.11 grantee, the lead agency under part H, or a State educational agency to local educational agencies and designated lead agencies under part H of IDEA, and other agencies, institutions, and organizations providing services to children with deaf-blindness, to—

(1) Enhance personnel training programs by, for example, making available the combined expertise of highly trained and experienced professionals from the fields of education and early intervention for children with deaf-blindness;

(2) Apply effective and relevant educational and early intervention research findings; and

(3) Replicate effective methodology and curricula in educating children with deaf-blindness, and in providing early intervention services to children with deaf-blindness.

(c) Technical assistance services made available under this section are to be determined by mutual agreement between the § 307.12 technical assistance grantee and the § 307.11 grantee, the lead agency under part H, or the State education agency.

(Authority: 20 U.S.C. 1422)

[49 FR 28364, July 11, 1984, as amended at 54 FR 15310, Apr. 17, 1989; 56 FR 51585, 51586, Oct. 11, 1991]

§ 307.13 What types of technical assistance for transitional services are considered for support under this part?

(a) The Secretary may provide financial assistance under this part to provide technical assistance to State educational agencies in making available to adolescents and young adults with deaf-blindness, programs and services to facilitate their transition from education to employment and other services such as vocational, independent living, and other postsecondary services.

(b) Each grantee under this section must provide each of the following services:

(1) Technical assistance to agencies institutions, and organizations that are preparing adolescents and young adults with deaf-blindness for adult placement, or that are preparing to receive adolescents or young adults with deaf-blindness into adult living and work environments, or that serve, or

propose to serve adolescents and young adults with deaf-blindness.

(2) Training or inservice training to paraprofessionals or professionals serving, or preparing to serve, those adolescents and young adults, as well as training to their parents.

(3) Assistance in the development or replication of successful innovative approaches to providing rehabilitative, supervised, semi-supervised, or independent living programs.

(c) As used in this section, the term *transitional services* includes—

(1) Counseling, training, and other services to assist adolescents and young adults with deaf-blindness to adjust to work environments and employment options;

(2) Information concerning relevant public services available to assist adolescents and young adults with deaf-blindness in transition from educational to other services, including, recreational and leisure time resources, rehabilitative, supervised, semi-supervised, or independent living programs, and the procedures for assessing those services; and

(3) Assistance to relevant agencies in the development of individualized work-related plans for adolescents and young adults with deaf-blindness.

(d) Each grantee under this section shall develop and implement strategies to promote coordination between State and local agencies, institutions, and organizations that are preparing adolescents and young adults with deaf-blindness for adult placements, or that are preparing to receive adolescents or young adults with deaf-blindness into adult living and work environments, or that serve, or propose to serve adolescents or young adults with deaf-blindness, including agencies providing rehabilitative, vocational, health, career planning and development, and social services, and agencies providing a range of supervised and unsupervised living options.

(e) Each grantee under this section shall assess the effectiveness of the project in facilitating the transition of adolescents and young adults with deaf-blindness from education to employment and other services such as vocational, independent living, and other postsecondary services.

(Authority: 20 U.S.C. 1422)

[49 FR 28364, July 11, 1984, as amended at 56 FR 51586, Oct. 11, 1991]

§307.14 What types of pilot projects are considered for support to successful §307.11 applicants under this part?

The Secretary may provide financial assistance under this part to successful applicants under §307.11, to support pilot projects described at §307.10(d).

(Authority: 20 U.S.C. 1422)

[56 FR 51586, Oct. 11, 1991]

§307.15 What types of activities are supported in a national clearinghouse for children with deaf-blindness?

The Secretary may provide financial assistance under this part to support the following activities:

(a) Identification, coordination, and dissemination of information on deaf-blindness, emphasizing information concerning practices developed through research, development or demonstration activities that have produced statistical or narrative data establishing their effectiveness in working with children with deaf-blindness, including—

(1) Special educational and early intervention programs, services, and resources;

(2) Related medical, health, social, and recreational services;

(3) The nature of deaf-blindness and its early intervention, educational, and employment implications;

(4) Legal issues affecting persons with disabilities; and

(5) Information on available services and programs in postsecondary education for adolescents and young adults with deaf-blindness.

(b) Interaction with educators, professional groups, and parents to identify areas for programming, materials development, training, and expansion of specific services.

(c) Maintenance of a computerized data base on local, regional, and national resources.

(d) Responding to information requests from professionals, parents, and members of the public.

(Authority: 20 U.S.C. 1422)

[56 FR 51586, Oct. 11, 1991]

§§ 307.16—307.19 [Reserved]

Subpart C—How Does One Apply for a Grant?

§§ 307.20—307.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 307.30 What priorities are considered for support by the Secretary?

(a) The Secretary may select as annual priorities one or more of the types of projects listed in § 307.10.

(b) The Secretary advises the public of these priorities through an application notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1422)

§ 307.31 How does the Secretary determine the amount of an award under § 307.11?

In determining the funding level for each award under § 307.11 for a single or multi-State project for children with deaf-blindness, the Secretary considers the following factors:

(a) The number of children in the States the applicant proposes to serve.

(b) The number of children with deaf-blindness in the State benefiting from services under § 307.11(a) (1) and (2) in relation to the total number of such children in all States.

(c) The relative cost of providing services authorized under this part to children with deaf-blindness in the States the applicant proposes to serve.

(d) The quality of the application submitted under this part evaluated on the basis of the criteria in § 307.33.

(Authority: 20 U.S.C. 1422)

[54 FR 15311, Apr. 17, 1989, as amended at 56 FR 51585, 51586, Oct. 11, 1991]

§ 307.32 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under § 307.11 on the basis of the criteria in § 307.33. If more than one eligible application is received on behalf of any State for an award under § 307.11, the Secretary uses the procedures established in § 307.34. The Secretary uses the selection criteria in § 307.35 or 307.36 to evaluate applications submitted for other types of activities authorized under this part.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1422)

[54 FR 15311, Apr. 17, 1989]

§ 307.33 What criteria does the Secretary use to evaluate a State or multi-State application under § 307.11?

The Secretary uses the following criteria to evaluate the quality of an application submitted under § 307.11. Each applicant may receive up to a total of 100 points. Each application will be evaluated based only on those factors of each criterion that relate to the service needs of the States the applicant proposes to serve.

(a) *Justification for the project, extent of need, and expected impact.* (15 points) The Secretary reviews each application to determine the justification for the proposed activities in each State, based on the extent of State need for and expected impact from the provision of services and technical assistance, including consideration of—

(1) The age, number, and location of children with deaf-blindness in the State to whom the State is not obligated to provide a free appropriate public education under part B of the IDEA, to whom the State is not providing special educational and related services under some other authority, and to whom the applicant proposes to provide services;

(2) The specific actions needed for the provision of early intervention, educational, and related services to children with deaf-blindness based on the State's plan for delivery of services to students with handicaps required under parts B and H of the IDEA;

(3) The specific actions needed for the provision of technical assistance addressed by the project based on the

State's plan for provision of technical assistance to providers of services to children with deaf-blindness;

(4) The expected benefits to be gained by providing the early intervention, educational, and related services to children with deaf-blindness to be served by the project, their parents and service providers; and

(5) The expected benefits to be gained by meeting the technical assistance needs of service providers to be assisted by the project.

(b) *Quality of services and technical assistance.* (40 points) The Secretary reviews each application to determine the quality of the plan to provide services and technical assistance in each State to be served, including—

(1) The quality of the design of the project for providing each of the early intervention, educational, and related services described under §307.11(a)(1), and for providing technical assistance as described under §307.11(a)(2);

(2) The extent to which the applicant's plan for providing services and technical assistance implements current research findings and exemplary practices including arranging for services that are age-appropriate for project participants, and providing for the maximum integration of children with deaf-blindness in the least restrictive environment;

(3) How well the objectives of the project respond to the needs of children with deaf-blindness in the State, their parents, and service providers;

(4) The extent to which the plan of management is effective and ensures proper and efficient provision of early intervention, educational, and related services, and technical assistance, and reflects an analysis of the service needs of children with deaf-blindness in the State;

(5) How well the objectives of the project relate to the purpose of the program;

(6) How the project will assist the State in developing and implementing the State's Comprehensive Systems of Personnel Development required under parts B and H of IDEA;

(7) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition;

(8) The quality of the applicant's plan for providing early intervention, consultative, and training services for families of children with deaf-blindness as described in §307.11(a)(1)(iii);

(9) The quality of the applicant's plan to involve parents in the development and delivery of appropriate services to their children with deaf-blindness; and

(10) The extent to which services provided for children birth through two years of age meet the requirements of part H of the IDEA.

(c) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project for the provision of services to children with deaf-blindness and technical assistance to agencies, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The experience among key personnel referred to in paragraphs (c)(1) and (2) of this section, relevant to the provision of quality educational services to children with deaf-blindness in less restrictive environments.

(4) The time that each person referred to in paragraphs (c)(1) and (2) of this section will commit to the project; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee)

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine for technical assistance, and direct services where appropriate, in each State to be served, the extent to which—

(1) The budgets are adequate to support the activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) Costs reflect—

(i) The time anticipated to be spent by each staff member for the provision of services described under § 307.11(a)(1) and costs for contracted and consultative services, travel costs, and other direct costs;

(ii) The time anticipated to be spent by each staff member for the provision of technical assistance under § 307.11(a)(2), and costs for contracted and consultative services, travel, and other related expenditures for technical assistance activities; and

(iii) The time anticipated to be spent for administrative services.

(Authority: 20 U.S.C. 1422)

(f) *Coordination.* (5 points) The Secretary reviews each application to determine the adequacy of the applicant's procedures for initiating and maintaining coordination in each State to be served with—

(1) Related activities funded from grants, contracts, and cooperative agreements awarded under parts C, D, E, F, and G of the IDEA; and

(2) Relevant agencies, organizations, and institutions having responsibility to deliver services to children with deaf-blindness in the State, including State education agencies and other service providers under parts B and H of the IDEA and section 1221 *et seq.* of title I of the Elementary and Secondary Education Act of 11965.

(g) *Dissemination.* (5 points) The Secretary reviews each application to determine the adequacy of the applicant's procedures for disseminating significant project information within the State(s) to providers of services to children with deaf-blindness.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1422)

[54 FR 15311, Apr. 17, 1989, as amended at 56 FR 51585, 51586, Oct. 11, 1991]

§ 307.34 What procedures does the Secretary use if more than one application for an award under § 307.11 proposes to serve the same State?

If more than one eligible application is received on behalf of any State for an award under § 307.11, the Secretary applies the selection criteria in § 307.33 and selects the highest ranked application for funding.

(Authority: 20 U.S.C. 1422)

[54 FR 15312, Apr. 17, 1989]

§ 307.35 What criteria are used to evaluate a technical assistance application under § 307.10, § 307.12, or § 307.13?

The Secretary uses the following criteria to evaluate an application for the provision of technical assistance under § 307.10, § 307.12, and § 307.13. Each application may receive up to a total of 100 points:

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project will assist in meeting national needs in the provision of services to children with deaf-blindness, including consideration of—

(1) The extent and importance of the needs addressed by the project;

(2) The expected benefits to children with deaf-blindness served by the project, their parents, and service providers; and

(3) The national significance of the project in terms of potential benefits to children with deaf-blindness who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(c) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1422)

[54 FR 15312, Apr. 17, 1989. Redesignated and amended at 56 FR 51587, Oct. 11, 1991]

§307.36 What criteria are used to evaluate an application for other than technical assistance under §307.10, or for an application under §307.14 or §307.15?

The Secretary uses the following criteria to evaluate the quality of an application submitted under §307.10 (except for technical assistance projects), and under §307.14 and §307.15. Each applicant may receive up to a total of 100 points.

(a) *Importance and impact.* (20 points) (1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part, including—

(i) The significance of the problem or issues to be addressed;

(ii) The extent to which the project is based on previous results, research and evaluation findings, or other information related to the problem or issue;

(iii) The contribution that project findings or products will make to current knowledge and practice; and

(iv) The extent to which findings, information, or products of the project will be designed to promote their adaptation by and usefulness to others in conducting related projects.

(2) In determining the extent of the importance and impact of the application, the Secretary also considers the

relevance of proposed activities in addressing the unique needs of children targeted by the project.

(3) In determining the importance and impact of the application the Secretary considers the extent to which the project addresses the unique needs of children with disabilities from minority backgrounds.

(b) *Technical soundness.* (1) The Secretary reviews each application to determine the technical soundness of the project, including—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, or disabling conditions; and

(iii) The anticipated outcomes.

(2) In determining the technical soundness of an application, the Secretary also considers—

(i) For pilot projects under § 307.14—

(A) The correlation with and relevance to the activities under § 307.11 for a State or multi-State project; and

(B) The extent to which practices of the pilot project can be adopted in other settings within the State;

(ii) For the clearinghouse project under § 307.15—

(A) The extent to which the applicant evidences awareness of the magnitude and importance of effective public awareness, the existence of already existing materials and resources available to meet general and specific educator and consumer needs, and gaps in the bank of resources and materials to meet those needs;

(B) The quality of the information retrieval, assimilation, revision and dissemination systems that the applicant will utilize in meeting general requests of the public as well as the specific needs of educators, administrators, and consumers; and

(C) The adequacy of project procedures for addressing, through products and outreach procedures, the unique needs of users from traditionally underrepresented groups;

(iii) For research projects—

(A) The comprehensiveness of the review of research to the problem or issues to be addressed by the project and to the nature of the population to be included in the project;

(B) The theoretical soundness of the conceptual framework and research hypotheses upon which the research is to be conducted;

(C) The appropriateness of the data analysis, procedures, and instrumentation;

(D) The effectiveness of the research design in testing the research hypotheses; and

(E) How the anticipated research results can be utilized in subsequent research or demonstration projects, if applicable;

(iv) For model development, improvement, or demonstration projects—

(A) The extent to which the project is focused on the development or adaptation of innovative educational practices;

(B) The nature and extent to which the proposed practices to be included in the model demonstration have been identified and validated through prior research or related model developmental efforts with the same or similar target populations;

(C) The extent to which the practices to be demonstrated promote the integration of children with deaf-blindness with peers who are not disabled in least-restrictive environments; and

(D) The extent to which the project will develop materials and procedures that can be used by others to implement the model;

(v) For replication, outreach, or utilization projects—

(A) The nature and extent to which the practices to be disseminated through outreach strategies have been validated for effectiveness;

(B) The extent to which the practices to be replicated or utilized promote the integration of children with deaf-blindness with peers who are not disabled in least-restrictive environments; and

(C) The extent to which the practices to be replicated or utilized are economically feasible for other nonfederally supported replications, and lend themselves for adaptations with other relevant populations.

(vi) For preservice or inservice training projects—

(A) If appropriate, the degree to which the proposed activities relate to and are coordinated with specific training needs identified by the State educational agency under part B and State lead agency under part H in its Comprehensive System of Personnel Development plan;

(B) The extent to which the training will result in certification, recertification or licensure for participants completing the training;

(C) The extent to which the curriculum is theoretically sound, incorporates validated effective practices, is appropriate in scope and sequence, incorporates appropriate practicum experiences, and can be used by others to train personnel with similar training needs;

(D) The quality of the practicum training sites—school, group home, supported living, and other settings where children with deaf-blindness are found—including evidence that they are sufficiently available, apply state-of-the-art services and model teaching practices, materials and technology, provide adequate supervision to trainees, and offer opportunities for trainees to teach and foster interactions between children with disabilities and their peers who are not disabled; and

(E) The extent to which training addresses the needs of a range of children including children with disabilities from minority backgrounds; and

(vii) For parent involvement projects—

(A) The extent to which the project will address specific needs and interests of parents of children with deaf-blindness upon which the project is focused;

(B) The extent to which the project promotes the active involvement of parents of children with deaf-blindness in the design, implementation, and on-going review of the educational and related services to be provided to their children with deaf-blindness for which the project is to provide benefit; and

(C) The extent to which the project is designed to meet the unique needs of parents of children with deaf-blindness from minority backgrounds.

(3) The maximum possible score awarded under this criterion is indicated in parentheses by the type of project proposed, as follows:

(i) For pilot projects (15 points).

(ii) For the clearinghouse project under §307.15 (10 points).

(iii) For research projects (30 points).

(iv) For development, improvement, demonstration, or other projects (20 points).

(v) For replication, outreach, or utilization projects (15 points).

(vi) For preservice or inservice training projects (15 points).

(vii) For parent involvement projects (15 points).

(c) *Plan of operation.* (1) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The extent to which the plan of management is effective for the type of project proposed and ensures proper and efficient administration of the project;

(ii) The adequacy of the applicant's resources and plan for use of resources and personnel to achieve project objectives;

(iii) How the budget proposed by the applicant is adequate to support the activities and that the costs are reasonable in relation to the objectives of the project;

(iv) The adequacy of the applicant's procedures for initiating and maintaining coordination with relevant State, local and professional organizations and agencies, for the purpose of furthering achievement of the project objectives;

(v) The adequacy of the applicant's plan to involve project participants with disabilities and, as appropriate, their family members in the development, implementation, and on-going review of project outcomes; and

(vi) The adequacy of the applicant's plan to determine the effectiveness and timeliness in completion of the managerial procedures and objectives of the project's plan of operation.

(2) The maximum possible score awarded under this criterion is indicated in parentheses by the type of project proposed, as follows:

(i) For pilot projects (30 points).

(ii) For the clearinghouse project under § 307.15 (35 points).

(iii) For research projects (15 points).

(iv) For development, improvement, demonstration, or other projects (25 points).

(v) For replication, outreach, or utilization projects (30 points).

(vi) For preservice or inservice training projects (30 points).

(vii) For parent involvement projects (30 points).

(d) *Key personnel.* (20 points) (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) Strategies of the applicant to identify and recruit personnel with disabilities or from traditionally underrepresented groups.

(2) In determining the qualifications of each person referred to in paragraphs (d)(1) (i) and (ii) the Secretary also considers—

(i) Experience and training in conducting, documenting, and applying the types of activities to be conducted; and

(ii) Knowledge of the results and findings of relevant projects and potential for application of this information in addressing the unique needs of the children with deaf-blindness to be included in the project.

(e) *Evaluation.* (15 points) (1) The Secretary reviews each application to determine the quality of the plan for evaluating the project, including—

(i) The adequacy of the applicant's plan to determine, to the extent relevant, the effectiveness of the project in achieving measurable change and positive outcomes for children with deaf-blindness who were served by the project and others for whom the project was designed to benefit;

(ii) The adequacy of the applicant's plan to determine the effectiveness and timeliness in completion of the managerial procedures and objectives of the project's plan of operation; and

(iii) The procedures for recording, reviewing, analyzing, and interpreting for relevant audiences, data generated through conducting project activities.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1422)

[56 FR 51587, Oct. 11, 1991]

§ 307.37 What additional consideration will be given by the Secretary in carrying out this part?

In carrying out this part, the Secretary takes into consideration the availability and quality of existing services for children with deaf-blindness in the country, and, to the extent practicable, ensures that all parts of the country have an opportunity to receive assistance under this part.

(Authority: 20 U.S.C. 1422)

[56 FR 51589, Oct. 11, 1991]

§§ 307.38—307.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee Under This Program?

§ 307.40 [Reserved]

§ 307.41 What advisory committees are to be established under this program?

Each grantee under this part shall establish and maintain an advisory committee for the project. Each committee must include at least one parent of a child or youth with deaf-blindness, a representative of the State educational agency in the State in which the grantee is located, a limited number of professionals with training and experience in serving children with deaf-blindness, and other individuals representing related agencies and organizations. These committees may participate in such activities as—

(a) Planning, development, and operation of the project; and

(b) Dissemination of information regarding the project's activities.

(Authority: 20 U.S.C. 1422)

[49 FR 28364, July 11, 1984, as amended at 56 FR 51585, 51589, Oct. 11, 1991]

§307.42 What other conditions must be met by a grantee under this program?

(a) The Secretary, if appropriate, requires grantees to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information.

(b) The Secretary requires delivery of those reports, as appropriate, to—

(1) The regional and Federal resource centers, the clearinghouses, and the technical assistance to parents assisted under parts C and D of the Act;

(2) The National Diffusion Network;

(3) The ERIC Clearinghouse on the Handicapped and Gifted;

(4) The Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health;

(5) Appropriate parent and professional organizations;

(6) Organizations representing individuals with disabilities; and

(7) Such other networks as the Secretary may determine to be appropriate.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1410(g))

[56 FR 51589, Oct. 11, 1991]

§§307.43—307.49 [Reserved]

PART 309—EARLY EDUCATION PROGRAM FOR CHILDREN WITH DISABILITIES

Subpart A—General

Sec.
309.1 What is the Early Education Program for Children with Disabilities (EEPCD)?
309.2 Who is eligible for an award?
309.3 What activities may the Secretary fund?
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309.30 What conditions must be met by recipients of experimental, demonstration, and outreach projects?
309.31 What are the matching requirements for experimental, demonstration, and outreach projects?
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309.33 What conditions must be met by recipients of statewide data systems projects?
309.34 What other conditions must be met by grantees under this program?

AUTHORITY: 20 U.S.C. 1423, unless otherwise noted.

SOURCE: 52 FR 29817, Aug. 11, 1987, unless otherwise noted.

Subpart A—General

§309.1 What is the Early Education Program for Children with Disabilities (EEPCD)?

The EEPCD supports activities that are designed—

(a) To address the special needs of children with disabilities, birth through age eight, and their families; and

(b) To assist State and local entities in expanding and improving programs and services for these children and their families.

(Authority: 20 U.S.C. 1423)

[52 FR 29817, Aug. 11, 1987, as amended at 56 FR 54690, Oct. 22, 1991]

§309.2 Who is eligible for an award?

(a)(1) Public agencies and nonprofit private organizations are eligible for a grant or cooperative agreement under §309.3 (a) through (h).

(2) Profit-making organizations are also eligible under § 309.3 (e) and (f).

(b) States are eligible for grants or cooperative agreements under § 309.3(i).

(Authority: 20 U.S.C. 1423)

[57 FR 28965, June 29, 1992]

§ 309.3 What activities may the Secretary fund?

The Secretary may provide financial assistance in the form of a contract grant or cooperative agreement under this part to support the following activities:

(a) *Experimental projects.* These projects support the design of investigative models that compare alternative and innovative practices related to early intervention, preschool, and early education services for children with disabilities and their families.

(b) *Demonstration projects.* These projects assist in developing and implementing preschool and early intervention program practices that establish specific strategics and products worthy of dissemination and replication.

(c) *Outreach projects.* These projects support the replication of established practices to assist other agencies and organizations in expanding and improving services to children with disabilities and their families.

(d) *Research institutes.* These institutes are designed to carry on sustained research to generate and disseminate new information on preschool and early intervention programs.

(e) *Research projects.* These projects are designed to identify and meet the full range of special needs of children covered under this part.

(f) *Training projects.* These projects support the training of personnel for programs specifically designed for children with disabilities, including programs to integrate children with disabilities into regular preschool programs.

(g) *Technical assistance development system.* This system assists entities operating experimental, demonstration, and outreach programs and assists State agencies to expand and improve services to children with disabilities.

(h) *Synthesis projects.* These projects synthesize the knowledge developed under this part and organize, integrate, and present the knowledge so it can be incorporated and imparted to parents, professionals, and others providing or preparing to provide preschool or early intervention services and to persons designing preschool or early intervention programs.

(i) *Statewide data systems projects.* These projects establish an inter-agency, multi-disciplinary, and coordinated statewide system for the identification, tracking, and referral to appropriate services of all categories of children who are biologically or environmentally at risk of having developmental delays.

(Authority: 20 U.S.C. 1423)

[52 FR 29817, Aug. 11, 1987, as amended at 56 FR 54690, Oct. 22, 1991; 57 FR 28965, June 29, 1992]

§ 309.4 What regulations apply to this program?

The following regulations apply to grants and cooperative agreements under this program:

(a) The Education Department General Administrative Regulations (EDGAR) established in title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses)

(b) The regulations in this part 309.

(Authority: 20 U.S.C. 1423)

[52 FR 29817, Aug. 11, 1987, as amended at 56 FR 54690, Oct. 22, 1991]

§309.5 What definitions apply to this program?

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

Applicant
Application
Award
Contract
Department
EDGAR
Fiscal year
Grant
Local educational agency
Nonprofit
Nonpublic
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR part 300. The section of part 300 that contains the definition is given in parentheses:

Include (§300.6)
Parent (§300.10)
Related services (§300.13)
Special education (§300.14)

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

Act. As used in this part, *Act* means the Individuals with Disabilities Education Act.

Children with disabilities. (1) As used in this part, *children with disabilities* means those children from birth through age eight—

(i) With mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) Who, because of those impairments, need special education and related services.

(2) The term includes infants and toddlers, birth through age two, who need early intervention services because they—

(i) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Cognitive development, physical development including vision and hearing, language and speech development, psychosocial development, or self-help skills, or

(ii) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(3) The term also includes individuals from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(4) For children aged three to five, inclusive, the term may, at a State's discretion, include children—

(i) Who are experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas; Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) Who, for that reason, need special education and related services.

(Authority: 20 U.S.C. 1401(a)(1); 20 U.S.C. 1423(a)(1); 20 U.S.C. 1472(1))

[52 FR 29817, Aug. 11, 1987, as amended at 56 FR 54691, Oct. 22, 1991; 57 FR 28965, June 29, 1992]

Supart B—How Does One Apply for an Award?

§309.10 What separate applications must an applicant submit?

Applicants for assistance under this part must submit a separate application for each activity in §309.3 that is announced for competition.

(Authority: 20 U.S.C. 1423)

§309.11 How does the Secretary select and announce funding priorities under the program?

The Secretary may establish as a priority any activity in §309.3.

(Authority: 20 U.S.C. 1423)

Subpart C—How Does the Secretary Make an Award?

§ 309.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application under this part on the basis of the criteria in § 309.21.

(b) The Secretary awards up 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1423)

§ 309.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate applications unless, with regard to training projects, he determines that the selection criteria in 34 CFR part 318 are more appropriate:

(a) *Importance.* (15 points) (1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The extent to which the project is based on previous research findings related to the problem or issue;

(iii) The numbers of individuals who will benefit; and

(iv) How the project wil address the identified problem or issue.

(b) *Impact.* (15 points) (1) The Secretary reviews each application to determine the probable impact of the proposed project in meeting the needs of children with disabilities, birth through age eight, and their families.

(2) The Secretary considers—

(i) The contribution that project findings or products will make to current knowledge and practice;

(ii) The methods used for dissemination of project findings or products to appropriate target audiences; and

(iii) The extent to which findings or products are replicable, if appropriate.

(c) *Technical soundness.* (35 points) (1) The Secretary reviews each application to determine the technical soundness of the project plan.

(2) In reviewing applications under this part, the Secretary considers—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability;

(iii) The methods and procedures used to implement the design, including instrumentation and data analysis; and

(iv) The anticipated outcomes.

(3) With respect to training projects in applying the criterion in paragraph (c)(2)(iii) of this section, the Secretary considers—

(i) The curriculum, course sequence, and practice leading to specific competencies; and

(ii) The relationship of the project to the comprehensive system of personnel development plans required by parts B and H of the Act, and State licensure or certification standards.

(4) In addition to the criteria in paragraph (c)(2) of this section, the Secretary, in reviewing outreach projects, also considers—

(i) The agencies to be served through outreach activities;

(ii) The current services, their location, and anticipated impact of outreach assistance for each of those agencies;

(iii) The model demonstration project upon which the outreach project is based, including the effectiveness of the model program with children, families, or other recipients of project services; and

(iv) The likelihood that the demonstration project will be continued and supported by funds other that those available through this part.

(d) *Plan of operation.* (10 points) (1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project:

(ii) Clarity in the goals and objectives of the project;

(iii) The quality of the activities proposed to accomplish the goals and objectives;

(iv) The adequacy of proposed timeliness for accomplishing those activities; and

(v) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(e) *Evaluation plan.* (5 points) (1) The Secretary reviews each application to determine the quality of the plan for evaluating project goals, objectives, and activities.

(2) The Secretary considers the extent to which the methods of evaluation are appropriate and produce objectives and quantifiable data.

(f) *Quality of key personnel.* (10 points) (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred to in paragraphs (f)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(3) The Secretary considers experience and training in areas related to project goals to determine qualifications of key personnel.

(g) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(h) *Budget and cost-effectiveness.* (5 points) (1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to undertake project activities; and

(ii) Costs are reasonable in relation to objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1423)

[52 FR 29817, Aug. 11, 1987, as amended at 53 FR 49145, Dec. 6, 1988; 56 FR 54691, Oct. 22, 1991]

§309.22 Are awards for experimental, demonstration, outreach, and statewide data systems projects geographically dispersed?

To the extent feasible, the Secretary, in addition to using the selection criteria in §309.21, geographically disperses awards for experimental, demonstration, outreach, and statewide data systems projects throughout the Nation in urban and rural areas.

(Authority: 20 U.S.C. 1423(a)(3))

[57 FR 28965, June 29, 1992]

Subpart D—What Conditions Must Be Met After an Award By Experimental, Demonstration, Technical Assistance, Statewide Data Systems, and Outreach Projects?

§309.30 What conditions must be met by recipients of experimental, demonstration, and outreach projects?

(a) Experimental, demonstration, and outreach projects must include services and activities that are designed to—

(1) Facilitate the intellectual, emotional, physical, mental, social, speech or other communication mode, language development, and self-help skills of children with disabilities;

(2) Provide family education and include a parent or their representative, as well as encourage the participation of parents of children with disabilities, in the development and operation of projects under this section;

(3) Acquaint the community in which the project is located with the special needs and potentialities of children with disabilities;

(4) Offer training about exemplary models and practices, including interdisciplinary models and practices, to State and local personnel who provide services to children with disabilities, and to the parents of these children;

(5) Support the adoption of exemplary models and practices in States and local communities, including the involvement of adult role models with disabilities at all levels of the program;

(6) Facilitate and improve the early identification of infants and toddlers with disabilities or those infants and toddlers at risk of having developmental disabilities;

(7) Facilitate the transition of infants with disabilities or infants at risk of having developmental delays, from medical care to early intervention services, and the transition from early intervention services to preschool special education or regular education services (especially where the lead agency for early intervention services under part H of the Act is not the State educational agency);

(8) Promote the use of assistive technology devices and assistive technology services, if appropriate, to enhance the development of infants and toddlers with disabilities;

(9) Increase the understanding of, and address, the early intervention and preschool needs of children exposed prenatally to maternal substance abuse;

(10) Facilitate and improve outreach to low-income, minority, rural, and other underserved populations eligible for assistance under parts B and H of the Act; and

(11) Support statewide projects, in conjunction with a State's application under part H of the Act and a State's plan under part B or the Act, to change the delivery of early intervention services to infants and toddlers with disabilities, and to change the delivery of special education and related services to preschool children with disabilities, from segregated to integrated environments.

(b) Experimental, demonstration, and outreach projects must be coordinated with State and local educational agencies, and appropriate public and private health and social service agencies, in order to—

(1) Inform those agencies of the nature and purposes of the assisted project's activities or services; and

(2) Provide opportunities for the project staff to coordinate their activities with staff of other agencies.

(Authority: 20 U.S.C. 1423(a) (1), (2))

[52 FR 29817, Aug. 11, 1987, as amended at 56 FR 54691, Oct. 22, 1991; 57 FR 28966, June 29, 1992]

§ 309.31 What are the matching requirements for experimental, demonstration, and outreach projects?

(a) Federal financial participation for an experimental, demonstration, or outreach project may not exceed 90 percent of the total annual costs of development, operation, and evaluation of the project.

(b) The Secretary may waive the matching requirement in paragraph (a) of this section in the case of an arrangement entered into with governing bodies of Indian tribes located on Federal or State reservations and with consortia of those bodies if they are able to demonstrate that insufficient resources are available.

(Authority: 20 U.S.C. 1423(a)(4))

§ 309.32 What are the requirements for technical assistance projects?

(a) The technical assistance development system shall provide assistance to parents of and advocates for infants, toddlers, and children with disabilities, as well as direct service and administrative personnel involved with these children, including assistance to part H State agencies on procedures for use by primary referral sources in referring a child to the appropriate agency within the system for evaluation, assessment, or service.

(b) Information from the system should be aggressively disseminated through established information networks and other mechanisms to ensure both an impact and benefits at the community level.

(Authority: 20 U.S.C. 1423(b))

[56 FR 54691, Oct. 22, 1991]

§ 309.33 What conditions must be met by recipients of statewide data systems projects?

Recipients of statewide data systems projects shall—

(a) Create a data system within the first year to document the numbers and types of at-risk children in the State and to develop linkages with all appropriate existing child data and tracking systems that assist in providing information;

(b) Coordinate activities with the child find component required under parts B and H of the Act;

(c) Demonstrate the involvement of the lead agency and the State interagency coordinating council under part H of the Act as well as the State educational agency under part B of the Act;

(d) Coordinate with other relevant prevention activities across appropriate service agencies, organizations, councils, and commissions;

(e) Define an appropriate service delivery system based on children with various types of at-risk factors; and

(f) Document the need for additional services as well as barriers.

(Authority: 20 U.S.C. 1423(b))

[57 FR 28966, June 29, 1992]

§309.34 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

(Approved by the Office of Management and Budget under control number 1820–0028)

[56 FR 54691, Oct. 22, 1991, as amended at 57 FR 14314, Apr. 17, 1992. Redesignated at 57 FR 28966, June 29, 1992]

PART 315—PROGRAM FOR CHILDREN WITH SEVERE DISABILITIES

Subpart A—General

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AUTHORITY: 20 U.S.C. 1424, unless otherwise noted.

SOURCE: 49 FR 28021, July 9, 1984, unless otherwise noted.

Subpart A—General

§ 315.1 What is the Program for Children with Severe Disabilities?

This program supports research, development or demonstration, training, and dissemination activities that, consistent with the purpose of part C of the Individuals with Disabilities Education Act, meet the unique educational needs of infants, toddlers, children, and youth with severe disabilities.

(Authority: 20 U.S.C. 1424)

[56 FR 54692, Oct. 22, 1991]

§ 315.2 Who is eligible to apply for a grant under this program?

Any public or private, profit or nonprofit, organization or institution may apply for a grant under this program.

(Authority: 20 U.S.C. 1424)

§ 315.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this part 315.

(b) The Education Department General Administrative Regulations (EDGAR) established in title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

(Authority: 20 U.S.C. 1424; 20 U.S.C. 3474(a))

[49 FR 28021, July 9, 1984, as amended at 55 FR 21714, May 25, 1990; 56 FR 54692, Oct. 22, 1991]

§ 315.4 What definitions apply to this program?

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

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Nonprofit
Preschool
Private
Project
Public
Recipient
Secretary
State

(Authority: 20 U.S.C. 1424; 20 U.S.C. 3474(a))

(b) *Definition in 34 CFR part 300.* The term *parent* as used in this part is defined in 34 CFR 300.10.

(c) *Children with disabilities.* (1) The term *children with disabilities* as used in this part means those children—

(i) With mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) Who, for that reason, need special education and related services.

(2) The term includes infants and toddlers, birth through age two, who need

early intervention services because they—

(i) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Cognitive development, physical development including vision and hearing, language and speech development, psychosocial development, or self-help skills; or

(ii) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(3) The term includes, at a State's discretion, individuals from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(4) For children aged three to five, inclusive, the term may, at a State's discretion, include children—

(i) Who are experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) Who, for that reason, need special education and related services.

(d) *Children with severe disabilities.* (1) As used in this part, the term *children with severe disabilities* refers to children with disabilities who, because of the intensity of their physical, mental, or emotional problems, need highly specialized education, social, psychological, and medical services in order to maximize their full potential for useful and meaningful participation in society and for self-fulfillment.

(2) The term includes those children with disabilities with severe emotional disturbance (including schizophrenia), autism, severe and profound mental retardation, and those who have two or more serious disabilities such as deaf-blindness, mental retardation and blindness, and cerebral-palsy and deafness.

(3) Children with severe disabilities—

(i) May experience severe speech, language, and/or perceptual-cognitive deprivations, and evidence abnormal behaviors such as—

(A) Failure to respond to pronounced social stimuli;

(B) Self-multilation;

(C) Self-stimulation;

(D) Manifestation of intense and prolonged temper tantrums; and

(E) The absence of rudimentary forms of verbal control; and

(ii) May also have extremely fragile physiological conditions.

(Authority: 20 U.S.C. 1424)

[49 FR 28021, July 9, 1984, as amended at 56 FR 54692, Oct. 22, 1991; 57 FR 28966, June 29, 1992]

§§ 315.5—315.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§315.10 What types of activities are considered for support by the Secretary under this part?

The Secretary may provide financial assistance under this part to support the following activities:

(a) Research to identify and meet the full range of special education, related services and early intervention needs (including transportation to and from school) of children with severe disabilities, described in §315.11.

(b) The development or demonstration of new, or improvements in existing, methods, approaches, or techniques which would contribute to the adjustment and education of children with severe disabilities, as described in §315.12.

(c) Training of special and regular education, related services, and early intervention personnel engaged or preparing to engage in programs specifically designed for children with severe disabilities, including training of regular teachers, instructors, and administrators in strategies for serving children with disabilities that include integrated settings for educating children with severe disabilities along with their nondisabled peers, as described in §315.13.

(d) Dissemination of materials and information about practices found effective in working with children with

severe disabilities, as described in § 315.14.

(Authority: 20 U.S.C. 1424)

(e) Statewide projects in conjunction with the State's plan under part B, to improve the quality of special education and related services for children with severe disabilities, and to change the delivery of those services from segregated to integrated environments.

(f) Development and operation of extended school year demonstration projects for children with severe disabilities.

[49 FR 28021, July 9, 1984, as amended at 52 FR 31958, Aug. 24, 1987; 56 FR 54691, 54692, Oct. 22, 1991]

§ 315.11 What types of research activities are considered for support by the Secretary under this part?

(a) The Secretary may provide financial assistance under this part for the following research activities:

(1) Research to identify and meet the full range of special education, related services and early intervention needs (including transportation to and from school) of children with severe disabilities.

(2) Research to identify and meet the instructional or counseling needs of parents, professionals, and others involved in the provision of services to children with severe disabilities, for the purpose of facilitating the delivery and improving the quality of these services.

(b) Each application for assistance under this part must—

(1) Specifically describe and justify the research activities which the applicant proposes to undertake;

(2) Fully describe how the applicant will develop and validate the effectiveness of procedures for applying the project's research findings to the provision of improved direct services to children with severe disabilities.

(Authority: 20 U.S.C. 1424)

[49 FR 28021, July 9, 1984, as amended at 52 FR 31958, Aug. 24, 1987; 56 FR 54691, 54692, Oct. 22, 1991]

§ 315.12 What types of development or demonstration activities are considered for support by the Secretary under this part?

(a) The Secretary may provide financial assistance under this part for one or more of the following development and demonstration activities to meet the needs of children with severe disabilities.

(1) Review, analysis, and evaluation of current educational practices and research findings.

(2) Diagnosis and evaluation of the learning capacities and limitations of children with severe disabilities and the identification of their specific learning needs and problems.

(3) Design and demonstration of innovative procedures for addressing the identified needs of children with severe disabilities in a variety of settings.

(4) Evaluation of the progress and achievement of children with severe disabilities who participate in project activities.

(b) Each application for assistance under this part must—

(1) Justify the need for the development or demonstration activities which the applicant proposes to undertake, particularly in consideration of related development or demonstration activities in the nation where applicable;

(2) Describe the nature and extent of the impact which the proposed activities are expected to have on children with severe disabilities who will be served by the project; and

(3) Describe the impact, in terms of replicability, that the activities are expected to have upon children and youth not served by the project.

(Authority: 20 U.S.C. 1424)

[49 FR 28021, July 9, 1984, as amended at 52 FR 31958, Aug. 24, 1987; 56 FR 54691, Oct. 22, 1991]

§ 315.13 What types of training activities are considered for support by the Secretary under this part?

The Secretary may provide financial assistance under this part to support training activities that meet the following requirements:

(a) *Training.* Training of professional and allied personnel may include staff meetings, seminars, workshops, demonstrations, and related activities.

(b) *Participants.* Participants in training activities may include present and potential project personnel and other special and regular education teachers, administrators, child care workers, parents, related service personnel, early intervention personnel and teacher aides.

(c) *Stipends.* The Secretary, on a case-by-case basis, may authorize the payment of stipends for inservice training in an amount the Secretary determines appropriate for a particular training activity.

(d) Each application for assistance under this part must—

(1) Justify the need for the training activities that the applicant proposes to undertake; and

(2) Describe the nature and extent of the impact that the proposed activities are expected to have on children with severe disabilities who will ultimately be served by the individuals who receive the training.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1424)

[49 FR 28021, July 9, 1984, as amended at 52 FR 31958, Aug. 24, 1987; 56 FR 54691, 54692, Oct. 22, 1991]

§315.14 What types of dissemination activities are considered for support by the Secretary under this part?

The Secretary may provide assistance under this part for dissemination activities including distribution of materials and information to educational institutions, parents, the general public, and members of professions engaged in the field of the education of children with severe disabilities.

(Authority: 20 U.S.C. 1424)

[49 FR 28021, July 9, 1984, as amended at 52 FR 31959, Aug. 24, 1987; 56 FR 54692, Oct. 22, 1991]

§§315.15—315.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§315.30 How does the Secretary select and announce funding priorities under this program?

(a) For any fiscal year, the Secretary may give priority to one or more of the activities listed in §§315.10—315.14.

(b) The Secretary advises the public of these priorities through a notice published in the FEDERAL REGISTER.

(c) The Secretary may establish other priorities through publication of one or more notices in the FEDERAL REGISTER in accordance with 34 CFR 75.105, *Annual priorities.*

(Authority: 20 U.S.C. 1424)

[49 FR 28021, July 9, 1984, as amended at 52 FR 31959, Aug. 24, 1987]

§315.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§315.32 or 315.33.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1424)

[52 FR 31959, Aug. 24, 1987]

§315.32 What are the selection criteria used to award a research grant?

The Secretary uses the following criteria to evaluate an application for a research project described in §315.11:

(a) *Importance and expected impact of the research.* (20 points) The Secretary reviews each application to determine the extent to which the project will develop new knowledge in understanding and effectively meeting the needs of children with severe disabilities, including the extent to which—

(1) The programmatic research areas proposed by the applicant represent critical areas of investigation, or problems whose solution would have greatest impact on improving services to children with severe disabilities; and

(2) The specific questions to be addressed in the project are likely to generate knowledge needed for bringing about a major change in understanding of the topical area.

(b) *Technical soundness of the project.* (15 points) (1) The Secretary reviews each application to determine the technical soundness of the research plan, including—

(i) The design;

(ii) The proposed sample;

(iii) Instrumentation; and

(iv) Data analysis procedures.

(2) The Secretary also reviews each application for the relevance of its proposed training efforts, including—

(i) Strategies for provision of training; and

(ii) Relationships between the applicant, other organizations or agencies providing training in coordination with the applicant, and trainees receiving training from the applicant.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) How the objectives of the project relate to the purpose of the program;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Quality of key personnel.* (20 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in conducting, documenting, and applying research pertaining to children with severe disabilities;

(ii) Awareness of relevant research findings and demonstration project results pertaining to other children with disabilities and the potential for use of the findings and results with children with severe disabilities; and

(iii) Experience in communicating research findings to service providers of children with severe disabilities and in assisting these providers with effective application of the findings.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is

located and throughout the Nation; and

(2) Provides a clear description of the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1424)

[49 FR 28021, July 9, 1984, as amended at 53 FR 49145, Dec. 6, 1988; 56 FR 54691, 54692, Oct. 22, 1991]

§315.33 What are the selection criteria used to award a grant for a demonstration, training, or dissemination project?

The Secretary uses the following criteria to evaluate an application for a demonstration project under §315.12 and a training project under §315.13. The Secretary also uses these criteria to evaluate a dissemination project under §315.14, except that a maximum of 30 points may be given for criterion (b) (plan of operation) and no points are provided for criterion (g) (dissemination plan).

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project is consistent with national needs in the provision of innovative services to children with severe disabilities, including consideration of—

(1) The needs addressed by the project;

(2) The impact and benefits to be gained by meeting the educational and related service needs of children with severe disabilities served by the project, their parents and service providers; and

(3) The national significance of the project in terms of potential benefits to children with severe disabilities who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(c) *Quality of key personnel.* (15 points). (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its non-discriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraph (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timeliness for production of all project documents and other products which the applicant will disseminate.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1424)

[49 FR 28021, July 9, 1984, as amended at 53 FR 49145, Dec. 6, 1988; 56 FR 54691, 54692, Oct. 22, 1991]

§ 315.34 What other factors are considered by the Secretary in making a grant?

To the extent feasible, the Secretary supports activities that are geographically dispersed throughout the Nation in urban and rural areas.

(Authority: 20 U.S.C. 1424)

[52 FR 31960, Aug. 24, 1987]

§§ 315.35—315.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee Under This Program?

§ 315.40 What coordination requirement(s) must be met by a grantee?

Each recipient shall coordinate the activities assisted under this part with similar activities assisted under other sections of the Act.

(Authority: 20 U.S.C. 1424)

§ 315.41 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

(Approved by the Office of Management and Budget under control number 1820–0028)

[56 FR 54692, Oct. 22, 1991, as amended at 57 FR 14314, Apr. 17, 1992]

§§ 315.42—315.49 [Reserved]

PART 316—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—PARENT TRAINING AND INFORMATION CENTERS

Subpart A—General

Sec.

316.1 What is the Training Personnel for the Education of Individuals with Disabilities—Parent Training and Information Centers program?
316.2 Who is eligible for an award?
316.3 What kinds of projects may the Secretary fund?
316.4 What regulations apply to this program?
316.5 What definitions apply to this program?

Subpart B—What Activities Does the Secretary Assist Under This Program?

316.10 What activities may the Secretary fund?

Subpart C—How Does the Secretary Make an Award?

316.20 What are the requirements for applicants?
316.21 How does the Secretary evaluate an application?
316.22 What selection criteria does the Secretary use to evaluate applications for parent centers and experimental centers?
316.23 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?
316.24 What additional factors does the Secretary consider?

Subpart D—What Conditions Must a Grantee Meet?

316.30 What types of services are required?
316.31 What are the duties of the board of directors or special governing committee of a parent organization?
316.32 What are the reporting requirements under this program?
316.33 What other conditions must be met by grantees under this program?

AUTHORITY: 20 U.S.C. 1431(d) and 1434, unless otherwise noted.

SOURCE: 57 FR 62096, Dec. 29, 1992, unless otherwise noted.

Subpart A—General

§316.1 What is the Training Personnel for the Education of Individuals with Disabilities—Parent Training and Information Centers program?

(a) This program provides training and information to parents of children (infants, toddlers, children, and youth) with disabilities, and to persons who work with parents to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children with disabilities.

(b) Parent training and information programs may, at a grantee's discretion, include participation of State or local educational agency personnel if that participation will further an objective of the program assisted by the grant.

(Authority: 20 U.S.C. 1431(d))

§316.2 Who is eligible for an award?

Only parent organizations are eligible to receive awards under this program.

(Authority: 20 U.S.C. 1431(d))

§316.3 What kinds of projects may the Secretary fund?

The Secretary funds three kinds of projects under this program:

(a) Parent training and information centers.

(b) Experimental urban and rural parent training and information centers.

(c) Technical assistance for establishing, developing, and coordinating parent training and information programs.

(Authority: 20 U.S.C. 1431(d))

§316.4 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations:

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) Part 75 (Direct Grant Programs).

(3) Part 77 (Definitions That Apply to Department Regulations).

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) Part 81 (General Education Provisions Act—Enforcement).

(6) Part 82 (New Restrictions on Lobbying).

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)).

(b) The regulations in this part 316.

(Authority: 20 U.S.C. 1431(d); 3474(a))

§316.5 What definitions apply to this program?

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

Applicant
Application
Award
Department
EDGAR
Fiscal year
Local educational agency
Nonprofit
Private

Project
Secretary
State
State educational agency

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR part 300:

Individualized education program
Parent
Related services
Special education

(c) *Other definitions specific to 34 CFR part 316.* The following terms used in this part are defined as follows:

Act means the Individuals With Disabilities Education Act (IDEA).

Parent organization means a private nonprofit organization that is governed by a board of directors of which a majority of the members are parents of children with disabilities—particularly minority parents—and that includes members who are professionals—especially minority professionals—in the fields of special education, early intervention, and related services, and individuals with disabilities. If the private nonprofit organization does not have such a board, the organization must have a membership that represents the interests of individuals with disabilities, and must establish a special governing committee of which a majority of the members are parents of children with disabilities—particularly parents of minority children—and that includes members who are professionals—especially minority professionals—in the fields of special education, early intervention, and related services. Parent and professional membership of these boards or special governing committees must be broadly representative of minority and other individuals and groups having an interest in special education, early intervention, and related services.

(Authority: 20 U.S.C. 1431(d))

Subpart B—What Activities Does the Secretary Assist Under This Program?

§ 316.10 What activities may the Secretary fund?

(a) Parent training and information centers assisted under § 316.3(a) must assist parents to—

(1) Better understand the nature and needs of the disabling conditions of their children with disabilities;

(2) Provide follow-up support for the educational programs of their children with disabilities;

(3) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(4) Participate fully in educational decisionmaking processes, including the development of the individualized education program, for a child with a disability;

(5) Obtain information about the range of options, programs, services, and resources available at the national, State, and local levels to children with disabilities and their families; and

(6) Understand the provisions for educating children with disabilities under the Act.

(b) Experimental urban centers under § 316.3(b) must serve large numbers of parents of children with disabilities located in high density areas, and experimental rural centers under § 316.3(b) must serve large numbers of parents of children with disabilities located in rural areas. The centers may focus on particular aspects of parent training and information services, including but not limited to those activities required under § 316.10(a). Experimental projects may include a planning and development phase.

(1) Experimental urban centers may concentrate on neighborhoods within a city or focus on specific unserved groups. They may serve an entire city or concentrate on a specific area or ethnic group within a city.

(2) Experimental rural centers may serve a large, sparsely populated area. Projects may identify specific methods, including use of technology and telecommunications, to reach these parents.

(c) The technical assistance to parent programs under § 316.3(c) includes technical assistance for establishing, developing, and coordinating parent training and information programs. Activities must include, but are not limited to, the following:

(1) Determining national needs and identifying unserved regions and populations.

(2) Identifying the specific technical assistance needs of individual centers.

(3) Developing programs in unserved areas.

(4) Conducting annual meetings at national and regional levels.

(5) Identifying and coordinating national activities to serve parents of children with disabilities. This may include conferences, publications, and maintenance of documents and data relevant to parent programs.

(6) Dissemination of information through media, newsletters, computers, and written documentation.

(7) Cooperative activities with other projects and organizations on common goals.

(8) Evaluation, including determination of the impact of technical assistance activities, and evaluation assistance to centers.

(9) Management assistance to centers.

(10) Involvement of parent programs and the Department in identifying one or more substantive specialization areas.

(11) Acting as a resource to parent training programs in identified specialization areas such as transition, supported employment, early childhood, integration, and technology.

(Authority: 20 U.S.C. 1431(d))

Subpart C—How Does the Secretary Make an Award?

§316.20 What are the requirements for applicants?

(a) Applicants for awards for parent centers and experimental centers under §316.3 (a) and (b) shall demonstrate the capacity and expertise to conduct the authorized training and information activities effectively, and to network with clearinghouses, including those authorized under section 633 of the Act, other organizations and agencies, and other established national, State, and local parent groups representing the full range of parents of children with disabilities—especially parents of minority children.

(b) In order to assure that awards for parent centers under §316.3(a) serve parents of minority children with disabilities (including parents served pursuant to §316.33) representative to the proportion of the minority population in the areas being served, applicants for awards shall identify with specificity the special efforts that will be undertaken to involve those parents, including efforts to work with community-based and cultural organizations and the specification of supplementary aids, services, and supports that will be made available. Applicants shall also specify budgetary items earmarked to accomplish these efforts.

(c) Applicants for awards for experimental urban centers shall provide a rationale for their project and demonstrate a capability to serve the parents they have identified and targeted for services.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(d))

§316.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§316.22 and 316.23.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(d))

§316.22 What selection criteria does the Secretary use to evaluate applications for parent centers and experimental centers?

The Secretary uses the following criteria to evaluate applications for parent centers and experimental centers:

(a) *Extent of present and projected need.* (15 points) The Secretary reviews each application to determine the extent to which the project makes an impact on parent training and information needs, consistent with the purposes of the Act, including consideration of the impact on—

(1) The present and projected needs in the applicant's geographic area for trained parents;

(2) The present and projected training and information needs for personnel to work with parents of children with disabilities; and

(3) Parents of minority infants, toddlers, children, and youth with disabilities.

(b) *Anticipated project results.* (25 points) The Secretary reviews each application to determine the extent to which the project will assist parents to—

(1) Better understand the nature and needs of the disabling conditions of their children with disabilities;

(2) Provide follow-up support for the educational programs of their children with disabilities;

(3) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(4) Participate fully in educational decision-making processes, including the development of the individualized educational program, for a child with a disability;

(5) Obtain information about the range of options, programs, services, and resources available at the national, State, and local levels to children with disabilities and their families; and

(6) Understand the provisions for educating children with disabilities under the Act.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective management plan that ensures proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective; and

(5) How the applicant addresses the needs of parents of minority infants, toddlers, children, and youth with disabilities.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable (See 34 CFR 75.590, Evaluation by the grantee.); and

(3) Provide the data required for the annual report to Congress. (See 20 U.S.C. 1434 (a)(3) and (b))

(e) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used on the project;

(3) The time each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Evidence of the applicant's past experience in the fields relating to the objectives of the project.

(f) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

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(Authority: 20 U.S.C. 1431(d))

§ 316.23 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?

The Secretary uses the following criteria to evaluate applications for technical assistance activities:

(a) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Project content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential for effectiveness, and the quality of its plan for dissemination of the results of the project;

(2) The extent to which substantive content and organization of the project—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to assist parents of infants, toddlers, children, and youth with disabilities; and

(3) The extent to which project philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Applicant experience and ability.* (15 points) The Secretary looks for information that shows the applicant's—

(1) Experience and training in fields related to the objectives of the project;

(2) National experience relevant to performance of the functions supported by the project;

(3) Ability to conduct the proposed project;

(4) Ability to communicate with intended consumers of information; and

(5) Ability to maintain necessary communication and coordination with other relevant projects, agencies, and organizations.

(d) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Evidence of the key personnel's past experience and training in fields related to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(d))

§316.24 What additional factors does the Secretary consider?

In addition to the criteria in §316.22, the Secretary considers the following factors in making an award:

(a) *Geographic distribution.* In selecting projects for awards for parent centers under §316.3(a), the Secretary ensures that, to the greatest extent possible, awards are distributed geographically, on a State or regional basis, throughout all the States and serve parents of children with disabilities in both urban and rural areas.

(b) *Unserved areas.* In selecting projects for parent centers under §316.3(a) and experimental centers

under § 316.3(b), the Secretary gives priority to applications that propose to serve unserved areas.

(Authority: 20 U.S.C. 1431(d))

Subpart D—What Conditions Must a Grantee Meet?

§ 316.30 What types of services are required?

(a) Parent centers and experimental centers must be designed to meet the unique training and information needs of parents of children with disabilities who live in the areas to be served by the project, particularly those who are members of groups that have been traditionally underrepresented.

(b) Parent centers and experimental centers must consult and network with appropriate national, State, regional, and local agencies and organizations that serve or assist children with disabilities and their families in the geographic areas served by the project.

(Authority: 20 U.S.C. 1431(d))

§ 316.31 What are the duties of the board of directors or special governing committee of a parent organization?

A recipient's board of directors or special governing committee as described in § 316.5 must meet at least once in each calendar quarter to review the parent training and information activities under the award. Whenever a private nonprofit organization requests a renewal of an award under this part, the board of directors or special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(d))

§ 316.32 What are the reporting requirements under this program?

(a) Recipients shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of these procedures, findings, and information. The Secretary requires their delivery, as appropriate, to the Regional and Federal Reserve Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and other networks the Secretary may determine to be appropriate.

(b) The recipient shall provide data for every year of the project on—

(1) The number of parents provided information and training by disability category of their children;

(2) The types and modes of information or training provided;

(3) Strategies used to reach and serve parents of minority children with disabilities;

(4) The number of parents served as a result of activities described under paragraph (b)(3) of this section;

(5) Activities to network with other information clearinghouses and parent groups as required by § 316.20(a);

(6) The number of agencies and organizations consulted with at the national, State, regional, and local levels; and

(7) The number of parents served who are parents of children with disabilities birth through age five.

(Approved by the Office of Management and Budget under control number 1820–0530)

(Authority: 20 U.S.C. 1409(g); 1434(a)(3))

§ 316.33 What other conditions must be met by grantees under this program?

(a) In the case of a grant for parent centers under § 316.3(a) and experimental centers under § 316.3(b) to a private nonprofit organization for fiscal year 1993 or 1994, the organization, in expending the amounts described in paragraph (b) of this section, shall give priority to providing services to parents of children with disabilities birth through age five.

(b) With respect to a grant for a parent center or an experimental center to

a private nonprofit organization for fiscal year 1993 or 1994, the amounts referred to in paragraph (a) of this section are any amounts provided in the grant in excess of the amount of any grant under this program provided to the organization for fiscal year 1992.

(c) Recipients of awards for parent centers and experimental centers shall serve parents of children representing the full range of disabling conditions.

(Authority: 20 U.S.C. 1431(d))

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS FOR PERSONNEL TRAINING

Subpart A—General

Sec.

318.1 What is the purpose of the Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training program?
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318.23 What selection criteria does the Secretary use to evaluate applications for special projects?
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318.25 What additional factors does the Secretary consider?

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318.30 What are the priorities for award of student fellowships and traineeships?
318.31 Is student financial assistance authorized?
318.32 What are the student financial assistance criteria?
318.33 May the grantee use funds if a financially assisted student withdraws or is dismissed?
318.34 What are the reporting requirements under this program?

AUTHORITY: 20 U.S.C. 1431(a)–(d) and 1434, unless otherwise noted.

SOURCE: 57 FR 62099, Dec. 29, 1992, unless otherwise noted.

Subpart A—General

§318.1 What is the purpose of the Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training program?

This program serves to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities.

(Authority: 20 U.S.C. 1431(a)–(c))

§318.2 Who is eligible for an award?

The following are eligible for assistance under this part:

(a) Institutions of higher education and appropriate nonprofit agencies are eligible under §318.10 (a)(1), (a)(2), (a)(7), and (a)(8).

(b) Institutions of higher education, State agencies, and other appropriate nonprofit agencies are eligible under §318.10(a)(3).

(c) States or other entities are eligible under §318.10(a) (4) and (5). An entity may not receive financial assistance for a professional development partnership project and a technical assistance project during the same period.

(d) Institutions of higher education in partnership with local education agencies and center schools for students who are deaf are eligible under §318.10(a)(6).

(Authority: 20 U.S.C. 1431(a)–(c))

[57 FR 62099, Dec. 29, 1992, as amended at 58 FR 27441, May 7, 1993]

§ 318.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations:

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) Part 75 (Direct Grant Programs).

(3) Part 77 (Definitions that Apply to Department Regulations).

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) Part 81 (General Education Provisions Act—Enforcement).

(7) Part 82 (New Restrictions on Lobbying).

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 318.

(Authority: 20 U.S.C. 1431(a)–(c); 3474(a))

§ 318.4 What definitions apply to this program?

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

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Local educational agency
Nonprofit
Preschool
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR part 300:

Deafness
Deaf-blindness
Other health impairments
Related services
Special education

(c) *Definitions specific to 34 CFR part 318.* The following terms used in this part are defined as follows:

Act means the Individuals with Disabilities Education Act (IDEA).

Infants and toddlers with disabilities. (1) The term means individuals from birth through age two who need early intervention services because they—

(i) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Cognitive development, physical development, including vision and hearing, language and speech development, psychosocial development, or self-help skills; or

(ii) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(2) The term also includes children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

National Education Goals means the following goals to be achieved by the year 2000:

(1) All children will start school ready to learn.

(2) The high school graduation rate will increase to at least 90 percent.

(3) Students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter, including English, mathematics, science, history, and geography, and every school will ensure that all students learn to use their minds well, so that they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

(4) Students will be first in the world in science and mathematics achievement.

(5) Every adult will be literate and will possess the knowledge and skills

necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

(6) Every school will be free of drugs and violence and will offer a disciplined environment conducive to learning.

(Authority: 20 U.S.C. 1401; 1431(a)–(c); 1472)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§318.10 What activities may the Secretary fund?

(a) The Secretary supports training programs in the following eight areas:

(1) Preservice training of personnel for careers in special education, related services, and early intervention, including careers in—

(i) Special education teaching, including speech-language pathology, audiology, adapted physical education, and instructional and assistive technology;

(ii) Related services for children with disabilities in educational and other settings; and

(iii) Early intervention and preschool services.

(2) Leadership training, including—

(i) Supervision and administration at the advanced graduate, doctoral, and post-doctoral levels;

(ii) Research; and

(iii) Personnel preparation at the doctoral and post-doctoral levels.

(3) Special projects designed to include—

(i) Development, evaluation, and distribution of innovative approaches, curricula, and materials for personnel development; and

(ii) Other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(4) The formation of professional development programs consisting of consortia or partnerships of public and private entities.

(5) Technical assistance to the entities in paragraph (a)(4) of this section.

(6) Regional model demonstration training programs on deafness and secondary disabilities.

(7) Training educational interpreters.

(8) Training regular educators who serve students with deafness.

(b) Projects for preservice training, leadership training, and professional development programs must—

(1) Develop new programs to establish expanded capacity for quality preservice training; or

(2) Improve existing programs designed to increase the capacity and quality of preservice training.

(c) Projects supported under this program may provide training for degree, nondegree, certified, and noncertified personnel at associate degree through post-doctoral levels of preparation.

(Authority: 20 U.S.C. 1431(a)–(c))

[57 FR 62099, Dec. 29, 1992, as amended at 58 FR 27441, May 7, 1993]

§318.11 What priorities may the Secretary establish?

(a) The Secretary may, through a notice published in the FEDERAL REGISTER, select annually one or more of the following priority areas for funding:

(1) *Preparation of personnel for careers in special education.* This priority supports preservice preparation of personnel for careers in special education. Preservice training includes additional training for currently employed teachers seeking additional degrees, certifications, or endorsements. Training at the baccalaureate, masters, or specialist level is appropriate. Under this priority, ''personnel'' includes special education teachers, speech-language pathologists, audiologists, adapted physical education teachers, vocational educators, and instructive and assistive technology specialists.

(2) *Preparation of related services personnel.* This priority supports preservice preparation of individuals to provide developmental, corrective, and other supportive services that assist children and youth with disabilities to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, school social workers, health service providers, physical therapists, occupational therapists, school psychologists, counselors (including rehabilitation counselors), interpreters, orientation and mobility specialists, respite care providers, art therapists, volunteers,

physicians, and other related services personnel.

(i) Projects to train personnel identified as special education personnel in the regulations in this part are not appropriate, even if those personnel may be considered related services personnel in other settings.

(ii) This priority is not designed for general training. Projects must include inducements and preparation to increase the probability that graduates will direct their efforts toward supportive services to special education. For example, a project in occupational therapy (OT) might support a special component on pediatric or juvenile psychiatric OT, support those students whose career goal is OT in the schools, or provide for practica and internships in school settings.

(3) *Training early intervention and preschool personnel.* This priority supports projects that are designed to provide preservice preparation of personnel who serve infants, toddlers, and preschool children with disabilities, and their families. Personnel may be prepared to provide short-term services or long-term services that extend into a child's school program. The proposed training program must have a clear and limited focus on the special needs of children within the age range from birth through five, and must include consideration of family involvement in early intervention and preschool services. Training programs under this priority must have a significant interdisciplinary focus.

(4) *Preparation of leadership personnel.* This priority supports projects that are designed to provide preservice professional preparation of leadership personnel in special education, related services, and early intervention. Leadership training is considered to be preparation in—

(i) Supervision and administration at the advanced graduate, doctoral, and post-doctoral levels;

(ii) Research; and

(iii) Personnel preparation at the doctoral and post-doctoral levels.

(5) *Special projects.* This priority supports projects that include development, evaluation, and distribution of innovative approaches to personnel preparation; development of curriculum materials to prepare personnel to educate or provide early intervention services; and other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(i) Appropriate areas of interest include—

(A) Preservice training programs to prepare regular educators to work with children and youth with disabilities and their families;

(B) Training teachers to work in community and school settings with children and youth with disabilities and their families;

(C) Inservice and preservice training of personnel to work with infants, toddlers, children, and youth with disabilities and their families;

(D) Inservice and preservice training of personnel to work with minority infants, toddlers, children, and youth with disabilities, and their families;

(E) Preservice and inservice training of special education and related services personnel in instructive and assistive technology to benefit infants, toddlers, children, and youth with disabilities; and

(F) Recruitment and retention of special education, related services, and early intervention personnel.

(ii) Both inservice and preservice training must include a component that addresses the coordination among all service providers, including regular educators.

(6) *Professional development partnerships.* This priority, listed in § 318.10(a)(4), supports the formation of consortia or partnerships of public and private entities for the purpose of providing opportunities for career advancement or competency-based training, including but not limited to certificate- or degree-granting programs in special education, related services, and early intervention for current workers at public and private agencies that provide services to infants, toddlers, children, and youth with disabilities. Activities authorized under this priority include, but are not limited to, the following:

(i) Establishing a program with colleges and universities to develop creative new programs and coursework options or to expand existing programs in the field of special education, related services, or early intervention. Funds may be used to provide release time for faculty and staff for curriculum development, instructional costs, and modest start-up and other program development costs.

(ii) Establishing a career development mentoring program using faculty and professional staff members of participating agencies as role models, career sponsors, and academic advisors for experienced State, city, county, and voluntary sector workers who have demonstrated a commitment to working in these fields and who are enrolled in higher education institution programs relating to these fields.

(iii) Supporting a wide range of programmatic and research activities aimed at increasing opportunities for career advancement and competency-based training in these fields.

(iv) Identifying existing public agency, private agency, and labor union personnel policies and benefit programs that may facilitate the ability of workers to take advantage of higher education opportunities such as leave time and tuition reimbursement.

(7) *Technical assistance to professional development partnerships.* This priority, listed in §318.10(a)(5), supports technical assistance to States or entities receiving awards under professional development partnership projects. Activities must include, but are not limited to, the following:

(i) Identifying the specific technical assistance needs of individual projects.

(ii) Conducting annual meetings at the national level.

(iii) Identifying other projects under the Act related to professional development for the purpose of coordinating professional development projects. Coordination activities may include conferences, publications, and maintenance of documents and data relevant to the activities of the professional development projects.

(iv) Cooperating with other projects and organizations on common goals.

(v) Disseminating information through media, newsletters, computers, and written documentation.

(vi) Evaluating center activities, including impact determination, and evaluation assistance to centers.

(8) *Utilizing innovative recruitment and retention strategies.* This priority supports projects to develop emerging and creative sources of supply of personnel with degrees and certification in appropriate disciplines, and innovative strategies related to recruitment and retention of personnel.

(9) *Promoting full qualifications for personnel serving infants, toddlers, children, and youth with disabilities.* This priority supports projects designed specifically to train personnel who are working with less than full certification or outside their field of specialization, to assist them in becoming fully qualified. The following are appropriate under this priority: student incentives; extension, summer, and evening programs; internships; alternative certification plans; and other innovative practices.

(10) *Training personnel to serve low incidence disabilities.* This priority supports projects to train teachers of children with visual impairments including blindness, hearing impairments including deafness, orthopedic impairments, other health impairments, autism, traumatic brain injury, and severe and multiple disabilities.

(11) *Training personnel to work in rural areas.* This priority supports projects to train personnel to serve infants, toddlers, children, and youth with disabilities in rural areas. Projects, including curricula, procedures, practica, and innovative use of technology, must be designed to provide training to assist personnel to work with parents, teachers, and administrators in these special environments. Special strategies must be designed to recruit personnel from rural areas who will most likely return to those areas.

(12) *Training personnel to provide transition assistance from school to adult roles.* This priority supports projects for preparation of personnel who assist youth with disabilities in their transition from school to adult roles. Personnel may be prepared to provide short-term transition services, long-term

structured employment services, or instruction in community and school settings with secondary school students. It is especially important that preparation of transition personnel include training in instructional and assistive technology.

(13) *Preparation of paraprofessionals.* This priority supports projects for the preparation of paraprofessionals. This includes programs to train teacher aids, job coaches, interpreters, therapy assistants, and other personnel who provide support to professional staff in delivery of services to infants, toddlers, children, and youth with disabilities.

(14) *Improving services for minorities.* This priority supports projects to prepare personnel to serve infants, toddlers, children, and youth with disabilities who, because of minority status, require that personnel obtain professional competencies in addition to those needed to teach other children with similar disabilities. Projects funded under this priority must focus on specific minority populations, determine the additional competencies that are needed by professionals serving those populations, and develop those competencies.

(15) *Training minorities and individuals with disabilities.* This priority supports projects to recruit and prepare minority individuals and individuals with disabilities for careers in special education, related services, and early intervention.

(16) *Minority institutions.* This priority supports awards to Historically Black Colleges and Universities and other institutions of higher education whose minority student enrollment is at least 25 percent. Awards may provide training of personnel in all areas noted in § 318.10(a) (1) and (2), and must be designed to increase the capabilities of the institution in appropriate training areas.

(17) *Preparing personnel to meet the National Education Goals.* This priority supports projects that develop or expand innovative preservice and inservice training programs that are designed to provide personnel serving children with disabilities with skills that are needed to help schools meet the National Education Goals. These programs must promote the following:

(i) Increased collaboration among providers of special education, regular education, bilingual education, migrant education, and vocational education, and among public and private agencies and institutions.

(ii) Improved coordination of services among health and social services agencies and within communities regarding services for children with disabilities and their families.

(iii) Increased systematic parental involvement in the education of their children with disabilities.

(iv) Inclusion of children with disabilities in all aspects of education and society.

(v) Training that is designed to enable special education teachers to teach, as appropriate, to world class standards (such as those developed by the National Council on Teachers of Mathematics) as those standards are developed.

(18) *Training educational interpreters.* This priority supports projects for the establishment or continuation of educational interpreter training programs to train personnel to effectively meet the various communication needs of elementary and secondary students who are deaf or deaf-blind. These programs may also provide for the training or retraining (including short-term and inservice training) of regular education teachers who are involved in providing instruction to individuals who are deaf, but who are not certified as teachers of such individuals, and other personnel who work with such individuals, on the role of educational interpreters.

(19) *Attention deficit disorders.* This priority supports projects to devise new inservice and preservice training strategies for special education and regular classroom teachers and administrators to address the needs of children with attention deficit disorders (ADD). The purpose is not to develop distinct categorical programs for training personnel to teach children with ADD, but rather to enhance the skills of general and special education teachers and administrators to better serve this population of students. These strategies must be infused into personnel preparation programs of national organizations serving regular and special education personnel.

(20) *Regional model demonstration training programs on deafness and secondary disabilities.* This priority supports regional model demonstration training programs on deafness and secondary disabilities. These programs shall provide preservice and inservice training to teachers, school administrators, leadership personnel, and related services personnel in the education of students with deafness.

(21) *Training regular educators who serve students with deafness.* This priority supports projects to provide for the training or retraining of regular education teachers who are involved in providing instruction to individuals who are deaf, but who are not certified as teachers of such individuals, to meet the communication needs of such individuals.

(b) Under paragraph (a) of this section, the Secretary may identify an amount of funds to be set aside for projects to address the needs of children with particular disabilities and in particular States or geographic areas. Decisions to implement this paragraph would be based on review of each State's comprehensive systems of personnel development, special studies, and other information.

(Authority: 20 U.S.C. 1431(a)–(c))

[57 FR 62099, Dec. 29, 1992, as amended at 58 FR 27441, May 7, 1993]

Subpart C—How Does the Secretary Make an Award?

§318.20 What are the requirements for applicants?

(a) An applicant under §318.10 (a)(1), (a)(2), (a)(6), or (a)(8) shall demonstrate that the proposed project is consistent with the needs for personnel, including personnel to provide special education services to children with limited English proficiency, identified by the comprehensive systems of personnel development of the State or States typically employing program graduates.

(b) A project under §318.10 (a)(1), (a)(2), (a)(6), or (a)(8) must include—

(1) Training techniques and procedures designed to foster collaboration among special education teachers, regular teachers, administrators, related service personnel, early intervention personnel, and parents;

(2) Training techniques, procedures, and practica designed to demonstrate the delivery of services in an array of regular, special education, and community settings; and

(3) Interdisciplinary preparation of trainees.

(c) An applicant shall demonstrate how it will address, in whole or in part, the needs of infants, toddlers, children, and youth with disabilities from minority backgrounds.

(d) An applicant under §318.10 (a)(1), (a)(2), (a)(6), or (a)(8) shall present a detailed description of strategies for recruitment and training of members of minority groups and persons with disabilities.

(e) For technical assistance under §318.10(a)(5), to professional development partnership projects, an applicant shall demonstrate capacity and expertise in the education, training, and retention of workers to serve children and youth with disabilities through the use of consortia or partnerships established for the purpose of retaining the existing workforce and providing opportunities for career enhancements.

(f) An applicant under §318.10 ((a)(1), (a)(2), (a)(6), or (a)(8) shall demonstrate that it meets State and professionally recognized standards for the training of personnel, as evidenced by appropriate State and professional accreditation, unless the award is for the purpose of assisting the applicant to meet those standards.

(g) An applicant under §318.10(a)(7) must provide an assurance that all interpreters receiving training under the grant will be provided training designed to develop skills necessary for facilitating effective communication for students who are deaf or deaf-blind.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1410; 1431(a)–(c))

[57 FR 62099, Dec. 29, 1992, as amended at 58 FR 27441, May 7, 1993]

§318.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§318.22, 318.23, and 318.24.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.22 What selection criteria does the Secretary use to evaluate applications for preservice training, leadership training, professional development programs, regional model demonstration training programs on deafness and secondary disabilities, training educational interpreters, and training regular educators to serve students with deafness?

The Secretary uses the following criteria to evaluate all applications for preservice training under § 318.10(a)(1), leadership training under § 318.10(a)(2), professional development projects under § 318.10(a)(4), regional model demonstration training programs on deafness and secondary disabilities under § 318.10(a)(6), training educational interpreters under § 318.10(a)(7), and training regular educators to serve students with deafness under § 318.10(a)(8).

(a) *Impact on critical present and projected needs.* (30 points) The Secretary reviews each application to determine the extent to which the training will have a significant impact on critical present and projected State, regional, or national needs in the quality or the quantity of personnel serving infants, toddlers, children, and youth with disabilities. The Secretary considers—

(1) The significance of the personnel needs to be addressed to the provisions of special education, related services, and early intervention. Significance of needs identified by the applicant may be shown by—

(i) Evidence of critical shortages of personnel to serve infants, toddlers, children, and youth with disabilities, including those with limited English proficiency, in targeted specialty or geographic areas, as demonstrated by data from the State comprehensive systems of personnel development; reports from the Clearinghouse on Careers and Employment of Personnel serving children and youth with disabilities; or other indicators of need that the applicant demonstrates are relevant, reliable, and accurate; or

(ii) Evidence showing significant need for improvement in the quality of personnel providing special education, related services, and early intervention services, as shown by comparisons of actual and needed skills of personnel in targeted speciality or geographic areas; and

(2) The impact the proposed project will have on the targeted need. Evidence that the project results will have an impact on the targeted needs may include—

(i) The projected number of graduates from the project each year who will have necessary competencies and certification to affect the need;

(ii) For ongoing programs, the extent to which the applicant's projections are supported by the number of previous program graduates that have entered the field for which they received training, and the professional contributions of those graduates; and

(iii) For new programs, the extent to which program features address the projected needs, the applicant's plan for helping graduates locate appropriate employment in the area of need, and the program features that ensure that graduates will have competencies needed to address identified qualitative needs.

(b) *Capacity of the applicant.* (25 points) The Secretary reviews each application to determine the capacity of the applicant to train qualified personnel, including consideration of—

(1) The qualifications and accomplishments of the project director and other key personnel directly involved in the proposed training program, including prior training, publications, and other professional contributions;

(2) The amount of time each key person plans to commit to the project;

(3) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability;

(4) The adequacy of resources, facilities, supplies, and equipment that the applicant plans to commit to the project;

(5) The quality of the practicum training settings, including evidence that they are sufficiently available;

apply state-of-the-art services and model teaching practices, materials, and technology; provide adequate supervision to trainees; offer opportunities for trainees to teach; and foster interaction between students with disabilities and their nondisabled peers;

(6) The capacity of the applicant to recruit well-qualified students;

(7) The experience and capacity of the applicant to assist local public schools and early intervention service agencies in providing training to these personnel, including the development of model practicum sites; and

(8) The extent to which the applicant cooperates with the State educational agency, the State-designated lead agency under part H of the Act, other institutions of higher education, and other appropriate public and private agencies in the region served by the applicant in identifying personnel needs and plans to address those needs.

(c) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) The extent to which the plan of management ensures effective, proper, and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective;

(5) The extent to which the application includes a delineation of competencies that program graduates will acquire and how the competencies will be evaluated;

(6) The extent to which substantive content and organization of the program—

(i) Are appropriate for the students' attainment of professional knowledge and competencies deemed necessary for the provision of quality educational and early intervention services for infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of methods, procedures, techniques, technology, and instructional media or materials that are relevant to the preparation of personnel who serve infants, toddlers, children, and youth with disabilities; and

(7) The extent to which program philosophy, objectives, and activities implement current research and demonstration results in meeting the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired; and;

(3) Provide evidence that evaluation data and student follow-up data are systematically collected and used to modify and improve the program. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant presents appropriate plans for the institutionalization of federally supported activities into basic program operations.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(a)–(c))

[57 FR 62099, Dec. 29, 1992, as amended at 58 FR 27441, May 7, 1993]

§318.23 What selection criteria does the Secretary use to evaluate applications for special projects?

The Secretary uses the following criteria to evaluate special projects under §318.10(a)(3):

(a) *Anticipated project results.* (20 points) The Secretary reviews each application to determine the extent to which the project will meet present and projected needs under parts B and

H of the Act in special education, related services, or early intervention services personnel development.

(b) *Program content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential for replication and effectiveness, and the quality of its plan for dissemination of the results of the project;

(2) The extent to which substantive content and organization of the project—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children, and youth with disabilities; and

(3) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Evidence of the key personnel's past experience and training in fields related to the objectives of the project.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.24 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?

The Secretary uses the following criteria to evaluate applications for technical assistance activities under § 318.10(a)(5):

(a) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan to operation for the project, including—

(1) The quality of the project design;

(2) The effectiveness of the management plan in ensuring proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Program content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential for effectiveness, and the quality of its plan for dissemination of the results of the project;

(2) The extent to which substantive content and organization of the program—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children, and youth with disabilities; and

(3) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Applicant experience and ability.* (15 points) The Secretary looks for information that shows the applicant's—

(1) Experience and training in fields related to the objectives of the project;

(2) National experience relevant to performance of the functions supported by this program;

(3) Ability to conduct the proposed project;

(4) Ability to communicate with intended consumers of information;

(5) Ability to maintain necessary communication and coordination with other relevant projects, agencies, and organizations; and

(6) Capacity and expertise in the education, training, and retention of workers to serve children and youth with disabilities through the use of consortia or partnerships established for the purpose of retaining the existing workforce and providing opportunities for career enhancements.

(d) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project; and

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1431(a)–(c))

§318.25 What additional factors does the Secretary consider?

To the extent feasible, the Secretary ensures that projects for professional development partnerships under §318.10(a)(4) and training educational interpreters under §318.10(a)(7) are geographically dispersed throughout the Nation in urban and rural areas.

(Authority: 20 U.S.C. 1431(a)–(c))

[58 FR 27441, May 7, 1993]

Subpart D—What Conditions Must a Grantee Meet?

§ 318.30 What are the priorities for award of student fellowships and traineeships?

A grantee shall give priority consideration in the selection of qualified recipients of fellowships and traineeships to individuals from disadvantaged backgrounds, including minorities and individuals with disabilities who are underrepresented in the teaching profession or in the specializations in which they are being trained.

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.31 Is student financial assistance authorized?

The sum of the assistance provided to a student under this part and any other assistance provided the student may not exceed the student's cost of attendance as follows:

(a) *Cost of attendance* means—

(1) Tuition and fees normally assessed a student carrying the same academic workload (as determined by the institution) including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(2) An allowance (as determined by the institution) for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis;

(3) An allowance (as determined by the institution) for room and board costs incurred by the student that—

(i) Is not less than $1,500 for students without dependents residing at home with parents;

(ii) Is the standard amount that the institution normally assesses its residents for room and board for students without dependents residing in institutionally owned or operated housing; and

(iii) Is based for all other students on the expenses reasonably incurred for room and board outside the institution, except that the amount may not be less than $2,500;

(4) For less than half-time students (as determined by the institution), tuition and fees and an allowance for books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (a)(7) of this section);

(5) For a student engaged in a program of study by correspondence, only tuition and fees; and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(6) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with the study as determined by the institution;

(7) For a student with one or more dependents, an allowance, as determined by the institution, based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(8) For a student with a disability, an allowance, as determined by the institution, for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

(b) For a student receiving all or part of his or her instruction by means of telecommunications technology, no distinction may be made with respect to the mode of instruction in determining costs, but this paragraph may not be construed to permit including the cost of rental or purchase of equipment.

(Authority: 20 U.S.C. 1087*ll*)

§ 318.32 What are the student financial assistance criteria?

Direct financial assistance may only be paid to a student in a preservice program, and only if the student—

(a) Is qualified for admission to the program of study;

(b) Maintains satisfactory progress in a course of study as defined in 34 CFR 668.7; and

(c)(1) Is a citizen or national of the United States;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Has a permanent or lasting—as distinguished from temporary—principal, actual dwelling place in fact, without regard to intent, in Palau or the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1091)

§318.33 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for financial assistance to other eligible students during the grant period.

(Authority: 20 U.S.C. 1087*ll*)

§318.34 What are the reporting requirements under this program?

Recipients shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information. The Secretary requires their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and other networks the Secretary may determine to be appropriate.

(Approved by the Office of Management and Budget under control number 1820–0530)

(Authority: 20 U.S.C. 1409(g))

PART 319—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

Subpart A—General

Sec.
319.1 What is the Training Personnel for the Education of Individuals with Disabilities—Grants to State Educational Agencies and Institutions of Higher Education program?
319.2 Who is eligible for an award?
319.3 What activities may the Secretary fund?
319.4 What regulations apply to this program?
319.5 What definitions apply to this program?

Subpart B—How Does One Apply for an Award?

319.10 What are the application requirements under this program?

Subpart C—How Does the Secretary Make an Award?

319.20 How does the Secretary evaluate an application?
319.21 How does the Secretary determine the amount of a basic State award?
319.22 How does the Secretary determine the amount available for the competitive award program?
319.23 What selection criteria does the Secretary use in the basic State award and competitive award programs?
319.24 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?

Subpart D—What Conditions Must Be Met After an Award?

319.30 Is student financial assistance authorized?
319.31 What are the student financial assistance criteria?
319.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?
319.33 What are the reporting requirements under this program?

AUTHORITY: 20 U.S.C. 1432, unless otherwise noted.

SOURCE: 57 FR 62106, Dec. 29, 1992, unless otherwise noted.

Subpart A—General

§ 319.1 What is the Training Personnel for the Education of Individuals with Disabilities—Grants to State Educational Agencies and Institutions of Higher Education program?

This program assists States in establishing and maintaining preservice and inservice programs to prepare special and regular education, related services, and early intervention personnel and their supervisors to meet the needs of infants, toddlers, children, and youth with disabilities. These programs must be consistent with the personnel needs identified in the State's comprehensive systems of personnel development under sections 613 and 676(b)(8) of the Individuals With Disabilities Education Act (IDEA). The program also assists States in developing and maintaining their comprehensive systems of personnel development, including conducting recruitment and retention activities.

(Authority: 20 U.S.C. 1432)

§ 319.2 Who is eligible for an award?

(a) Each State educational agency (SEA) is eligible to receive an award under the basic State award program described in § 319.3(a). If an SEA does not apply for an award, institutions of higher education (IHEs) within the State may apply for the award for that State. If an SEA chooses not to apply for basic State award, the SEA shall notify all IHEs within the State at least 30 days prior to the Department's closing date for applications.

(b) Only State educational agencies are eligible for a competitive award described in § 319.3(b).

(c) Profit and nonprofit organizations and agencies are eligible for technical assistance awards described in § 319.3(c).

(Authority: 20 U.S.C. 1432)

§ 319.3 What activities may the Secretary fund?

The Secretary funds basic State awards and may fund competitive grant awards and provide technical assistance to States in developing and maintaining their comprehensive systems of personnel development and in recruitment and retention strategies.

(a) *Basic State awards.* The Secretary makes an award to each State for the purposes described in § 319.1.

(b) *Competitive award program.* The Secretary may make competitive awards for the purposes described in § 319.1. These awards must address particularly high priority issues in a State that also have high potential for generalizability to needs in other States.

(c) *Technical assistance.* (1) The Secretary may provide technical assistance to State educational agencies on matters pertaining to the effective implementation of section 613(a)(3) of the IDEA.

(2) This activity includes, but is not limited to, technical assistance to the States relating to the following—

(i) Monitoring personnel needs in the State including identification of alternative approaches for determining current and projected needs;

(ii) Analyzing strategies to determine needs for professional preparation to meet the needs of children with disabilities;

(iii) Identifying, designing, adapting, testing, and disseminating new professional preparation strategies; and

(iv) Providing technical assistance in the personnel development, recruitment, and retention areas.

(3) Operational activities must include, but are not limited to, the following:

(i) Determining national needs and identifying unserved regions and populations.

(ii) Identifying the specific technical assistance needs of individual States related to professional preparation.

(iii) Conducting annual meetings at national and regional levels.

(iv) Dissemination of information through media, newsletters, computers, and written documentation.

(v) Cooperative activities with other personnel development projects and organizations on common goals.

(vi) Evaluation, including impact determination, and evaluation assistance to personnel development projects funded under section 632 of the IDEA as well as evaluation of comprehensive

system of personnel development activities.

(Authority: 20 U.S.C. 1432)

[57 FR 62106, Dec. 29, 1992; 59 FR 1651, Jan. 12, 1994]

§319.4 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations:

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) Part 75 (Direct Grant Programs).

(3) Part 77 (Definitions that Apply to Department Regulations).

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) Part 81 (General Education Provisions Act—Enforcement).

(7) Part 82 (New Restrictions on Lobbying).

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 319.

(Authority: 20 U.S.C. 1432; 3474(a))

§319.5 What definitions apply to this program?

The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Preschool
Project
Public
Secretary
State
State educational agency

(Authority: 20 U.S.C. 1432)

Subpart B—How Does One Apply for an Award?

§319.10 What are the application requirements under this program?

An institution of higher education that applies for an award under §319.3(a) shall demonstrate that it meets State and professionally recognized standards for the training of special education and related services personnel, as evidenced by appropriate State and professional accreditation, unless—as indicated in a published priority of the Secretary—the award is for the purpose of assisting the applicant to meet those standards.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1432)

Subpart C—How Does the Secretary Make an Award?

§319.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§319.23 and 319.24.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1432)

§319.21 How does the Secretary determine the amount of a basic State award?

The Secretary determines the amount of an award under §319.3(a) as follows:

(a) The Secretary distributes no less than 80 percent of the funds available for these awards as follows:

(1) Each State receives a base amount to be determined by the Secretary, but not less than $85,000.

(2) From the funds remaining, the Secretary provides an additional amount to each State based on the State's proportion of the national child count provided under part B of the

IDEA and subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended.

(b) After determining a State's award under paragraph (a) of this section, the Secretary determines annually the additional amount of funds to be awarded for the quality of the application based on the criteria set forth in § 319.23.

(Authority: 20 U.S.C. 1432)

§ 319.22 How does the Secretary determine the amount available for the competitive award program?

In any fiscal year, the Secretary may not expend for the competitive program under § 319.3(b) an amount more than 10 percent of the amount expended under section 632 of the IDEA in the preceding fiscal year.

(Authority: 20 U.S.C. 1432)

§ 319.23 What selection criteria does the Secretary use in the basic State award and competitive award programs?

The Secretary uses the following criteria to evaluate an application for a basic State award (SEA or IHE applicant) and for a competitive award:

(a) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine—

(1) The extent to which the project identifies and selects priority needs from the range of personnel needs identified in the State comprehensive systems of personnel development;

(2) The extent to which the project addresses the personnel needs selected by the applicant under paragraph (a)(1) of this section; and

(3) If appropriate, how the project relates to actual and projected personnel needs for certified teachers in the State as identified by the State educational agency in its annual data report required under section 618 of the IDEA.

(b) *Program content.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) Competencies that will be acquired by each trainee and how the competencies will be evaluated are identified;

(2) Substantive content of the training to be provided is appropriate for the attainment of professional knowledge and competencies that are necessary for the provision of quality educational or early intervention services to infants, toddlers, children, and youth with disabilities;

(3) Benefits to be gained by the number of trainees expected to be graduated or otherwise to complete training and employed over the next five years are described;

(4) Appropriate methods, procedures, techniques, and instructional media or materials will be used in the preparation of trainees who serve infants, toddlers, children, and youth with disabilities;

(5) If relevant, appropriate practicum facilities are accessible to the applicant agency and trainees and will be used for such activities as observation, participation, practice teaching, laboratory or clinical experience, internships, and other supervised experiences of adequate scope and length;

(6) If relevant, practicum facilities for model programs will provide state-of-the-art educational services, including use of current and innovative curriculum materials, instructional procedures, and equipment; and

(7) Program philosophy, program objectives, and activities to be implemented to attain program objectives are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design;

(2) The effectiveness of the management plan in ensuring proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation

plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired, and the number of trainees who complete short-term in-service or preservice training programs. (See 34 CFR 75.590, Evaluation by the grantee).

(e) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Experience and training in fields related to the objectives of the project.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1432)

§319.24 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?

The Secretary uses the following criteria to evaluate applications for technical assistance activities:

(a) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design;

(2) The effectiveness of the management plan in ensuring proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Program content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential effectiveness, and the quality of its plan for dissemination of the results of the project;

(2) The extent to which substantive content and organization of the program—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children, and youth with disabilities; and

(3) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Applicant experience and ability.* (15 points) The Secretary looks for information that shows the applicant's—

(1) Experience and training in fields related to the objectives of the project;

(2) National experience relevant to performance of the functions supported by this program;

(3) Ability to conduct the proposed project;

(4) Ability to communicate with intended consumers of information; and

(5) Ability to maintain necessary communication and coordination with other relevant projects, agencies, and organizations.

(d) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project; and

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1432)

Subpart D—What Conditions Must Be Met After an Award?

§ 319.30 Is student financial assistance authorized?

A grantee may use grant funds under § 319.2 (a) and (b) to provide traineeships or stipends. The sum of the assistance provided to a student through this part and any other assistance provided the student may not exceed the student's cost of attendance as follows:

(a) *Cost of attendance* means—

(1) Tuition and fees normally assessed a student carrying the same academic workload (as determined by the institution) including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(2) An allowance (as determined by the institution) for books, supplies, transportation, miscellaneous and personal expenses for a student attending the institution on at least a half-time basis;

(3) An allowance (as determined by the institution) for room and board costs incurred by the student that—

(i) Is not less than $1,500 for students without dependents residing at home with parents;

(ii) Is the standard amount that the institution normally assesses its residents for room and board for students without dependents residing in institutionally owned or operated housing; and

(iii) Is based for all other students on the expenses reasonably incurred for room and board outside the institution, except that the amount may not be less than $2,500;

(4) For less than half-time students (as determined by the institution), tuition and fees and an allowance for books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (a)(7) of this section);

(5) For a student engaged in a program of study by correspondence, only tuition and fees; and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(6) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with the study as determined by the institution;

(7) For a student with one or more dependents, an allowance, as determined by the institution, based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(8) For a student with a disability, an allowance, as determined by the institution, for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

(b) For a student receiving all or part of his or her instruction by means of telecommunication technology, no distinction may be made with respect to the mode of instruction in determining costs. This paragraph may not be construed to permit including the cost of rental or purchase of equipment.

(Authority: 20 U.S.C. 1087ll)

§319.31 What are the student financial assistance criteria?

Direct financial assistance under §319.2 (a) and (b) may only be paid to students in preservice programs and only if the student—

(a) Is qualified for admission to the program of study;

(b) Maintains satisfactory progress in a course of study as provided in 34 CFR 668.16(e); and

(c)(1) Is a citizen or national of the United States;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Has a permanent or lasting—as distinguished from temporary—principal, actual dwelling place in fact, without regard to intent, in Palau or the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1091)

§319.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for financial assistance to other eligible students during the grant period.

(Authority: 20 U.S.C. 1087ll)

§319.33 What are the reporting requirements under this program?

Recipients shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information. The Secretary requires their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the IDEA, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate, parent and professional organizations, organizations representing individuals with disabilities, and other networks the Secretary may determine to be appropriate.

(Approved by the Office of Management and Budget under control number 1820–0530)

(Authority: 20 U.S.C. 1409(g))

PART 320—CLEARINGHOUSES

Subpart A—General

Sec.
320.1 What is the Clearinghouse program?
320.2 Who is eligible to apply for assistance under this program?
320.3 What activities are required of clearinghouses?
320.4 What regulations apply to this program?
320.5 What definitions apply to this program?
320.6—320.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

320.10 What kinds of activities may be supported under this part?
320.11—320.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

320.30 What are the selection criteria used to award a grant?
320.31 What are the priorities for funding under this program?

320.32 What additional factors does the Secretary consider?
320.33—320.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

320.40 What evaluation and coordination requirements must be met by a grantee?
320.41 What other conditions must be met by grantees under this program?
320.42—320.49 [Reserved]

AUTHORITY: 20 U.S.C. 1433, unless otherwise noted.

SOURCE: 49 FR 25986, June 25, 1984, unless otherwise noted.

Subpart A—General

§ 320.1 What is the Clearinghouse program?

The Clearinghouses program provides financial assistance for—

(a) A national clearinghouse on the education of children and youth with disabilities that disseminates information and provides technical assistance to parents, professionals, and other interested parties;

(b) A national clearinghouse on postsecondary education for individuals with disabilities; and

(c) A national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields relating to the education of children and youth with disabilities.

(Authority: 20 U.S.C. 1433)

[56 FR 54695, Oct. 22, 1991]

§ 320.2 Who is eligible to apply for assistance under this program?

Parties eligible to apply for assistance under this part are public agencies or nonprofit private organizations or institutions.

(Authority: 20 U.S.C. 1433)

[49 FR 25986, June 25, 1984, as amended at 56 FR 54695, Oct. 22, 1991]

§ 320.3 What activities are required of clearinghouses?

The clearinghouses are required to—

(a) Collect, develop, and disseminate information;

(b) Provide technical assistance;

(c) Conduct coordinated outreach activities;

(d) Provide for the coordination and networking with other relevant national, State, and local organizations and information and referral resources;

(e) Respond to individuals and organizations seeking information; and

(f) Provide for the synthesis of information for its effective utilization by parents, professionals, individuals with disabilities, and other interested parties.

(Authority: 20 U.S.C. 1433)

[56 FR 54695, Oct. 22, 1991]

§ 320.4 What regulations apply to this program?

The following regulations apply to grants awarded under this program:

(a) The regulations in this part 320.

(b) The Education Department General Administrative Regulations (EDGAR) in title 34 of the *Code of Federal Regulations* in—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

(Authority: 20 U.S.C. 1433; 20 U.S.C. 3474(a))

[49 FR 25986, June 25, 1984. Redesignated and amended at 56 FR 54695, 54696, Oct. 22, 1991]

§ 320.5 What definitions apply to this program?

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

Contract
EDGAR

Grant
Nonprofit
Private
Project
Public
Secretary
State

(Authority: 20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR part 300.* The term *parent* as used in this part is defined in 34 CFR 300.10.

(Authority: 20 U.S.C. 1433)

[49 FR 25986, June 25, 1984. Redesignated at 56 FR 54695, Oct. 22, 1991]

§§320.6—320.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§320.10 What kinds of activities may be supported under this part?

The Secretary may provide funds under this part to—

(a) Establish and operate a national clearinghouse for children and youth with disabilities that will do the following:

(1) Collect and disseminate information (including the development of materials) on characteristics of infants, toddlers, children, and youth with disabilities and on programs, legislation, and services relating to their education under this Act and other Federal laws.

(2) Participate in programs and services related to disability issues for providing outreach, technical assistance; collection, and dissemination of information; and promoting networking of individuals with appropriate national, State, and local agencies and organizations.

(3) Establish a coordinated network and conduct outreach activities with relevant Federal, State, and local organizations and other sources for promoting public awareness of disability issues and the availability of information, programs, and services.

(4) Collect, disseminate, and develop information on current and future national, Federal, regional, and State needs for providing information to parents, professionals, individuals with disabilities, and other interested parties relating to the education and related services of individuals with disabilities.

(5) Provide technical assistance to national, Federal, regional, State and local agencies and organizations seeking to establish information and referral services for individuals with disabilities and their families.

(6) Include strategies to disseminate information to underrepresented groups such as those with limited English proficiency, in carrying out the activities in this section.

(b) Establish and operate a national clearinghouse on postsecondary education for individuals with disabilities that will do the following:

(1) Collect and disseminate information nationally on characteristics of individuals entering and participating in education and training programs after high school; legislation affecting such individuals and such programs; policies; procedures, and support services, as well as adaptations, and other resources available or recommended to facilitate the education of individuals with disabilities; available programs and services that include, or can be adapted to include, individuals with disabilities; and sources of financial aid for the education and training of individuals with disabilities.

(2) Identify areas of need for additional information.

(3) Develop new materials (in both print and nonprint form), especially by synthesizing information from a variety of fields affecting disability issues and the education, rehabilitation, and retraining of individuals with disabilities.

(4) Develop a coordinated network of professionals, related organizations and associations, mass media, other clearinghouses, and governmental agencies at the Federal, regional, State, and local level for the purposes of disseminating information and promoting awareness of issues relevant to the education of individual with disabilities after high school and referring individuals who request information to local resources.

(5) Respond to requests from individuals with disabilities, their parents, and professionals who work with them, for information that will enable them

to make appropriate decisions about postsecondary education and training.

(c) Establish and operate a national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields related to the education of children and youth with disabilities that will do the following:

(1) Collect and disseminate information on current and future national, regional, and State needs for special education and related services personnel.

(2) Disseminate information to high school counselors and others concerning current career opportunities in special education, location of programs, and various forms of financial assistance (such as scholarships, stipends, and allowances).

(3) Identify training programs available around the country.

(4) Establish a network among local and State educational agencies and institutions of higher education concerning the supply of graduates and available openings.

(5) Provide technical assistance to institutions seeking to meet State and professionally recognized standards.

(Authority: 20 U.S.C. 1433)

[56 FR 54696, Oct. 22, 1991]

§§ 320.11—320.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 320.30 What are the selection criteria used to award a grant?

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum score for all the criteria is 100 points. The maximum score for each complete criterion is indicated in parentheses.

(a) *Plan of operation.* (40 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application for information that shows the qualifications of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590.) *Evaluation by the grantee.*)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Experience and ability.* (10 points) The Secretary looks for information that shows the applicant's—

(1) National experience relevant to performance of the functions supported by this program;

(2) Ability to conduct its proposed project;

(3) Ability to communicate with the intended consumers of information; and

(4) Ability to maintain the necessary communication with other agencies and organizations.

(g) *Cooperation and coordination with other agencies.* (10 points) (1) The Secretary reviews each application for information that shows the activities funded under this section will be coordinated with—

(i) Similar activities funded from grants and contracts awarded under this part and under part C of the Act; and

(ii) Other agencies and organizations conducting or eligible to conduct activities essential to the effective implementation of the proposed project.

(2) The Secretary looks for information that shows the nature and extent of, and timeline for, coordination which the applicant has had and proposes to have to facilitate implementation and continuation of the project activities after termination of Federal funding.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1433)

[49 FR 25986, June 25, 1984, as amended at 52 FR 26657, July 15, 1987; 56 FR 54696, Oct. 22, 1991]

§320.31 What are the priorities for funding under this program?

The Secretary may select as annual priorities any of the activities listed in §320.10 by publishing a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1433)

§320.32 What additional factors does the Secretary consider?

In awarding grants, contracts, and cooperative agreements under this part, the Secretary gives priority to any applicant with:

(a) Demonstrated, proven effectiveness at the national level in performing the functions established in this part; and with the ability to conduct such projects, communicate with intended consumers of information, and maintain the necessary communication with national, regional, State and local agencies and organizations.

(b) Demonstrated, proven effectiveness at the national level in provding informational services to minorities and minority organizations.

(Approved by the Office of Management and Budget under control number 1820–0028)

[56 FR 54696, Oct. 22, 1991, as amended at 57 FR 14314, Apr. 17, 1992]

§§320.33—320.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§320.40 What evaluation and coordination requirements must be met by a grantee?

(a) Each grantee under this part shall ensure that any printed materials it produces or disseminates have been

evaluated by individuals with disabilities, parents of children and youth with disabilities, and by appropriate professionals with respect to the quality, currency, and appropriateness of, and the need to develop or disseminate, the materials.

(b) Recipients of awards under § 320.10 (a), (b), and (c) shall coordinate the dissemination of materials and information activities supported under this part.

(Authority: 20 U.S.C. 1433)

[49 FR 25986, June 25, 1984, as amended at 52 FR 26657, July 15, 1987; 56 FR 54696, Oct. 22, 1991]

§ 320.41 What other conditions must be met by grantees under this program?

(a) Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouse, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Programs (CASSP) under the National Institute of Mental health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(b) Beginning in fiscal year 1991, and for each year thereafter, each project assisted under this part provide information required by the Secretary, including—

(1) The number of individuals served by disability category, as appropriate, including parents, professionals, students, and individuals with disabilities;

(2) A description of responses utilized;

(3) A listing of new products developed and disseminated; and

(4) A description of strategies and activities utilized for outreach to urban and rural areas with populations of minorities and underrepresented groups.

(Authority: 20 U.S.C. 1409; 20 U.S.C. 1433)

(Approved by the Office of Management and Budget under control number 1820–0028)

[56 FR 54696, Oct. 22, 1991, as amended at 57 FR 14314, Apr. 17, 1992]

§§ 320.42—320.49 [Reserved]

PART 324—RESEARCH IN EDUCATION OF INDIVIDUALS WITH DISABILITIES PROGRAM

Subpart A—General

Sec.
324.1 What is the Research in Education of Individuals with Disabilities programs?
324.2 Who is eligible to apply for an award under this program?
324.3 What regulations apply to this program?
324.4 What definitions apply to this program?
324.5—324.9 [Reserved]

Subpart B—What Priorities Does the Secretary Consider for Support Under This Program?

324.10 What kinds of priorities are authorized under this part?
324.11 What kinds of research and model projects are supported under this part?
324.12—324.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

324.30 How does the Secretary select and announce funding priorities under this program?
324.31 What are the selection criteria for evaluating applications for research projects?
324.32 What are the selection criteria for evaluating applications for model projects?
324.33 What are the selection criteria for evaluating research-related activities other than research and model projects?
324.34—324.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Recipient?

324.40 What conditions must be met by a recipient?
324.41 What other conditions must be met by grantees under this program?
324.42—324.49 [Reserved]

AUTHORITY: 20 U.S.C. 1441–1443, unless otherwise noted.

SOURCE: 50 FR 34639, Aug. 26, 1985, unless otherwise noted.

Subpart A—General

§324.1 What is the Research in Education of Individuals with Disabilities programs?

The Research in Education of Individuals with Disabilities program provides support to—

(a) Advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children with disabilities in regular education environments, to provide such children effective instruction and enable them to successfully learn; and

(b) Research and related activities, surveys, or demonstrations relating to physical education or recreation, including therapeutic recreation, for children with disabilities.

(Authority: 20 U.S.C. 1441(a); 20 U.S.C 1442))

[56 FR 54697, Oct. 22, 1991]

§324.2 Who is eligible to apply for an award under this program?

(a) The Secretary may make grants to, or enter into contracts and cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations for the research and related activities authorized under section 641(a) of the Individuals with Disabilities Education Act.

(b) The Secretary may award grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and may make contracts with States, State and local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations for research and related purposes authorized under section 642 of the Individuals with Disabilities Education Act, relating to physical education or recreation for children with disabilities, and to conduct research, surveys, or demonstrations relating to physical education or recreation for children with disabilities.

(Authority: 20 U.S.C. 1441(a), 1442)

[50 FR 34639, Aug. 26, 1985, as amended at 50 FR 43702, Oct. 29, 1985; 56 FR 54697, Oct. 22, 1991]

§324.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this part 324.

(b) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(5) Part 81 (General Education Provisions Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying);

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(Authority: 20 U.S.C. 1441–1444)

[50 FR 34639, Aug. 26, 1985, as amended at 56 FR 54697, Oct. 22, 1991]

§324.4 What definitions apply to this program?

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

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Nonprofit
Private

Project
Project period
Secretary
State educational agency

(Authority: 20 U.S.C. 1441–1444)

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR 300.5, 300.13, and 300.14:

Children with disabilities
Related services
Special education

(Authority: 20 U.S.C. 1401(a)(1), (16), (17))

(c) *Other definitions.* In addition to the definitions referred to in paragraphs (a) and (b) of this section, the following definition applies to this part: *Youth with disabilities* means any child with disabilities who—

(1) Is twelve years of age or older; or

(2) Is enrolled in the seventh or higher grade in school.

(Authority: 20 U.S.C. 1401(b))

[50 FR 34639, Aug. 26, 1985, as amended at 56 FR 54697, Oct. 22, 1991]

§§ 324.5—324.9 [Reserved]

Subpart B—What Priorities Does the Secretary Consider for Support Under This Program?

§ 324.10 What kinds of priorities are authorized under this part?

(a) The priorities under § 324.1(a) must support innovation, development, exchange, and use of advancements in knowledge and practice designed to contribute to the improvement of instruction and learning of infants, toddlers, children, and youth with disabilities.

(b) Under this part, the Secretary may support a wide range of research and related activities designed to—

(1) Advance knowledge regarding the provision of instruction and other interventions to infants, toddlers, children, and youth with disabilities including the—

(i) Organization, synthesis, and interpretation of current knowledge and the identification of knowledge gaps;

(ii) Identification of knowledge and skill competencies needed by personnel providing special education, related services, and early intervention services;

(iii) Improvement of knowledge regarding the developmental and learning characteristics of infants, toddlers, children, and youth with disabilities in order to improve the design and effectiveness of interventions and instruction;

(iv) Evaluation of approaches and interventions;

(v) Development of instructional strategies, techniques, and activities;

(vi) Improvement of curricula and instructional tools such as textbooks, media, materials, and technology;

(vii) Development of assessment techniques, instruments (including tests, inventories, and scales), and strategies for measurement of progress and the identification, location, and evaluation of infants, toddlers, children, and youth with disabilities for the purpose of determining eligibility, program planning, and placement for special education, related services, and early intervention services;

(viii) Testing of research findings in practice settings to determine the application, usability, effectiveness, and generalizability of such research findings;

(ix) Improvement of knowledge regarding families, minorities, limited English proficiency, and disabling conditions; and

(x) Identification of environmental organizational, resource, and other conditions necessary for effective professional practice; and

(2) Advance the use of knowledge by personnel providing special education, related services, and early intervention services including the—

(i) Improvement of knowledge regarding how such individuals learn new knowledge and skills, and strategies for effectively facilitating such learning in preservice, inservice, and continuing education;

(ii) Organization, integration, and presentation of knowledge so that such knowledge can be incorporated and imparted in personnel preparation, continuing education programs, and other relevant training and communication vehicles; and

(iii) Expansion and improvement of networks that exchange knowledge and practice information;

(3) Disseminate information on research and related activities conducted under this part to regional resource centers, interested individuals, and organizations;

(4) Conduct research and related activities, surveys, or demonstrations relating to physical education or recreation, including therapeutic recreation, for children with disabilities.

(Authority: 20 U.S.C. 1441(a); 20 U.S.C. 1442)

(c) The Secretary also may support student-initiated or field-initiated projects consistent with the purpose of the program, as described in §324.1.

[56 FR 54697, Oct. 22, 1991, as amended at 57 FR 28966, June 29, 1992]

§324.11 What kinds of research and model projects are supported under this part?

(a) Research projects supported under this part must be designed to generate knowledge about the early intervention or education of infants, toddlers, children, and youth with disabilities and to translate that knowledge into practical techniques and materials.

(b) Model projects supported under this part must develop and implement innovative early intervention or educational programs that serve infants, toddlers, children, and youth with disabilities either directly or indirectly. These projects must be designed to—

(1) Improve significantly an aspect of the early intervention or education of infants, toddlers, children, and youth with disabilities;

(2) Provide information about the comparative effectiveness of the model being demonstrated;

(3) Continue beyond the award period; and

(4) Provide for dissemination and replication of a successful program.

(Authority: 20 U.S.C. 1441, 1442)

[50 FR 34639, Aug. 26, 1985, as amended at 52 FR 43483, Nov. 12 1987; 56 FR 54698, Oct. 22, 1991]

§§324.12—324.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§324.30 How does the Secretary select and announce funding priorities under this program?

(a) For any fiscal year, the Secretary may give priority to one or more of the types of activities under §324.10.

(b) Under section 641(c) of the Individuals with Disabilities Education Act, the Secretary publishes proposed research priorities for public comment in the FEDERAL REGISTER not later than twelve months preceding the fiscal year for which they are being announced. The Secretary publishes final priorities for this program not later than 90 days after the close of the comment period.

(c) The Secretary establishes separate competitions for research and model projects for any activity for which the Secretary provides assistance under this part.

(Authority: 20 U.S.C. 1441(c), 1442)

[50 FR 34639, Aug. 26, 1985, as amended at 56 FR 54698, Oct. 22, 1991]

§324.31 What are the selection criteria for evaluating applications for research projects?

The Secretary uses the criteria in this section to evaluate applications for research projects. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points) (1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points) (1) The Secretary reviews each application to determine the qualifications of the key personnel that applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points) (1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points) (1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

CROSS REFERENCE: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation of, or compensation for, the problem or issue that relates to the early intervention with or special education of infants, toddlers, children, and youth with disabilities.

(g) *Impact.* (5 points) The Secretary reviews each application to determine the probable impact of the proposed research and development products and the extent to which those products can be expected to have a direct influence on infants, toddlers, children, and youth with disabilities or personnel responsible for their education or early intervention services.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's experience in special education or early intervention services; and

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (40 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) Instrumentation; and

(4) Data analysis procedures.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1441–1442)

[50 FR 34639, Aug. 26, 1985, as amended at 52 FR 43483, Nov. 12, 1987; 53 FR 49145, Dec. 6, 1988; 56 FR 54698, Oct. 22, 1991]

§324.32 What are the selection criteria for evaluating applications for model projects?

The Secretary uses the criteria in this section to evaluate applications for model project awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points) (1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points) (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project;

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(3) To determine personnel qualification, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points) (1) The Secretary reviews such application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points) (1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine if—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and;

(2) The importance of the project in addressing the problem or issue.

(g) *Innovativeness.* (15 points) (1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's experience in special education or early intervention services; and

(2) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (25 points) (1) The Secretary reviews each application to determine the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(i) The population to be served;

(ii) The model planning process;

(iii) Record keeping systems;

(iv) Coordination with other service providers;

(v) The identification and assessment of students;

(vi) Interventions to be used, including proposed curricula;

(vii) Individualized educational program planning; and

(viii) Parent and family participation.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1441–1442)

[50 FR 34639, Aug. 26, 1985, as amended at 52 FR 43483, Nov. 12, 1987; 53 FR 49145, Dec. 6, 1988; 56 FR 54698, Oct. 22, 1991]

§ 324.33 What are the selection criteria for evaluating research-related activities other than research and model projects?

The Secretary uses the criteria in 34 CFR 75.210 *(Selection criteria for a discretionary grant program that does not have regulations)* (to evaluate applications for new awards for research-related activities other than research and model projects.

(Authority: 20 U.S.C. 1441–1442).

§§ 324.34—324.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Recipient?

§ 324.40 What conditions must be met by a recipient?

Not more than 90 days after the completion of a project assisted under this part, each recipient must submit a report to the Secretary that includes—

(a) An abstract of the project;

(b) For a research project, a description of the research problem and the methodological approach used in the research study; or

(c) For a model project—

(1) A description of the model which permits replication, in part or in whole, by appropriate parties to which it is disseminated; and

(2) A description of the evaluation procedures and findings related to the effectiveness of the model;

(d) A summary of the project findings; and

(e) A statement of the conclusions.

(Approved by the Office of Management and Budget under control number 1820–0002)

(Authority: 20 U.S.C. 1441(d))

§ 324.41 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations,

organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

(Approved by the Office of Management and Budget under control number 1820–0028)

[56 FR 54698, Oct. 22, 1991, as amended at 57 FR 14315, Apr. 17, 1992]

§§ 324.42—324.49 [Reserved]

PART 325—STATE SYSTEMS FOR TRANSITION SERVICES FOR YOUTH WITH DISABILITIES PROGRAM

Subpart A—General

Sec.
325.1 What is the State systems for transition services for youth with disabilities program?
325.2 Who is eligible for a grant?
325.3 How must States use funds under this program?
325.4 What regulations apply?
325.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

325.10 What must an application include?

Subpart C—How Does the Secretary Make a Grant?

325.20 How does the Secretary evaluate an application?
325.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After a Grant?

325.30 What other conditions must be met by a grantee under this program?

AUTHORITY: 20 U.S.C. 1425(e), unless otherwise noted.

SOURCE: 56 FR 66291, Dec. 20, 1991, unless otherwise noted.

Subpart A—General

§325.1 What is the State systems for transition services for youth with disabilities program?

This program provides assistance to States to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school.

(Authority: 20 U.S.C. 1425(e)(1))

§325.2 Who is eligible for a grant?

Under this program the Secretary may make a one-time, five-year grant—

(a) To a State educational agency and a State vocational rehabilitation agency that submit a joint application; or

(b) If a vocational rehabilitation agency does not choose to participate, to a State educational agency and a State agency that provides transition services to individuals who are leaving programs under the Act, that submit a joint application.

(Authority: 20 U.S.C. 1425(e)(2))

§325.3 How must States use funds under this program?

Agencies that receive grants under this program shall use grant funds to—

(a) Increase the availability, access, and quality of transition assistance through the development and improvement of policies, procedures, systems, and other mechanisms for youth with disabilities and their families as those youth prepare for and enter adult life;

(b) Improve the ability of professionals, parents, and advocates to work with those youth in ways that promote the understanding of and the capability to successfully make the transition from student to adult;

(c) Improve working relationships among education personnel, both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils authorized by the Job Training Partnership Act, and families of students with disabilities and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of those youth;

(d) Create an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded under this program and with other sources;

(e) Create incentives for the implementation of lasting State-wide system changes in the transition of students with disabilities to postsecondary training, education, and employment; and

(f) Assist the State education agency in implementing the requirement in section 602(a)(20)(D) of the Act that the student's individualized education program include a statement of needed transition services for students, beginning no later than age 16 and annually thereafter (and, if determined appropriate for the individual, beginning at age 14), including, if appropriate, a statement of the interagency responsibilities or linkages, (or both) before the student leaves the school setting.

(Authority: 20 U.S.C. 1425(e)(3))

§ 325.4 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR—

(1) Part 75 (Direct Grant Programs);

(2) Part 77 (Definitions that Apply to Department Regulations);

(3) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(5) Part 81 (General Education Provisions Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying);

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 325.

(Authority: 20 U.S.C. 1425(e))

§ 325.5 What definitions apply?

(a) *Definition in the Act.* The following term used in this part is defined in section 602(a)(19) of the Individuals with Disabilities Education Act:

Transition services

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

Application
EDGAR
Grant
Local education agency (LEA)
Project
Secretary
State
State educational agency (SEA)

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

Act means the Individuals with Disabilities Education Act.

Youth with disabilities means individuals with disabilities from age 14 through the age they exit school.

(Authority: 20 U.S.C. 1425(e))

Subpart B—How Does a State Apply for a Grant?

§ 325.10 What must an application include?

An application under this program must include the following:

(a) A description of how the State educational agency and State vocational rehabilitation agency or other State agency will use—

(1) The first year, if necessary, to plan how to implement transition services;

(2) The second through fourth years to develop and implement transition services; and

(3) The fifth year to evaluate transition services.

(b) A description of how the grant funds will be used during the planning period and phased out during the evaluation period to ensure the continuation of transition services.

(c) A description of the current availability, access, and quality of transition services for eligible youth and a description of how, over five years, the State will improve and expand the availability, access, and quality of transition services for youth with disabilities and their families as those youth prepare for and enter adult life.

(d) A description of how the State will improve and increase the ability of professionals, parents, advocates, and youth to promote the understanding of and the capability to successfully

make the transition from student to adult.

(e) A description of how the State will improve and increase working relationships among education personnel, both with LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils authorized by the Job Training Partnership Act, students with disabilities, their families, and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities.

(f) A description of how the State will use grant funds as an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded through this program and with other sources.

(g) A description of how the State will address, in whole or in part, the needs of youth with disabilities from minority backgrounds.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1410(b), 1425(e)(4)(A))

Subpart C—How Does the Secretary Make a Grant?

§325.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the criteria in §325.21.

(b) The Secretary awards up to 100 points under these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1425(e))

§325.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate the quality of an application submitted under this part:

(a) *Extent of need and expected impact* (20 points). The Secretary reviews each application to determine the justification for the proposed activities in the State based on the State need for and expected impact from the activities to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school. The Secretary looks for information that provides—

(1) A description of the current availability, access, and quality of transition services for eligible youth and a description of how, over five years, the State will improve and expand the availability, access, and quality of transition services for youth with disabilities and their families as those youth prepare for and enter adult life;

(2) A description of how the State will improve and increase the ability of professionals, parents, advocates, and youth to promote the understanding of and the capability to successfully make the transition from student to adult;

(3) A description of how the State will improve and increase working relationships among education personnel, both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils authorized by the Job Training Partnership Act, students with disabilities, their families, and their advocates to identify and achieve consensus on the general nature and specific application or transition services to meet the needs of youth with disabilities:

(4) A description of how the State will use grant funds as an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded under this program and with other sources; and

(5) A description of how the State will address the unique needs of youth with disabilities from minority backgrounds.

(b) *Technical soundness* (25 points). The Secretary reviews each application to determine the technical soundness of the project and whether the applicant has the capacity to achieve lasting statewide change, including a description of how the State will—

(1) Target resources to school settings, such as providing access to rehabilitation counselors for students with disabilities who are in school settings;

(2) Target a substantial amount of grant funds, received under this program, to program evaluation and documentation of, and dissemination of information about, transition services as well as to improve the capacity for case management;

(3) Provide incentives for interagency and private sector resource pooling and otherwise investing in transition services, especially in the form of cooperative agreements, particularly with Private Industry Councils authorized by the Job Training Partnership Act and local branches of State employment agencies;

(4) Provide for early, ongoing information and training for those involved with or who could be involved with transition services—professionals, parents, youth with disabilities, including self-advocacy training for those youth, and advocates for those youth as well as Private Industry Councils authorized by the Job Training Partnership Act and local branches of State employment agencies;

(5) Provide for the early and direct involvement of all relevant parties, including Private Industry Councils authorized by the Job Training Partnership Act and local branches of State employment agencies, in operating and planning improvements in transition services, and the early and direct involvement of all relevant parties in planning and implementing transition services for individual youth;

(6) Provide access to training for eligible youth that matches labor market needs in their communities;

(7) Integrate transition services with relevant opportunities in communities, including those sponsored by Private Industry Councils authorized by the Job Training Partnership Act and local employment agencies;

(8) Clearly define the services and service delivery system that will result from the project. The State must have analyzed in detail how these will differ from the current services and current delivery system;

(9) Identify all relevant barriers to implementing the proposed statewide changes and identify and propose appropriate strategies for eliminating those barriers;

(10) Use an evaluation plan for transition services that is outcome oriented, that focuses on individual youth-focused benefits, and that is based on standard sources of information such as the individualized education programs required by the IDEA;

(11) Disseminate annually information about project activities and procedures and information from project evaluation activities, including information regarding effective strategies and obstacles to achieving project goals, to the organizations described in § 325.30, and to other interested organizations within the State; and

(12) Ensure that, if appropriate and no later than age 22, eligible youth who participate in transition services under this program would be served as appropriate in the State section 110 program, the title VI, part C program, or the title VII, part A program, authorized under the Rehabilitation Act of 1973, as amended.

(c) *Plan of operation* (20 points). The Secretary reviews each application for information that shows the quality of the plan of operation for the project, including—

(1) An effective plan of management delineating the roles of both participating agencies and ensures proper and efficient administration of the project;

(2) A clear description of how the objectives of the project relate to the purpose of the program;

(3) The way the joint applicants plan to use their resources and personnel to achieve each objective;

(4) A description of how all State and other agencies whose cooperation and participation are necessary for statewide implementation are actively collaborating in project management;

(5) A description of how the joint applicants will provide for the direct participation of youth with disabilities and parents in the planning, development, and implementation of the project;

(6) A description of the procedures to be used to ensure that youth and their families who are potentially eligible

for the disability programs of the Social Security Administration are provided information, training, and referral services;

(7) A description of how the first year will be used to plan, if necessary, how to implement transition services, the second through fourth years to develop and implement transition services, and the fifth year to evaluate statewide services;

(8) Whether the budget is adequate to support the project and costs are reasonable in relation to the objectives of the project; and

(9) The extent to which grant funds will be used during the planning period and phased out during the evaluation period to ensure the continuation of transition services.

(d) *Quality of key personnel* (25 points, distributed as indicated). (1) The Secretary reviews each application for information that shows the qualifications of key personnel the applicant plans to use on the project, including information that shows—

(i) The qualifications of the project director (8 points); and

(ii) The qualifications of each of the other key personnel to be used in the project, including experience and training in fields related to the objectives of the project (7 points).

(2) In determining the qualifications of each person referred to in paragraphs (d)(1) (i) and (ii) of this section the Secretary also considers—

(i) The time that each person will commit to the project;

(ii) Experience and training in conducting, documenting, and applying the types of activities to be conducted; and

(iii) Knowledge of the results and findings of relevant projects and potential for application of this information in addressing the need for transitional services to youth with disabilities.

(3) Recruitment of underrepresented populations (10 points). The Secretary reviews each application for information that shows effective efforts are being made to recruit members of underrepresented populations as project staff, including—

(i) Strategies to recruit employees who are members of underrepresented populations, including members of racial or ethnic minority groups and individuals with disabilities; and

(ii) Procedures to provide training and other necessary support to retain and advance qualified personnel from underrepresented populations.

(e) *Evaluation* (10 points). The Secretary reviews each application to determine the quality of the plan for evaluating the project throughout the entire grant, leading to the required fifth year evaluation. The Secretary reviews factors including—

(1) The adequacy of the applicant's plan to determine the effectiveness of the project in achieving measurable changes in State policy, programs, and services that improve systems providing transition services for youth with disabilities.

(2) The adequacy of the applicant's plan to determine the effectiveness and timeliness in completion of the managerial procedures and objectives of the project's plan of operation; and

(3) The procedures for recording, reviewing, analyzing, and interpreting for relevant audiences, data generated through conducting project activities.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1425(e))

Subpart D—What Conditions Must Be Met After a Grant?

§325.30 What other conditions must be met by a grantee under this program?

(a) The Secretary, if appropriate, requires grantees to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information.

(b) The Secretary requires delivery of those reports, as appropriate, to—

(1) The regional and Federal resource centers, the clearinghouses, and the technical assistance to parents programs assisted under parts C and D of the Act;

(2) The National Diffusion Network;

(3) The ERIC Clearinghouse on the Handicapped and Gifted;

(4) The Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health;

(5) Appropriate parent and professional organizations;

(6) Organizations representing individuals with disabilities; and

(7) Such other networks as the Secretary may determine to be appropriate.

(c) Each grantee shall participate in the evaluation conducted by the institution of higher education or nonprofit public or private organization supported to implement section 626(f)(3)(A) of the Act.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1410(g), 1425(f)(3))

PART 326—SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR YOUTH WITH DISABILITIES PROGRAM

Subpart A—General

Sec.

326.1 What is the Secondary Education and Transitional Services for Youth with Disabilities program?
326.2 Who is eligible to apply for an award under this program?
326.3 What regulations apply to this program?
326.4 What definitions apply to this program?
326.5—326.9 [Reserved]

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326.20 What must an applicant include in its application?
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Subpart D—How Does the Secretary Make a Grant?

326.30 What priorities are considered for support by the Secretary under this part?
326.31 How does the Secretary establish priorities?
326.32 What are the selection criteria for evaluating applications for research and evaluation projects?
326.33 What are the selection criteria for evaluating applications for model projects?
326.34 Are awards in this program geographically dispersed?
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326.40 What is the requirement for participation of students with disabilities and their parents?
326.41 What coordination requirements must a grantee meet?
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326.43—326.49 [Reserved]

AUTHORITY: 20 U.S.C. 1425, unless otherwise noted.

SOURCE: 49 FR 28383, July 11, 1984, unless otherwise noted.

Subpart A—General

§ 326.1 What is the Secondary Education and Transitional Services for Youth with Disabilities program?

(a)(1) The purpose of this program is to assist youth with disabilities in the transition from secondary school to postsecondary environments such as competitive or supported employment.

(2) The Secretary carries out this purpose by providing assistance for projects that—

(i) Strengthen and coordinate education and related services that assist youth with disabilities currently in school or who recently left school to assist them in the transition to competitive or supported employment, postsecondary education, vocational training, continuing education, independent and community living or adult services;

(ii) Stimulate the improvement and development of programs for secondary special education; or

(iii) Stimulate the improvement of the vocational and life skills of students with disabilities to enable them to be better prepared for transition to adult life and services.

(b) The purpose of this program is also to ensure that secondary special

education and transitional services result in competitive or supported employment for youth with disabilities.

(Authority: 20 U.S.C. 1425)

[49 FR 28383, July 11, 1984, as amended at 52 FR 34368, Sept. 10, 1987; 56 FR 54698, Oct. 22, 1991]

§326.2 Who is eligible to apply for an award under this program?

The Secretary may provide assistance under this program by grants to, or contracts with—

(a) Institutions of higher education;

(b) State educational agencies;

(c) Local educational agencies; and

(d) Other public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*)).

(Authority: 20 U.S.C. 1425(a))

§326.3 What regulations apply to this program?

The following regulations apply to awards under the Secondary Education and Transitional Services for Youth with Disabilities program:

(a) The regulations in this part 326.

(b) The Education Department General Administrative Regulations (EDGAR) in title 34 of the Code of Federal regulations in—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirement for Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

(Authority: 20 U.S.C. 1425; 20 U.S.C. 3474(a))

[49 FR 28383, July 11, 1984, as amended at 56 FR 54698, Oct. 22, 1991]

§326.4 What definitions apply to this program?

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

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Nonprofit
Private
Project
Project period
Public
Secondary school
Secretary
State
State educational agency

(Authority: 20 U.S.C. 1425; 20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR 300.5,300.13, and 300.14:

Children with disabilities
Related services
Special education

(Authority: 20 U.S.C. 1401(a) (1), (16), (17))

(c) *Other definitions.* In addition to the definitions referred to in paragraphs (a) and (b) of this section, the following definitions apply to this part:

(1) *Youth with disabilities* means any child with disabilities who—

(i) Is twelve years of age or older;

(ii) Is enrolled in the seventh or higher grade in school; or

(iii) Was enrolled in the seventh or higher grade in school and recently left school.

(Authority: 20 U.S.C. 1401(b), 1425(a)(1))

(2) *Supported employment* is paid work in a variety of settings, particularly regular work sites, especially designed for individuals with disabilities—

(i) For whom competitive employment at or above the minimum wage is not immediately obtainable; and

(ii) Who, because of their disability, need intensive on-going support to perform in a work setting.

(Authority: 20 U.S.C. 1425)

[49 FR 28383, July 11, 1984, as amended at 52 FR 34368, Sept. 10, 1987; 56 FR 54698, 54699, Oct. 22, 1991]

§§ 326.5—326.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 326.10 What kinds of projects are authorized under this part?

(a) This program supports research, development, demonstration, evaluation, and other types of projects for the following purposes:

(1) To improve secondary education programs for youth with disabilities.

(2) To coordinate with other activities serving this population.

(3) To provide education and related services to assist youth with disabilities in the transitional process to postsecondary education, vocational training, competitive employment, continuing education, independent or community living, or adult services.

(4) To stimulate the improvement of the vocational and life skills of students with disabilities to enable them to be better prepared for transition to adult life and services.

(b) Projects funded under this part must serve youth with disabilities and may also include other individuals with disabilities who have recently left special education programs.

(Authority: 20 U.S.C. 1425)

[49 FR 28383, July 11, 1984, as amended at 52 FR 34369, Sept. 10, 1987; 56 FR 54698, 54699, Oct. 22, 1991]

§§ 326.11—326.19 [Reserved]

Subpart C—How Does One Apply for a Grant?

§ 326.20 What must an applicant include in its application?

(a) Each applicant must include in its application information demonstrating how the activities it proposes will lead to competitive or supported employment of individuals with disabilities.

(b) Each applicant, other than for the purpose of conducting studies or evaluation, shall—

(1) Describe the procedures to be used for disseminating relevant findings and data to regional resource centers, clearinghouses, and other interested persons, agencies, or organizations;

(2) Describe the procedures to be used for coordinating services among agencies for which youth with disabilities are or will be eligible;

(3) Provide for the direct participation of students with disabilities and the parents of handicapped students in the planning, development, and implementation of such projects.

(c) Each applicant for activities described in § 326.30 (a) and (b) that is not an educational agency must include in its application information demonstrating how it has met, and will meet, the requirements of § 326.41.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1425)

[49 FR 28383, July 11, 1984, as amended at 52 FR 34369, Sept. 10, 1987; 56 FR 54698, 54699, Oct. 22, 1991]

§§ 326.21—326.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 326.30 What priorities are considered for support by the Secretary under this part?

The Secretary may select annually one or more of the following priority areas for funding:

(a) *Transition strategies and techniques.* This priority supports research projects designed to develop strategies and techniques for transition to competitive or supported employment through improvements in independent living skills, secondary and postsecondary education, vocational preparation, and availability of work opportunities.

(b) *Service demonstration models.* This priority supports projects that develop and establish exemplary models for services and individualized education programs, including independent living vocational training and job placement, that result directly in paid employment in regular work settings for

youth with disabilities leaving school, or that enhance the effectiveness of secondary and postsecondary services which lead to employment or independent living.

(c) *Demographic studies.* This priority supports demographic studies of the numbers, locations, age levels, types and degrees of disabilities of youth with disabilities, and anticipated transition and adult services needed by those youth to obtain competitive or supported employment.

(d) *Service delivery research projects.* This priority supports research projects, including field testing and evaluation of innovative service approaches to service delivery models or components to assist youth with disabilities in secondary school and in other services that assist transition to employment. These service delivery approaches can be replicated and disseminated.

(e) *Cooperative models for planning and developing transitional services.* This priority supports projects designed to plan and develop cooperative models for activities among State or local educational agencies, developmental disabilities councils, and adult service agencies, including vocational rehabilitation, mental health, mental retardation, and public employment agencies, and private employers, which will facilitate effective planning for services to meet the employment needs of youth with disabilities as they leave school.

(f) *Procedures for evaluation of secondary education, vocational training, and placement services.* This priority supports projects that will develop appropriate procedures for evaluating secondary special education, vocational training, placement, and other transitional services that lead to employment for youth with disabilities.

(g) *Program evaluation.* This priority supports projects that will evaluate the effectiveness of the program carried out under this part to assist youth with disabilities in the transition from secondary school to postsecondary environments such as competitive or supported employment.

(h) *Research projects in secondary education.* This priority supports research projects which focus on secondary level programs for youth with disabilities. These projects will have as their major objective the development and improvement of replicable programs and will focus on the evaluation of the program or the components of the program, such as curricula design, program organization, employer involvement, and instructional methods.

(i) *Drop out studies.* This priority supports studies which provide information on the numbers, age levels, types of disabilities and reasons why some youth with disabilities remain to complete school programs while others drop out of school.

(j) *Curriculum development.* This priority supports the development of curriculum and instructional techniques in special education and related services that will improve students with disabilities acquisition of the skills necessary for transition to adult life and services.

(k) *Physical education and therapeutic recreation.* This priority supports specially designed or adapted physical educational and therapeutic recreation programs to facilitate the full participation of youth with disabilities in community programs.

(l) *Assistive technology.* This priority supports the development and dissemination of exemplary programs and practices that meet the unique needs of students who utilize assistive technology devices and services as these students make the transition to postsecondary education, vocational training, competitive employment (including supported employment), and continuing education or adult services.

(Authority: 20 U.S.C. 1425)

[49 FR 28383, July 11, 1984, as amended at 52 FR 34369, Sept. 10, 1987; 56 FR 54698, 54699, Oct. 22, 1991]

§326.31 How does the Secretary establish priorities?

For any fiscal year, the Secretary may select a priority or combination of priorities from among those listed in §326.30 by publishing a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C 1425)

§ 326.32 What are the selection criteria for evaluating applications for research and evaluation projects?

The Secretary uses the criteria in this section to evaluate applications for research and evaluation projects, including projects submitted under § 326.30 (a), (c), (d), (f), (g), and (h). The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points) (1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590, Evaluation by the grantee)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are qualifiable.

(e) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) (1) The Secretary reviews each application for information demonstrating that the proposed project addresses national concerns in light of the purposes of this part.

(2) The Secretary looks for information that shows—

(i) The significance of the problem or issue to be addressed;

(ii) The importance of the proposed project in increasing the understanding of the problem or issue;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research findings related to the problem or issue.

(g) *Impact.* (10 points) The Secretary reviews each application for information that shows the probable impact of the proposed project in educating youth with disabilities, including—

(1) The contribution that the project findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(h) *Technical soundness.* (40 points) The Secretary reviews each application for information demonstrating the technical soundness of the research or evaluation plan, including—

(1) The design (10 points);

(2) The proposed sample (10 points);

(3) Instrumentation (10 points); and

(4) Data analysis procedures (10 points).

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1425)

[49 FR 28383, July 11, 1984, as amended at 53 FR 49145, Dec. 6, 1988; 56 FR 54698, 54699, Oct. 22, 1991]

§326.33 What are the selection criteria for evaluating applications for model projects?

The Secretary uses the criteria in this section to evaluate applications for model projects, including projects submitted under §326.30 (b) and (e). The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points) (1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590, Evaluation by the grantee)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application for information that shows—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and;

(2) The importance of the project in solving the problem.

(g) *Impact.* (10 points) The Secretary reviews each application for information that shows the probable impact of the proposed model in educating youth with disabilities, including—

(1) The contribution that the project findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(h) *Innovativeness.* (10 points) (1) The Secretary reviews each application for information that shows the innovativeness of the proposed project.

(2) The Secretary looks for information that shows a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(i) *Technical soundness.* (25 points) The Secretary reviews each application for information demonstrating the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;

(2) The model planning process;

(3) Recordkeeping systems;

(4) Coordination with other service providers;

(5) The identification and assessment of students;

(6) Interventions to be used, including proposed curricula;

(7) Individualized educational program planning; and

(8) Parent and family participation.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1425)

[49 FR 28383, July 11, 1984, as amended at 53 FR 49145, Dec. 6, 1988; 56 FR 54698, 54699, Oct. 22, 1991]

§ 326.34 Are awards in this program geographically dispersed?

As much as feasible, the Secretary, in addition to using the criteria in §§ 326.32 and 326.33, geographically disperses awards throughout the Nation in urban as well as rural areas.

(Authority: 20 U.S.C. 1425)

[52 FR 34369, Sept. 10, 1987]

§§ 326.35—326.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 326.40 What is the requirement for participation of students with disabilities and their parents?

Each grantee shall provide for the direct participation of handicapped students and the parents of students with disabilities in the planning, development, and implementation of its project.

(Authority: 20 U.S.C. 1425(d))

[49 FR 28383, July 11, 1984, as amended at 56 FR 54698, 54699, Oct. 22, 1991]

§326.41 What coordination requirements must a grantee meet?

A grantee that is not an educational agency shall coordinate with the State educational agency of each affected State in the planning, development, and implementation of any activities described in §326.30 (a) or (b).

(Authority: 20 U.S.C. 1425(c))

§326.42 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

(Approved by the Office of Management and Budget under control number 1820–0028)

[56 FR 54699, Oct. 22, 1991, as amended at 57 FR 14315, Apr. 17, 1992]

§§326.43—326.49 [Reserved]

PART 327—SPECIAL STUDIES PROGRAM

Subpart A—General

Sec.
327.1 What is the Special Studies Program?
327.2 Who is eligible to apply for an award under this program?
327.3 What regulations apply to this program?
327.4 What definitions apply to this program?
327.5—327.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

327.10 What kinds of priorities are authorized under this part?
327.11—327.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

327.30 How does the Secretary establish priorities for an award?
327.31 What are the selection criteria for evaluating applications for awards?
327.32—327.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

327.40 What are the requirements for conducting projects?
327.41 What conditions must be met by a recipient of an award under this program?
327.42—327.49 [Reserved]

AUTHORITY: 20 U.S.C. 1418, unless otherwise noted.

SOURCE: 50 FR 35484, Aug. 30, 1985, unless otherwise noted.

Subpart A—General

§327.1 What is the Special Studies Program?

The purpose of this program is to support the collection of data, studies, investigations, and evaluations to assess the impact and effectiveness of programs and projects assisted under the Individuals with Disabilities Education Act, and related activities to provide the Congress and others with this information.

(Authority: 20 U.S.C. 1418)

[50 FR 35484, Aug. 30, 1985, as amended at 56 FR 54699, Oct. 22, 1991]

§327.2 Who is eligible to apply for an award under this program?

(a) The Secretary may make awards under this program to public or private agencies, institutions, organizations, and other appropriate parties for support of the kinds of projects described in §327.10(a), (b), (d), (f), (h), and (i).

(b) In order to carry out the projects described in §327.10(c), the Secretary may enter into cooperative agreements with—

(1) State educational agencies; and

(2) Other State agencies designated by the Governor in each State for the purpose of administering an early intervention program under part H of the Education of the Handicapped Act.

(c) In order to carry out the projects described in § 327.10(e), the Secretary may make awards to State or local educational agencies, institutions of higher education, public agencies, and private nonprofit organizations and, when necessary because of the unique nature of the study, private for-profit organizations.

(d) In order to carry out the projects in § 327.10(g), the Secretary may make awards to State or local educational agencies, institutions of higher education, other public agencies, and private nonprofit organizations.

(Authority: 20 U.S.C. 1418)

[50 FR 35484, Aug. 30, 1985, as amended at 53 FR 28351, July 27, 1988; 56 FR 54699, Oct. 22, 1991]

§ 327.3 What regulations apply to this program?

The following regulations apply to grants and cooperative agreements under this program:

(a) The regulations in this part 327.

(b) The Education Department General Administrative Regulations (EDGAR) in title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(5) Part 81 (General Education Provisions Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying);

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(Authority: 20 U.S.C. 1418)

[50 FR 35484, Aug. 30, 1985, as amended at 56 FR 54699, Oct. 22, 1991]

§ 327.4 What definitions apply to this program?

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

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Project
Secretary
State educational agency.

(Authority: 20 U.S.C. 1418)

[50 FR 35484, Aug. 30, 1985, as amended at 56 FR 54700, Oct. 22, 1991]

§§ 327.5—327.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

§ 327.10 What kinds of priorities are authorized under this part?

Priorities authorized under this part include activities to:

(a) Collect data, and conduct studies, investigations, analyses, and evaluations to assess progress in the implementation of the Act, the impact of the Act, and the effectiveness of State and local efforts and efforts by the Secretary of the Interior to provide free appropriate public education to all children and youth with disabilities, and early intervention services to infants and toddlers with disabilities.

(b) Obtain data, on at least an annual basis, about programs and projects assisted under the Act and under other Federal laws relating to the provision of services to infants, toddlers, children, and youth with disabilities as required under section 618(b) of the Act.

(c) Assess the impact and effectiveness of programs, policies, and procedures assisted under the Act, in accordance with sections 618(d)(1) and (2) of

the Act, through cooperative agreements with State agencies.

(d) Provide technical assistance to participating State agencies in the implementation of the evaluation studies described under paragraph (c) of this section.

(e)(1) Support studies, analyses, syntheses, and investigations for improving program management, administration, delivery, and effectiveness necessary to provide full educational opportunities and early interventions for all children with disabilities from birth through age 21. Such studies and investigations shall gather information necessary for program and system improvements, including—

(i) Developing effective, appropriate criteria and procedures to identify, evaluate, and serve infants, toddlers, children, and youth with disabilities from minority backgrounds for purposes of program eligibility, program planning, delivery of services, program placement, and parental involvement;

(ii) Planning and developing effective early intervention services, special education, and related services to meet the complex and changing needs of infants, toddlers, children, and youth with disabilities;

(iii) Developing and implementing a comprehensive system of personnel development needed to provide qualified personnel in sufficient number to deliver special education, related services, and early intervention services;

(iv) Developing the capacity to implement practices having the potential to integrate children with disabilities to the maximum extent appropriate, with children who are not disabled;

(v) Effectively allocating and using human and fiscal resources for providing early intervention, special education, and related services;

(vi) Strengthening programs and services to improve the progress of children and youth with disabilities while in special education, and to effect a successful transition when such children and youth leave special education;

(vii) Achieving interagency coordination to maximize resource utilization and continuity in services provided to infants, toddlers, children, and youth with disabilities;

(viii) Strengthening parent-school communication and coordination to improve the effectiveness of planning and delivery on interventions and instruction, thereby enhancing development and educational progress; and

(ix) Identifying the environmental, organizational, resource, and other conditions necessary for effective professional practice.

(2) The studies and investigations under paragraph (e)(1) of this section may be conducted through surveys, interviews, case studies, program implementation studies, secondary data analyses and synthesis, and other appropriate methodologies.

(3) The studies and investigations under paragraph (e)(1) of this section shall address the information needs of State and local educational agencies for improving program management, administration, delivery, and effectiveness.

(f)(1) Support special studies to assess progress in the implementation of the Act, and assess the impact and effectiveness of State and local efforts and efforts by the Secretary of the Interior to provide free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities. Reports from these studies must include recommendations for improving services to individuals.

(2) In selecting priorities for 1991 through 1994, the Secretary may give first preference to—

(i) Completing a longitudinal study of a sample of students with disabilities, examining—

(A) The full range of disabling conditions;

(B) The educational progress of students with disabilities while in special education; and

(C) The occupational, educational, and independent living status of students with disabilities after graduating from secondary school or otherwise leaving special education;

(ii) Conducting a nationally representative study focusing on the types, number, and intensity of related services provided to children with disabilities by disability category;

(iii) Conducting a study that examines the degree of disparity among

States with regard to the placement in various educational settings of children and youth with similar disabilities, especially those with mental retardation, and, to the extent that such disparity exists, the factors that lead these children and youth to be educated in significantly different educational settings;

(iv) Conducting a study that examines the factors that have contributed to the decline in the number of children classified as mentally retarded since the implementation of the Act, and examines the current disparity among States in the percentage of children so classified;

(v) Conducting a study that examines the extent to which out-of-community residential programs are used for children and youth who are seriously emotionally disturbed, the factors that influence the selection of such placements, the degree to which such individuals transition back to education programs in their communities, and the factors that facilitate or impede such transition; and

(vi) Conducting a study that examines the—

(A) Factors that influence the referral and placement decisions and types of placements, by disability category and English language proficiency, of minority children relative to other children;

(B) Extent to which these children are placed in regular education environments;

(C) Extent to which the parents of these children are involved in placement decisions and in the development and implementation of the individualized education program and the results of such participation; and

(D) Type of support provided to parents of these children that enable these parents to understand and participate in the educational process.

(g)(1) Support activities that organize, synthesize, interpret, and integrate information obtained under paragraphs (e) and (f) of this section, with relevant knowledge obtained from other sources.

(2) These activities include the selection and design of content, formats, and means for communicating such information effectively to specific or general audiences, in order to promote the use of such information in improving program administration and management, and service delivery and effectiveness.

(h) Assist in the development of the annual report to the Congress required under section 618(g) of the Act.

(i) Provide technical assistance to State agencies providing the data described in section 618(b) (1) and (2) of the Act to achieve accurate and comparable information.

(Authority: 20 U.S.C. 1418)

[56 FR 54700, Oct. 22, 1991]

§§ 327.11—327.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 327.30 How does the Secretary establish priorities for an award?

Section 618(e)(1) of the Individuals with Disabilities Education Act requires that beginning in fiscal 1993 and every three years thereafter, the Secretary submit to the appropriate committee of each House of the Congress and publish in the FEDERAL REGISTER proposed priorities under the special studies described in § 327.10(f) for review and comment.

(Authority: 20 U.S.C. 1418)

[56 FR 54701, Oct. 22, 1991, as amended at 57 FR 28966, June 29, 1992]

§ 327.31 What are the selection criteria for evaluating applications for awards?

The Secretary uses the criteria in this section to evaluate applications for awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation* (10 points). (1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities, and

(D) The elderly.

(b) *Quality of key personnel.* (10 points) (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, Such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities, and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points). (1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

CROSS REFERENCE: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points). (1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points). (1) The Secretary reviews each application to determine if the proposed project addresses State and national concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the issues to be addressed for both State and national audiences;

(ii) The importance of the proposed project in determining the impact and effectiveness of programs assisted under the Act;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research and evaluation findings related to the issues.

(g) *Usefulness.* (10 points). The Secretary reviews each application to determine the usefulness of the proposed project findings in improving services to infants, toddlers, children, and youth with disabilities including—

(1) The contribution that the project findings or products will make to current knowledge or practice;

(2) The extent to which findings and reports will be useful in improving

services for infants, toddlers, children, and youth with disabilities; and

(3) The extent to which findings and reports will be useful to both State and national audiences in understanding the impact and effectiveness of programs assisted under the Individuals with Disabilities Education Act.

(h) *Technical soundness.* (40 points). The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including, where appropriate—

(1) The design;

(2) The proposed sample;

(3) Instrumentation;

(4) Data analysis procedures; and

(5) Procedures for the development of the project report.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1418)

[50 FR 35484, Aug. 30, 1985, as amended at 53 FR 28351, July 27, 1988; 56 FR 54701, Oct. 22, 1991]

§§ 327.32—327.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 327.40 What are the requirements for conducting projects?

Each State educational agency or other State agency receiving an award for a State Agency/Federal Evaluation Studies project under § 327.10(c) shall—

(a) Contribute an amount not less than 40 percent of the total cost of the study, which amount may be paid from a State's allocation of funds for State administration of part B of the Act; and

(b) Develop the study in consultation with the State advisory panel established under the Act, local educational agencies and others involved in, or concerned with, the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities.

(Authority: 20 U.S.C. 1418(c), (d)(2))

[50 FR 35484, Aug. 30, 1985, as amended at 53 FR 28351, July 27, 1988; 56 FR 54701, Oct. 22, 1991]

§ 327.41 What conditions must be met by a recipient of an award under this program?

Recipients of awards under § 327.10(e) must prepare their procedures, findings, and other relevant information in a form that will maximize their dissemination and use, especially through dissemination networks and mechanisms authorized by the Act, and in a form for inclusion in the annual report to Congress under section 618(g) of the Act.

(Authority: 20 U.S.C. 1418(c))

(Approved by the Office of Management and Budget under control number 1820–0028)

[56 FR 54701, Oct. 22, 1991, as amended at 57 FR 14315, Apr. 17, 1992]

§§ 327.42—327.49 [Reserved]

PART 328—PROGRAM FOR CHILDREN AND YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE

Subpart A—General

Sec.
328.1 What is the Program for Children and Youth with Serious Emotional Disturbance?
328.2 Who is eligible for an award?
328.3 What priorities may the Secretary fund under this program?
328.4 What priorities may the Secretary establish?
328.5 What regulations apply?
328.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

328.20 How does the Secretary evaluate an application?
328.21 What selection criteria does the Secretary use for applications for research projects?
328.22 What selection criteria does the Secretary use for applications for development or demonstration projects?
328.23 When does the Secretary propose new selection criteria?

Subpart D—What Conditions Must Be Met After an Award?

328.30 What special conditions apply to projects assisted under this program?

AUTHORITY: 20 U.S.C. 1426, unless otherwise noted.

SOURCE: 56 FR 56457, Nov. 4, 1991, unless otherwise noted.

Subpart A—General

§328.1 What is the Program for Children and Youth With Serious Emotional Disturbance?

Under this program, the Secretary may support—

(a) Projects, including research projects, for the purpose of improving special education and related services to children and youth with serious emotional disturbance; and

(b) Demonstration projects to provide services for children and youth with serious emotional disturbance. Funds for projects under this paragraph may also be used—

(1) To facilitate interagency and private sector resource pooling to improve services for children and youth with serious emotional disturbance; and

(2) To provide information and training for those involved with, or who could be involved with, children and youth with serious emotional disturbance.

(Authority: 20 U.S.C. 1426 (a), (b))

§328.2 Who is eligible for an award?

(a) To carry out the purpose in §328.1(a), the Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies.

(b) *Demonstration service projects.* To carry out the purposes in §328.1(b), the Secretary may make grants to local educational agencies in collaboration with mental health entities.

(Authority: 20 U.S.C. 1426 (a), (b))

§328.3 What priorities may the Secretary fund under this program?

(a) Under §328.2(a), the Secretary may support projects that include, but are not limited to—

(1) Studies regarding the present state of special education and related services to children and youth with serious emotional disturbance and their families, including information and data to enable assessments of the status of those services over time;

(2) Developing methodologies and curricula designed to improve special education and related services for these children and youth;

(3) Developing and demonstrating strategies and approaches to reduce the use of out-of-community residential programs and to encourage the increased use of school district-based programs, which may include day treatment programs, after-school programs, and summer programs;

(4) Developing the knowledge, skills and strategies for effective collaboration among special education, regular education, related services, and other professionals and agencies; or

(5) Developing and demonstrating innovative approaches to assist and to prevent children with emotional and behavioral problems from developing serious emotional disturbances that require the provision of special education and related services.

(b) Under §328.2(b), the Secretary may support demonstration projects that include, but are not limited to—

(1) Increasing the availability, access, and quality of community services for children and youth with serious emotional disturbance and their families;

(2) Improving working relationships among education, school, and community mental health and other relevant personnel, families of those children and youth, and their advocates;

(3) Targeting resources to school settings, such as providing access to school or community mental health professionals or both and other community resources for students with serious emotional disturbance who are in community school settings; and

(4) Taking into account the needs of minority children and youth in all phases of project activity.

(Authority: 20 U.S.C. 1426 (a), (b))

§328.4 What priorities may the Secretary establish?

(a) Each year the Secretary may select as a priority one or more of the types of activities listed in §328.3.

(b) The Secretary announces these priorities in a notice published in the FEDERAL REGISTER.

(c) In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105, the Secretary may also propose new priorities for assistance under this program through publication of a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1426(a), and 20 U.S.C. 3474)

§ 328.5 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in title 34 of the Code of Federal Regulations—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR chapter 1 and the Education Department Acquisition Regulation (EDAR) in 48 CFR chapter 34.

(c) The regulations in this part 328.

(Authority: 20 U.S.C. 1426)

§ 328.6 What definitions apply?

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

Application
EDGAR
Grant
Local educational agency (LEA)
Project
Public
Secretary
State
State educational agency (SEA)

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

Act means the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1400–1485).

Free appropriate public education is defined in 34 CFR part 300.4.

(Authority: 20 U.S.C. 1426)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 328.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 328.21, 328.22, and 328.23.

(b) The Secretary awards up to 100 points under these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1426)

§ 328.21 What selection criteria does the Secretary use for applications for research projects?

The Secretary uses the following criteria to evaluate an application for a research project:

(a) *Plan of operation.* (10 points) (1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color,

national origin, gender, age, or disabling condition.

(3) The Secretary reviews each application to determine the quality of the evaluation plans for the project, and considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

CROSS REFERENCE: 34 CFR 75.590, *Evaluation by the grantee.*

(b) *Quality of key personnel.* (10 points) (1) The Secretary reviews each application to determine the qualifications of the key personnel that the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points) (1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(e) *Importance.* (15 points) The Secretary reviews each application to determine the importance of the project in lending to the understanding of, remediation of, or compensation for, the problem or issue that relates to the early intervention with or special education of infants, toddlers, children, and youth with disabilities.

(f) *Impact.* (15 points) The Secretary reviews each application to determine the probable impact of the proposed research products on infants, toddlers, children, and youth with disabilities, or personnel responsible for their education.

(g) *Organizational capability.* (5 points) The Secretary considers—

(1) The applicant's experience in special education; and

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that the findings can be used effectively.

(h) *Technical soundness.* (35 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) The instrumentation; and

(4) The data analysis procedures.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1426)

§328.22 What selection criteria does the Secretary use for applications for development or demonstration projects?

The Secretary uses the following criteria to evaluate an application for a development or demonstration project:

(a) *Plan of operation.* (10 points) (1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(b) *Quality of key personnel.* (10 points) (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points) (1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points) (1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

CROSS REFERENCE: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine—

(1) The extent to which the service delivery problem addressed by the proposed project is of concern to others in the Nation; and

(2) The importance of the project in addressing the problem or issue.

(g) *Innovativeness.* (15 points) (1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's experience in special education or early intervention services; and

(2) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (25 points) The Secretary reviews each application to determine the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;

(2) The model planning process;

(3) Recordkeeping systems;

(4) Coordination with other service providers;

(5) The identification and assessment of students;

(6) Interventions to be used, including proposed curricula;

(7) Individualized educational program planning; and

(8) Parent and family participation.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1426)

§328.23 When does the Secretary propose new selection criteria?

(a) The Secretary may propose new selection criteria for applications for projects when the applications cannot be appropriately evaluated using the selection criteria in either §328.21 or §328.22.

(b) The Secretary announces the new selection criteria in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1426)

Subpart D—What Conditions Must be Met After an Award?

§328.30 What special conditions apply to projects assisted under this program?

(a) Each project assisted under this program must—

(1) Apply existing research outcomes from multi-disciplinary fields; and

(2) In complying with 34 CFR 75.590 (Evaluation by the grantee), use a grant evaluation plan that is outcome-oriented and that focuses on the benefits to individual children and youth.

(b) A grantee, if appropriate, must prepare reports describing procedures, findings, and other relevant information in a form that will maximize the dissemination and use of these procedures, findings, and information.

(c) The Secretary requires delivery of those reports, as appropriate, to—

(1) The regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Programs (TAPP) assisted under parts C and D of the Act;

(2) The National Diffusion Network;

(3) The ERIC Clearinghouse on the Handicapped and Gifted;

(4) The Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health;

(5) Appropriate parent and professional organizations;

(6) Organizations representing individuals with disabilities; and

(7) Such other networks as the Secretary may determine to be appropriate.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1426(c))

PART 330—CAPTIONED FILMS INCLUDING VIDEOS LOAN SERVICE PROGRAM FOR DEAF AND HARD OF HEARING INDIVIDUALS

Subpart A—General

Sec.
330.1 Captioned Films Including Videos Loan Service Program.
330.2 Who is eligible to apply under the Captioned Films Including Videos Loan Service Program?
330.3 [Reserved]
330.4 What definitions apply to the captioned films loan service for the deaf program?

Subparts B—D [Reserved]

Subpart E—What Conditions Must Be Met by a Borrower?

330.50 What are the limitations on use of the loan service?

AUTHORITY: 20 U.S.C. 1451, 1452, unless otherwise noted.

SOURCE: 45 FR 52130, Aug. 5, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§330.1 Captioned Films Including Videos Loan Service Program.

The Captioned Films Including Videos Loan Service Program promotes the general welfare for deaf and hard of hearing individuals by—

(a) Bringing to deaf and hard of hearing individuals understanding and appreciation of those films that play an important part in the general and cultural advancement of hearing individuals;

(b) Providing enriched educational and cultural experiences through which deaf and hard of hearing individuals can be brought into better touch with the realities of their environment;

(c) Providing a wholesome and rewarding experience that deaf and hard

of hearing individuals may share together; and

(d) Addressing the problems of illiteracy among deaf and hard of hearing individuals.

(Authority: 20 U.S.C. 1451, 1452)

[56 FR 54701, Oct. 22, 1991]

§ 330.2 Who is eligible to apply under the Captioned Films Including Videos Loan Service Program?

The following are eligible to apply to borrow captioned films and videos:

(a) Deaf and hard of hearing individuals.

(b) Parents of deaf and hard of hearing individuals.

(c) Other individuals directly involved in activities promoting the advancement of deaf and hard of hearing individuals in the United States.

(Authority: 20 U.S.C. 1452(a))

[56 FR 54701, Oct. 22, 1991]

§ 330.3 [Reserved]

§ 330.4 What definitions apply to the captioned films loan service for the deaf program?

(a) [Reserved]

(b) The following definitions apply to terms used in this part:

Act means Individuals With Disabilities Education Act.

Borrower means a user of loan service media.

Deaf person means a person whose hearing is so severely impaired as not to be correctable to a functional level for the ordinary activities of living.

Educational media means those media used for educational purposes.

Films means motion pictures and other materials similar in display and function, such as video tapes and video discs.

Media means films, filmstrips, photographs and slides, transparencies, television, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

Nonprofit purposes means that the exhibition of media may not result in monetary gain or other tangible economic benefit to the borrower.

Theatrical films means films produced for showing in a commercial setting as entertainment and not those primarily developed for use in a formal program of instruction.

(Authority: 20 U.S.C. 1451, 1452)

[45 FR 52130, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 53 FR 41085, Oct. 19, 1988; 56 FR 54701, Oct. 22, 1991]

Subparts B—D [Reserved]

Subpart E—What Conditions Must Be Met by a Borrower?

§ 330.50 What are the limitations on use of the loan service?

(a) A borrower shall use the captioned films for nonprofit purposes only. Moreover, the sum of any fees collected by the borrower for use of the films may not exceed the reasonable expense incurred by the borrower in showing the films to eligible viewers.

(b) In accordance with agreements with producers and distributors, a borrower shall show theatrical films to deaf and hard of hearing individuals only. However, this does not exclude the attendance of teachers of deaf and hard of hearing individuals, interpreters, parents, and occasional guests as long as the audience is composed predominantly of deaf and hard of hearing individuals.

(Authority: 20 U.S.C. 1452(a), (b)(1))

[45 FR 52130, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 53 FR 41085, Oct. 19, 1988; 56 FR 54701, Oct. 22, 1991]

PART 331—EDUCATIONAL MEDIA AND DESCRIPTIVE VIDEOS LOAN SERVICE PROGRAM FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.

331.1 Educational Media and Descriptive Videos Loan Service Program.
331.2 Who is eligible to apply under the Educational Media and Descriptive Videos Loan Service Program?
331.3 [Reserved]
331.4 What definitions apply to the Educational Media and Descriptive Videos Loan Service Program?

Subparts B—D [Reserved]

Subpart E—What Conditions Must Be Met by a Borrower?

331.50 What are the limitations on the use of the loan service?

AUTHORITY: 20 U.S.C. 1452, unless otherwise noted.

SOURCE: 45 FR 52131, Aug. 5, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§331.1 Educational Media and Descriptive Videos Loan Service Program.

The Educational Media and Descriptive Video Loan Service Program—

(a) Makes educational media and descriptive videos available in the United States for nonprofit purposes to individuals with disabilities, parents of individuals with disabilities, and other individuals directly involved in activities for the advancement of individuals with disabilities; and utilizes educational media to help eliminate illiteracy among individuals with disabilities; and

(b) Promotes the general welfare of visually impaired individuals by—

(1) Bringing to these individuals an understanding and appreciation of textbooks, films, television programs, video material, and other educational publications and materials that play such an important part in the general and cultural advancement of visually unimpaired individuals; and

(2) Ensuring access to television programming and other video materials.

(Authority: 20 U.S.C. 1452(a))

[56 FR 54702, Oct. 22, 1991]

§331.2 Who is eligible to apply under the Educational Media and Descriptive Videos Loan Service Program?

The following are eligible to apply to borrow educational media and descriptive videos:

(a) Individuals with disabilities.

(b) Parents of individuals with disabilities.

(c) Other persons directly involved in activities for the advancement of individuals with disabilities in the United States.

(Authority: 20 U.S.C. 1452(a))

[56 FR 54702, Oct. 22, 1991]

§331.3 [Reserved]

§331.4 What definitions apply to the Educational Media and Descriptive Videos Loan Service Program?

(a) [Reserved]

(b) The following definitions apply to the terms used in this part:

Act means Individuals with Disabilities Education Act.

Borrower means a user of loan service media.

Educational media means those media used for educational purposes.

Films means motion pictures and other materials similar in display and function, such as video tapes and video discs.

Media means films, filmstrips, photographs and slides, transparencies, television, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

Nonprofit purposes means that the exhibition of media may not result in monetary gain or other tangible economic benefit to the borrower.

(Authority: 20 U.S.C. 1451, 1452)

[54 FR 52131, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 53 FR 41085, Oct. 19, 1988; 56 FR 54702, Oct. 22, 1991]

Subparts B—D [Reserved]

Subpart E—What Conditions Must Be Met by a Borrower?

§331.50 What are the limitations on the use of the loan service?

A borrower shall use the educational media for nonprofit purposes only. Moreover, the sum of any fees collected by the borrower for the use of the educational media may not exceed the reasonable expenses incurred by the borrower in exhibiting the media to eligible parties.

(Authority: 20 U.S.C. 1452(a))

[53 FR 41085, Oct. 19, 1988]

PART 332—EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

Subpart A—General

Sec.
332.1 Educational Media Research, Production, Distribution, and Training Program.
332.2 Who is eligible to apply under the educational media research, production, distribution, and training program?
332.3 What regulations apply to this program?
332.4 What definitions apply to the educational media research, production, distribution, and training program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

332.10 Projects funded under the educational media research, production, distribution, and training program.

Subpart C—[Reserved]

Subpart D—How Are Grants Made?

332.30 How does the Secretary establish priorities annually?
332.31 How does the Secretary evaluate an application?
332.32 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Grantee?

332.40 Final products.
332.41 What other conditions must be met by grantees under this program?

AUTHORITY: 20 U.S.C. 1451–1452, unless otherwise noted.

SOURCE: 45 FR 52132, Aug. 5, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 332.1 Educational Media Research, Production, Distribution, and Training Program.

The purposes of this program are to promote:

(a) The general welfare of deaf and hard of hearing individuals by—

(1) Bringing to such individuals understanding and appreciation of those films and television programs that play such an important part in the general and cultural advancement of hearing individuals;

(2) Providing through these films and television programs enriched educational and cultural experiences through which deaf and hard of hearing individuals can be brought into better touch with the realities of their environment;

(3) Providing a wholesome and rewarding experience that deaf and hard of hearing individuals may share together; and

(b) The educational advancement of individuals with disabilities by—

(1) Carrying on research in the use of educational media for individuals with disabilities;

(2) Producing and distributing educational media for the use of individuals with disabilities, their parents, their actual or potential employers, and other individuals directly involved in work for the advancement of individuals with disabilities;

(3) Training individuals in the use of educational media for the instruction of individuals with disabilities; and

(4) Utilizing educational media to help eliminate illiteracy among individuals with disabilities; and

(c) The general welfare of visually impaired individuals by—

(1) Bringing to such individuals an understanding and appreciation of textbooks, films, television programs, video material, and other educational publications and materials that play such an important part in the general and cultural advancement of visually unimpaired individuals; and

(2) Ensuring access to television programming and other video materials.

(Authority: 20 U.S.C. 1451)

[56 FR 54702, Oct. 22, 1991]

§ 332.2 Who is eligible to apply under the educational media research, production, distribution, and training program?

Parties eligible for grants under this subpart are profit and nonprofit public and private agencies, organizations, and institutions except only the National Theatre of the Deaf, Inc. and other appropriate non-profit organizations are eligible for a grant, contract,

or cooperative agreement under §332.10(f).

(Authority: 20 U.S.C. 1451, 1452)

[45 FR 52132, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 56 FR 54702, Oct. 22, 1991]

§332.3 What regulations apply to this program?

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions That Apply to Department Regulations);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 332.

(Authority: 20 U.S.C. 1221e–3(a)(1))

[56 FR 54702, Oct. 22, 1991]

§332.4 What definitions apply to the educational media research, production, distribution, and training program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR part 77:

Applicant
Application
Award
Secretary
Nonprofit
Public

(b) *Specific program definitions:*

Act means the Individuals with Disabilities Education Act (title VI of Pub. L. 91–230 as amended).

Distribution means giving physical access to media and related materials and attendant equipment.

Educational media means those media used for educational purposes.

Films means motion pictures and other materials similar in display and function, such as video tapes and video discs.

Media means films, filmstrips, photographs and slides, transparencies, television, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

Media technology means the methods and processes through which media are provided and encompasses demonstration of the use of modern communication technology in improving the general welfare of handicapped persons.

Nonprofit purposes means that the exhibition of media may not result in monetary gain or other tangible economic benefit to the borrower.

Production means creating or changing media materials.

Training means activities designed to develop facility in the use of media materials and technology and in dissemination and marketing practices.

(Authority: 20 U.S.C. 1451, 1452)

[45 FR 52132, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 56 FR 54702, Oct. 22, 1991]

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§332.10 Projects funded under the educational media research, production, distribution, and training program.

Projects that may be supported include, but are not limited to the following:

(a) Research in the use of educational and training films and other educational media for individuals with disabilities. This may include research to—

(1) Identify the full range of special needs of individuals with disabilities related to educational media and media technology;

(2) Determine the need for—

(i) Educational media training;

(ii) Media information systems; and

(iii) Media delivery systems;

(3) Determine the extent to which the needs listed in paragraph (a)(2) of this section are being met; and

(4) Develop or demonstrate new or improved techniques that would contribute to the advancement and education of individuals with disabilities through the use of educational media or technology or both.

(b) Creation or adaptation of educational media for use by individuals with disabilities, their parents, their actual or potential employers, and other persons directly involved in activities for the advancement of individuals with disabilities.

(c) Distribution of educational media. This may include the development of delivery systems.

(d) Dissemination of information about practices found effective in regard to the effective use of educational media and technology.

(e) Training of persons in the use and dissemination of educational media for the advancement of individuals with disabilities.

(f) Provision of cultural experiences to enrich the lives of deaf and hard of hearing children and adults, increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard of hearing individuals, and promote the integration of hearing and deaf and hard of hearing individuals through shared cultural, educational, and social experiences.

(g) Captioning for deaf and hard of hearing individuals and video describing for the visually impaired of films, television programs, and video materials.

(h) Provision of current, free textbooks and other educational publications and materials to blind and other print-handicapped students in elementary, secondary, postsecondary, and graduate schools and other institutions of higher education through the medium of transcribed tapes and cassettes. The term *print-handicapped* refers to any individual who is blind as severely visually impaired, or who, by reason of a physical or perceptual disability, is unable to read printed material unassisted.

(i) Distribution of captioned and video-described films, video materials, and other educational media and equipment through State schools for individuals with disabilities, public libraries, and such other agencies or entities as the Secretary deems appropriate to serve as local or regional centers for such distribution.

(Authority: 20 U.S.C. 1452)

[45 FR 52132, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 56 FR 54702, Oct. 22, 1991]

Subpart C—[Reserved]

Subpart D—How Are Grants Made?

§ 332.30 How does the Secretary establish priorities annually?

(a) The Secretary may select a priority for funding from among those activities listed in § 332.10 by publishing a notice in the FEDERAL REGISTER.

(b) The Secretary may identify a particular disability or disabilities as a priority for assistance under this program through publication of a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1451, 1452)

[45 FR 52132, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 56 FR 54703, Oct. 22, 1991]

§ 332.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 332.32. The extent to which an applicant addresses a priority is considered under the *need* criterion of § 332.32(f).

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1451)

§332.32 What selection criteria does the Secretary use?

(a) *Plan of operation.* (25 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under represented, such as—

(A) Individuals with disabilities;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under represented, such as—

(A) Individuals with disabilities;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (15 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources for the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (20 points) (1) The Secretary reviews each application for information that shows the need for the project.

(2) The Secretary looks for information that shows—

(i) The need for the proposed activity with respect to the disability served or to be served by the applicant;

(ii) The potential for using the results in other projects or programs.

(g) *Marketing and dissemination.* (5 points) (1) The Secretary reviews each application for information that shows adequate provisions for marketing or disseminating results.

(2) The Secretary looks for information that shows—

(i) The provisions for marketing or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

(Authority: 20 U.S.C. 1451, 1452)

(Approved by the Office of Management and Budget under control number 1820–0028)

[46 FR 3206, Jan. 14, 1981, as amended at 56 FR 54703, Oct. 22, 1991; 57 FR 14315, Apr. 17, 1992]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 332.40 Final products.

The Secretary may require any grantee engaged in the actual development of materials to submit up to one original and two copies of those materials.

§ 332.41 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

(Approved by the Office of Management and Budget under control number 1820–0028)

[56 FR 54703, Oct. 22, 1991, as amended at 57 FR 14315, Apr. 17, 1992]

PART 333—TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR INDIVIDUALS WITH DISABILITIES PROGRAM

Subpart A—General

Sec.
333.1 What is the Technology, Educational Media, and Materials for Individuals with Disabilities Program?
333.2 Who is eligible for an award?
333.3 What priorities does the Secretary consider for support under this part?
333.4 How does the Secretary select and announce funding priorities under this program?
333.5 What regulations apply to this program?
333.6 What definitions apply to this program?
333.7—333.9 [Reserved]

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

333.20 How does the Secretary evaluate an application?
333.21 What selection criteria does the Secretary use to evaluate applications for research or evaluation activities?
333.22 What selection criteria does the Secretary use to evaluate applications for development or demonstration activities?
333.23—333.29 [Reserved]

Subpart D—What Conditions Must be Met After an Award?

333.30 What materials must be submitted by the grantee?
333.31 What other conditions must be met by grantees under this program?
333.32—333.39 [Reserved]

AUTHORITY: 20 U.S.C. 1461–1462, unless otherwise noted.

SOURCE: 53 FR 6952, Mar. 3, 1988, unless otherwise noted.

Subpart A—General

§ 333.1 What is the Technology, Educational Media, and Materials for Individuals with Disabilities Program?

The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, and educational media and materials in the

education of children and youth with disabilities, and the provision of related services and early intervention services to infants and toddlers with disabilities.

(Authority: 20 U.S.C. 1461)

[56 FR 54703, Oct. 22, 1991]

§333.2 Who is eligible for an award?

(a) The Secretary may award grants or contracts, or enter into cooperative agreements with, institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for-profit organizations.

(b) The Secretary does not award a grant, contract, or cooperative agreement for the activities described in §333.3 (a) through (f) unless the applicant for such assistance agrees that activities carried out with the assistance will be coordinated, as appropriate, with the State entity receiving funds under the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (title 1 of Public Law 100–407).

(Authority: 20 U.S.C. 1461)

[53 FR 6952, Mar. 3, 1988, as amended at 56 FR 54703, Oct. 22, 1991]

§333.3 What priorities does the Secretary consider for support under this part?

The Secretary may fund activities that carry out the purpose of the program. These activities may include, but are not limited to, the following:

(a) Conducting research or evaluation on the need, use, design features, implementation, and effectiveness of technology, assistive technology, educational media, and materials.

(b) Demonstrating the effectiveness and the efficient implementation and use of technology, assistive technology, educational media, and materials.

(c) Designing and developing new technology, assistive technology, educational media, and materials.

(d) Adapting, modifying, and evaluating existing technology, assistive technology, educational media, and materials.

(e) Assisting the public and private sectors by providing advice and information to promote the development, use, distribution, and marketing of technology, assistive technology, educational media, and materials.

(f) Disseminating information through such means as publications, telecommunications, conferences, or presentations on the availability, quality, use, and effectiveness of technology, assistive technology, educational media, and materials.

(g) Increasing access to and use of assistive technology devices and assistive technology services in the education of infants, toddlers, children, and youth with disabilities, and other activities authorized under the Technology-Related Assistance for Individuals with Disabilities Act of 1988 as such Act relates to the education of students with disabilities.

(h) Examining how these purposes can address the problem of illiteracy among individuals with disabilities.

(Authority: 20 U.S.C. 1461)

[53 FR 6952, Mar. 3, 1988, as amended at 56 FR 54703, Oct. 22, 1991]

§333.4 How does the Secretary select and announce funding priorities under this program?

(a) Each year the Secretary may select as a priority one or more of the types of activities listed in §333.3.

(b) The Secretary announces these priorities in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1461)

[53 FR 6952, Mar. 3, 1988, as amended at 56 FR 54703, Oct. 22, 1991]

§333.5 What regulations apply to this program?

(a) The following regulations apply to grants and cooperative agreements under this program:

(1) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations—

(i) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(ii) Part 75 (Direct Grant Programs);

(iii) Part 77 (Definitions that Apply to Department Regulations);

(iv) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(v) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(vi) Part 81 (General Education Provisions Act—Enforcement);

(vii) Part 82 (New Restrictions on Lobbying);

(viii) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(ix) Part 86 (Drug-Free Schools and Campuses)

(2) The regulations in this part 333.

(b) Any contracts awarded under this program are subject to the Federal Acquisition Regulation (FAR) in 48 CFR chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR chapter 34.

(Authority: 20 U.S.C. 1461)

[53 FR 6952, Mar. 3, 1988, as amended at 56 FR 54703, Oct. 22, 1991]

§ 333.6 What definitions apply to this program?

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

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Nonprofit
Private
Project
Project period
Public
Secretary
State educational agency

(Authority: 20 U.S.C. 1461)

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR 300.5, 300.13, and 300.14:

Children with disabilities
Related services
Special education

(Authority: 20 U.S.C. 1401(a)(1), (16), (17), 1461)

(c) *Definitions in 34 CFR part 303.* The following terms used in this part are defined in 34 CFR 303.10 and 303.13:

Early intervention services
Infants and toddlers with disabilities

(Authority: 20 U.S.C. 1472(1))

[53 FR 6952, Mar. 3, 1988, as amended at 56 FR 54703, Oct. 22, 1991]

§§ 333.7—333.9 [Reserved]

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 333.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 333.21 or § 333.22, as applicable.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1461)

§ 333.21 What selection criteria does the Secretary use to evaluate applications for research or evaluation activities?

The Secretary uses the following criteria to evaluate applications for research and evaluation projects:

(a) *Importance.* (15 points) The Secretary reviews each application to determine the extent to which the proposed project addresses national concerns in light of the purposes of this part, and considers the significance of the problem or issue to be addressed.

(b) *Technical soundness.* (30 points) (1) The Secretary reviews each application to determine if the approach is technically and programmatically sound.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) Technical soundness of the research or evaluation plan, including if appropriate—

(A) The design;

(B) The proposed sample;

(C) The instrumentation; and

(D) The data analysis.

(c) *Plan of operation.* (15 points) (1) The Secretary reviews each application

to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that ensures proper and efficient administration of the project;

(ii) A clear description of how the objectives of the project relate to the purpose of the program;

(iii) The way the applicant plans to use its resources and personnel to achieve each objective; and

(iv) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, or gender.

(d) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

(e) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application to determine that the applicant plans to devote adequate resources for the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate;

(ii) The equipment and supplies that the applicant plans to use are adequate; and

(iii) The applicant demonstrates necessary access to target population necessary to conduct the research or evaluation.

(f) *Impact.* (5 points) The Secretary reviews each application to determine—

(1) The probable impact of the proposed project in educating or providing early intervention services to infants, toddlers, children, and youth with disabilities; and

(2) The contribution that the project findings or products will make to current knowledge or practice.

(g) *Dissemination.* (5 points) The Secretary reviews each application to determine the extent to which the findings and products will be disseminated to, and used for the benefit of appropriate target groups.

(h) *Budget and cost-effectiveness.* (10 points) (1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1461)

[53 FR 6952, Mar. 3, 1988, as amended at 55 FR 24892, June 19, 1990; 56 FR 54704, Oct. 22, 1991]

§333.22 What selection criteria does the Secretary use to evaluate applications for development or demonstration activities?

The Secretary uses the following criteria to evaluate applications for development and demonstration projects:

(a) *Importance.* (20 points) (1) The Secretary reviews each application to determine the extent to which the proposed project addresses national concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The potential impact of the proposed project for providing innovative advancements to the problem or issues; and

(iii) Previous research findings related to the problem or issue.

(b) *Technical soundness.* (30 points) (1) The Secretary reviews each application to determine the quality and technical soundness of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the conceptual design of the project;

(ii) A clear specification of the procedures to be followed in carrying out the project; and

(iii) The extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that can be quantified.

(c) *Plan of operation.* (15 points) (1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that insures proper and efficient administration of the project;

(ii) The way the applicant plans to use its resources and personnel to achieve each objective; and

(iii) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for assuring adequate performance measurement of project progress.

CROSS REFERENCE: 34 CFR 75.590, Evaluation by the grantee.

(e) *Quality of key personnel.* (10 points) (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

(f) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application to determine that the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate;

(ii) The equipment and supplies that the applicant plans to use are adequate; and

(iii) The applicant demonstrates access to subjects necessary to conduct the proposed project.

(g) *Marketing and dissemination.* (10 points) (1) The Secretary reviews each application to determine if there are adequate provisions for marketing or disseminating results.

(2) The Secretary considers—

(i) The provisions for marketing, replicating, or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

(h) *Budget and cost-effectiveness.* (5 points) (1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1461)

[53 FR 6952, Mar. 3, 1988, as amended at 55 FR 24892, June 19, 1990; 56 FR 54704, Oct. 22, 1991]

§§333.23—333.29 [Reserved]

Subpart D—What Conditions Must Be Met After an Award?

§333.30 What materials must be submitted by the grantee?

The Secretary may require any grantee engaged in the development of materials to submit a copy of those materials.

(Authority: 20 U.S.C. 1461)

§333.31 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

(Approved by the Office of Management and Budget under control number 1820–0028)

[56 FR 54704, Oct. 22, 1991, as amended at 57 FR 14315, Apr. 17, 1992]

§§333.32—333.39 [Reserved]

PART 338—POSTSECONDARY EDUCATION PROGRAMS FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.

338.1 What are the Postsecondary Education Programs for Individuals with Disabilities?
338.2 Who is eligible to apply for an award under these programs?
338.3 What regulations apply to these programs?
338.4 What definitions apply to these programs?
338.5—338.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under These Programs?

338.10 What kinds of activities may be supported under this part?
338.11—338.19 [Reserved]

Subpart C—How Does an Applicant Apply for a Grant?

338.20 What are the application requirements under this part?
338.21—338.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

338.30 What are the priorities considered for support by the Secretary under this part?
338.31 What are the selection criteria used to make awards?
338.32 Are awards for regional centers and model projects geographically dispersed?
338.33—338.39 [Reserved]

Subpart E—What Conditions Must a Grantee Meet?

338.40 What coordination and dissemination requirements must be met by a grantee?
338.41 What other conditions must be met by grantees under this program?
338.42—338.49 [Reserved]

AUTHORITY: 20 U.S.C. 1424a, unless otherwise noted.

SOURCE: 49 FR 25991, June 25, 1984, unless otherwise noted.

Subpart A—General

§338.1 What are the Postsecondary Education Programs for Individuals with Disabilities?

The Postsecondary Education Programs for Individuals with Disabilities provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities. Such model programs may include joint projects

that coordinate with special education and transitional services.

(Authority: 20 U.S.C. 1424a)

[56 FR 54704, Oct. 22, 1991]

§ 338.2 Who is eligible to apply for an award under these programs?

State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other nonprofit educational agencies are eligible to apply for awards under this part.

(Authority: 20 U.S.C. 1424a)

§ 338.3 What regulations apply to these programs?

The following regulations apply to awards under the Postsecondary Education Programs for Individuals with Disabilities;

(a) The regulations in this part 338.

(b) The Education Department General Administrative Regulations (EDGAR) established in title 34 of the *Code of Federal Regulations* in—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

(Authority: 20 U.S.C. 1424a; 20 U.S.C. 3474(a))

[49 FR 25991, June 25, 1984, as amended at 56 FR 54704, Oct. 22, 1991]

§ 338.4 What definitions apply to these programs?

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

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Nonprofit
Project
Secretary
State educational agency.

(Authority: 20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR part 300.* The following term used in this part is defined in 34 CFR 300.5(b)(9):

Specific learning disability

(Authority: 20 U.S.C. 1401(a)(15))

(c) *Other definitions—Individuals with disabilities* means individuals—

(1) With mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(2) Who, by reason thereof, need special education and related services.

(Authority: 20 U.S.C. 1424a(b))

[49 FR 25991, June 25, 1984, as amended at 56 FR 54704, Oct. 22, 1991]

§§ 338.5—338.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under These Programs?

§ 338.10 What kinds of activities may be supported under this part?

(a) The Secretary may support projects and activities under this part including but not limited to—

(1) The operation of centers for deaf individuals, including models of comprehensive supportive services to those individuals;

(2) Model projects of supportive services to individuals with disabling conditions other than deafness that focus on—

(i) Specially adapted or designed educational programs that coordinate, facilitate, and encourage education of individuals with disabilities with their nondisabled peers;

(ii) Expansion of the educational resources and services available to individuals with disabilities in postsecondary programs;

(iii) Outreach activities that include the provision of technical assistance to strengthen efforts in the development, operation, and design of model programs that are adapted to the special needs of individuals with disabilities.

(iv) Development and dissemination of strategies and materials for the inservice training of faculty and administrative personnel involved in the integration of individuals with disabilities in postsecondary institutions in order to improve their understanding of, and attitudes toward, those individuals;

(3) Evaluation of the effectiveness of programs carried out under this part to increase access to postsecondary education for individuals with disabilities; and

(4) Establishment of projects to stimulate and develop model statewide, regional, and national programs to improve access for individuals with disabilities including the fostering of cooperative and consortia arrangements.

(b) The following is an illustrative list of the types of supportive services which may be provided (in whole or in part) in model projects supported under this part:

(1) Interpreters.
(2) Tutors.
(3) Notetakers and readers.
(4) Wheelchair attendants.
(5) Guidance counselors.
(6) Speech and auditory training.
(7) Job placement and follow-up.
(8) Preparatory and orientation services.
(9) Supplementary learning experiences.
(10) Instructional media adaptations.
(11) Inservice training for teachers and other educational staff relating to the participants with disabilities in the program.
(12) Administrative expenses, including employment of a director, administrator, or coordinator of the program.
(13) Planning and evaluation activities.

(c) Recipients may not use funds provided under this part for the payment of tuition or subsistence allowances.

(Authority: 20 U.S.C. 1424a)

[49 FR 25991, June 25, 1984, as amended at 52 FR 6143, Mar. 2, 1987; 56 FR 54704, Oct. 22, 1991]

§§ 338.11—338.19 [Reserved]

Subpart C—How Does an Applicant Apply for a Grant?

§338.20 What are the application requirements under this part?

Applications for funds under this part must contain—

(a) A description of the disabling condition(s) of the persons to be served; and

(b) The estimated number of individuals with disabilities to be served annually in the program and specification of the resources and services needed to enable them to benefit from an educational program.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1424, 1424a)

[49 FR 25991, June 25, 1984, as amended at 56 FR 54704, Oct. 22, 1991]

§§ 338.21—338.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§338.30 What are the priorities considered for support by the Secretary under this part?

(a) For each fiscal year, the Secretary gives priority consideration to four regional centers for deaf individuals.

(b) For any fiscal year, the Secretary may select priorities from among those activities listed in §338.10(a) (2) through (4).

(c) The Secretary may identify one or more disabling conditions as a priority for assistance under this part by publishing a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1424a(a)(2))

[49 FR 25991, June 25, 1984, as amended at 56 FR 54704, Oct. 22, 1991]

§ 338.31 What are the selection criteria used to make awards?

The Secretary uses the weighted criteria in this section to evaluate applications for new awards. The maximum score for all the criteria is 100 points.

(a) *Plan of operation.* (25 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points) (1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers experience and training in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590, Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Continuation of program.* (5 points) (1) The Secretary reviews each application for information that shows that the activities to be supported are likely to be continued after Federal funding ends.

(2) The Secretary looks for information that shows the likelihood that the services provided under the proposed program will be continued by the applicant following the expiration of Federal funding, as measured by evidence

of financial and other commitment of the applicant to the program.

(g) *Importance.* (10 points) (1) The Secretary reviews each application for information demonstrating that the proposed project is nationally important in light of the purposes of this part.

(2) The Secretary looks for information that shows—

(i) The significance of the problem or issue to be addressed;

(ii) The importance of the proposed project in increasing the understanding of the problem or issue; and in remediating or compensating for it;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research findings related to the problem or issue.

(h) *Impact.* (15 points) The Secretary reviews each application for information that shows the probable impact of the proposed research or demonstration activities in improving postsecondary education for individuals with disabilities, including—

(1) The contribution that the research or demonstration findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1424a)

[49 FR 25991, June 25, 1984, as amended at 53 FR 49145, Dec. 6, 1988; 56 FR 54704, Oct. 22, 1991]

§338.32 Are awards for regional centers and model projects geographically dispersed?

To the extent feasible, the Secretary, after applying the selection criteria in §338.31, geographically disperses awards for regional centers and model projects throughout the Nation in urban and rural areas.

(Authority: 20 U.S.C. 1424a)

[52 FR 6143, Mar. 2, 1987]

§§338.33—338.39 [Reserved]

Subpart E—What Conditions Must a Grantee Meet?

§338.40 What coordination and dissemination requirements must be met by a grantee?

Grantees operating regional centers and model projects shall coordinate their efforts with, and disseminate information about their activities to, the clearinghouse on postsecondary programs established under 34 CFR 320.1(b).

(Authority: 20 U.S.C. 1424a)

[52 FR 6143, Mar. 2, 1987]

§338.41 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

(Approved by the Office of Management and Budget under control number 1820–0028)

[56 FR 54704, Oct. 22, 1991, as amended at 57 FR 14315, Apr. 17, 1992]

§§ 338.42—338.49 [Reserved]

PART 345—STATE GRANTS PROGRAM FOR TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.
345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?
345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?
345.3 What are the types of awards under this program?
345.4 Who is eligible to receive a development grant?
345.5 What are the responsibilities of the lead agency or public agency in applying for and in administering a development grant?
345.6 How does a State designate the lead agency?
345.7 Who is eligible to receive an extension grant?
345.8 What are the responsibilities of the lead agency in applying for and in administering an extension grant?
345.9 What regulations apply to this program?
345.10 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support?

345.20 What types of activities are authorized under this program?

Subpart C—How Does a State Apply for a Grant?

345.30 What is the content of an application for a development grant?
345.31 What is the content of an application for an extension grant?

Subpart D—How Does the Secretary Make a Grant?

345.40 How does the Secretary evaluate an application for a development grant under this program?
345.41 What other factors does the Secretary take into consideration in making development grant awards under this program?
345.42 What is the review process for an application for an extension grant?
345.43 What priorities does the Secretary establish?

Subpart E—What Conditions Must Be Met After an Award?

345.50 What are the reporting requirements for the recipients of development and extension grants?
345.51 When is a State making significant progress?
345.52 Who retains title to devices provided under this program?
345.53 What are the requirements for grantee participation in the Secretary's progress assessments?
345.54 How may grant funds be used under this program?
345.55 What are the responsibilities of a State in carrying out protection and advocacy services?

Subpart F—What Compliance Procedures May the Secretary Use?

345.60 Who is subject to a corrective action plan?
345.61 What penalties may the Secretary impose on a grantee that is subject to corrective action?
345.62 How does a State redesignate the lead agency when it is subject to corrective action?
345.63 How does a State change the entity responsible for providing protection and advocacy services?

AUTHORITY: 29 U.S.C. 2201–2217, unless otherwise noted.

SOURCE: 61 FR 8161, Mar. 1, 1996, unless otherwise noted.

Subpart A—General

§ 345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?

This program provides grants to States to support systems change and advocacy activities designed to assist States in developing and implementing consumer-responsive comprehensive Statewide programs of technology-related assistance that accomplish the purposes in § 345.2.

(Authority: 29 U.S.C. 2211(a); section 101(a) of the Act)

§ 345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?

The purposes of this program are to provide financial assistance to States

to support systems change and advocacy activities designed to assist each State in developing and implementing a consumer-responsive comprehensive statewide program of technology-related assistance, for individuals with disabilities of all ages, that is designed to—

(a)(1) Increase the availability of, funding for, access to, and provision of, assistive technology devices and assistive technology services;

(2) Increase the active involvement of individuals with disabilities and their family members, guardians, advocates, and authorized representatives, in the planning, development, implementation, and evaluation of the program;

(3) Increase the involvement of individuals with disabilities and, if appropriate, their family members, guardians, advocates, or authorized representatives, in decisions related to the provision of assistive technology devices and assistive technology services;

(4) Increase the provision of outreach to underrepresented populations and rural populations, to enable the two populations to enjoy the benefits of programs carried out to accomplish the purposes described in this section to the same extent as other populations;

(5) Increase and promote coordination among State agencies, and between State agencies and private entities, that are involved in carrying out activities under this part, particularly providing assistive technology devices and assistive technology services, that accomplish a purpose described in another paragraph of this section;

(6)(i) Increase the awareness of laws, regulations, policies, practices, procedures, and organizational structures, that facilitate the availability or provision of assistive technology devices and assistive technology services; and

(ii) Facilitate the change of laws, regulations, policies, practices, procedures, and organizational structures, that impede the availability or provision of assistive technology devices and assistive technology services;

(7) Increase the probability that individuals with disabilities of all ages will, to the extent appropriate, be able to secure and maintain possession of assistive technology devices as these individuals make the transition between services offered by human service agencies or between settings of daily living;

(8) Enhance the skills and competencies of individuals involved in providing assistive technology devices and assistive technology services;

(9) Increase awareness and knowledge of the efficacy of assistive technology devices and assistive technology services among—

(i) Individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(ii) Individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities;

(iii) Educators and related services personnel;

(iv) Technology experts (including engineers);

(v) Employers; and

(vi) Other appropriate individuals;

(10) Increase the capacity of public agencies and private entities to provide and pay for assistive technology devices and assistive technology services on a statewide basis for individuals with disabilities of all ages; and

(11) Increase the awareness of the needs of individuals with disabilities for assistive technology devices and for assistive technology services.

(b)(1) Identify Federal policies that facilitate payment for assistive technology devices and assistive technology services.

(2) Identify Federal policies that impede this payment.

(3) Eliminate inappropriate barriers to this payment.

(c) Enhance the ability of the Federal Government to provide States with—

(1) Technical assistance, information, training, and public awareness programs relating to the provision of assistive technology devices and assistive technology services; and

(2) Funding for demonstration projects.

(Authority: 29 U.S.C. 2201(b); section 2(b) of the Act)

§345.3 What are the types of awards under this program?

(a) Under this program, the Secretary—

(1) Awards three-year development grants to assist States in developing and implementing consumer-responsive comprehensive statewide programs that accomplish the purposes in § 345.2;

(2) May award an initial two-year extension grant to any State that meets the standards in § 345.42(a); and

(3) May award a second extension grant, for a period of not more than 5 years, to any State that meets the standards in § 345.42(b).

(b) The Secretary calculates the amount of the development grants in paragraph (a)(1) of this section on the basis of—

(1) Amounts available for making grants under this part;

(2) The population of the State or territory concerned; and

(3) The types of activities proposed by the State relating to the development of a consumer-responsive comprehensive statewide program of technology-related assistance.

(c) The Secretary calculates the amount of the extension grants in paragraph (a)(2) of this section on the basis of—

(1) Amounts available for making grants;

(2) The population of the State;

(3) The types of assistance proposed by the State in its application; and

(4) A description in its application of the amount of resources committed by the State and available to the State from other sources to sustain the program after federal funding ends.

(d)(1) In providing any increases in initial extension grants in paragraph (a)(2) of this section above the amounts provided to States for Fiscal Year 1993, the Secretary may give priority to States (other than the territories) that—

(i) Have the largest populations, based on the most recent census data; and

(ii) Are sparsely populated, with a wide geographic spread.

(2) To be eligible for the priority in paragraph (d)(1) of this section, the circumstances in paragraphs (d)(1)(i) or (ii) must have impeded the development of a consumer-responsive, comprehensive statewide program of technology-related assistance in a State.

(e) During the fourth and fifth years of a State's second extension grant, the amount received by a State will be reduced to 75% and 50%, respectively, of the amount paid to the State for the third year of the grant.

(Authority: 29 U.S.C. 2212(b), 2213(a), 2213(c)(1)(B) and (2), and 2213(c)(1)(D); sections 102(b), 103(a), 103(c)(1)(B) and (2), 103(c)(1)(D) of the Act)

§ 345.4 Who is eligible to receive a development grant?

A State is eligible to receive a development grant under this program, provided that the Governor has designated a lead agency to carry out the responsibilities contained in § 345.5.

(Authority: 29 U.S.C. 2212(a)(1) and 2212 (d)(1); section 102(a) and 102(d)(1) of the Act)

§ 345.5 What are the responsibilities of the lead agency or public agency in applying for and in administering a development grant?

(a) The lead agency is responsible for the following:

(1) Submitting the application containing the information and assurances contained in § 345.30.

(2) Administering and supervising the use of amounts made available under the grant.

(3)(i) Coordinating efforts related to, and supervising the preparation of, the application;

(ii) Coordinating the planning, development, implementation, and evaluation of the consumer-responsive comprehensive statewide program of technology-related assistance among public agencies and between public agencies and private agencies, including coordinating efforts related to entering into interagency agreements; and

(iii) Coordinating efforts related to, and supervising, the active, timely, and meaningful participation by individuals with disabilities and their family members, guardians, advocates, or authorized representatives, and other appropriate individuals, with respect to activities carried out under the grant.

(4) The delegation, in whole or in part, of any responsibilities described in paragraphs (a)(1) through (3) of this section to one or more appropriate offices, agencies, entities, or individuals.

(b) If the lead agency is not a public agency, a public agency shall have the responsibility of controlling and administering amounts received under the grant.

(Authority: 29 U.S.C. 2212(d)(1) and 2212(e)(12)(A); section 102(d)(1) and 102(e)(12)(A) of the Act)

§345.6 How does a State designate the lead agency?

(a) The Governor may designate—

(1) A commission appointed by the Governor;

(2) A public-private partnership or consortium;

(3) A university-affiliated program;

(4) A public agency;

(5) A council established under Federal or State law; or

(6) Another appropriate office, agency, entity, or individual.

(b) The State shall provide evidence that the lead agency has the ability—

(1) To respond to assistive technology needs across disabilities and ages;

(2) To promote the availability throughout the State of assistive technology devices and assistive technology services;

(3) To promote and implement systems change and advocacy activities;

(4) To promote and develop public-private partnerships;

(5) To exercise leadership in identifying and responding to the technology needs of individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(6) To promote consumer confidence, responsiveness, and advocacy; and

(7) To exercise leadership in implementing effective strategies for capacity building, staff and consumer training, and enhancement of access to funding for assistive technology devices and assistive technology services across agencies.

(Authority: 29 U.S.C. 2212(d)(2) and (3); sections 102(d)(2) and (3) of the Act)

§345.7 Who is eligible to receive an extension grant?

A State is eligible to receive an extension grant under this program.

§345.8 What are the responsibilities of the lead agency in applying for and in administering an extension grant?

(a) To be eligible to receive an initial extension grant, the lead agency shall—

(1) Submit an application containing the information and assurances in §345.31; and

(2) Hold a public hearing in the third year of a program carried out under a development grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(b) To be eligible to receive a second extension grant, the lead agency shall—

(1) Submit an application containing the information and assurances in §345.31; and

(2) Hold a public hearing in the second year of a program carried out under an initial extension grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(Authority: 29 U.S.C. 2213(d) and (e); section 103(d) and (e) of the Act)

§345.9 What regulations apply to this program?

The following regulations apply to the State Grants Program for Technology-Related Assistance for Individuals with Disabilities:

(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);

(2) 34 CFR part 75 (Direct Grant Programs), except §75.618;

(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 §§80.32(a) and 80.33(a);

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement);

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part.

(Authority: 29 U.S.C. 2201–2217; sections 101–107 of the Act)

§ 345.10 What definitions apply to this program?

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

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Nonprofit
Nonpublic
Private
Project
Project period
Public

(b) *Definitions in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.* (1) The following terms used in this part are defined in section 3 of the Act:

Advocacy services
Assistive technology device
Assistive technology service
Comprehensive statewide program of technology-related assistance
Consumer-responsive
Disability
Individual with a disability; individuals with disabilities
Institution of higher education
Protection and advocacy services
Secretary
State
Systems change and related activities
Technology-related assistance
Underrepresented population

(2) The following term used in this part is defined in section 102(b)(5) of the Act:

Territory

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

Initial extension grant means the two-year extension grant following a three-year development grant under this program.

Second extension grant means the extension grant following the initial extension grant under this program. The period of this grant is for a period of not more than 5 years.

(Authority: 29 U.S.C. 2201–2217; sections 101–107 of the Act)

Subpart B—What Kinds of Activities Does the Department Support

§ 345.20 What type of activities are authorized under this program?

Any State that receives a development or extension grant shall use the funds made available through the grant to accomplish the purposes described in § 345.2(a) and, in accomplishing such purposes, may carry out any of the following systems change and advocacy activities:

(a) Support activities to increase access to, and funding for, assistive technology, including—

(1) The development, and evaluation of the efficacy, of model delivery systems that provide assistive technology devices and assistive technology services to individuals with disabilities, that pay for devices and services, and that, if successful, could be replicated or generally applied, such as—

(i) The development of systems for the purchase, lease, other acquisition, or payment for the provision, of assistive technology devices and assistive technology services; or

(ii) The establishment of alternative State or privately financed systems of subsidies for the provision of assistive technology devices and assistive technology services, such as—

(A) A loan system for assistive technology devices;

(B) An income-contingent loan fund;

(C) A low interest loan fund;

(D) A revolving loan fund;

(E) A loan insurance program; or

(F) A partnership with private entities for the purchase, lease, or other acquisition of assistive technology devices and the provision of assistive technology services;

(2) The demonstration of assistive technology devices, including—

(i) The provision of a location or locations within the State where the following individuals can see and touch assistive technology devices, and learn about the devices from personnel who are familiar with such devices and their applications:

(A) Individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(B) Education, rehabilitation, health care, and other service providers;

(C) Individuals who work for Federal, State, or local government entities; and

(D) Employers.

(ii) The provision of counseling and assistance to individuals with disabilities and their family members, guardians, advocates, and authorized representatives to determine individual needs for assistive technology devices and assistive technology services; and

(iii) The demonstration or short-term loan of assistive technology devices to individuals, employers, public agencies, or public accommodations seeking strategies to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(3) The establishment of information systems about, and recycling centers for, the redistribution of assistive technology devices and equipment that may include device and equipment loans, rentals, or gifts.

(b) Support activities to—

(1) Identify and coordinate Federal and State policies, resources, and services, relating to the provision of assistive technology devices and assistive technology services, including entering into interagency agreements;

(2) Convene interagency work groups to enhance public funding options and coordinate access to funding for assistive technology devices and assistive technology services for individuals with disabilities of all ages, with special attention to the issues of transition (such as transition from school to work, and transition from participation in programs under part H of the Individuals with Disabilities Education Act (20 U.S.C. 1471 et seq.), to participation in programs under part B of such Act (20 U.S.C. 1411 et seq.)) home use, and individual involvement in the identification, planning, use, delivery, and evaluation of such devices and services; or

(3) Document and disseminate information about interagency activities that promote coordination with respect to assistive technology devices and assistive technology services, including evidence of increased participation of State and local special education, vocational rehabilitation, and State medical assistance agencies and departments.

(c) Carry out activities to encourage the creation or maintenance of, support, or provide assistance to, statewide and community-based organizations, or systems, that provide assistive technology devices and assistive technology services to individuals with disabilities or that assist individuals with disabilities in using assistive technology devices or assistive technology services. The activities may include outreach to consumer organizations and groups in the State to coordinate the activities of the organizations and groups with efforts (including self-help, support groups, and peer mentoring) to assist individuals with disabilities and their family members, guardians, advocates, or authorized representatives, to obtain funding for, and access to, assistive technology devices and assistive technology services.

(d) Pay for expenses, including travel expenses, and services, including services of qualified interpreters, readers, and personal assistants services that may be necessary to ensure access to the comprehensive statewide program of technology-related assistance by individuals with disabilities who are determined by the State to be in financial need. The expenses must be incurred by participants in activities associated with the state technology program.

(e) Conduct a statewide needs assessment that may be based on data in existence on the date on which the assessment is initiated and may include—

(1) Estimates of the numbers of individuals with disabilities within the

State, categorized by residence, type and extent of disabilities, age, race, gender, and ethnicity;

(2) In the case of an assessment carried out under a development grant, a description of efforts, during the fiscal year preceding the first fiscal year for which the State received a grant, to provide assistive technology devices and assistive technology services to individuals with disabilities within the State, including—

(i) The number of individuals with disabilities who received appropriate assistive technology devices and assistive technology services; and

(ii) A description of the devices and services provided;

(3) Information on the number of individuals with disabilities who are in need of assistive technology devices and assistive technology services, and a description of the devices and services needed;

(4) Information on the cost of providing assistive technology devices and assistive technology services to all individuals with disabilities within the State who need such devices and services;

(5) A description of State and local public resources and private resources (including insurance) that are available to establish a consumer-responsive comprehensive statewide program of technology-related assistance;

(6) Information identifying Federal and State laws, regulations, policies, practices, procedures, and organizational structures, that facilitate or interfere with the operation of a consumer responsive comprehensive statewide program of technology related assistance;

(7) A description of the procurement policies of the State and the extent to which such policies will ensure, to the extent practicable, that assistive technology devices purchased, leased, or otherwise acquired with assistance made available through a development or extension grant under this part are compatible with other technology devices, including technology devices designed primarily for use by—

(i) Individuals who are not individuals with disabilities;

(ii) Individuals who are elderly; or

(iii) Individuals with particular disabilities; and

(8) Information resulting from an inquiry about whether a State agency or task force (composed of individuals representing the State and individuals representing the private sector) should study the practices of private insurance companies holding licenses within the State that offer health or disability insurance policies under which an individual may obtain reimbursement for—

(i) The purchase, lease, or other acquisition of assistive technology devices; or

(ii) The use of assistive technology services.

(f) Support—(1)(i) A public awareness program designed to provide information relating to the availability and efficacy of assistive technology devices and assistive technology services for—

(A) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(B) Individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities;

(C) Educators and related services personnel;

(D) Technology experts (including engineers);

(E) Employers; and

(F) Other appropriate individuals and entities; or

(ii) Establish and support the program if no such program exists.

(2) A public awareness program that may include the—

(i) Development and dissemination of information relating to the—

(A) Nature of assistive technology devices and assistive technology services;

(B) Appropriateness, cost, and availability of, and access to, assistive technology devices and assistive technology services; and

(C) Efficacy of assistive technology devices and assistive technology services with respect to enhancing the capacity of individuals with disabilities;

(ii) Development of procedures for providing direct communication among public providers of assistive technology devices and assistive technology services and between public providers and private providers of devices and services (including employers); and

(iii) Development and dissemination of information relating to the use of the program by individuals with disabilities and their family members, guardians, advocates, or authorized representatives, professionals who work in a field related to an activity described in this section, and other appropriate individuals.

(g) Carry out directly, or may provide support to a public or private entity to carry out, training and technical assistance activities that—

(1)(i) Are provided for individuals with disabilities and their family members, guardians, advocates, and authorized representatives, and other appropriate individuals; and

(ii) May include—

(A) Training in the use of assistive technology devices and assistive technology services;

(B) The development of written materials, training, and technical assistance describing the means by which agencies consider the needs of an individual with a disability for assistive technology devices and assistive technology services in developing, for the individual, any individualized education program described in section 614(a)(5) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(a)(5)), any individualized written rehabilitation program described in section 102 of the Rehabilitation Act of 1973 (29 U.S.C. 722), any individualized family service plan described in section 677 of the Individuals with Disabilities Education Act (20 U.S.C. 1477), and any other individualized plans or programs;

(C) Training regarding the rights of the persons described in paragraph (f)(1)(i) of this section to assistive technology devices and assistive technology services under any law other than this Act, to promote fuller independence, productivity, and inclusion in and integration into society of such persons; and

(D) Training to increase consumer participation in the identification, planning, use, delivery, and evaluation of assistive technology devices and assistive technology services; and

(2)(i) Enhance the assistive technology skills and competencies of—

(A) Individuals who work for public agencies or for private entities (including insurers) that have contact with individuals with disabilities;

(B) Educators and related services personnel;

(C) Technology experts (including engineers);

(D) Employers; and

(E) Other appropriate personnel; and

(ii) Include taking actions to facilitate the development of standards, or, when appropriate, the application of standards, to ensure the availability of qualified personnel.

(h) Support the compilation and evaluation of appropriate data related to a program described in §345.1.

(i)(1) Develop, operate, or expand a system for public access to information concerning an activity carried out under another paragraph of this section, including information about assistive technology devices and assistive technology services, funding sources and costs of assistance, and individuals, organizations, and agencies capable of carrying out such an activity for individuals with disabilities.

(2) Access to the system may be provided through community-based entities, including public libraries, centers for independent living (as defined in section 702(1) of the Rehabilitation Act of 1973 (29 U.S.C. 796a(1)), and community rehabilitation programs, as defined in section 7(25) of such Act (29 U.S.C. 706(25)).

(3) In developing, operating, or expanding a system described in paragraph (i)(1) of this section, the State may—

(i) Develop, compile, and categorize print, large print, braille, audio, and video materials, computer disks, compact discs (including compact discs formatted with read-only memory), information that can be used in telephone-based information systems, and other media as technological innovation may make appropriate;

(ii) Identify and classify existing funding sources, and the conditions of and criteria for access to such sources, including any funding mechanisms or strategies developed by the State;

(iii) Identify existing support groups and systems designed to help individuals with disabilities make effective use of an activity carried out under another paragraph of this section; and

(iv) Maintain a record of the extent to which citizens of the State use or make inquiries of the system established in paragraph (i)(1) of this section, and of the nature of inquiries.

(4) The information system may be organized on an interstate basis or as part of a regional consortium of States in order to facilitate the establishment of compatible, linked information systems.

(j)(1) The State may enter into cooperative agreements with other States to expand the capacity of the States involved to assist individuals with disabilities of all ages to learn about, acquire, use, maintain, adapt, and upgrade assistive technology devices and assistive technology services that individuals need at home, at school, at work, or in other environments that are part of daily living.

(2) The State may operate or participate in a computer system through which the State may electronically communicate with other States to gain technical assistance in a timely fashion and to avoid the duplication of efforts already undertaken in other States.

(k) Support the establishment or continuation of partnerships and cooperative initiatives between the public sector and the private sector to promote the greater participation by business and industry in the—

(1) Development, demonstration, and dissemination of assistive technology devices; and

(2) Ongoing provision of information about new products to assist individuals with disabilities.

(l) Provide advocacy services.

(m) Utilize amounts made available through development and extension grants for any systems change and advocacy activities, other than the activities described in another paragraph of this section, that are necessary for developing, implementing, or evaluating the consumer-responsive comprehensive statewide program of technology-related assistance.

(n)(1) Accomplish the purposes in § 345.2(b) and (c).

(Authority: 29 U.S.C. 2201(b) and 2211(b); sections 2(b)(2), 2(b)(3) and 101(b) of the Act)

Subpart C—How Does a State Apply for a Grant?

§ 345.30 What is the content of an application for a development grant?

(a) Applicants for development grants under this program shall include the following information in their applications:

(1) Information identifying the lead agency designated by the Governor under § 345.4 and the evidence described in § 345.6(b).

(2) A description of the nature and extent of involvement of various State agencies, including the State insurance department, in the preparation of the application and the continuing role of each agency in the development and implementation of the consumer-responsive comprehensive statewide program of technology-related assistance, including the identification of the available resources and financial responsibility of each agency for paying for assistive technology devices and assistive technology services.

(3)(i) A description of procedures that provide for—

(A)(*1*) The active involvement of individuals with disabilities and their family members, guardians, advocates, and authorized representatives, and other appropriate individuals, in the development, implementation, and evaluation of the program; and

(*2*) To the maximum extent appropriate, the active involvement of individuals with disabilities who use assistive technology devices or assistive technology services, in decisions relating to such devices and services; and

(B) Mechanisms for determining consumer satisfaction and participation of individuals with disabilities who represent a variety of ages and types of disabilities, in the consumer-responsive comprehensive statewide program of technology-related assistance.

(ii) A description of the nature and extent of the—

(A) Involvement, in the designation of the lead agency under § 345.4, and in the development of the application, of—

(*1*) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(*2*) Other appropriate individuals who are not employed by a State agency; and

(*3*) Organizations, providers, and interested parties, in the private sector; and

(B) Continuing role of the individuals and entities described in paragraph (a)(3)(ii)(A) of this section in the program.

(4) A tentative assessment of the extent of the need of individuals with disabilities in the State, including individuals from underrepresented populations or rural populations for a statewide program of technology-related assistance and a description of previous efforts and efforts continuing on the date of the application to develop a consumer-responsive comprehensive statewide program of technology-related assistance.

(5) A description of State resources and other resources (to the extent this information is available) that are available to commit to the development of a consumer-responsive comprehensive statewide program of technology-related assistance.

(6) Information on the program with respect to the—

(i) Goals and objectives of the State for the program;

(ii) Systems change and advocacy activities that the State plans to carry out under the program; and

(iii) Expected outcomes of the State for the program, consistent with the purposes described in §345.2(a).

(7)(i) A description of the data collection system used for compiling information on the program, consistent with requirements established by the Secretary for systems, and, when a national classification system is developed pursuant to section 201 of the Act, consistent with the classification system; and

(ii) Procedures that will be used to conduct evaluations of the program.

(8) A description of the policies and procedures governing contracts, grants, and other arrangements with public agencies, private nonprofit organizations, and other entities or individuals for the purpose of providing assistive technology devices and assistive technology services consistent with this part.

(b) Applicants for development grants shall include the following assurances in their applications:

(1)(i) An assurance that the State will use funds from a development or extension grant to accomplish the purposes described in §345.2(a) and the goals, objectives, and outcomes described in paragraph (a)(6) of this section, and to carry out the systems change and advocacy activities described in paragraph (a)(6)(ii) of this section, in a manner that is consumer-responsive.

(ii) An assurance that the State, in carrying out systems change and advocacy activities, shall carry out the following activities, unless the State demonstrates through the progress reports required under §345.50 that significant progress has been made in the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, and that other systems change and advocacy activities will increase the likelihood that the program will accomplish the purposes described in §345.2(a):

(A) The development, implementation, and monitoring of State, regional, and local laws, regulations, policies, practices, procedures, and organizational structures, that will improve access to, provision of, funding for, and timely acquisition and delivery of, assistive technology devices and assistive technology services;

(B) The development and implementation of strategies to overcome barriers regarding access to, provision of, and funding for, such devices and services, with priority for identification of barriers to funding through State education (including special education) services, vocational rehabilitation services, and medical assistance services or, as appropriate, other health and human services, and with particular emphasis on overcoming barriers for underrepresented populations and rural populations;

(C) Coordination of activities among State agencies, in order to facilitate access to, provision of, and funding for,

assistive technology devices and assistive technology services;

(D) The development and implementation of strategies to empower individuals with disabilities and their family members, guardians, advocates, and authorized representatives, to successfully advocate for increased access to, funding for, and provision of, assistive technology devices and assistive technology services, and to increase the participation, choice, and control of individuals with disabilities and their family members, guardians, advocates, and authorized representatives in the selection and procurement of assistive technology devices and assistive technology services;

(E) The provision of outreach to underrepresented populations and rural populations, including identifying and assessing the needs of such populations, providing activities to increase the accessibility of services to such populations, training representatives of such populations to become service providers, and training staff of the consumer-responsive comprehensive statewide program of technology-related assistance to work with such populations; and

(F) The development and implementation of strategies to ensure timely acquisition and delivery of assistive technology devices and assistive technology services, particularly for children.

(2) An assurance that the State will conduct an annual assessment of the consumer-responsive comprehensive statewide program of technology-related assistance, in order to determine—

(i) The extent to which the State's goals and objectives for systems change and advocacy activities, as identified in the State plan under paragraph (a)(6) of this section, have been achieved; and

(ii) The areas of need that require attention in the next year.

(3) An assurance that amounts received under the grant will be expended in accordance with the provisions of this part;

(4) An assurance that amounts received under the grant—

(i) Will be used to supplement amounts available from other sources that are expended for technology-related assistance, including the provision of assistive technology devices and assistive technology services; and

(ii) Will not be used to pay a financial obligation for technology-related assistance (including the provision of assistive technology devices or assistive technology services) that would have been paid with amounts available from other sources if amounts under the grant had not been available, unless—

(A) The payment is made only to prevent a delay in the receipt of appropriate technology-related assistance (including the provision of assistive technology devices or assistive technology services) by an individual with a disability; and

(B) The entity or agency responsible subsequently reimburses the appropriate account with respect to programs and activities under the grant in an amount equal to the amount of the payment;

(5) An assurance that—

(i) A public agency shall control and administer amounts received under the grant; and

(ii) A public agency or an individual with a disability shall—

(A) Hold title to property purchased with such amounts; and

(B) Administer such property.

(6) An assurance that the State will—

(i) Prepare reports to the Secretary in the form and containing information required by the Secretary to carry out the Secretary's functions under this part; and

(ii) Keep records and allow access to records as the Secretary may require to ensure the correctness and verification of information provided to the Secretary under this paragraph of this section.

(7) An assurance that amounts received under the grant will not be commingled with State or other funds;

(8) An assurance that the State will adopt fiscal control and accounting procedures as may be necessary to ensure proper disbursement of an accounting for amounts received under the grant;

(9) An assurance that the State will—

(i) Make available to individuals with disabilities and their family members, guardians, advocates, or authorized

representatives information concerning technology-related assistance in a form that will allow individuals to effectively use the information; and

(ii) In preparing information for dissemination, consider the media-related needs of individuals with disabilities who have sensory and cognitive limitations and consider the use of auditory materials, including audio cassettes, visual materials, including video cassettes and video discs, and braille materials.

(10) An assurance that, to the extent practicable, technology-related assistance made available with amounts received under the grant will be equitably distributed among all geographical areas of the State;

(11) An assurance that the lead agency will have the authority to use funds made available through a development or extension grant to comply with the requirements of this part, including the ability to hire qualified staff necessary to carry out activities under the program;

(12)(i) An assurance that the State will annually provide, from the funds made available to the State through a development or extension grant under this part, an amount calculated in accordance with section 102(f)(4) of the Act in order to make a grant to, or enter into a contract with—

(A) An entity to support protection and advocacy services through the systems established to provide protection and advocacy under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.), the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10801 et seq.), and section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e); or

(B) An entity described in § 345.55(a)(1).

(ii) The State need not provide the assurance in paragraph (b)(12)(i) of this section, if the State requests in its annual progress report or first or second extension application, as applicable, that the Secretary annually reserve, from the funds made available for a development or extension grant, an amount calculated in accordance with section 102(f)(4) of the Act, in order for the Secretary to make a grant to or enter into a contract with a system to support protection and advocacy services.

(13) An assurance that the State—

(i) Will develop and implement strategies for including personnel training regarding assistive technology within existing Federal- and State-funded training initiatives, in order to enhance assistive technology skills and competencies; and

(ii) Will document the training;

(14) An assurance that the percentage of the funds received under the grant that is used for indirect costs (as defined in OMB Circular A–87 incorporated by reference in 34 CFR 80.22(b)) shall not exceed 10 percent of the total amount of the grant; and

(15) An assurance that the lead agency will coordinate the activities funded through a development or extension grant under this part with the activities carried out by councils within the State, including—

(i) Any council or commission specified in the assurance provided by the State in accordance with section 101(a)(36) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(36));

(ii) The Statewide Independent Living Council established under section 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d));

(iii) The advisory panel established under section 613(a)(12) of the Individuals with Disabilities Education Act (20 U.S.C. 1413(a)(12));

(iv) The State Interagency Coordinating Council established under section 682 of the Individuals with Disabilities Education Act (20 U.S.C. 1482));

(v) The State Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act (20 U.S.C. 6024);

(vi) The State mental health planning council established under section 1914 of the Public Health Service Act (42 U.S.C. 300x–3);

(vii) Any council established under section 204, 206(g)(2)(A), or 712(a)(3)(H) of the Older Americans Act of 1965 (42 U.S.C. 3015, 3017(g)(2)(A), or 3058g(a)(3)(H)).

(16) An assurance that there will be coordination between the activities

funded through the grant and other related systems change and advocacy activities funded by either Federal or State sources.

(c) Applicants for development grants shall provide any other related information and assurances that the Secretary may reasonably require.

(Authority: 29 U.S.C. 2212(e); section 102(e) of the Act)

345.31 What is the content of an application for an extension grant?

A State that seeks an extension grant shall include the following in an application:

(a) The information and assurances described in §345.30, except the preliminary needs assessment described in §345.30(a)(4).

(b) A description of the following:

(1) The needs relating to technology-related assistance of individuals with disabilities (including individuals from underrepresented populations or rural populations) and their family members, guardians, advocates, or authorized representatives, and other appropriate individuals within the State.

(2) Any problems or gaps that remain with the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance in the State.

(3) The strategies that the State will pursue during the grant period to remedy the problems or gaps with the development and implementation of a program.

(4) Outreach activities to be conducted by the State, including dissemination of information to eligible populations, with special attention to underrepresented populations and rural populations.

(5)(i) The specific systems change and advocacy activities described in §345.20 (including the activities described in §345.30(b)(1)) carried out under the development grant received by the State, or, in the case of an application for a second extension grant, under an initial extension grant received by the State under this section, including—

(A) A description of systems change and advocacy activities that were undertaken to produce change on a permanent basis for individuals with disabilities of all ages;

(B) A description of activities undertaken to improve the involvement of individuals with disabilities in the program, including training and technical assistance efforts to improve individual access to assistive technology devices and assistive technology services as mandated under other laws and regulations in effect on the date of the application, and including actions undertaken to improve the participation of underrepresented populations and rural populations, such as outreach efforts; and

(C) An evaluation of the impact and results of the activities described in paragraph (b)(5)(i)(A) and (B) of this section.

(ii) The relationship of systems change and advocacy activities to the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance.

(iii) The progress made toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance.

(6)(i) In the case of an application for an initial extension grant, a report on the hearing described in §345.8(a)(2) or, in the case of an application for a second extension grant, a report on the hearing described in §345.8(b)(2).

(ii) A description of State actions, other than a hearing, designed to determine the degree of satisfaction of individuals with disabilities, and their family members, guardians, advocates, or authorized representatives, public service providers and private service providers, educators and related service providers, technology experts (including engineers), employers, and other appropriate individuals and entities with—

(A) The degree of their ongoing involvement in the development and implementation of the consumer-responsive comprehensive statewide program of technology-related assistance;

(B) The specific systems change and advocacy activities described in §345.20 (including the activities described in §345.30(b)(1)) carried out by the State under the development grant or the initial extension grant;

(C) Progress made toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance; and

(D) The ability of the lead agency to carry out the activities described in §345.6(b).

(c) A summary of any comments received concerning the issues described in paragraph (b)(6) of this section and response of the State to such comments, solicited through a public hearing or through other means, from individuals affected by the consumer-responsive comprehensive statewide program of technology-related assistance, including—

(1) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(2) Public service providers and private service providers;

(3) Educators and related services personnel;

(4) Technology experts (including engineers);

(5) Employers; and

(6) Other appropriate individuals and entities.

(d) An assurance that the State, any recipient, and any subrecipient of funds made available to the State under the Act will comply with guidelines established under section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(e)(1) A copy of the protection and advocacy contract or grant agreement entered into by the State;

(2) Evidence of ongoing negotiations with an entity to provide protection and advocacy services, if the State has not yet entered into a grant or contract; or

(3) A request that the Secretary enter into a grant agreement with an entity to provide protection and advocacy services, pursuant to §345.30(b)(12)(ii).

(Authority: 29 U.S.C. 2213 (d) and (e); section 103 (d) and (e) of the Act).

Subpart D—How Does the Secretary Make a Grant?

§345.40 How does the Secretary evaluate an application for a development grant under this program?

The Secretary evaluates each application using the selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 2212(a); section 102(a) of the Act)

§345.41 What other factors does the Secretary take into consideration in making development grant awards under this program?

In making development grants under this program, the Secretary takes into consideration, to the extent feasible—

(a) Achieving a balance among States that have differing levels of development of consumer-responsive comprehensive statewide programs of technology-related assistance; and

(b) Achieving a geographically equitable distribution of the grants.

(Authority: 29 U.S.C. 2212(c); section 102(c) of the Act)

§345.42 What is the review process for an application for an extension grant?

(a) The Secretary may award an initial extension grant to any State that—

(1) Provides the evidence described in §345.6(b) and makes the demonstration described in paragraph (a)(2) of this section;

(2) Demonstrates that the State has made significant progress, and has carried out systems change and advocacy activities that have resulted in significant progress, toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, consistent with this part; and

(3) Holds a public hearing in the third year of a program carried out under a development grant, after providing appropriate and sufficient notice to allow interested groups and organizations

and all segments of the public an opportunity to comment on the program.

(b) The Secretary may award a second extension grant to any State that—

(1) Provides the evidence described in § 345.6(b) and makes the demonstration described in paragraph (a)(2) of this section;

(2) Describes the steps the State has taken or will take to continue on a permanent basis the consumer-responsive comprehensive statewide program of technology-related assistance with the ability to maintain, at a minimum, the outcomes achieved by the systems change and advocacy activities;

(3) Identifies future funding options and commitments for the program from the public and private sector and the key individuals, agencies, and organizations to be involved in, and to direct future efforts of, the program; and

(4) Holds a public hearing in the second year of a program carried out under an initial extension grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(c) In making any award to a State for a second extension grant, the Secretary makes an award contingent on a determination, based on the on-site visit in § 345.53, that the State is making significant progress toward development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, except where the Secretary determines that the on-site visit is unnecessary. If the Secretary determines that the State is not making significant progress, the Secretary may take an action described in § 345.61.

(Authority: 29 U.S.C. 2213 (b) and (e) and 2215(a)(2); sections 103 (b) and (e) and 105(a)(2) of the Act)

§ 345.43 What priorities does the Secretary establish?

(a) The Secretary gives, in each of the 2 fiscal years succeeding the fiscal year in which amounts are first appropriated for carrying out development grants, priority for funding to States that received development grants under this part during the fiscal year preceding the fiscal year concerned.

(b) For States that are applying for initial extension grants, the Secretary gives, in any fiscal year, priority to States that received initial extension grants during the fiscal year preceding the fiscal year concerned.

(c) The Secretary may establish other appropriate priorities under the Act.

(Authority: 29 U.S.C. 2212(b)(4) and 2213(c); sections 102(b)(4) and 103(c) of the Act)

Subpart E—What Conditions Must Be Met After an Award?

§ 345.50 What are the reporting requirements for the recipients of development and extension grants?

(a) States receiving development and extension grants shall submit annually to the Secretary a report that documents significant progress in developing and implementing a consumer-responsive comprehensive statewide program of technology-related assistance documenting the following:

(1) The progress the State has made, as determined in the State's annual assessment (consistent with the guidelines established by the Secretary under § 345.51) in achieving the State's goals, objectives, and outcomes as identified in the State's application, and areas of need that require attention in the next year, including unanticipated problems with the achievement of the goals, objectives, and outcomes described in the application, and the activities the State has undertaken to rectify these problems.

(2) The systems change and advocacy activities carried out by the State including—

(i) An analysis of the laws, regulations, policies, practices, procedures, and organizational structure that the State has changed, has attempted to change, or will attempt to change during the next year, to facilitate and increase timely access to, provision of, or funding for, assistive technology devices and assistive technology services; and

(ii) A description of any written policies and procedures that the State has developed and implemented regarding access to, provision of, and funding for,

assistive technology devices and assistive technology services, particularly policies and procedures regarding access to, provision of, and funding for, such devices and services under education (including special education), vocational rehabilitation, and medical assistance programs.

(3) The degree of involvement of various State agencies, including the State insurance department, in the development, implementation, and evaluation of the program, including any interagency agreements that the State has developed and implemented regarding access to, provision of, and funding for, assistive technology devices and assistive technology services such as agreements that identify available resources for, assistive technology devices and assistive technology services and the responsibility of each agency for paying for such devices and services.

(4) The activities undertaken to collect and disseminate information about the documents or activities analyzed or described in paragraphs (a) (1) through (3) of this section, including outreach activities to underrepresented populations and rural populations and efforts to disseminate information by means of electronic communication.

(5) The involvement of individuals with disabilities who represent a variety of ages and types of disabilities in the planning, development, implementation, and assessment of the consumer-responsive comprehensive statewide program of technology-related assistance, including activities undertaken to improve such involvement, such as consumer training and outreach activities to underrepresented populations and rural populations.

(6) The degree of consumer satisfaction with the program, including satisfaction by underrepresented populations and rural populations.

(7) Efforts to train personnel as well as consumers.

(8) Efforts to reduce the service delivery time for receiving assistive technology devices and assistive technology services.

(9) Significant progress in the provision of protection and advocacy services, in each of the areas described in §345.55(c)(1)(ii).

(b) The State shall make these reports readily available to the public at no extra cost.

(c) The State shall submit on an annual basis—

(1) A copy of the protection and advocacy contract or grant agreement entered into by the State;

(2) Evidence of ongoing negotiations with an entity to provide protection and advocacy services, if the State has not yet entered into a grant or contract; or

(3) A request that the Secretary enter into a grant agreement with an entity to provide protection and advocacy services, pursuant to §345.30(b)(12)(ii).

(Authority: 29 U.S.C. 2212(e)(16)(A) and 2214(b); sections 102(e)(16)(A) and 104(b) of the Act)

§345.51 When is a State making significant progress?

A State is making significant progress when it carries out—

(a) The systems change and advocacy activities listed in §345.30(b)(1)(ii)(A) through (F); or

(b) Other systems change and advocacy activities, if the State demonstrates through the progress reports developed by the Secretary and required to be submitted by a State in §345.50 that it has accomplished the purposes of the program listed in §345.2(a).

(Authority: 29 U.S.C. 2212(e)(7) and 2214(a); sections 102(e)(7) and 104(a) of the Act)

§345.52 Who retains title to devices provided under this program?

Title to devices purchased with grant funds under this part, either directly or through any contract or subgrant, must be held by a public agency or by an individual with a disability who is the beneficiary of the device. If the disabled individual does not have legal status to hold title, the title may be retained by a parent or legal guardian.

(Authority: 29 U.S.C. 2212(e)(12)(B); section 102(e)(12)(B) of the Act)

§ 345.53 What are the requirements for grantee participation in the Secretary's progress assessments?

Recipients of development grants shall participate in the Secretary's assessment of the extent to which States are making significant progress by—

(a) Participating in the on-site monitoring visits that will be made to each grantee during the final year of the development grant;

(b) Participating in an on-site monitoring visit, that is in addition to the visit in paragraph (a), if the State applies for a second extension grant and whose initial on-site visit occurred prior to the date of the enactment of the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994, unless the Secretary determines that the visit is not necessary.

(c) Providing written evaluations of the State's progress toward fulfilling its goals and the objectives of the project, and such other documents as the Secretary may reasonably require to complete the required assessment.

(Authority: 29 U.S.C. 2215(a); section 105(a) of the Act)

§ 345.54 How may grant funds be used under this program?

(a) States receiving funds under this part shall comply with the assurances provided under §§ 345.30 and 345.31.

(b) A State receiving a grant may make contracts or subgrants to the eligible entities in § 345.6, provided that—

(1) A designated public agency maintains fiscal responsibility and accountability; and

(2) All appropriate provisions related to data collection, recordkeeping, and cooperation with the Secretary's evaluation and program monitoring efforts are applied to all subcontractors and subgrantees as well as to the agency receiving the grant.

(Authority: 29 U.S.C. 2212(e), 2213(d), and 2215(a)(5); sections 102(e), 103(d), and 105(a)(5) of the Act; section 437 of the General Education Provisions Act; 20 U.S.C. 1232f)

§ 345.55 What are the responsibilities of a State in carrying out protection and advocacy services?

(a)(1) A State is eligible to receive funding to provide protection and advocacy services if—

(i) The State, as of June 30, 1993, has provided for protection and advocacy services through an entity that is capable of performing the functions that would otherwise be performed under § 345.30(b)(12) by the system described in that section; and

(ii) The entity referred to in § 345.30(b)(12)(i) is not a system described in that section.

(b) A State that meets both of the descriptions in paragraph (a)(1) of this section also shall comply with the same requirements of this part as a system that receives funding under § 345.30(b)(12).

(c)(1) A system that receives funds under § 345.30(b)(12)(i) to carry out the protection and advocacy services described in § 345.30(b)(12)(i) in a State, or an entity described in paragraph (a)(1) of this section, shall prepare reports that contain the information required by the Secretary, including the following:

(i) A description of the activities carried out by the system or entity with the funds;

(ii) Documentation of significant progress, in providing protection and advocacy services, in each of the following areas:

(A) Conducting activities that are consumer-responsive, including activities that will lead to increased access to funding for assistive technology devices and assistive technology services.

(B) Executing legal, administrative, and other appropriate means of representation to implement systems change and advocacy activities.

(C) Developing and implementing strategies designed to enhance the long-term abilities of individuals with disabilities and their family members, guardians, advocates, and authorized representatives to successfully advocate for assistive technology devices and assistive technology services to which the individuals with disabilities

are entitled under law other than this Act.

(D) Coordinating activities with protection and advocacy services funded through sources other than this Act, and coordinating activities with the systems change and advocacy activities carried out by the State lead agency.

(2) The system or entity shall submit the reports to the lead agency in the State not less often than every 6 months.

(3) The system or entity shall provide monthly updates to the lead agency concerning the activities and information described in paragraph (c) of this section.

(d) Before making a grant or entering into a contract under §345.30(b)(12)(ii) to support the protection and advocacy services described in §345.30(b)(12)(ii) in a State, the Secretary shall solicit and consider the opinions of the lead agency in the State with respect to the terms of the grant or contract.

(e)(1) In each fiscal year, the Secretary specifies for each State receiving a development or an extension grant the minimum amount that the State shall use to provide protection and advocacy services.

(2)(i) Except as provided for in paragraphs (e) (3) and (4), the Secretary calculates this minimum amount based on the size of the grant, the needs of individuals with disabilities within the State, the population of the State, and the geographic size of the State.

(ii) The Secretary establishes a minimum amount for each State that ranges from at least $40,000 up to $100,000.

(3) If a State receives a second extension grant, the Secretary specifies a minimum amount for the fourth year (if any) of the grant period that equals 75 percent of the minimum amount specified for the State for the third year of the second extension grant of the State.

(4) If a State receives a second extension grant, the Secretary specifies a minimum amount for the fifth year (if any) of the grant period that equals 50 percent of the minimum amount specified for the State for the third year of the second extension grant of the State.

(5) After the fifth year (if any) of the grant period, no Federal funds may be made available under this title by the State to a system described in §345.30(b)(12) or an entity described in paragraph (a) of this section.

(Authority: 29 U.S.C. 2212(f); section 102(f) of the Act)

Subpart F—What Compliance Procedures May the Secretary Use?

§345.60 Who is subject to a corrective action plan?

(a) Any State that fails to comply with the requirements of this part is subject to a corrective action plan.

(b) A State may appeal a finding that it is subject to corrective action within 30 days of being notified in writing by the Secretary of the finding.

(Authority: 29 U.S.C. 2215(b)(1); section 105(b)(1) of the Act)

§345.61 What penalties may the Secretary impose on a grantee that is subject to corrective action?

A State that fails to comply with the requirements of this part may be subject to corrective actions such as—

(a) Partial or complete termination of funds;

(b) Ineligibility to participate in the grant program in the following year;

(c) Reduction in funding for the following year; or

(d) Required redesignation of the lead agency.

(Authority: 29 U.S.C. 2215(b)(2); section 105(b)(2) of the Act)

§345.62 How does a State redesignate the lead agency when it is subject to corrective action?

(a) Once a State becomes subject to a corrective action plan under §345.60, the Governor of the State, subject to approval by the Secretary, shall appoint, within 30 days after the submission of the plan to the Secretary, a monitoring panel consisting of the following representatives:

(1) The head of the lead agency designated by the Governor;

(2) Two representatives from different public or private nonprofit organizations that represent the interests of individuals with disabilities;

(3) Two consumers who are users of assistive technology devices and assistive technology services and who are not—

(i) Members of the advisory council, if any, of the consumer-responsive comprehensive statewide program of technology-related assistance; or

(ii) Employees of the State lead agency; and

(4) Two service providers with knowledge and expertise in assistive technology devices and assistive technology services.

(b) The monitoring panel must be ethnically diverse. The panel shall select a chairperson from among the members of the panel.

(c) The panel shall receive periodic reports from the State regarding progress in implementing the corrective action plan and shall have the authority to request additional information necessary to determine compliance.

(d) The meetings of the panel to determine compliance shall be open to the public (subject to confidentiality concerns) and held at locations that are accessible to individuals with disabilities.

(e) The panel shall carry out the duties of the panel for the entire period of the corrective action plan, as determined by the Secretary.

(f) A failure by a Governor of a State to comply with the requirements of paragraphs (a) through (e) of this section results in the termination of funding for the State under this part.

(g) Based on its findings, a monitoring panel may determine that a lead agency designated by a Governor has not accomplished the purposes described in § 345.2(a) and that there is good cause for redesignation of the agency and the temporary loss of funds by the State under this part.

(h) For the purposes of this section, ''good cause'' includes the following:

(1) Lack of progress with employment of qualified staff;

(2) Lack of consumer-responsive activities;

(3) Lack of resource allocation to systems change and advocacy activities;

(4) Lack of progress with meeting the assurances in § 345.30(b); or

(5) Inadequate fiscal management.

(i) If a monitoring panel determines that the lead agency should be redesignated, the panel shall recommend to the Secretary that further remedial action be taken or that the Secretary order the Governor to redesignate the lead agency within 90 days or lose funds under this part. The Secretary, based on the findings and recommendations of the monitoring panel, and after providing to the public notice and opportunity for comment, shall make a final determination regarding whether to order the Governor to redesignate the lead agency. The Governor shall make any redesignation in accordance with the requirements that apply to designations under § 345.6.

(Authority: 29 U.S.C. 2215(c); section 105(c) of the Act)

§ 345.63 How does a State change the entity responsible for providing protection and advocacy services?

(a) The Governor of a State, based on input from individuals with disabilities and their family members, guardians, advocates, or authorized representatives, may determine that the entity providing protection and advocacy services has not met the protection and advocacy service needs of the individuals with disabilities and their family members, guardians, advocates, or authorized representatives, for securing funding for and access to assistive technology devices and assistive technology services, and that there is good cause to provide the protection and advocacy services for the State through a contract with a second entity.

(b) On making the determination in paragraph (a) of this section, the Governor may not enter into a contract with a second entity to provide the protection and advocacy services unless good cause exists and unless—

(1) The Governor has given the first entity 30 days notice of the intention to enter into the contract, including specification of good cause, and an opportunity to respond to the assertion that good cause has been shown;

(2) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives, have timely notice of the determination and opportunity for public comment; and

(3) The first entity has the opportunity to appeal the determination to the Secretary within 30 days of the determination on the basis that there is not good cause to enter into the contract.

(c)(1) When the Governor of a State determines that there is good cause to enter into a contract with a second entity to provide the protection and advocacy services, the Governor shall hold an open competition within the State and issue a request for proposals by entities desiring to provide the services.

(2) The Governor shall not issue a request for proposals by entities desiring to provide protection and advocacy services until the first entity has been given notice and an opportunity to respond. If the first entity appeals the determination to the Secretary, the Governor shall issue such request only if the Secretary decides not to overturn the determination of the Governor. The Governor shall issue such request within 30 days after the end of the period during which the first entity has the opportunity to respond, or after the decision of the Secretary, as appropriate.

(3) The competition shall be open to entities with the same expertise and ability to provide legal services as a system in §345.30(b)(12). The competition shall ensure public involvement, including a public hearing and adequate opportunity for public comment.

(Authority: 29 U.S.C. 2215(d); section 105(d) of the Act)

PART 350—DISABILITY AND REHABILITATION RESEARCH PROJECTS AND CENTERS PROGRAM (Eff. 10–1–97)

Subpart A—General

Sec.

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AUTHORITY: Sec. 204; 29 U.S.C. 761–762, unless otherwise noted.

SOURCE: 62 FR 5713, Feb. 6, 1997, unless otherwise noted.

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Subpart A—General

§ 350.1 What is the Disability and Rehabilitation Research Projects and Centers Program?

The Disability and Rehabilitation Research Projects and Centers Program provides grants to establish and support—

(a) The following Disability and Rehabilitation Research and Related Projects:

(1) Disability and Rehabilitation Research Projects.

(2) Field-Initiated Projects.

(3) Advanced Rehabilitation Research Training Projects; and

(b) The following Disability and Rehabilitation Research Centers:

(1) Rehabilitation Research and Training Centers.

(2) Rehabilitation Engineering Research Centers.

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

§ 350.2 What is the purpose of the Disability and Rehabilitation Research Project and Centers Program?

The purpose of the Disability and Rehabilitation Research Project and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to—

(a) Develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and

(b) Improve the effectiveness of services authorized under the Act.

(Authority: Secs. 204(a) and (b)(6); 29 U.S.C. 762(a) and (b)(6))

§ 350.3 Who is eligible for an award?

The following entities are eligible for an award under this program:

(a) States.

(b) Public or private agencies, including for-profit agencies.

(c) Public or private organizations, including for-profit organizations.

(d) Institutions of higher education.

(e) Indian tribes and tribal organizations.

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

§350.4 What regulations apply?

The following regulations apply to the Disability and Rehabilitation Research Projects and Centers Program:

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

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 350.

(c)(1) Subject to the additional requirement in paragraph (c)(2) of this section, 34 CFR part 97 (Protection of Human Subjects).

(2) If an institutional review board (IRB) reviews research that purposefully requires inclusion of children with disabilities or individuals with mental disabilities as research subjects, the IRB must have at least one member who is primarily concerned with the welfare of these research subjects.

(Authority: 29 U.S.C. 761a, 762, 42 U.S.C. 300v–1(b))

§350.5 What definitions apply?

(a) The following definitions in 34 CFR part 77 apply to this part—

Applicant
Application
Award
Budget
Department
EDGAR
Equipment
Facilities
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Recipient
Secretary
Supplies
State

(Authority: Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

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

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

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1))

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

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

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—

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

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

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

(5) Training or technical assistance for individuals with disabilities, or, if appropriate, their family members,

guardians, advocates, or authorized representatives; and

(6) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of, individuals with disabilities.

(Authority: Sec. 7(24); 29 U.S.C. 706(24))

Disability means a physical or mental impairment that substantially limits one or more major life activities.

(Authority: Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

Individual with a disability means any individual who:

(1) Has a physical or mental impairment that substantially limits one or more of the individual's major life activities;

(2) Has a record of this impairment; or

(3) Is regarded as having this impairment.

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

Individual with a severe disability means—

(1)(i) An individual with a disability 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, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord impairments, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment of rehabilitation needs to cause comparable substantial functional limitation; or

(2) An individual with a severe mental or physical impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment, respectively.

(Authority: Sec. 7(15)(C); 29 U.S.C. 706(15)(C))

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 and off the job, that the individual would typically perform if the individual did not have a disability. These services must be designed to increase the individual's control in life and ability to perform everyday activities on and off the job.

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

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 such areas as education, rehabilitation, employment, transportation, independent living, and recreation, and includes rehabilitation engineering, assistive technology devices, and assistive technology services.

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

Research is classified on a continuum from basic to applied:

(1) *Basic research* is research in which the investigator is concerned primarily with gaining new knowledge or understanding of a subject without reference to any immediate application or utility.

(2) *Applied research* is research in which the investigator is primarily interested in developing new knowledge, information or understanding which

can be applied to a predetermined rehabilitation problem or need. Applied research builds on selected findings from basic research.

(Authority: Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

State rehabilitation agency means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

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

Target population means the group of individuals, organizations, or other entities expected to be affected by the project. More than one group may be involved since a project may affect those who receive services, provide services, or administer services.

(Authority: Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

Subpart B—What Projects Does the Secretary Assist?

§350.10 What are the general requirements for Disability and Rehabilitation Research Projects?

Disability and Rehabilitation Research Projects must meet the following requirements:

(a) Carry out one or more of the following types of activities, as specified in §§350.13–350.19:

(1) Research.

(2) Development.

(3) Demonstration.

(4) Training.

(5) Dissemination.

(6) Utilization.

(7) Technical assistance.

(b) Further one or more of the purposes listed in §350.2.

(Authority: Sec. 202; 29 U.S.C. 761a)

§350.11 What are the general requirements for a Field-Initiated Project?

A Field-Initiated Project must—

(a) Further one or more of the purposes in §350.2; and

(b) Carry out one of the following types of activities:

(1) Research.

(2) Development.

(Authority: Sec. 202; 29 U.S.C. 761a)

§350.12 What are the general requirements for an Advanced Rehabilitation Research Training Project?

An Advanced Rehabilitation Research Training Project must—

(a) Provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience;

(b) Further one or more of the purposes in §350.2; and

(c) Carry out all of the following activities:

(1) Recruitment and selection of candidates for advanced research training.

(2) Provision of a training program that includes didactic and classroom instruction, is multidisciplinary, and emphasizes scientific methodology, and may involve collaboration among institutions.

(3) Provision of research experience, laboratory experience or its equivalent in a community-based research setting, and a practicum that involve each individual in clinical research and in practical activities with organizations representing individuals with disabilities.

(4) Provision of academic mentorship or guidance, and opportunities for scientific collaboration with qualified researchers at the host university and other appropriate institutions.

(5) Provision of opportunities for participation in the development of professional presentations and publications, and for attendance at professional conferences and meetings as appropriate for the individual's field of study and level of experience.

(Authority: Sec. 202(k); 29 U.S.C. 761a(k))

§350.13 What must a grantee do in carrying out a research activity?

In carrying out a research activity under this program, a grantee shall—

(a) Identify one or more hypotheses; and

(b) Based on the hypotheses identified, perform an intensive systematic study directed toward—

(1) New or full scientific knowledge; or

(2) Understanding of the subject or problem studied.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.14 What must a grantee do in carrying out a training activity?

In carrying out a training activity under this program, a grantee shall conduct a planned and systematic sequence of supervised instruction that is designed to impart predetermined skills and knowledge.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.15 What must a grantee do in carrying out a demonstration activity?

In carrying out a demonstration activity under this program, a grantee shall apply results derived from previous research, testing, or practice to determine the effectiveness of a new strategy or approach.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.16 What must a grantee do in carrying out a development activity?

In carrying out a development activity under this program, a grantee must use knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.17 What must a grantee do in carrying out a utilization activity?

In carrying out a utilization activity under this program, a grantee must relate research findings to practical applications in planning, policy making, program administration, and delivery of services to individuals with disabilities.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.18 What must a grantee do in carrying out a dissemination activity?

In carrying out a dissemination activity under this program, a grantee must systematically distribute information or knowledge through a variety of ways to potential users or beneficiaries.

(Authority: Sec. 202; 29 U.S.C. 761a)

§ 350.19 What must a grantee do in carrying out a technical assistance activity?

In carrying out a technical assistance activity under this program, a grantee must provide expertise or information for use in problem-solving.

(Authority: Sec. 202; 29 U.S.C. 761a)

Subpart C—What Rehabilitation Research and Training Centers Does the Secretary Assist?

§ 350.20 What general requirements must a Rehabilitation Research and Training Center meet?

A Rehabilitation Research and Training Center shall—

(a) Plan and conduct activities that further one or more of the purposes listed in § 350.2;

(b) Serve as a center of national excellence and as a national or regional resource for providers and individuals with disabilities and the parents, family members, guardians, advocates, or authorized representatives of the individuals;

(c) Be of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner consistent with appropriate State and Federal law; and

(d) Be able to carry out training activities either directly or through another entity that can provide such training.

(Authority: Secs. 204(b) and (b)(2)(K); 29 U.S.C. 762(b) and (b)(2)(K))

§ 350.21 What collaboration must a Rehabilitation Research and Training Center engage in?

A Rehabilitation Research and Training Center must be operated by or in collaboration with—

(a) One or more institutions of higher education; or

(b) One or more providers of rehabilitation or other appropriate services.

(Authority: Sec. 204(b)(2); 29 U.S.C. 762(b)(2))

§350.22 What activities must a Rehabilitation Research and Training Center conduct?

A Rehabilitation Research and Training Center shall—

(a) Carry out research activities by conducting coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge that will—

(1) Improve rehabilitation methodology and service delivery systems;

(2) Alleviate or stabilize disabling conditions; and

(3) Promote maximum social and economic independence of individuals with disabilities;

(b) Conduct training activities by providing training (including graduate, pre-service, and in-service training) to assist—

(1) Rehabilitation personnel and other individuals to more effectively provide rehabilitation services; and

(2) Rehabilitation research personnel and other rehabilitation personnel to improve their capacity to conduct research; and

(c) Conduct technical assistance activities by serving as an informational and technical assistance resource for providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals with disabilities, through conferences, workshops, public education programs, in-service training programs, and similar activities.

§350.23 What restriction exists on Rehabilitation Research and Training Centers regarding indirect costs?

A host institution with which a Rehabilitation Research and Training Center is affiliated may not collect more than fifteen percent of the total grant award as indirect cost charges, notwithstanding the provisions in 34 CFR 75.562.

(Authority: Sec. 204(b)(2)(O); 29 U.S.C. 762(b)(2)(O))

Subpart D—What Rehabilitation Engineering Research Centers Does the Secretary Assist?

§350.30 What requirements must a Rehabilitation Engineering Research Center meet?

A Rehabilitation Engineering Research Center shall plan and conduct activities that—

(a) Further one or more of the purposes listed in §350.2; and

(b)(1) Lead to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities; or

(2) Involve rehabilitation technology and enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives.

(Authority: Sec. 204(b)(3); 29 U.S.C. 762(b)(3))

§350.31 What collaboration must a Rehabilitation Engineering Research Center engage in?

A Rehabilitation Engineering Research Center must be operated by or in collaboration with—

(a) One or more institutions of higher education; or

(b) One or more nonprofit organizations.

(Authority: Sec. 204(b)(3); 29 U.S.C. 762(b)(3))

§350.32 What activities must a Rehabilitation Engineering Research Center conduct?

A Rehabilitation Engineering Research Center shall—

(a) Conduct research or demonstration activities by using one or more of the following strategies:

(1) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and remove environmental barriers through—

(i) Planning and conducting research, including cooperative research with

public or private agencies and organizations, designed to produce new scientific knowledge and new or improved methods, equipment, or devices; and

(ii) Studying and evaluating new or emerging technologies, products, or environments and their effectiveness and benefits.

(2) Demonstrating and disseminating—

(i) Innovative models for the delivery to rural and urban areas of cost-effective rehabilitation technology services that will promote the use of assistive technology services; and

(ii) Other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities.

(3) Conducting research and demonstration activities that facilitate service delivery systems change by demonstrating, evaluating, documenting, and disseminating—

(i) Consumer-responsive and individual and family-centered innovative models for the delivery, to both rural and urban areas, of innovative, cost-effective rehabilitation technology services that promote use of rehabilitation technology; and

(ii) Other scientific research to assist in meeting the employment and independent living needs of, and addressing the barriers confronted by individuals with disabilities, including individuals with severe disabilities;

(b) To the extent consistent with the nature and type of research or demonstration activities described in paragraph (a) of this section, carry out research, training, and information dissemination activities by—

(1) Providing training opportunities to individuals, including individuals with disabilities, to enable them to become rehabilitation technology researchers and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organizations; and

(2) Responding, through research or demonstration activities, to the needs of individuals with all types of disabilities who may benefit from the application of technology within the subject area of focus of the Center.

(c) Conduct orientation seminars for rehabilitation service personnel to improve the application of rehabilitation technology;

(d) Conduct activities that specifically demonstrate means for utilizing rehabilitation technology; and

(e) Provide technical assistance and consultation that are responsive to concerns of service providers and consumers.

(Authority: Sec. 204(b)(3); 29 U.S.C. 762(b)(3))

§ 350.33 What cooperation requirements must a Rehabilitation Engineering Research Center meet?

A Rehabilitation Engineering Research Center—

(a) Shall cooperate with State agencies and other local, State, regional, and national programs and organizations developing or delivering rehabilitation technology, including State programs funded under the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2201 *et seq.*); and

(b) To the extent consistent with the nature and type of research or demonstration activities described in § 350.32(a), shall cooperate with the entities described in paragraph (a) of this section to provide information to individuals with disabilities and their parents, family members, guardians, advocates, or authorized representatives, to—

(1) Increase awareness and understanding of how rehabilitation technology can address their needs; and

(2) Increase awareness and understanding of the range of options, programs, services, and resources available, including financing options for the technology and services covered by the subject area of focus of the Center.

(Authority: Sec. 204(b)(3) and (c); 29 U.S.C. 762(b)(3) and (c))

§ 350.34 Which Rehabilitation Engineering Research Centers must have an advisory committee?

A Rehabilitation Engineering Research Center conducting research or demonstration activities that facilitate service delivery systems change must have an advisory committee.

(Authority: Sec. 204 (b)(3)(D); 29 U.S.C. 762 (b)(3)(D))

§350.35 What are the requirements for the composition of an advisory committee?

The majority of a Rehabilitation Engineering Research Center advisory committee's members must be comprised of individuals with disabilities who are users of rehabilitation technology, or their parents, family members, guardians, advocates, or authorized representatives.

(Authority: Sec. 204(b)(3)(D); 29 U.S.C. 762(b)(3)(D))

Subpart E—How Does One Apply for an Award?

§350.40 What is required of each applicant regarding the needs of individuals with disabilities from minority backgrounds?

(a) Unless the Secretary indicates otherwise in a notice published in the FEDERAL REGISTER, an applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

(b) The approaches an applicant may take to meet this requirement may include one or more of the following:

(1) Proposing project objectives addressing the needs of individuals with disabilities from minority backgrounds.

(2) Demonstrating that the project will address a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(3) Demonstrating that individuals from minority backgrounds will be included in study samples in sufficient numbers to generate information pertinent to individuals with disabilities from minority backgrounds.

(4) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(5) Providing outreach to individuals with disabilities from minority backgrounds to ensure that they are aware of rehabilitation services, clinical care, or training offered by the project.

(6) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Sec. 21(b)(6); 29 U.S.C. 718b(b)(6))

§350.41 What State agency review must an applicant under the Disability and Rehabilitation Research Projects and Centers Program obtain?

(a) An applicant that proposes to conduct research, demonstrations, or related activities that will either involve clients of the State vocational rehabilitation agency as research subjects or study vocational rehabilitation services or techniques under this program, shall follow the requirements in 34 CFR 75.155 through 75.159.

(b) For the purposes of this Program, *State* as used in 34 CFR 75.155 through 75.159 means the State rehabilitation agency or agencies in the primary State or States to be affected by the proposed activities.

(Authority: Secs. 204(c) and 306(i); 29 U.S.C. 762(c) and 766(a))

Subpart F—How Does the Secretary Make an Award?

§350.50 What is the peer review process for this Program?

(a) The Secretary refers each application for a grant governed by those regulations in this part to a peer review panel established by the Secretary.

(b) Peer review panels review applications on the basis of the applicable selection criteria in §350.54.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

§350.51 What is the purpose of peer review?

The purpose of peer review is to insure that—

(a) Those activities supported by the National Institute on Disability and Rehabilitation Research (NIDRR) are of the highest scientific, administrative, and technical quality; and

(b) Activity results may be widely applied to appropriate target populations and rehabilitation problems.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

§ 350.52 What is the composition of a peer review panel?

(a) The Secretary selects as members of a peer review panel scientists and other experts in rehabilitation or related fields who are qualified, on the basis of training, knowledge, or experience, to give expert advice on the merit of the applications under review.

(b) Applications for awards of $60,000 or more, except those for the purposes of evaluation, dissemination of information, or conferences, must be reviewed by a peer review panel that consists of a majority of non-Federal members.

(c) In selecting members to serve on a peer review panel, the Secretary takes into account all of the following factors:

(1) The level of formal scientific or technical education completed by potential panel members.

(2)(i) The extent to which potential panel members have engaged in scientific, technical, or administrative activities appropriate to the category of applications that the panel will consider;

(ii) The roles of potential panel members in those activities; and

(iii) The quality of those activities.

(3) The recognition received by potential panel members as reflected by awards and other honors from scientific and professional agencies and organizations outside the Department.

(4) Whether the panel includes knowledgeable individuals with disabilities, or parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities.

(5) Whether the panel includes individuals from diverse populations.

(Authority: Secs. 18 and 202(e); 29 U.S.C. 717 and 761a(e))

§ 350.53 How does the Secretary evaluate an application?

(a)(1)(i) The Secretary selects one or more of the selection criteria in § 350.54 to evaluate an application;

(ii) The Secretary establishes selection criteria based on statutory provisions that apply to the Program which may include, but are not limited to—

(A) Specific statutory selection criteria;

(B) Allowable activities;

(C) Application content requirements; or

(D) Other pre-award and post-award conditions; or

(iii) The Secretary uses a combination of selection criteria established under paragraph (a)(1)(ii) of this section and selection criteria in § 350.54.

(2) For Field-Initiated Projects, the Secretary does not consider § 350.54(b) (Responsiveness to the Absolute or Competitive Priority) in evaluating an application.

(b)(1) In considering selection criteria in § 350.54, the Secretary selects one or more of the factors listed in the criteria except as provided for in paragraph (b)(2) of this section.

(2) Under § 350.54, the Secretary always considers the factor in paragraph (n)(2) of that section.

(c) The maximum possible score for an application is 100 points.

(d)(1) In the application package or a notice published in the FEDERAL REGISTER, the Secretary informs applicants of—

(i)(A) The selection criteria chosen; and

(B) The maximum possible score for each of the selection criteria; and

(ii)(A) The factors selected for considering the selection criteria; and

(B) If points are assigned to each factor, the maximum possible score for each factor under each criterion.

(2) If no points are assigned to each factor, the Secretary evaluates each factor equally.

(e) For Field-Initiated Projects, in addition to the selection criteria, the Secretary uses the additional considerations in selecting applications for funding as described in § 350.55.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

§ 350.54 What selection criteria does the Secretary use in evaluating an application?

In addition to criteria established under § 350.53(a)(1)(ii), the Secretary may select one or more of the following criteria in evaluating an application:

(a) *Importance of the problem.* (1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant clearly describes the need and target population.

(ii) The extent to which the proposed activities further the purposes of the Act.

(iii) The extent to which the proposed activities address a significant need of one or more disabled populations.

(iv) The extent to which the proposed activities address a significant need of rehabilitation service providers.

(v) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities.

(vi) The extent to which the applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to a trainee population in which there is a need for more qualified researchers.

(vii) The extent to which the proposed project will have beneficial impact on the target population.

(b) *Responsiveness to an absolute or competitive priority.* (1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the FEDERAL REGISTER.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority.

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority.

(c) *Design of research activities.* (1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art.

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art;

(B) Each research hypothesis is theoretically sound and based on current knowledge;

(C) Each sample population is appropriate and of sufficient size;

(D) The data collection and measurement techniques are appropriate and likely to be effective; and

(E) The data analysis methods are appropriate.

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable.

(d) *Design of development activities.* (1) The Secretary considers the extent to which the design of development activities is likely to be effective in accomplishing the objectives of the project.

(2)(i) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(ii) The extent to which the plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products or techniques, including consideration of the extent to which—

(A) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(B) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(C) The new device or technique will be developed and tested in an appropriate environment;

(D) The new device or technique is likely to be cost-effective and useful;

(E) The new device or technique has the potential for commercial or private manufacture, marketing, and distribution of the product; and

(F) The proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products.

(e) *Design of demonstration activities.* (1) The Secretary considers the extent to which the design of demonstration activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the proposed demonstration activities build on previous research, testing, or practices.

(ii) The extent to which the proposed demonstration activities include the use of proper methodological tools and theoretically sound procedures to determine the effectiveness of the strategy or approach.

(iii) The extent to which the proposed demonstration activities include innovative and effective strategies or approaches.

(iv) The extent to which the proposed demonstration activities are likely to contribute to current knowledge and practice and be a substantial addition to the state-of-the-art.

(v) The extent to which the proposed demonstration activities can be applied and replicated in other settings.

(f) *Design of training activities.* (1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety.

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration.

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter; and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project.

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials.

(v) The extent to which the proposed training materials and methods are accessible to individuals with disabilities.

(vi) The extent to which the applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees, including those who are individuals with disabilities.

(vii) The extent to which the applicant is able to carry out the training activities, either directly or through another entity.

(viii) The extent to which the proposed didactic and classroom training programs emphasize scientific methodology and are likely to develop highly qualified researchers.

(ix) The extent to which the quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to develop highly qualified researchers.

(x) The extent to which the type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in advanced-level research, are likely to develop highly qualified researchers.

(xi) The extent to which the opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(g) *Design of dissemination activities.* (1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of

the project, the Secretary considers one or more of the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter; and

(B) If appropriate, is based on new knowledge derived from research activities of the project.

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format.

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration.

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter.

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities.

(h) *Design of utilization activities.* (1) The Secretary considers the extent to which the design of utilization activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the potential new users of the information or technology have a practical use for the information and are likely to adopt the practices or use the information or technology, including new devices.

(ii) The extent to which the utilization strategies are likely to be effective.

(iii) The extent to which the information or technology is likely to be of use in other settings.

(i) *Design of technical assistance activities.* (1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration.

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter.

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information.

(iv) The extent to which the technical assistance is accessible to individuals with disabilities.

(j) *Plan of operation.* (1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers one or more of the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks.

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective.

(k) *Collaboration.* (1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project.

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant.

(iii) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities.

(l) *Adequacy and reasonableness of the budget.* (1) The Secretary considers the

adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers one or more of the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities.

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities.

(iii) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner.

(m) *Plan of evaluation.* (1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers one or more of the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation; and

(B) Achieving the project's intended outcomes and expected impacts.

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments.

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population; and

(B) Are objective, and quantifiable or qualitative, as appropriate.

(n) *Project staff.* (1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers one or more of the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities.

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project.

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas.

(iv) The extent to which the project staff includes outstanding scientists in the field.

(v) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority.

(o) *Adequacy and accessibility of resources.* (1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate.

(ii) The quality of an applicant's past performance in carrying out a grant.

(iii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research.

(iv) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 202 and 204; 29 U.S.C. 761a and 762)

§350.55 What are the additional considerations for selecting Field-Initiated Project applications for funding?

(a) The Secretary reserves funds to support some or all of the Field-Initiated Project applications that have been awarded points totaling 80% or more of the maximum possible points under the procedures described in §350.53.

(b) In making a final selection of applications to support as Field-Initiated Projects, the Secretary considers the extent to which applications that have been awarded a rating of 80% or more of the maximum possible points and meet one or more of the following conditions:

(1) The proposed project represents a unique opportunity to advance rehabilitation knowledge to improve the lives of individuals with disabilities.

(2) The proposed project complements research already planned or funded by the NIDRR through annual priorities published in the FEDERAL REGISTER or addresses the research in a new and promising way.

(Authority: Secs. 202 (g) and (i)(1); 29 U.S.C. 761a(g) and 761a(i)(1))

Subpart G—What Conditions Must Be Met After an Award?

§350.60 How must a grantee conduct activities?

A grantee must—

(a) Conduct all activities in a manner that is accessible to and usable by individuals with disabilities; and

(b) If a grantee carries out more than one activity, carry out integrated activities.

(Authority: Secs. 202 and 204(b)(2); 29 U.S.C. 761a and 762(b))

§350.61 What evaluation requirements must a grantee meet?

(a) A grantee must establish performance measures for use in its evaluation that—

(1) Are clearly related to the—

(i) Intended outcomes of the project; and

(ii) Expected impacts on the target population; and

(2) To the extent possible are quantifiable, or are objective and qualitative.

(b) A grantee must make periodic assessments of progress that will provide the grantee with performance feedback related to—

(1) Progress in implementing the plan of operation; and

(2) Progress in achieving the intended outcomes and expected impacts as assessed by the established performance measures.

(Authority: Secs. 202 and 204; 29 U.S.C. 761a and 762)

§350.62 What are the matching requirements?

(a)(1) The Secretary may make grants to pay for part of the costs of research and demonstration projects that bear directly on the development of procedures, methods, and devices to assist the provision of vocational and other rehabilitation services, and research training and career development projects.

(2) Each grantee must participate in the costs of those projects.

(3) The specific amount of cost sharing to be borne by each grantee—

(i) Is negotiated at the time of the award; and

(ii) Is not considered in the selection process.

(b)(1) The Secretary may make grants to pay for part or all of the costs of—

(i) Establishment and support of Rehabilitation Research and Training Centers and Rehabilitation Engineering Research Centers; and

(ii) Specialized research or demonstration activities described in section 204(b)(2)–(16) of the Act.

(2) The Secretary determines at the time of the award whether the grantee must pay a portion of the project or center costs.

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

§350.63 What are the requirements of a grantee relative to the Client Assistance Program?

All Projects and Centers that provide services to individuals with disabilities with funds awarded under this Program must—

(a) Advise those individuals who are applicants for or recipients of services under the Act, or their parents, family members, guardians, advocates, or authorized representatives, of the availability and purposes of the Client Assistance Program (CAP) funded under the Act; and

(b) Provide information on the means of seeking assistance under the CAP.

(Authority: Sec. 20; 29 U.S.C. 718a)

§ 350.64 What is the required duration of the training in an Advanced Rehabilitation Research Training Project?

A grantee for an Advanced Rehabilitation Research Training Project shall provide training to individuals that is at least one academic year, unless a longer training period is necessary to ensure that each trainee is qualified to conduct independent research upon completion of the course of training.

(Authority: Secs. 202–204; 29 U.S.C. 760–762)

§ 350.65 What level of participation is required of trainees in an Advanced Rehabilitation Research Training Project?

Individuals who are receiving training under an Advanced Rehabilitation Research Training Project shall devote at least eighty percent of their time to the activities of the training program during the training period.

(Authority: Secs. 202–204; 29 U.S.C. 760–762)

§ 350.66 What must a grantee include in a patent application?

Any patent application filed by a grantee for an invention made under a grant must include the following statement in the first paragraph:

The invention described in this application was made under a grant from the Department of Education.

(Authority: 20 U.S.C. 1221e–3)

EFFECTIVE DATE NOTE: At 62 FR 5713, Feb. 6, 1997, part 350 was revised, effective Oct. 1, 1997. For the convenience of the user, the text remaining in effect until Oct. 1, 1997, is set forth as follows:

PART 350—DISABILITY AND REHABILITATION RESEARCH: GENERAL PROVISIONS

Subpart A—General

Sec.
350.1 What are the purposes of activities supported under the disability and rehabilitation research program?
350.2 Who is eligible for assistance under these programs?
350.3 What regulations apply to these programs?
350.4 What definitions apply to these programs?

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

350.20 What are the application procedures under these programs?
350.21 What is required of each applicant relative to the needs of individuals with disabilities from minority backgrounds?

Subpart D—How Does the Secretary Make a Grant?

350.30 What is the peer review process for these programs?
350.31 What is the purpose of peer review?
350.32 What is the composition of a peer review panel?
350.33 How does the Secretary evaluate an application under 34 CFR part 351, 354, or 355?
350.34 What selection criteria does the Secretary use in reviewing applications under part 351, 354, 355, or 357?
350.35 What additional factors does the Secretary consider in reviewing applications under any Institute program?

Subpart E—What Conditions Apply to a Grantee?

350.40 What are the matching requirements?
350.41 What are the requirements of a grantee relative to the Client Assistance Program?

AUTHORITY: 29 U.S.C. 760–762, unless otherwise noted.

SOURCE: 46 FR 45305, Sept. 10, 1981, unless otherwise noted.

Subpart A—General

§ 350.1 What are the purposes of activities supported under the disability and rehabilitation research program?

(a) The activities funded by the Institute—

(1) Support the conduct of research, demonstration projects, training, and related activities to maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities of all ages, with particular emphasis on improving the effectiveness, including the cost-effectiveness, of services authorized under the Act;

(2) Provide for a comprehensive and coordinated approach to the support and conduct of research, demonstration projects, training, and related activities, and to ensure that the approach is in accordance with the long-range plan for research developed by the Institute;

(3) Promote the transfer of rehabilitation technology to individuals with disabilities through research and demonstration projects relating to—

(i) The procurement process for the purchase of rehabilitation technology;

(ii) The utilization of rehabilitation technology on a national basis; and

(iii) Specific adaptations or customizations of products to enable individuals with disabilities to live more independently;

(4) Ensure the widespread distribution to rehabilitation professionals, individuals with disabilities, and other interested parties, in usable formats, of practical scientific and technological information that is generated by research, demonstration projects, training and related activities;

(5) Ensure the widespread dissemination to rehabilitation professionals, individuals with disabilities, and other interested parties, in usable formats, of new knowledge about disabilities, including state-of-the-art practices and improvements in the services authorized under the Act;

(6) Identify effective strategies that enhance the opportunities for individuals with disabilities to engage in productive work; and

(7) Increase the opportunities for researchers who are individuals with disabilities or members of minority groups or other traditionally underserved populations.

(b) The Secretary awards financial assistance through ten types of programs:

(1) Research and demonstration projects (34 CFR part 351).

(2) Research grants for establishment and operation of rehabilitation research and training centers (34 CFR part 352).

(3) Research grants for the establishment and operation of rehabilitation engineering research centers (34 CFR part 353).

(4) Research grants for establishment and operation of model training centers (34 CFR part 354).

(5) Knowledge dissemination and research utilization projects (34 CFR part 355).

(6) Research fellowships (34 CFR part 356).

(7) Field-initiated projects (34 CFR part 357).

(8) Innovation Grants projects (34 CFR part 358).

(9) Special Projects and Demonstrations for Spinal Cord Injuries (34 CFR part 359).

(10) Research Training and Career Development Projects (34 CFR part 360).

(Authority: Secs. 200, 202, and 204; 29 U.S.C. 760, 761a, and 762)

[46 FR 45305, Sept. 10, 1981, as amended at 50 FR 16673, Apr. 26, 1985; 52 FR 30060, Aug. 12, 1987; 53 FR 23351, June 21, 1988; 53 FR 24245, June 27, 1988; 60 FR 17426, Apr. 5, 1995]

§ 350.2 Who is eligible for assistance under these programs?

The following agencies and organizations are eligible for grants or contracts as appropriate under these programs, except for programs described in 34 CFR parts 352, 353, 356, and 360.

(a) State and public agencies or organizations;

(b) Private agencies or organizations;

(c) Institutions of higher education; and

(d) Indian tribes and tribal organizations.

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

[46 FR 45305, Sept. 10, 1981, as amended at 52 FR 30061, Aug. 12, 1987; 53 FR 23351, June 21, 1988; 60 FR 17427, Apr. 5, 1995]

§ 350.3 What regulations apply to these programs?

The following regulations apply to grants under the Disability and Rehabilitation Research Programs—

(a) The Education Department General Administrative Regulations (EDGAR), established in title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs), except as noted in 34 CFR 352.33, 352.40, and 358.3;

(3) Part 77 (Definitions that Apply to Department Programs); and

(4) Part 78 (Education Appeal Board);

(b) The regulations in this part, 34 CFR part 350;

(c) The regulations in 34 CFR part 351, 352, 353, 354, 355, 356, 357, 358, 359, or 360, as appropriate; and

(d)(1) Subject to the additional requirement in paragraph (d)(2) of this section, 34 CFR part 97, Protection of Human Subjects.

(2) When an IRB reviews research that purposefully requires inclusion of children with disabilities or individuals with mental disabilities as research subjects, the IRB must

include at least one person primarily concerned with the welfare of these research subjects.

(Authority: 20 U.S.C. 761a, 762, 42 U.S.C. 300v-1(b))

[46 FR 45305, Sept. 10, 1981, as amended at 50 FR 16673, Apr. 26, 1985; 52 FR 30061, Aug. 12, 1987; 53 FR 23351, June 21, 1988; 56 FR 28031, June 18, 1991; 60 FR 17427, Apr. 5, 1995]

§ 350.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR part 77 apply to the programs under Disability and Rehabilitation Research—

Applicant.
Application.
Award.
Budget Period.
Department.
EDGAR.
Grant Period.
Nonprofit.
Nonpublic.
Preschool.
Private.
Project.
Project Period.
Public.
Secretary.
State.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

(b) The following definitions also apply to programs under Disability and Rehabilitation Research—

Act means the Rehabilitation Act of 1973 (Pub. L. 93–112), as amended.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

American Indian means an individual who is a member of an Indian tribe.

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

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

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

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. The term includes—

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

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

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

(5) Training or technical assistance for an individual with disabilities, or, where appropriate, the family members, guardians, advocates, or authorized representatives of such an individual; and

(6) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

(Authority: Sec. 7(24); 29 U.S.C. 706(24))

Demonstration means the application of results derived from previous research, testing, or practice for purposes of establishing the reliability, indicating the validity, or determining the cost effectiveness of new rehabilitation procedures.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Development means the systematic use of knowledge and understanding gained from research, directed toward creating useful materials, devices, systems, or methods, including design and development of prototypes and processes.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Disability means a physical or mental impairment that substantially limits one or more major life activities.

(Authority: Sec. 7(26)(B); 29 U.S.C. 706(26)(B))

Fellowship means a financial award to obtain the assistance of highly qualified research fellows from the United States and foreign countries. It is not a grant.

(Authority: Sec. 202(d); (29 U.S.C. 761a(d)))

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); 29 U.S.C. 706(21))

Individual with a disability means any individual who:

(1) Has a physical or mental impairment that substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

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

Individual with a severe disability means an individual with a disability—

(1)(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, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord impairments, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment of rehabilitation needs to cause comparable substantial functional limitation; or

(2) An individual with a severe mental or physical impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment, respectively.

(Authority: Sec. 7(15)(C); 29 U.S.C. 706(15)(C))

Institute means the National Institute on Disability and Rehabilitation Research.

(Authority: Sec. 202(a); (29 U.S.C. 761a(a)))

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 if the individual did not have a disability. These services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(Authority: Sec. 7(11); 29 U.S.C. 706(11))

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 such functional areas as mobility, communications, hearing, vision, cognition and in activities associated with employment, independent living, education, and integration into the community.

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

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 such areas as education, rehabilitation, employment, transportation, independent living, and recreation, and includes rehabilitation engineering, assistive technology devices, and assistive technology services.

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

Research means intensive systematic study directed toward new or fuller scientific knowledge or understanding of the subject or problem studied. Research is classified on a continuum from basic to applied.

(1) *Basic research* is research in which the investigator is concerned primarily with gaining new knowledge or understanding of a subject without reference to any immediate application or utility.

(2) *Applied research* is research in which the investigator is primarily interested in developing new knowledge, information or understanding which can be applied to a predetermined rehabilitation problem or need. Applied research builds on selected findings from basic research.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Research utilization means activities seeking to link research findings to practical applications in planning, policymaking, program administration, and service practice in the delivery of services to individuals with disabilities.

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

State rehabilitation agency means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

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

Supported employment means competitive work in integrated work settings for individuals with the most severe disabilities 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

who, because of the nature and severity of their disability, need intensive supported employment services and extended services after transition in order to perform that work. The term includes transitional employment for persons who are individuals with the most severe disabilities due to mental illness.

(Authority: Sec. 7(18); 29 U.S.C. 706(18))

Target population means the group of individuals, organizations, or other entities expected to be affected by the results of specific research. More than one target group may be involved since research results may affect those who receive services, provide services, or administer services.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Training means a planned and systematic sequence of instruction under competent supervision which is designed to impart predetermined skills and knowledge.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

[46 FR 45305, Sept. 10, 1981, as amended at 49 FR 9325, Mar. 12, 1984; 52 FR 30061, Aug. 12, 1987; 60 FR 17427, Apr. 5, 1995]

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 350.20 What are the application procedures under these programs?

An applicant for assistance under 34 CFR parts 351, 352, 353, 354, 355, 357, 358, 359, or 360 whose application is to conduct research, demonstrations, or related activities that will either involve clients of the State vocational rehabilitation agency as research subjects or study vocational rehabilitation services or techniques, shall follow the requirements in EDGAR §§ 75.155–75.159, including—

(a) Submitting a copy of its application for comment to the State rehabilitation agency or agencies in the primary State or States to be affected by the proposed activities; and

(b) Including in its application copies of transmittal letters to the appropriate State agency or agencies indicating that the necessary copies were transmitted on or before the due date for transmittal of the application to the Department.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 204(c) and 306(i); 29 U.S.C. 762(c) and 766(a))

[60 FR 17428, Apr. 5, 1995]

§ 350.21 What is required of each applicant relative to the needs of individuals with disabilities from minority backgrounds?

Unless the Secretary indicates otherwise, an applicant for assistance under 34 CFR parts 351, 352, 353, 354, 355, 357, 358, 359, or 360 must demonstrate how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds. The approaches an applicant may take to meet this requirement, in whole or in part, may include one or more of the following:

(a) Proposing project objectives concerning minorities with disabilities.

(b) Demonstrating that its application addresses a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(c) Demonstrating that minority individuals will be included in study samples in sufficient numbers to generate information pertinent to minority individuals with disabilities.

(d) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(e) Providing rehabilitation services, clinical care, or training to minority individuals with disabilities.

(f) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 12(c) and 21(b)(6); 29 U.S.C. 711(c) and 718b(b)(6))

[60 FR 17428, Apr. 5, 1995]

Subpart D—How Does the Secretary Make a Grant?

§ 350.30 What is the peer review process for these programs?

The Secretary refers each application for a grant under the Disability and Rehabilitation Research Programs to a peer review panel established by the Secretary. Peer review panels review applications on the basis of the applicable selection criteria in 34 CFR 350.34, 352.31, 353.31, 357.32, 358.32, or 359.31.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

[52 FR 30061, Aug. 12, 1987, as amended at 53 FR 23352, June 21, 1988; 53 FR 24245, June 27, 1988]

§ 350.31 What is the purpose of peer review?

The purpose of peer review is to insure that those activities supported by the Institute are of the highest scientific, administrative, and technical quality and that the results may be widely applied to appropriate

target populations and rehabilitation problems.

(Authority: Sec. 202(e); (29 U.S.C. 761a(e)))

§ 350.32 What is the composition of a peer review panel?

(a) The Secretary selects as members of a peer review panel scientists and other experts in rehabilitation or related fields who are qualified, on the basis of training, knowledge, or experience, to give expert advice on the merit of the applications under review. Applications for awards of $60,000 or more, except those for the purposes of evaluation, dissemination of information, or conferences, must be reviewed by a peer review panel that consists of a majority of non-Federal members.

(b) In selecting an individual for membership on a peer review panel, the Secretary takes into account, among other factors, the following:

(1) The level of formal scientific or technical education completed by the individual;

(2) The extent to which the individual has engaged in scientific, technical, or administrative activities appropriate to the category of applications that the panel will consider, the role of the individual in those activities, and the quality of those activities; and

(3) The recognition received by the individual as reflected by awards and other honors from scientific and professional agencies and organizations outside the Department.

(Authority: Secs. 18 and 202(e); 29 U.S.C. 717 and 761a(e))

[46 FR 45305, Sept. 10, 1981, as amended at 52 FR 30061, Aug. 12, 1987]

§ 350.33 How does the Secretary evaluate an application under 34 CFR part 351, 354, or 355?

(a) The Secretary evaluates an application under 34 CFR part 351, 354, or 355 on the basis of the selection criteria in § 350.34.

(b) Each criterion applies to all types of projects under the programs governed by these parts; the elements within each criterion also apply to all of the activities within the projects unless the regulations specifically state that their application is limited to certain types of activities.

(c) The Secretary awards up to five possible points for each criterion. These points are awarded as follows based on how well the applicant addresses each criterion: Outstanding (5); superior (4); satisfactory (3); marginal (2); or poor (1).

(d) The Secretary computes a final score by multiplying the points awarded on each criterion by the weight assigned each criterion as indicated in parentheses after the descriptive title of the criterion.

(e) The maximum possible score for an application is 100 points.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

[49 FR 9325, Mar. 12, 1984, as amended at 52 FR 30062, Aug. 12, 1987; 53 FR 24245, June 27, 1988]

§ 350.34 What selection criteria does the Secretary use in reviewing applications under part 351, 354, or 355?

(a) *Potential Impact of Outcomes: Importance of Program* (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The training needs are clearly defined (training activities only);

(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential Impact of Outcomes: Dissemination/Utilization* (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only);

(4) The utilization approach is likely to address the defined need (utilization activities only); and

(5) There is likely to be widespread dissemination of the results, in a usable and effective manner, to all appropriate target populations, including individuals with disabilities and their family members.

(c) *Probability of Achieving Proposed Outcomes; Program/Project Design* (Weight 5.0). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound (research and development/demonstration activities only);

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only);

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only); and

(14) The materials to be used in the project and the materials to be disseminated are likely to be in formats that are accessible to the appropriate populations.

(d) *Probability of Achieving Proposed Outcomes: Key Personnel* (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Probability of Achieving Proposed Outcomes: Evaluation Plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/Project Management: Plan of Operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(g) *Program/Project Management: Adequacy of Resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adquate facilities is evident.

(h) *Program/Project Management: Budget and Cost Effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

[49 FR 9325, Mar. 12, 1984, as amended at 50 FR 16674, Apr. 26, 1985; 52 FR 30062, Aug. 12, 1987; 53 FR 24245, June 27, 1988; 60 FR 17428, Apr. 5, 1995]

§ 350.35 What additional factors does the Secretary consider in reviewing applications under any Institute program?

(a) In making grants of more than $299,999 per year under any Institute program, the Secretary also considers the findings of an on-site review of the applicant. An on-site review is made of the applicant rated most highly by the peer review panel, and, at the discretion of the Secretary, of other applicants that are very highly rated by the peer review panel.

(b) The purpose of an on-site review is to verify certain aspects of the application, including facilites and resources, client populations, staffing, management structure, institutional support, and relations with other

agencies, and to clarify certain aspects of the proposed activity if recommended by the members of the peer review panel.

(c) An on-site review is conducted by a group that includes one or more members of the peer review panel that originally reviewed by the application, supplemented by other experts as necessary.

(d) The Secretary uses the findings of the site review to assist in determining the order in which applications are selected for funding.

(Authority: Secs. 204(d)(2); 29 U.S.C. 762(d))

[52 FR 30062, Aug. 12, 1987]

Subpart E—What Conditions Apply to a Grantee?

§ 350.40 What are the matching requirements?

(a) The Secretary may make grants to pay for part of the costs of research and demonstration projects that bear directly on the development of procedures, methods, and devices to assist the provision of vocational and other rehabilitation services, and research training and career development projects. Each grantee must participate in the costs of those projects. The specific amount of cost sharing to be borne by each grantee is negotiated at the time of the award and is not a factor that is considered in the selection process.

(b)(1) The Secretary may make grants to pay for part or all of the costs of the following activities:

(i) Establishment and support of Rehabilitation Research and Training Centers, Rehabilitation Engineering Centers, and Model Training Centers.

(ii) Research and other special projects and demonstrations concerned with spinal cord injury.

(iii) Research projects concerned with end-stage renal disease, telecommunications, rehabilitation of children with disabilities and older individuals with disabilities, (including American Indians), attracting and retaining rehabilitation professionals in rural areas, producing and distributing captioned video cassettes to individuals who are deaf, and innovative methods for providing services for children with disabilities and their parents.

(iv) Joint projects with other Federal agencies and private industry.

(v) Research to test new concepts and innovative ideas.

(vi) International programs of research, demonstration, training, exchange of experts, and technical assistance.

(2) The Secretary determines at the time of the award whether the grantee must pay a portion of the project or center costs.

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

[46 FR 45305, Sept. 10, 1981, as amended at 50 FR FR 16674, Apr. 26, 1985; 52 FR 30062, Aug. 12, 1987; 53 FR 23352, June 21, 1988; 60 FR 17428, Apr. 5, 1995]

§ 350.41 What are the requirements of a grantee relative to the Client Assistance Program?

All projects that provide services to individuals with disabilities with funds awarded under these programs must advise those individuals who are applicants for or recipients of services under the Act, or the parents, family members, guardians, advocates, or authorized representatives of the individuals, of the availability and purposes of the Client Assistance Program (CAP) funded under the Act, and must provide information on the means of seeking assistance under the CAP.

(Authority: Sec. 20; 29 U.S.C. 718a)

[60 FR 17428, Apr. 5, 1995]

PART 351—DISABILITY AND REHABILITATION RESEARCH: RESEARCH AND DEMONSTRATION PROJECTS

Subpart A—General

Sec.
351.1 What is the research and demonstration projects program?
351.2 Who is eligible for assistance under this program?
351.3 What regulations apply to this program?
351.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

351.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

351.30 How is peer review conducted under this program?
351.31 What selection criteria are used under this program?
351.32 What are the priorities for funding under this program?

AUTHORITY: 29 U.S.C. 750–762, unless otherwise noted.

SOURCE: 46 FR 45308, Sept. 10, 1981, unless otherwise noted.

EFFECTIVE DATE NOTE: At 62 FR 5713, Feb. 6, 1997, part 351 was removed, effective Oct. 1, 1997.

Subpart A—General

§ 351.1 What is the research and demonstration projects program?

This program is designed to support—

(a) Discrete research, demonstration, training, and related projects to develop methods, procedures, and technology that maximize the full inclusion and integration into society, independent living, employment, family support, and economic and social self-sufficiency of individuals with disabilities, especially those with the most severe disabilities; and

(b) Discrete research, demonstration, and training projects that specifically address the implementation of titles I, III, VI, VII, and VIII of the Act, with emphasis on projects to improve the effectiveness of these programs and to meet the needs described in State Plans submitted to the Rehabilitation Services Administration by State vocational rehabilitation agencies.

(Authority: Sec. 204(a); 29 U.S.C. 761 and 762)

[60 FR 17429, Apr. 5, 1995]

§ 351.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are described in 34 CFR 350.2.

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

§ 351.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: Secs. 202 and 204; (29 U.S.C. 761a, 762))

§ 351.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 351.10 What types of projects are authorized under this program?

The Research and Demonstration Projects Program provides financial assistance for the following types of projects—

(a)(1) Studies and analyses of medical rehabilitation and restorative techniques, rehabilitation techniques or services, industrial, vocational, social, recreational, psychiatric, psychological, economic, and other factors affecting rehabilitation of individuals with disabilities;

(2) Studies and analyses of special problems of individuals who are homebound and individuals who are institutionalized;

(3) Studies, analyses, and demonstrations of architectural and engineering design—including universal design—adapted to meet the special needs of individuals with disabilities;

(4) Studies, analyses, and other activities related to supported employment; and

(5) Related activities that hold promise of increasing knowledge and improving the rehabilitation of individuals with disabilities, particularly those with the most severe disabilities and those who are members of populations that are unserved or underserved by programs under this Act.

(b) Specialized research activities as follows—

(1) Spinal cord injury research and demonstrations;

(2) End-stage renal disease research and demonstrations;

(3) International research, demonstration, training, and technical assistance projects, and exchange of experts;

(4) Joint projects with other Federal agencies and private industry in areas of joint interest involving rehabilitation;

(5) Research related to the rehabilitation of children or older individuals with disabilities, including older American Indian individuals with disabilities;

(6) Projects to develop and demonstrate innovative methods to attract

and retain professionals to serve in rural areas in the rehabilitation of individuals with disabilities, including individuals with severe disabilities;

(7) Research and demonstration projects on the provision of services for children through the age of five with disabilities;

(8) Studies of the rehabilitation needs of American Indian populations, and of effective means for delivery of rehabilitation services to American Indians residing on and off reservations; and

(9) Research concerning the use of existing telecommunication systems to improve services to individuals with disabilities; and

(10) Demonstration projects to provide incentives for the development, manufacture, and marketing of orphan technological devices to enable individuals with disabilities to achieve independence and access to gainful employment.

(Authority: Secs. 202(b)(8), 204(a), and 204(b)(4)–(10), (12), (15), and (16); 29 U.S.C. 761a(b)(8), 762(a), and 762(b)(4)–(10), (12), (15), and (16))

[46 FR 45308, Sept. 10, 1981, as amended at 52 FR 30062, Aug. 12, 1987; 60 FR 17429, Apr. 5, 1995]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 351.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32.

(Authority: Sec. 202(e); (29 U.S.C. 761a(e))

§ 351.31 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34.

(Authority: Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

[49 FR 9326, Mar. 12, 1984]

§ 351.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or all of the types of projects listed in § 351.10.

(b) The Secretary advises the public of these priorities through an Application Notice published in the FEDERAL REGISTER.

(Authority: Secs. 202(g), 204; (29 U.S.C. 761a(g), 762))

PART 352—DISABILITY AND REHABILITATION RESEARCH: REHABILITATION RESEARCH AND TRAINING CENTERS

Subpart A—General

Sec.
352.1 What is the Rehabilitation Research and Training Centers program?
352.2 Who is eligible for assistance under this program?
352.3 What regulations apply to this program?
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Subpart B—What Kinds of Activities Does the Department Assist Under This Program?

352.10 What activities are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

352.30 How is peer review conducted under this program?
352.31 What selection criteria are used under this program?
352.32 What are the priorities for funding under this program?
352.33 What is the project period of a Rehabilitation Research and Training Center?
352.34 What other factors does the Secretary consider in making an award under this program?

Subpart E—What Conditions Apply to a Grantee?

352.40 What are the indirect cost requirements for this program?

AUTHORITY: 29 U.S.C. 762(b)(1), unless otherwise noted.

SOURCE: 46 FR 45309, Sept. 10, 1981, unless otherwise noted.

EFFECTIVE DATE NOTE: At 62 FR 5713, Feb. 6, 1997, part 352 was removed, effective Oct. 1, 1997.

Subpart A—General

§ 352.1 What is the Rehabilitation Research and Training Centers program?

This program supports Rehabilitation Research and Training Centers for the purpose of—

(a) Conducting coordinated and advanced programs of research on disability and rehabilitation that will produce new knowledge that will improve rehabilitation methods and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence for individuals with disabilities;

(b) Providing training to service providers at the preservice, inservice, undergraduate, and graduate levels, to improve the quality and effectiveness of rehabilitation services;

(c) Providing advanced research training to individuals, including individuals with disabilities and those from minority backgrounds, engaged in research on disability and rehabilitation; and

(d) Serving as national and regional technical assistance resources, and providing training for service providers, individuals with disabilities and their families and representatives, and rehabilitation researchers.

(Authority: Sec. 204(b)(2); 29 U.S.C. 762(b)(2))

[60 FR 17429, Apr. 5, 1995]

§ 352.2 Who is eligible for assistance under this program?

Under this program, awards may be made to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations, that—

(a) Are of sufficient size, scope and quality to carry out effectively the activities in an efficient manner consistent with appropriate State and Federal law;

(b) Demonstrate the ability to carry out the training activities, either directly or through another entity that can provide that training; and

(c) Demonstrate that the Center will be operated in collaboration with an institution of higher education or provider of rehabilitation or other appropriate services.

(Authority: Secs. 204(a) and 204(b)(2)(A)(i) and (K); 29 U.S.C. 762(a) and 762(b)(2)(A)(i) and (K))

[60 FR 17429, Apr. 5, 1995]

§ 352.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: Secs. 202 and 204; (29 U.S.C. 761a, 762))

§ 352.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Assist Under This Program?

§ 352.10 What activities are authorized under this program?

(a) Rehabilitation Research and Training Centers shall conduct research activities, which must be accessible to and usable by individuals with disabilities, that may include the following:

(1) Basic or applied medical rehabilitation research.

(2) Research regarding the psychological and social aspects of rehabilitation.

(3) Research regarding disability policy.

(4) Research related to vocational rehabilitation.

(5) Research that promotes the social, emotional, functional, and educational growth of children who have disabilities.

(6) Research to develop and evaluate interventions, policies, and services that support families of children and adults who have disabilities.

(7) Research that will support the improvement of services and policies to foster the productivity, independence, and social integration of individuals with disabilities of all types, to live in their communities.

(b) Rehabilitation Research and Training Centers shall conduct training activities, which must be accessible to and usable by individuals with disabilities, that may include the following:

(1) Training of students preparing to be rehabilitation personnel.

(2) Training at the preservice, inservice, and graduate levels to assist individuals to provide rehabilitation services more effectively.

(3) Training at graduate, preservice, and inservice levels for rehabilitation research personnel.

(4) In-service training for individuals with disabilities and their family members, guardians, advocates, or authorized representatives.

(5) Faculty support for teaching rehabilitation-related courses of study for credit and other courses offered by the Center.

(c) Rehabilitation Research and Training Centers shall disseminate information and provide technical assistance, which must be accessible to and usable by individuals with disabilities, through conferences, workshops, public education programs, inservice training programs, publications, and similar activities, to—

(1) Providers of rehabilitation and other relevant services to individuals with disabilities;

(2) Individuals with disabilities;

(3) Family members of individuals with disabilities; and

(4) Other authorized representatives, advocates, and organizations that provide information and support to individuals with disabilities and their families.

(d) Rehabilitation Research and Training Centers may use part of their funds to provide services connected with their research and training activities to individuals with disabilities.

(e) Rehabilitation Research and Training Centers are encouraged—

(1) To develop practical applications for the findings of their research; and

(2) To disseminate information and provide technical assistance to administrators, policymakers, and representatives of public and private organizations whose activities affect the productivity, independence, and community integration of individuals with disabilities.

(Authority: Sec. 204(b)(2)(A)(ii),(B)–(D), and (F)–(I); 29 U.S.C. 762(b)(2)(A)(ii), (B)–(D), and (F)–(I))

[60 FR 17429, Apr. 5, 1995]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§352.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32.

(Authority: Sec. 202(e); (29 U.S.C. 761a(e)))

§352.31 What selection criteria are used under this program?

The Secretary evaluates applications under this program according to the following criteria:

(a) *Relevance and importance of the research program.* (20 points)

(NOTE: For fiscal year 1987 only, the maximum number of points to be awarded under this criterion is 25 points.)

The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objective of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the research design.* (35 points)

(NOTE: For fiscal year 1987 only, the maximum number of points to be awarded under this criterion is 25 points.)

The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected; and

(3) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the training and dissemination program.* (25 points): The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that are usable by people with various types of disabilities;

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, individuals with disabilities, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers;

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications;

(vi) Widespread dissemination of findings and other appropriate materials to providers of rehabilitation and other relevant services to individuals with disabilities, individuals with disabilities, family members of individuals with disabilities, and other authorized representatives, advocates, and organizations that provide information and support to individuals with disabilities and their families; and

(vii) Dissemination of research findings and other materials in appropriate formats and accessible media for use by individuals with various disabilities.

(d) *Quality of the organization and management.* (20 points):

(NOTE: For fiscal year 1987 only, the maximum number of points to be awarded under this criterion is 25 points.)

The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director, training director, principal investigator and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are

appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions and organizations; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 202(e) and 204(b)(2); 29 U.S.C. 761a(e) and 762(b)(2))

[52 FR 30063, Aug. 12, 1987, as amended at 60 FR 17430, Apr. 5, 1995]

§352.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or all of the types of centers listed in 34 CFR 352.10.

(b) The Secretary advises the public of these priorities through an Application Notice in the FEDERAL REGISTER.

(Authority: Secs. 202(g) and 204; (29 U.S.C. 761a(g) and 762))

§352.33 What is the project period of a Rehabilitation Research and Training Center?

Awards are made under this program for a period of five years except that awards may be made for a lesser period if—

(a) The award is made to a new recipient; or

(b) The award supports a new research area or an innovative approach to a research area.

(Authority: Sec. 204(b)(2)(L); 29 U.S.C. 762(b)(2)(L))

[60 FR 17430, Apr. 5, 1995]

§352.34 What other factors does the Secretary consider in making an award under this program?

In making an award under this program, the Secretary takes into consideration the location of any proposed Center and the appropriate geographic and regional allocation of all Centers.

(Authority: Sec. 204(b)(2)(J); 29 U.S.C. 762(b)(2)(J))

[60 FR 17430, Apr. 5, 1995]

Subpart E—What Conditions Apply to a Grantee?

§352.40 What are the indirect cost requirements for this program?

A host institution with which a center is affiliated may not collect in excess of fifteen percent of the total grant award as indirect cost charges, notwithstanding the provisions in §75.562 of EDGAR.

(Authority: Section 204(b)(2); 29 U.S.C. 762(b)(2))

[52 FR 30064, Aug. 12, 1987, as amended at 60 FR 17430, Apr. 5, 1995]

PART 353—DISABILITY AND REHABILITATION RESEARCH: REHABILITATION ENGINEERING RESEARCH CENTERS

Subpart A—General

Sec.

353.1 What is the Rehabilitation Engineering Research Centers program?
353.2 Who is eligible for assistance under this program?
353.3 What regulations apply to this program?
353.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

353.10 What types of activities are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

353.30 How is peer review conducted under this program?
353.31 What selection criteria are used under this program?
353.32 What are the priorities for funding under this program?
353.33 What is the project period of a Rehabilitation Engineering Research Center?
353.40 What additional requirements must be met by a grantee under this program?
353.41 What is the advisory committee requirement for a grantee under this program?

AUTHORITY: 29 U.S.C. 762(b)(3), unless otherwise noted.

SOURCE: 46 FR 45310, Sept. 10, 1981, unless otherwise noted.

EFFECTIVE DATE NOTE: At 62 FR 5713, Feb. 6, 1997, part 353 was removed, effective Oct. 1, 1997.

Subpart A—General

§ 353.1 What is the Rehabilitation Engineering Research Centers program?

Rehabilitation Engineering Research Centers conduct research, demonstration, and training activities regarding rehabilitation technology—including rehabilitation engineering, assistive technology devices, and assistive technology services, in order to enhance the opportunities to better meet the needs of, and address the barriers confronted by, individuals with disabilities in all aspects of their lives.

(Authority: Sec. 204(b)(3)(A); 29 U.S.C. 762(b)(3)(A))

[60 FR 17430, Apr. 5, 1995]

§ 353.2 Who is eligible for assistance under this program?

A public or private entity, including an Indian tribe or tribal organization, is eligible to receive an award under this program if the entity demonstrates that the Center will be operated by, or in collaboration with, an institution of higher education or a nonprofit organization.

(Authority: Sec. 204(b)(3)(A); 29 U.S.C. 762(b)(3)(A))

[60 FR 17430, Apr. 5, 1995]

§ 353.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: Secs. 202 and 204; (29 U.S.C. 761a and 762))

§ 353.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 353.10 What types of activities are authorized under this program?

(a) Rehabilitation Engineering Research Centers shall carry out research and demonstration activities through—

(1) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and remove environmental barriers through—

(i) Planning and conducting research, including cooperative research with public or private agencies and organizations, designed to produce new scientific knowledge and new or improved methods, equipment, or devices; and

(ii) Studying and evaluating the effectiveness and benefits of new or emerging technologies, products, or environments.

(2) Demonstrating and disseminating—

(i) Innovative models for the delivery to rural and urban areas of cost-effective rehabilitation technology services that will promote the use of assistive technology services; and

(ii) Other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(3) Conducting research and demonstration activities that facilitate service delivery systems change by demonstrating, evaluating, documenting, and disseminating—

(i) Consumer-responsive and individual and-family-centered innovative

models for the delivery to both rural and urban areas of innovative, cost-effective rehabilitation technology services that promote utilization of rehabilitation devices; and

(ii) Other scientific research to assist in meeting the employment and independent living needs of, and addressing the barriers confronted by individuals with disabilities, including individuals with severe disabilities.

(b) To the extent consistent with the nature and type of research or demonstration activities described in paragraph (a) of this section, the Rehabilitation Engineering Research Centers shall carry out research, training, and information dissemination activities by—

(1) Cooperating with programs established under the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100–407), and other regional and local programs, to provide information to individuals with disabilities and their parents, family members, guardians, advocates, or authorized representatives, to increase awareness and understanding of how rehabilitation technology can address their needs, and the range of options, programs, services, and resources available, including financing options for the technology and services covered by the area of focus of the Center;

(2) Providing training to individuals, including individuals with disabilities, to enable them to become rehabilitation technology researchers and practitioners of rehabilitation technology; and

(c) Responding, through research or demonstration activities, to the needs of individuals with all types of disabilities who may benefit from the application of technology within the area of focus of the Center.

(Authority: Secs. 204(b)(3); 29 U.S.C. 762(b)(3))

[60 FR 17430, Apr. 5, 1995]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§353.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32.

(Authority: Sec. 202(e); (29 U.S.C. 761a(e)))

§353.31 What selection criteria are used under this program?

(a) *Relevance and importance of the research program.* (25 points) The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area and to the development of new technology or new applications of existing technology, and is likely to become a nationally recognized source of information on technology in the priority area; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objectives of the Center, and will build upon and complement each other to enhance the likelihood of finding solutions to significant rehabilitation problems.

(b) *Quality of the research design.* (25 points) The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive program of research for the total project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with the state-of-the-art and current research in rehabilitation technology;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected.

(3) The plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products; and

(4) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning additional research, including the generation of new hypotheses where applicable.

(c) *Quality of the dissemination and utilization program.* (25 points) The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and dissemination packages will be prepared in a form usable by individuals with all types of disabilities;

(2) The proposed plan for dissemination and utilization of the research and development provides for—

(i) Orientation programs for rehabilitation service personnel to improve the application of rehabilitation technology;

(ii) Programs which specifically demonstrate means for utilizing rehabilitation technology;

(iii) Technical assistance and consultation that are responsive to concerns of service providers and consumers; and

(iv) Dissemination of reseach findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications, in an effort to make research results accessible to manufacturers, rehabilitation service providers, researchers, educators, disabled individuals and their families, and others;

(3) There is an appropriate plan to ensure the distribution and utilization of new devices and technology; and

(4) The plan provides for effective cooperation with appropriate State, local, and regional organizations and projects to provide information to individuals with disabilities and their family members, advocates, and representatives, about the potential uses and benefits, and resources for obtaining, rehabilitation technology.

(d) *Quality of the organization and management.* (25 points): The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the principal investigator and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of time for all staff is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition;

(2) The budgets for the Center and each of the proposed activities are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an

ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions; and

(8) The plan for evaluation of the Center will assess annually the outcomes of the discrete and interrelated research projects, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 202(e) and 204(b)(3); 29 U.S.C. 761a(e) and 762(b)(3))

[52 FR 30064, Aug. 12, 1987, as amended at 60 FR 17431, Apr. 5, 1995]

§353.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or all of the types of research centers or projects listed in 34 CFR 353.10.

(b) The Secretary advises the public of these priorities through an Application Notice published in the FEDERAL REGISTER.

(Authority: Secs. 202(g) and 204; (29 U.S.C. 761a(g) and 762))

§353.33 What is the project period of a Rehabilitation Engineering Research Center?

Awards are made under this program for a period of five years except that awards may be made for a lesser period if—

(a) The award is made to a new recipient; or

(b) The award supports a new research area or an innovative approach to a research area.

(Authority: Sec. 204(b)(3)(E); 29 U.S.C. 762(b)(3)(E))

[60 FR 17431, Apr. 5, 1995]

§353.40 What additional requirements must be met by a grantee under this program?

(a) A Rehabilitation Engineering Research Center shall cooperate with State rehabilitation agencies, and other local, State, regional, and national programs and organizations developing or delivering rehabilitation technology, including State programs funded under the Technology-Related Assistance for Individuals with Disabilities Act of 1988, as amended.

(b) A Rehabilitation Engineering Research Center funded under this program shall prepare and submit to the Secretary, either as part of an application for continuation of a grant or as part of a final report, a report that documents the short- and long-term impact of the center's program and program outcomes on the lives of individuals with disabilities, and such other information as the Secretary may request.

(Authority: Sec. 204(b)(3)(G); 29 U.S.C. 762(b)(3)(G))

[60 FR 17431, Apr. 5, 1995]

§353.41 What is the advisory committee requirement for a grantee under this program?

A Rehabilitation Engineering Research Center that conducts research or demonstration activities that facilitate service delivery systems change shall have an advisory committee of which the majority of the members are individuals with disabilities who are users of rehabilitation technology, or the parents, family members, guardians, advocates, or authorized representatives of users of assistive technology.

(Authority: Secs. 204(b)(3)(D)(ii); 29 U.S.C. 762(b)(3)(D)(ii))

[60 FR 17431, Apr. 5, 1995]

PART 355—DISABILITY AND REHABILITATION RESEARCH: KNOWLEDGE DISSEMINATION AND UTILIZATION PROGRAMS

Subpart A—General

Sec.

355.1 What is the Knowledge Dissemination and Utilization Program?
355.2 Who is eligible for assistance under this program?
355.3 What regulations apply to this program?
355.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

355.10 What types of activities are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

355.30 How is peer review conducted under this program?
355.31 What selection criteria are used under this program?
355.32 What are the priorities for funding under this program?

AUTHORITY: 29 U.S.C. 760–762, unless otherwise noted.

SOURCE: 46 FR 45312, Sept. 10, 1981, unless otherwise noted.

EFFECTIVE DATE NOTE: At 62 FR 5713, Feb. 6, 1997, part 355 was removed, effective Oct. 1, 1997.

Subpart A—General

§ 355.1 What is the Knowledge Dissemination and Utilization Program?

This program is designed to support activities that will insure that rehabilitation knowledge generated from projects and centers funded by the Institute and from other sources is fully utilized to improve the lives of individuals with disabilities.

(Authority: Secs. 202, 204(a), and 204(b)(5); (29 U.S.C. 761a, 762(a) and 762(b)(5)))

[46 FR 45312, Sept. 10, 1981, as amended at 58 FR 49419, Sept. 22, 1993]

§ 355.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are described in 34 CFR 350.2.

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

§ 355.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: Secs. 202 and 204; (29 U.S.C. 761a and 762))

§ 355.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 355.10 What types of activities are authorized under this program?

The knowledge dissemination and utilization program provides financial assistance for the following types of projects—

(a) Domestic or international research utilization;

(b) Domestic or international information dissemination activities;

(c) Building public awareness about ways of rehabilitating individuals with disabilities;

(Authority: Secs. 200(2), 202(b)4–6, 204(a), 204(b)(5); (29 U.S.C. 761a(b)(2), 761a(b) (4–6), 762(a), 762(b)(5)))

[46 FR 45312, Sept. 10, 1981, as amended at 58 FR 49419, Sept. 22, 1993]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 355.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32.

(Authority: Sec. 202e; (29 U.S.C. 761a(e))

§ 355.31 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34.

(Authority: Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761(i)(1)))

[49 FR 9326, Mar. 12, 1984]

§ 355.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or

all of the types of projects listed in 34 CFR 355.10.

(b) The Secretary advises the public of these priorities through an Application Notice published in the FEDERAL REGISTER.

(Authority: Secs. 202(g) and 204; (29 U.S.C. 761a(g) and 762))

PART 356—DISABILITY AND REHABILITATION RESEARCH: RESEARCH FELLOWSHIPS

Subpart A—General

Sec.

356.1 What is the Research Fellowships Program?
356.2 Who is eligible for assistance under this program?
356.3 What regulations apply to this program?
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Subpart B—What Kinds of Activities Does the Department Support Under This Program?

356.10 What types of activities are authorized?
356.11 What types of problems may be researched under the fellowship program?

Subpart C—How Does One Apply for Assistance Under This Program?

356.20 What are the application procedures under this part?
356.21 What is the fellowship review process?

Subpart D—How Does the Secretary Select a Fellow?

356.30 What selection criteria are used for this program?
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Subpart E—What Conditions Have to be Met by a Fellow?

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356.50 What kinds of payments are allowed under this program?
356.51 What reports are required?
356.52 Are there other requirements?

AUTHORITY: 29 U.S.C. 760–762, unless otherwise noted.

SOURCE: 46 FR 45312, Sept. 10, 1981, unless otherwise noted.

Subpart A—General

§356.1 What is the Research Fellowships Program?

The purpose of this program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to perform research on the rehabilitation of individuals with disabilities.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984, as amended at 58 FR 49419, Sept. 22, 1993]

§356.2 Who is eligible for assistance under this program?

(a) Only individuals are eligible to be recipients of Fellowships.

(b) Any individual is eligible for assistance under this program who has training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities.

(c) This program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships.

(1) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

(2) The Secretary awards Merit Fellowships to individuals in earlier stages of their careers in research. To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.

(d) An applicant for a fellowship under this program must be eligible under 34 CFR 75.60.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984, as amended at 57 FR 30343, July 8, 1992; 58 FR 49419, Sept. 22, 1993]

§ 356.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The peer review requirements contained in 34 CFR 350.31–350.32.

(b) The regulations in this part—34 CFR part 356;

(c)(1) Subject to the additional requirement in paragraph (c)(2) of this section, 34 CFR part 97, Protection of Human Subjects.

(2) When an IRB reviews research that purposefully requires inclusion of children with disabilities or individuals with mental disabilities as research subjects, the IRB must include at least one person primarily concerned with the welfare of these research subjects.

(d) The regulations in 34 CFR 75.60–75.61 (regarding the ineligibility of certain individuals to receive assistance).

(Authority: 29 U.S.C. 761a(d), 42 U.S.C. 300v–1(b))

[46 FR 45312, Sept. 10, 1981, as amended at 56 FR 28031, June 18, 1991; 57 FR 30343, July 8, 1992; 58 FR 49419, Sept. 22, 1993; 60 FR 17431, Apr. 5, 1995]

§ 356.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 356.10 What types of activities are authorized?

(a) Fellows may conduct original research in any area authorized by section 204 of the Act.

(b) Each year the Secretary may determine that research is needed in certain areas authorized under section 204 of the Act and may set aside funds to provide fellowship assistance for research in these specific areas. The Secretary publishes the selected priorities, if any, in a notice in the FEDERAL REGISTER.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.11 What types of problems may be researched under the fellowship program?

Problems encountered by individuals with disabilities in their daily lives that are due to the presence of a disabling condition, problems associated with the provision of rehabilitation services to individuals with disabilities, and problems connected with the conduct of disability research may be addressed under this program.

(Authority: Secs. 202(d), 202(g)(1), 204; 29 U.S.C. 761a(d), 761a(g)(1), 762)

[58 FR 49419, Sept. 22, 1993]

Subpart C—How Does One Apply for Assistance Under This Program?

§ 356.20 What are the application procedures under this part?

From time to time the Secretary will publish in the FEDERAL REGISTER an Application Notice that announces the availability of fellowship assistance under this part.

(Authority: Sec. 202(d); (29 U.S.C. 761a(d)))

§ 356.21 What is the fellowship review process?

The Secretary reviews applications for Fellowships in accordance with the peer review requirements governing grants in 34 CFR 350.31 and 350.32 and the selection criteria contained in § 356.30.

(Approved by the Office of Management and Budget under control number 1800–0027)

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

Subpart D—How Does the Secretary Select a Fellow?

§ 356.30 What selection criteria are used for this program?

The Secretary evaluates an application for a Fellowship on the basis of—

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of the Institute.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

(Approved by the Office of Management and Budget under control number 1800–0027)

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984, as amended at 52 FR 30065, Aug. 12, 1987]

§356.31 How does the Secretary evaluate an application under this part?

The Secretary awards the following points for each application based on how well the applicant addresses the two criteria in §356.30: Outstanding (5); Superior (4); Satisfactory (3); Marginal (2); Poor (1).

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§356.32 What are the special considerations in selecting applications for funding under this part?

(a) The Secretary reserves funds to support some or all of the applications which have been awarded a rating of superior or better (4–5 points) under §356.31.

(b) In making a final selection of applicants to support under this program, the Secretary considers the extent to which applicants rated outstanding or superior present a unique opportunity to effect a major advance in knowledge, address critical problems in innovative ways, present proposals which are consistent with the Institute's Long-Range Plan, build research capacity within the field, or complement and significantly increases the potential value of already planned research and related activities.

(Approved by the Office of Management and Budget under control number 1800–0027)

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984, as amended at 52 FR 30065, Aug. 12, 1987]

Subpart E—What Conditions Have To Be Met by a Fellow?

§356.40 What is the length of a Fellowship award?

The Secretary awards Fellowships for a period of 12 months. Under exceptional circumstances, the Secretary may extend the period of a Fellowship; such an extension may not exceed 12 months.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§356.41 What are the employment limitations during a fellowship period?

The Secretary may require a research fellow to work full time on authorized fellowship activities.

(Authority: Sec. 202(d); (29 U.S.C. 761a(d)))

§356.42 What acknowledgement of support is required?

Publication, distribution, and disposition of all manuscripts and other materials resulting from a fellowship awarded under this part must acknowledge that assistance was received from the Department and the Institute. Three copies of these publications or other materials must be furnished to the Secretary.

(Authority: Sec. 202(d); (29 U.S.C. 761a(d)))

Subpart F—What are the Administrative Responsibilities of a Fellow?

§356.50 What kinds of payments are allowed under this program?

A Fellowship award in either the Distinguished or Merit category includes a fixed stipend and a flat rate allowance for research and research-related expenses including travel expenses.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.51 What reports are required?

Fellows shall submit final reports. Each report must contain at a minimum an analysis of the significance of the project and an assessment of the degree to which the objectives of the project have been achieved.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.52 Are there other requirements?

The Secretary may require fellows to attend one or more meetings in connection with Fellowship activities.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

PART 357—DISABILITY AND REHABILITATION RESEARCH: FIELD-INITIATED PROJECTS

Subpart A—General

Sec.
357.1 What is the field-initiated projects program?
357.2 Who is eligible for assistance under this program?
357.3 What regulations apply to this program?
357.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

357.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

357.30 How is peer review conducted under this program?
357.31 How does the Secretary evaluate an application under this program?
357.32 How does the Secretary evaluate an application under this program?
357.33 What are the priorities for funding under this program?

AUTHORITY: 29 U.S.C 760–762, unless otherwise noted.

SOURCE: 49 FR 9326, Mar. 12, 1984, unless otherwise noted.

EFFECTIVE DATE NOTE: At 62 FR 5713, Feb. 6, 1997, part 357 was removed, effective Oct. 1, 1997.

Subpart A—General

§ 357.1 What is the field-initiated projects program?

This program is designed—

(a) To encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to further the purposes of the Institute; and

(b) To support research and demonstration, development, or knowledge dissemination projects as described in § 357.10, that address important activities not supported by Institute-funded research or that complement that research in a promising way.

(Authority: Secs. 200(1); 202(i)(1); 204; 29 U.S.C. 760(1), 761(a)(1), 762)

[53 FR 24245, June 27, 1988]

§ 357.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are described in 34 CFR 350.2.

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

§ 357.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: Secs. 202 and 204; 29 U.S.C 761a, 762)

§ 357.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i) (1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 357.10 What types of projects are authorized under this program?

The following types of projects may be funded under this program:

(a) Research and demonstration projects, including—

(1) Scientific investigations into the nature of disability and its prevalence and distribution;

(2) Methods of analyzing disability;

(3) Techniques and devices for habilitation, rehabilitation, and restoration of physical, emotional, cognitive, communicative, vocational, and social functioning;

(4) Analyses of social, economic, industrial, geographic, and demographic factors affecting disability and rehabilitation;

(5) Studies of architectural, administrative, employment, and transportation barriers and other problems encountered by individuals with disabilities in their daily lives; and

(6) General scientific and technological inquiries to develop methods and devices to enable persons with disabilities to live with maximum independence, and other comparable research and demonstration activities.

(b) Knowledge dissemination projects related to the dissemination and utilization of new knowledge in disability and rehabilitation, including—

(1) Studies of the most effective means to disseminate new knowledge to disabled consumers and service providers;

(2) Controlled demonstrations of selected techniques to encourage the utilization of new knowledge; and

(3) Studies to develop and test new curricula to train service providers in specific clinical or service skills or in the management of services.

(c) Development projects to—

(1) Design and develop new devices or techniques to assist individuals with disabilities to engage in activities of daily living;

(2) Fabricate prototype devices;

(3) Evaluate prototypes and other important but untested devices in clinical and daily living settings;

(4) Develop standards for assistive devices; and

(5) Develop techniques to promote the manufacture, evaluation, and distribution of new devices.

(Authority: Secs. 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761a(i)(1))

[53 FR 24245, June 27, 1988]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§357.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32.

(Sec. 202(e); (29 U.S.C 761a(e)))

§357.31 How does the Secretary evaluate an application under this program?

The Secretary evaluates an application under this program for scientific merit on the basis of the selection criteria in §357.32, and according to the procedures in §350.33.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

§357.32 How does the Secretary evaluate an application under this program?

(a) *Importance of the problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them; and

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities.

(3) The application addresses the needs of individuals with disabilities from minority backgrounds.

(b) *Design of the project.* (45 points) (1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target populations;

(iv) The materials for dissemination are prepared in media accessible to the target population;

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required disciplines to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Management and evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

(Approved by the Office of Management and Budget under Control Number 1820–0027)

(Authority: Secs. 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761a(i)(1))

[53 FR 24246, June 27, 1988, as amended at 58 FR 49419, Sept. 22, 1993]

§ 357.33 What are the priorities for funding under this program?

(a) The Secretary reserves funds to support some or all of the proposals which have been awarded a rating of 80 points or more under the procedures described in § 357.31.

(b) In making a final selection of proposals to support under this program, the Secretary will consider the extent to which proposals that have been awarded a rating of 80 points or more meet one or more of the following conditions:

(1) The proposed project represents a unique opportunity to advance rehabilitation knowledge to improve the lives of individuals with disabilities.

(2) The proposed project complements research already planned or funded by the Institute through annual priorities published in the FEDERAL

REGISTER or addresses that research in a new and promising way.

(Authority: Secs. 202(g) and 202(i)(1); (29 U.S.C. 761a(g) and 761a(i)(1))

[49 FR 9326, Mar. 12, 1984, as amended at 53 FR 24245, June 27, 1988]

PART 359—DISABILITY AND REHABILITATION RESEARCH: SPECIAL PROJECTS AND DEMONSTRATIONS FOR SPINAL CORD INJURIES

Subpart A—General

Sec.
359.1 What is the Special Projects and Demonstrations for Spinal Cord Injuries program?
359.2 Who is eligible for assistance under this program?
359.3 What regulations apply to this program?
359.4 What definitions apply to this program?
359.5—359.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

359.10 What types of projects are authorized under this program?
359.11 What activities must each recipient carry out under this program?
359.12—359.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

359.30 How is peer review conducted under this program?
359.31 What selection criteria does the Secretary use in reviewing applications under this program?
359.32 What additional factors does the Secretary consider in making a grant under this program?
359.33—359.39 [Reserved]

AUTHORITY: 29 U.S.C. 762(b)(4), unless otherwise noted.

Source: 50 FR 16676, Apr. 26, 1985, unless otherwise noted.

Subpart A—General

§359.1 What is the Special Projects and Demonstrations for Spinal Cord Injuries Program?

This program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries.

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

§359.2 Who is eligible for assistance under this program?

The agencies and organizations eligible to apply under this program are described in 34 CFR 350.2.

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

[58 FR 49420, Sept. 22, 1993]

§359.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: Secs. 202 and 204; 29 U.S.C. 761a and 762)

§359.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

§§359.5—359.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§359.10 What types of projects are authorized under this program?

This program provides assistance for demonstration projects that—

(a) Provide comprehensive rehabilitation services to individuals with spinal cord injuries; and

(b) Conduct spinal cord research, including clinical research and the analysis of standardized data in collaboration with other related projects.

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

§359.11 What activities must each recipient carry out under this program?

Each recipient, whether administering a project separately under this part or in coordination with other activities supported under title II of the Act, shall—

(a) Establish a multidisciplinary system of providing rehabilitation services specifically designed to meet the special needs of individuals with spinal cord injuries, including emergency medical services, acute care, vocational and other rehabilitation services, community and job placement, and long-term community follow up and health maintenance. The system must be established on an appropriate geographical basis that reflects patterns of patient flow, and must be administered in close coordination with similar programs of the Veterans Administration, the National Institutes of Health, and other public and private agencies and institutions where appropriate;

(b) Demonstrate and evaluate both the service and cost benefits of a regional service system to those individuals with spinal cord injuries who might be served within that system;

(c) Establish within the system a rehabilitation research environment for the achievement of new knowledge leading to the reduction and treatment of complications arising from spinal cord injury and the development of new techniques of medical management and rehabilitation;

(d) Demonstrate and evaluate the development and application of improved methods and equipment essential to the care, management, and rehabilitation of individuals with spinal cord injury;

(e) Demonstrate methods of community outreach and education for individuals with spinal cord injury in areas such as housing, transportation, recreation, employment, and other community activities; and

(f) Address the needs of individuals with spinal cord injuries from minority backgrounds;

(g) Participate as directed by the Secretary in national studies of the benefits of a spinal cord injury service system by contributing to a national database and by other means as required by the Secretary.

(Authority: Secs. 21(b)(6) and 204(b)(4); 29 U.S.C. 718b and 762(b)(4))

[50 FR 16676, Apr. 26, 1985, as amended at 58 FR 49420, Sept. 22, 1993]

§§ 359.12—359.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 359.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32, using the selection criteria in § 359.31.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

§ 359.31 What selection criteria does the Secretary use in reviewing applications under this program?

The Secretary uses the criteria in this section to evaluate applications under this program. The maximum score for all the criteria is 100 points.

(a) *Project design* (20 points). The Secretary reviews each application to determine to what degree—

(1) There is a clear description of how the objectives of the project relate to the purpose of the program;

(2) The research is likely to produce new and useful information;

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The research hypotheses are sound; and

(6) The research methodology is sound in the sample design and selection, the data collection plan, the measurement instruments, and the data analysis plan.

(b) *Service comprehensiveness* (20 points). The Secretary reviews each application to determine to what degree—

(1) The services to be provided within the project are comprehensive in scope, and include emergency medical services, intensive and acute medical care, rehabilitation management, psychosocial and community reintegration, and follow up;

(2) A broad range of vocational and other rehabilitation services will be available to severely handicapped individuals within the project; and

(3) Services will be coordinated with those services provided by other appropriate community resources.

(c) *Plan of operation* (15 points). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Individuals with disabilities; and

(iv) The elderly.

(d) *Quality of key personnel* (10 points). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training or experience, or both, in spinal cord injury care and rehabilitation and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature or methods, or both;

(3) All the disciplines necessary to establish the multidisciplinary system described in §359.11(a) are effectively represented;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Individuals with disabilities; and

(iv) The elderly.

(e) *Adequacy of resources* (10 points). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative and other necessary support is evident.

(f) *Budget/cost effectiveness* (10 points). The Secretary reviews each application to determine to what degree—

(1) The budget for the project is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project; and

(3) The budget for subcontracts (if required) is detailed and appropriate.

(g) *Dissemination/utilization* (5 points). The Secretary reviews each application to determine to what degree—

(1) There is a clearly defined plan for dissemination and utilization of project findings;

(2) The research results are likely to become available to others working in the field;

(3) The means to disseminate and promote utilization by others are defined; and

(4) The utilization approach is likely to address the defined need.

(h) *Evaluation plan* (10 points). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(Authority: Secs. 202(e) and 204(b)(4); 29 U.S.C. 761a(e) and 762(b)(4))

[50 FR 16676, Apr. 26, 1985, as amended at 58 FR 49420, Sept. 22, 1993]

§359.32 What additional factors does the Secretary consider in making a grant under this program?

In determining which applicants to fund under this program, the Secretary also considers the proposed location of any project in order to achieve, to the

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 360—DISABILITY AND REHABILITATION RESEARCH: RESEARCH TRAINING AND CAREER DEVELOPMENT PROGRAM

Subpart A—General

Sec.
360.1 What is the Research Training and Career Development Program?
360.2 Who is eligible for asssistance under this program?
360.3 What regulations apply to this program?
360.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

360.10 What types of projects are authorized under this program?
360.11 What types of activities are required under these projects?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

360.30 How is peer review conducted under this program?
360.31 What selection criteria are used under this program?
360.32 What are the priorities for funding under this program?

Subpart E—What Conditions Must Be Met After an Award?

360.40 What is the required duration of the training?
360.41 What level of participation is required of trainees?

AUTHORITY: 29 U.S.C. 760–762, unless otherwise noted.

SOURCE: 53 FR 23352, June 21, 1988, unless otherwise noted.

EFFECTIVE DATE NOTE: At 62 FR 5713, Feb. 6, 1997, part 360 was removed, effective Oct. 1, 1997.

Subpart A—General

§ 360.1 What is the Research Training and Career Development Program?

The purpose of this program is to expand capability in the field of rehabilitation research by supporting projects that provide advanced training in rehabilitation research.

(Authority: 29 U.S.C. 761a(k))

§ 360.2 Who is eligible for assistance under this program?

Institutions of higher education are eligible to receive assistance under this program.

(Authority: 29 U.S.C. 761(a)(k))

§ 360.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: 29 U.S.C. 761a(i)(l))

§ 360.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: 29 U.S.C. 761a(i)(l))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 360.10 What types of projects are authorized under this program?

The Research Training and Career Development Program provides financial assistance for projects of advanced training in rehabilitation research. These projects provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience, including experience in management or basic science research, in fields pertinent to rehabilitation in order to qualify those individuals to conduct independent research on problems related to disability and rehabilitation.

(Authority: 29 U.S.C. 761a(k))

§360.11 What types of activities are required under these projects?

Each project must include the following activities:

(a) Recruitment and selection of candidates for advanced research training.

(b) Provision of a training program that includes didactic and classroom instruction, is multidisciplinary, and emphasizes scientific methodology, and that may involve collaboration among institutions.

(c) Provision of research experience, laboratory experience or its equivalent in a community-based research setting, and a practicum that involve each individual in clinical research and in practical activities with organizations representing individuals with disabilities.

(d) Provision of academic mentorship or guidance, and opportunities for scientific collaboration with qualified researchers at the host university and other appropriate institutions.

(e) Opportunities for participation in the development of professional presentations and publications, and for attendance at professional conferences and meetings as appropriate for the individual's field of study and level of experience.

(Authority: 29 U.S.C. 761(a)(k))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§360.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

§360.31 What selection criteria are used under this program?

(a) *Importance and potential contribution.* (20 points) (Note: For fiscal year 1988 only, the maximum number of points to be awarded under this criterion is 10 points.) The Secretary reviews each application to determine to what degree—

(1) The applicant is responsive to any priority established under §360.32;

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers, such as clinicians in rural areas, or clinicians who have direct experience with underserved populations, including minority populations; and

(3) The applicant is likely to make a significant increase in the number of trained rehabilitation researchers.

(b) *Quality of proposed training program.* (40 points) The Secretary reviews each application to determine to what degree—

(1) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees, including those who are individuals with disabilities;

(2) The proposed didactic and classroom training programs emphasize scientific methodology, are multidisciplinary, comprehensive, and appropriate to the level of the trainees, and are likely to produce qualified independent researchers;

(3) The quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to produce highly qualified researchers;

(4) The type, extent, and quality of the proposed clinical and laboratory research experience, incuding the opportunity to participate in research on meaningful topics at an advanced level, are likely to develop individuals with the capacity to perform independent research; and

(5) The opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(c) *Personnel and resources committed to the project.* (30 points) The Secretary evaluates each application to determine to what degree—

(1) The activities of the project will be implemented by sufficient and qualified staff who are outstanding scientists in the field;

(2) The project director and other key staff are experienced in the delivery of advanced research training as well as knowledgeable about the methodology and literature of pertinent subject areas;

(3) All required disciplines are effectively included; and

(4) The applicant possesses the appropriate facilities, laboratories, and access to clinical populations and organizations representing persons with disabilities to support the conduct of advanced clinical rehabilitation research.

(d) *Management and operating plans.* (10 points) (Note: For fiscal year 1988 only, the maximum number of points to be awarded under this criterion is 20 points.) The Secretary evaluates each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) There is an effective plan for collaboration with other institutions of higher education and organizations whose participation is necessary to ensure effective classroom and clinical research training;

(3) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, gender, age, or disability;

(4) The applicant has provided an adequate plan for the use of facilities, resources, supplies, and equipment;

(5) The budget for the project is reasonable and adequate to support the proposed activities; and

(6) The applicant provides an appropriate plan for the evaluation of all phases of the project.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: 29 U.S.C. 761a(e) and 76(a)(k))

[53 FR 23352, June 21, 1988, as amended at 58 FR 49420, Sept. 22, 1993]

§ 360.32 What are the priorities for funding under this program?

(a) Each year, the Secretary may establish priorities to support research training in one or more of the following areas of study:

(1) Medicine or medical specialties, such as physical medicine and rehabilitation; neurology; orthopedics; otolaryngology; rheumatology; psychiatry; family medicine; endocrinology; pediatrics; podiatry; dentistry; urology; plastic and reconstructive surgery; or maxillofacial prosthodontics.

(2) Allied health professions, such as physical therapy; occupational therapy; nursing; audiology; speech pathology; psychology; or recreational therapy.

(3) Engineering and rehabilitation technology fields, such as prosthetics and orthotics; engineering; design; architecture; computer applications; or biomechanics.

(4) Miscellaneous clinical or technical fields, such as rehabilitation counseling; social work; law; social and behavioral sciences; gerontology; or demographics.

(b) The Secreatary establishes any priorities under this section through a notice in the FEDERAL REGISTER.

(Authority: 29 U.S.C. 760–762)

Subpart E—What Conditions Must Be Met After an Award?

§ 360.40 What is the required duration of the training?

A grantee shall provide training to individuals that is not less than one academic year in duration, unless a longer training period is required to ensure that each trainee is qualified to conduct independent research upon completion of the course of training. (Note: For fiscal year 1988 only, the minimum required training period is two academic years.)

(Authority: 29 U.S.C. 760–762)

§ 360.41 What level of participation is required of trainees?

Individuals who are receiving training under this program shall devote a minimum of eighty percent of their time to the activities of the training program during the training period.

(Authority: 29 U.S.C. 760–762)

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

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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))

§ 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 retaining 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 individual 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 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) I*ndividual 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 coworkers 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 preferences 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 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 accordance with the provisions of 34 CFR part 81, subpart A.

(e) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(h) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44

(i) *Judicial review.* A State may appeal the Secretary's decision to withhold or limit payments by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: 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.

(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 administer 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 rehabilitation 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 Advisory 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

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 interagency 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

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 within 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;

(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 benefitting 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 evaluation 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 factors, 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 nonprofit 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.

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(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.

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(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.

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(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 rehabilitation 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.

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(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 benefits 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.

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(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 employment 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 individual'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 require 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

(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 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 interagency 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 reallotment 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.

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AUTHORITY: 29 U.S.C. 795j–q, unless otherwise noted.

SOURCE: 59 FR 8331, Feb. 18, 1993, unless otherwise noted.

Subpart A—General

§ 363.1 What is the State Supported Employment Services Program?

Under the State Supported Employment Services Program, the Secretary provides grants to assist States in developing and implementing collaborative programs with appropriate entities to provide programs of supported employment services for individuals with the most severe disabilities who require supported employment services to enter or retain competitive employment.

(Authority: 29 U.S.C. 795j)

§ 363.2 Who is eligible for an award?

Any State is eligible for an award under this program.

(Authority: 29 U.S.C. 795n)

§ 363.3 Who is eligible for services?

A State may provide services under this program to any individual if—

(a) The individual has been determined eligible for vocational rehabilitation services in accordance with the criteria in section 102(a)(1) of the Act;

(b) The individual has been determined to be an individual with the most severe disabilities; and

(c) Supported employment has been identified as the appropriate rehabilitation objective for the individual on the basis of a comprehensive assessment of rehabilitation needs, including an evaluation of rehabilitation, career, and job needs.

(Authority: 29 U.S.C. 795m)

§ 363.4 What are the authorized activities under a State Supported Employment Services grant?

Under this program, the following activities are authorized:

(a) Any particularized assessment that is needed to supplement the comprehensive assessment of rehabilitation needs done under 34 CFR part 361 and that is provided subsequent to the development of the individualized written rehabilitation program. The supplementary assessment may be provided in circumstances such as the following:

(1) A reassessment of the suitability of the placement is warranted.

(2) There is a change in the individual's medical condition.

(b) Development of and placement in jobs for individuals with the most severe disabilities.

(c) Provision of supported employment services that are needed to support individuals with the most severe disabilities in employment, such as—

(1) Intensive on-the-job skills training and other training provided by skilled job trainers, co-workers, and other qualified individuals, and other

services specified in section 103(a) of the Act in order to achieve and maintain job stability;

(2) Follow-up services, including regular contact with employers, trainees with the most severe disabilities, parents, guardians or other representatives of trainees, and other suitable professional and informed advisors in order to reinforce and stabilize the job placement; and

(3) Discrete post-employment services following transition that are unavailable from an extended services provider and that are necessary to maintain the job placement, such as job station redesign, repair and maintenance of assistive technology, and replacement of prosthetic and orthotic devices.

(Authority: 29 U.S.C. 795l)

§363.5 What regulations apply?

The following regulations apply to the State Supported Employment Services Program:

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

(1) 34 CFR part 76 (State-Administered Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 363.

(c) The following regulations in 34 CFR part 361 (The State Vocational Rehabilitation Services Program): §§361.31; 361.32; 361.33; 361.34; 361.35; 361.39; 361.40; 361.41; 361.42; 361.47(a); 361.48; and 361.49.

NOTE: Many of the regulatory provisions cross-referenced in §363.5(c) are affected by statutory changes made by the Rehabilitation Act Amendments of 1992. If these provisions conflict with statutory language, they are superseded by the statutory language. Program regulations for part 361 are being amended to implement statutory changes. When final regulations for part 361 are published, these cross-references will be corrected, if necessary.

(Authority: 29 U.S.C. 795j and 711(c))

§363.6 What definitions apply?

(a) *Definitions in 34 CFR part 361.* The following terms used in this part are defined in 34 CFR 369.4(b):

Act
Designated State unit
Individual with disabilities
Individual with severe disabilities
State plan

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

Fiscal Year
Nonprofit
Private Secretary
State

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

(1) *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.

(2) As used in the definition of ''Supported employment''—

(i) *Competitive employment* means work—

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

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

(ii) *Integrated setting* means a setting typically found in the community in which an individual with the most severe disabilities interacts with non-disabled individuals, other than non-disabled individuals who are providing services to that individual, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(iii) *Supported employment services* means on-going support services provided by the designated State unit with funds under this part—

(A) For a period not to exceed 18 months, unless under special circumstances a longer period to achieve job stabilization has been jointly agreed to by the individual and the rehabilitation counselor and established in the individualized written rehabilitation program, before an individual with the most severe disabilities makes the transition to extended services; and

(B) As discrete post-employment services following transition in accordance with § 363.4(c)(3);

(iv) *Extended services* means on-going support services and other appropriate services provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part, part 381, part 376, or part 380, after an individual with the most severe disabilities has made the transition from State vocational rehabilitation agency support; and

(v) *Transitional employment* means a series of temporary job placements in competitive work in an integrated work setting with on-going support services for individuals with the most severe disabilities due to mental illness. In transitional employment, the provision of on-going support services must include continuing sequential job placements until job permanency is achieved.

(3) *On-going support services* means services that are—

(i) Needed to support and maintain an individual with the most severe disabilities in supported employment;

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

(iii) Furnished by the designated State unit from the time of job placement until transition to extended services, except as provided in § 363.4(c)(3) and, following transition, 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. On-going support services must include, at a minimum, twice-monthly monitoring at the work site of each individual in supported employment to assess employment stability, unless under special circumstances, especially at the request of the individual, the individualized written rehabilitation program provides for off-site monitoring, and, based upon that assessment, the coordination or provision of specific services at or away from the work site, that are needed to maintain employment stability. If off-site monitoring is determined to be appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month. On-going support services consist of—

(A) Any particularized assessment needed to supplement the comprehensive assessment of rehabilitation needs;

(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 such as 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 rehabilitation services described in 34 CFR part 361; and

(I) Any service similar to the foregoing services.

(Authority: 29 U.S.C. 706(18), 711(c), and 795j)

[59 FR 8331, Feb. 18, 1993, as amended at 62 FR 6363, Feb. 11, 1997]

Subpart B—How Does a State Apply for a Grant?

§363.10 What documents must a State submit to receive a grant?

To receive a grant under this part, a State must submit to the Secretary, as part of the State plan under 34 CFR part 361, a State plan supplement that meets the requirements of §363.11.

(Authority: 29 U.S.C. 795n)

§363.11 What information and assurances must be included in the State plan supplement?

Each State plan supplement must include the following:

(a) *Designated State agency.* Designate the State unit or units for vocational rehabilitation services identified in the State plan submitted under 34 CFR part 361 as the State agency or agencies to administer this program.

(b) *Results of needs assessment.* Summarize the results of the needs assessment of individuals with severe disabilities conducted under title I of the Act with respect to the rehabilitation and career needs of individuals with severe disabilities and the need for supported employment services. The results of the needs assessment must address the coordination and use of information within the State relating to section 618(b)(1)(c) of the Individuals with Disabilities Education Act.

(c) *Quality, scope, and extent of services.* Describe the quality, scope, and extent of supported employment services to be provided to individuals with the most severe disabilities under this program. The description must address the timing of the transition to extended services referred to in §363.50(b)(2).

(d) *Distribution of funds.* Describe the State's goals and plans with respect to the distribution of funds received under §363.20.

(e) *Collaboration.* Demonstrate evidence of the efforts of the designated State unit to identify and make arrangements, including entering into cooperative agreements, with—

(1) Other State agencies and other appropriate entities to assist in the provision of supported employment services; and

(2) Other public or non-profit agencies or organizations within the State, employers, natural supports, and other entities with respect to the provision of extended services.

(f) *Minority outreach.* Describe the designated State unit's outreach procedures for identifying and serving individuals with the most severe disabilities who are minorities.

(g) *Assurances.* Provide assurances that—

(1) Funds made available under this part will only be used to provide supported employment services authorized under the Act to individuals who are eligible under this part to receive the services;

(2) The comprehensive assessments of individuals with severe disabilities conducted under section 102(b)(1)(A) and funded under title I of the Act will include consideration of supported employment as an appropriate rehabilitation objective;

(3) An individualized written rehabilitation program, as required by section 102 of the Act, will be developed and updated, using funds under title I, that—

(i) Specifies the supported employment services to be provided to each individual served under this program, including a description of the expected extended services needed, which may include natural supports, and an identification of the State, Federal, or private programs or other resources that will provide the extended services, including a description of the basis for determining that extended services are available, or to the extent that it is not possible to identify the source of extended services at the time the individualized written rehabilitation program is developed, a statement describing the basis for concluding that there is a reasonable expectation that sources will become available;

(ii) Provides for periodic monitoring to ensure that each individual with severe disabilities is making satisfactory progress toward meeting the weekly work requirement established in the individualized written rehabilitation program by the time of transition to extended services;

(4) The State will use funds provided under this part only to supplement, and not supplant, the funds provided under title I of the Act, in providing supported employment services specified in the individualized written rehabilitation program;

(5) Services provided under an individualized written rehabilitation program will be coordinated with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent job skills training is provided, the training will be provided on-site;

(7) Supported employment services will include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, interests, concerns, abilities, and capabilities of individuals with the most severe disabilities;

(8) The designated State agency or agencies will expend no more than 5 percent of the State's allotment under this part for administrative costs of carrying out this program; and

(9) The public participation requirements of section 101(a)(23) are met.

(h) *Other information.* Contain any other information and be submitted in the form and in accordance with the procedures that the Secretary may require.

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

(Authority: 29 U.S.C. 795n)

Subpart C—How Does the Secretary Make a Grant?

§ 363.20 How does the Secretary allocate funds?

The Secretary allocates funds under this program in accordance with section 632(a) of the Act.

(Authority: 29 U.S.C. 795k)

§ 363.21 How does the Secretary reallocate funds?

The Secretary reallocates funds in accordance with section 632(b) of the Act.

(Authority: 29 U.S.C. 795k)

Subparts D–E—[Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

§ 363.50 What collaborative agreements must the State develop?

(a) A designated State unit must enter into one or more written cooperative agreements or memoranda of understanding with other appropriate State agencies, private nonprofit organizations, and other available funding sources to ensure collaboration in a plan to provide supported employment services and extended services to individuals with the most severe disabilities.

(b) A cooperative agreement or memorandum of understanding must, at a minimum, specify the following:

(1) The supported employment services to be provided by the designated State unit with funds received under this part.

(2) The extended services to be provided by relevant State agencies, private nonprofit organizations, or other sources following the cessation of supported employment services under this part.

(3) The estimated funds to be expended by the participating party or parties in implementing the agreement or memorandum.

(4) The projected number of individuals with the most severe disabilities who will receive supported employment services and extended services under the agreement or memorandum.

(Authority: 29 U.S.C. 795n)

§ 363.51 What are the allowable administrative costs?

(a) *Administrative costs—general.* Expenditures are allowable for the following administrative costs:

(1) Administration of the State plan supplement for this program.

(2) Planning program development, and personnel development to implement a system of supported employment services.

(3) Monitoring, supervision, and evaluation of this program.

(4) Technical assistance to other State agencies, private nonprofit organizations, and businesses and industries.

(b) *Limitation on administrative costs.* Not more than five percent of a State's allotment may be expended for administrative costs for carrying out this program.

(Authority: 29 U.S.C. 795n)

§363.52 What are the information collection and reporting requirements?

(a) A State shall collect and report information as required under section 13 of the Act for each individual with the most severe disabilities served under this program.

(b) The State shall collect and report separately information for

(1) Supported employment clients served under this program; and

(2) Supported employment clients served under 34 CFR part 361.

(Approved by the Office of Management and Budget under control number 1820–0551)

(Authority: 29 U.S.C. 712 and 795o)

§363.53 What special conditions apply to services and activities under this program?

Each grantee shall coordinate the services provided to an individual under this part and under 34 CFR part 361 to ensure that the services are complementary and not duplicative.

(Authority: 29 U.S.C. 711(c) and 795p)

§363.54 What requirements must a State meet before it provides for the transition of an individual to extended services?

A designated State unit must provide for the transition of an individual with the most severe disabilities to extended services no later than 18 months after placement in supported employment, unless a longer period is established in the individualized written rehabilitation program, and only if the individual has made substantial progress toward meeting the hours-per-week work goal provided for in the individualized written rehabilitation program, the individual is stabilized in the job, and extended services are available and can be provided without a hiatus in services.

(Authority: 29 U.S.C. 795n and 711(c))

§363.55 What are the requirements for successfully rehabilitating an individual in supported employment?

An individual with the most severe disabilities who is receiving supported employment services is considered to be successfully rehabilitated if the individual maintains a supported employment placement for 60 days after making the transition to extended services.

(Authority: 29 U.S.C. 711(c))

§363.56 What notice requirements apply to this program?

Each grantee must advise applicants for or recipients of services under this part, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State's Client Assistance Program, including information on seeking assistance from that program.

(Authority: 29 U.S.C. 718a)

PART 364—STATE INDEPENDENT LIVING SERVICES PROGRAM AND CENTERS FOR INDEPENDENT LIVING PROGRAM: GENERAL PROVISIONS

Subpart A—General

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AUTHORITY: 29 U.S.C. 796–796f-5, unless otherwise noted.

SOURCE: 59 FR 41887, Aug. 15, 1994, unless otherwise noted.

Subpart A—General

§ 364.1 What programs are covered?

(a) This part includes general requirements applicable to the conduct of the following programs authorized under title VII of the Rehabilitation Act of 1973, as amended:

(1) The State Independent Living Services (SILS) program (34 CFR part 365).

(2) The Centers for Independent Living (CIL) program (34 CFR part 366).

(b) Some provisions in this part also are made specifically applicable to the Independent Living Services for Older Individuals Who Are Blind (OIB) program (34 CFR part 367).

(Authority: 29 U.S.C. 711(c) and 796–796f-5)

§ 364.2 What is the purpose of the programs authorized by chapter 1 of title VII?

The purpose of the SILS and CIL programs authorized by chapter 1 of title VII of the Act is to promote a philosophy of independent living (IL), including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, to maximize the leadership, empowerment, independence, and productivity of individuals with significant disabilities, and to promote and maximize the integration and full inclusion of individuals with

significant disabilities into the mainstream of American society by providing financial assistance to States—

(a) For providing, expanding, and improving the provision of IL services;

(b) To develop and support statewide networks of centers for independent living (centers); and

(c) For improving working relationships among—

(1) SILS programs;

(2) Centers;

(3) Statewide Independent Living Councils (SILCs) established under section 705 of the Act;

(4) State vocational rehabilitation (VR) programs receiving assistance under title I and under part C of title VI of the Act;

(5) Client assistance programs (CAPs) receiving assistance under section 112 of the Act;

(6) Programs funded under other titles of the Act;

(7) Programs funded under other Federal laws; and

(8) Programs funded through non-Federal sources.

(Authority: 29 U.S.C. 796)

§364.3 What regulations apply?

The following regulations apply to the SILS and CIL programs:

(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 grants or subgrants to an eligible agency that is not a State or local government or Indian tribal organization.

(2) 34 CFR part 75 (Direct Grant Programs), with respect to grants under subparts B and C of 34 CFR part 366.

(3) 34 CFR part 76 (State-Administered Programs), with respect to grants under 34 CFR part 365 and subpart D of 34 CFR part 366.

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), with respect to grants to an eligible agency that is a State or local government or Indian tribal organization.

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 364.

(c) The regulations in 34 CFR parts 365 and 366 as applicable.

(Authority: 29 U.S.C. 711(c))

§364.4 What definitions apply?

(a) *Definitions in EDGAR*. The following terms used in this part and in 34 CFR parts 365, 366, and 367 are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Nonprofit
Private
Project
Public
Secretary

(b) *Other definitions*. The following definitions also apply to this part and to 34 CFR parts 365, 366, and 367:

Act means the Rehabilitation Act of 1973, as amended.

Administrative support services means assistance to support IL programs and the activities of centers and may include financial and technical assistance in planning, budget development, and evaluation of center activities, and support for financial management (including audits), personnel development, and recordkeeping activities.

(Authority: 29 U.S.C. 796c(c)(2))

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. To the extent permitted by State law or the rules of the agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. Advocacy may—

(1) Involve representing an individual—

(i) Before private entities or organizations, government agencies (whether State, local, or Federal), or in a court of law (whether State or Federal); or

(ii) In negotiations or mediation, in formal or informal administrative proceedings before government agencies (whether State, local, or Federal), or in legal proceedings in a court of law; and

(2) Be on behalf of—

(i) A single individual, in which case it is individual advocacy;

(ii) A group or class of individuals, in which case it is *systems* (or *systemic*) *advocacy;* or

(iii) Oneself, in which case it is *self advocacy*.

Attendant care means a personal assistance service provided to an individual with significant disabilities in performing a variety of tasks required to meet essential personal needs in areas such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

(Authority: 20 U.S.C. 706(30)(B)(vi))

Center for independent living means a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency that—

(1) Is designed and operated within a local community by individuals with disabilities; and

(2) Provides an array of IL services.

(Authority: 29 U.S.C. 796a(1))

Consumer control means, with respect to a center or eligible agency, that the center or eligible agency vests power and authority in individuals with disabilities, including individuals who are or have been recipients of IL services.

(Authority: 29 U.S.C. 796a(2))

Cross-disability means, with respect to a center, that a center provides IL services to individuals representing a range of significant disabilities and does not require the presence of one or more specific significant disabilities before determining that an individual is eligible for IL services.

(Authority: 29 U.S.C. 796a(1))

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

(Authority: 29 U.S.C.. 706(3) and 721(a)(1)(A))

Designated State unit means either—

(1) The State agency or the bureau, division, or other organizational unit within a State agency that is primarily concerned with the vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities and that is responsible for the administration of the VR program of the State agency; or

(2) The independent State commission, board, or other agency that has the vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities as its primary function.

(Authority: 29 U.S.C. 706(3) and 721(a)(2)(A))

Eligible agency means a consumer-controlled, community-based, cross-disability, nonresidential, private, nonprofit agency.

Authority: 29 U.S.C. 796f–5)

Independent living core services mean, for purposes of services that are supported under the SILS or CIL programs—

(1) Information and referral services;

(2) IL skills training;

(3) Peer counseling, including cross-disability peer counseling; and

(4) Individual and systems advocacy.

(Authority: 29 U.S.C. 706(29))

Independent living services includes the independent living core services and—

(1) Counseling services, including psychological, psychotherapeutic, and related services;

(2) Services related to securing housing or shelter, including services related to community group living, that are supportive of the purposes of the Act, and adaptive housing services, including appropriate accommodations to and modifications of any space used to serve, or to be occupied by, individuals with significant disabilities;

(3) Rehabilitation technology;

(4) Mobility training;

(5) Services and training for individuals with cognitive and sensory disabilities, including life skills training and interpreter and reader services;

(6) Personal assistance services, including attendant care and the training of personnel providing these services;

(7) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(8) Consumer information programs on rehabilitation and IL services available under the Act, especially for minorities and other individuals with significant disabilities who have traditionally been unserved or underserved by programs under the Act;

(9) Education and training necessary for living in a community and participating in community activities;

(10) Supported living;

(11) Transportation, including referral and assistance for transportation;

(12) Physical rehabilitation;

(13) Therapeutic treatment;

(14) Provision of needed prostheses and other appliances and devices;

(15) Individual and group social and recreational services;

(16) Training to develop skills specifically designed for youths who are individuals with significant disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

(17) Services for children;

(18) Services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with significant disabilities;

(19) Appropriate preventive services to decrease the need of individuals with significant disabilities assisted under the Act for similar services in the future;

(20) Community awareness programs to enhance the understanding and integration into society of individuals with significant disabilities; and

(21) Any other services that may be necessary to improve the ability of an individual with a significant disability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment and that are not inconsistent with any other provisions of the Act.

(Authority: 29 U.S.C. 796e–2(1))

Individual with a disability means an individual who—

(1) Has a physical, mental, cognitive, or sensory impairment that substantially limits one or more of the individual's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(Authority: 29 U.S.C. 706(8)(B))

Individual with a significant disability means an individual with a severe physical, mental, cognitive, or sensory impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of IL services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment.

(Authority: 29 U.S.C. 706(15)(B))

Legally authorized advocate or representative means an individual who is authorized under State law to act or advocate on behalf of another individual. Under certain circumstances, State law permits only an attorney, legal guardian, or individual with a power of attorney to act or advocate on behalf of another individual. In other circumstances, State law may permit other individuals to act or advocate on behalf of another individual.

(Authority: 29 U.S.C. 711(c))

Minority group means Alaskan Natives, American Indians, Asian Americans, Blacks (African Americans), Hispanic Americans, Native Hawaiians, and Pacific Islanders.

Nonresidential means, with respect to a center, that the center, as of October 1, 1994, does not operate or manage housing or shelter for individuals as an IL service on either a temporary or

long-term basis unless the housing or shelter is—

(1) Incidental to the overall operation of the center;

(2) Necessary so that the individual may receive an IL service; and

(3) Limited to a period not to exceed eight weeks during any six-month period.

(Authority: 29 U.S.C. 796a, 796f–1(f) and 706f–2(f))

Peer relationships mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.

Peer role models means individuals with significant disabilities whose achievements can serve as a positive example for other individuals with significant disabilities.

Personal assistance services means a range of IL services, provided by one or more persons, designed to assist an individual with a significant disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. These IL services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(Authority: 29 U.S.C. 706(11))

Service provider means—

(1) A designated State unit (DSU) that directly provides IL services to individuals with significant disabilities;

(2) A center that receives financial assistance under part B or C of chapter 1 of title VII of the Act; or

(3) Any other entity or individual that meets the requirements of § 364.43(e) and provides IL services under a grant or contract from the DSU pursuant to § 364.43(b).

(Authority: 29 U.S.C. 711(c) and 796(e))

Significant disability means a severe physical, mental, cognitive, or sensory impairment that substantially limits an individual's ability to function independently in the family or community or to obtain, maintain, or advance in employment.

State means, except for sections 711(a)(2)(A) and 721(c)(2)(A) and where otherwise specified in the Act, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect).

(Authority: 29 U.S.C. 706(16))

State plan means the State IL plan required under section 704 of title VII of the Act.

Transportation means travel and related expenses that are necessary to enable an individual with a significant disability to benefit from another IL service and travel and related expenses for an attendant or aide if the services of that attendant or aide are necessary to enable an individual with a significant disability to benefit from that IL service.

(Authority: 29 U.S.C. 706(30)(B)(xi) and 711(c))

Unserved and underserved groups or populations, with respect to groups or populations of individuals with significant disabilities in a State, include, but are not limited to, groups or populations of individuals with significant disabilities who—

(1) Have cognitive and sensory impairments;

(2) Are members of racial and ethnic minority groups;

(3) Live in rural areas; or

(4) Have been identified by the eligible agency as unserved or underserved within a center's project area.

(Authority: 29 U.S.C. 706, 711(c), and 796f–796f–5)

§ 364.5 What is program income and how may it be used?

(a) *Definition.* Program income means gross income received by a grantee under title VII of the Act that is directly generated by an activity supported under 34 CFR part 365, 366, or 367.

(b) *Sources.* Sources of program income include, but are not limited to, payments received from workers' compensation funds or fees for services to defray part or all of the costs of services provided to particular consumers.

(c) *Use of program income.* (1) Program income, whenever earned, must be used for the provision of IL services or the administration of the State plan, as appropriate.

(2) A service provider is authorized to treat program income as—

(i) A deduction from total allowable costs charged to a Federal grant, in accordance with 34 CFR 80.25(g)(1); or

(ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2).

(3) Program income may not be used to meet the non-Federal share requirement under 34 CFR 365.12(b).

(Authority: 29 U.S.C. 711(c); 34 CFR 80.25)

§364.6 What requirements apply to the 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 34 CFR part 365, 366, or 367 that are not obligated or expended by the DSU or center prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended by the DSU or center prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the DSU or center during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year under part B of chapter 1 and under chapter 2 of title VII of the Act remain available for obligation in the succeeding fiscal year only to the extent that the DSU complied with any matching requirement by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: 29 U.S.C. 718)

Subpart B—What Are the Application Requirements?

§364.10 What are the application requirements?

To receive a grant from a State's allotment of funds under parts B and C of chapter 1 of title VII of the Act and 34 CFR parts 365 and 366, a State shall submit to the Secretary, and obtain approval of, a three-year State plan meeting the requirements in subpart C of this part.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(a)(1))

§364.11 When must the State plan be submitted for approval?

The designated State unit (DSU) shall submit to the Secretary for approval the three-year State plan no later than July 1 of the year preceding the first fiscal year of the three-year period for which the State plan is submitted.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(a)(4))

§364.12 How does the Secretary approve State plans?

(a) *General.* The Secretary approves a State plan that the Secretary determines meets the requirements of section 704 of the Act and subparts B through D of this part and disapproves a plan that does not meet these requirements.

(b) *Informal resolution.* If the Secretary intends to disapprove the State plan, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice of formal hearing.* If, after reasonable effort has been made to resolve the dispute informally, no resolution has been reached, the Secretary provides written notice to the DSU and the SILC of the intention to disapprove the State plan and of the opportunity for a hearing.

(d) *Hearing.* (1) If the DSU requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the Department's administration of the programs authorized by title VII of the Act, to conduct a hearing.

(2) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(e) *Judicial review.* A State may appeal the Secretary's decision to disapprove its State plan 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.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796d–1(a))

§ 364.13 Under what circumstances may funds be withheld, reduced, limited, or terminated?

(a) *When withheld, reduced, limited, or terminated.* Payments to a State under chapter 1 of title VII of the Act may be withheld, reduced, limited, or terminated as provided by section 107(c) of the Act if the Secretary finds that—

(1) The State plan has been so changed that it no longer conforms with the requirements of section 704 of the Act; or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of the plan.

(b) *Informal resolution.* If the Secretary intends to withhold, reduce, limit, or terminate payment of funds to a State under title VII of the Act as provided by section 107(c) of the Act, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice of formal hearing.* If, after reasonable effort has been made to resolve the dispute informally, no resolution has been reached, the Secretary provides written notice to the DSU and SILC of the intention to withhold, reduce, limit, or terminate payment of funds under title VII of the Act and of the opportunity for a hearing.

(d) *Hearing.* If the DSU requests a hearing, the Secretary designates an administrative law judge (ALJ) in the Office of Administrative Law Judges to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) *Initial decision.* The ALJ issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The DSU may seek the Secretary's review of an ALJ's initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews an ALJ's initial decision in accordance with 34 CFR 81.43.

(h) *Final decision of the Department.* The ALJ's initial decision becomes the final decision of the Department in accordance with 34 CFR 81.44.

(i) *Judicial review.* A State may appeal the Secretary's final decision to withhold, reduce, limit, or terminate payment of funds to a State under title VII of the Act 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.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 727(c)–(d) and 796d–1(a))

Subpart C—What Are the State Plan Requirements?

§ 364.20 What are the general requirements for a State plan?

(a) *Form and content.* The State plan must contain, in the form prescribed by the Secretary, the information required by this part and any other information requested by the Secretary.

(b) *Duration.* (1) The State plan must cover a three-year period and must be amended whenever necessary to reflect any material change in State law, organization, policy, or agency operations that affects the administration of the State plan.

(2) The Secretary may require a State to submit an interim State plan for a period of less than three years following a reauthorization of the Act and prior to the effective date of final regulations.

(c) *Joint development-single agency.* The State plan must be jointly—

(1) Developed by the DSU and the SILC; and

(2) Signed by the—

(i) Director of the DSU (Director); and

(ii) Chairperson of the SILC, acting on behalf of and at the direction of the SILC.

(d) *Joint development-separate agency for individuals who are blind.* If a separate State agency is authorized by State law as the sole State agency with authority to administer or supervise the administration of that part of the State plan relating to the vocational rehabilitation of individuals who are blind, the State plan must be jointly—

(1) Developed by the DSU, the SILC, and the separate State agency authorized to provide VR services for individuals who are blind; and

(2) Signed by the—

(i) Director;

(ii) Director of the separate State agency authorized to provide VR services for individuals who are blind; and

(iii) Chairperson of the SILC, acting on behalf of and at the direction of the SILC.

(3) (Cross-reference: See §364.22(c).)

(e) The State plan must assure that, as appropriate, the DSU and SILC actively consult in the development of the State plan with the Director of the CAP authorized under section 112 of the Act.

(f) *Periodic review and revision.* The State plan must provide for the review and revision of the plan, at least once every three years, to ensure the existence of appropriate planning, financial support and coordination, and other assistance to appropriately address, on a statewide and comprehensive basis, the needs in the State for—

(1) Providing State IL services;

(2) Developing and supporting a statewide network of centers; and

(3) Working relationships between—

(i) Programs providing IL services and supporting or establishing centers; and

(ii) The VR program established under title I of the Act, and other programs providing services for individuals with disabilities.

(g) *Public hearings.* (1) The State plan must assure that the DSU and SILC conduct public meetings to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its submission to the Secretary and on any revisions to the approved State plan. The DSU and SILC may meet the public participation requirement by holding the public meetings before a preliminary draft State plan is prepared or by providing a preliminary draft State plan for comment at the public meetings.

(2) The State plan must assure that the DSU and SILC establish and maintain a written description of procedures for conducting public meetings in accordance with the following requirements:

(i) The DSU and SILC shall provide appropriate and sufficient notice of the public meetings. Appropriate and sufficient notice means notice provided at least 30 days prior to the public meeting through various media available to the general public, such as newspapers and public service announcements, and through specific contacts with appropriate constituency groups and organizations identified by the DSU and SILC.

(ii) The DSU and SILC shall make reasonable accommodation to individuals with disabilities who rely on alternative modes of communication in the conduct of the public meetings, including providing sign language interpreters and audio-loops.

(iii) The DSU and SILC shall provide the notices of the public meetings, any written material provided prior to or at the public meetings, and the approved State plan in accessible formats for individuals who rely on alternative modes of communication.

(h) The State plan must assure that, at the public meetings to develop the State plan, the DSU and SILC identify those provisions in the State plan that are State-imposed requirements. For purposes of this section, a State-imposed requirement includes any State law, regulation, rule, or policy relating to the DSU's administration or operation of IL programs under title VII of the Act, including any rule or policy

implementing any Federal law, regulation, or guideline, that is beyond what would be required to comply with the regulations in 34 CFR parts 364, 365, 366, and 367.

(i) The State plan also must address how the specific requirements in §§364.21 through 364.43 and in §§364.56 and 364.59 will be met.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796c (a) and (m)(6))

§ 364.21 What are the requirements for the Statewide Independent Living Council (SILC)?

(a) *Establishment.* (1) To be eligible to receive assistance under chapter 1 of title VII of the Act, each State shall establish a SILC that meets the requirements of section 705 of the Act.

(2) The SILC may not be established as an entity within a State agency, including the designated State agency or DSU. The SILC shall be independent of the DSU and all other State agencies.

(b) *Appointment and composition*—(1) *Appointment.* Members of the SILC must be appointed by the Governor or the appropriate entity within the State responsible, in accordance with State law, for making appointments.

(2) *Composition.* (i) The SILC must include—

(A) At least one director of a center chosen by the directors of centers within the State; and

(B) As ex officio, nonvoting members, a representative from the DSU and representatives from other State agencies that provide services to individuals with disabilities.

(ii) The SILC may include—

(A) Other representatives from centers;

(B) Parents and legal guardians of individuals with disabilities;

(C) Advocates of and for individuals with disabilities;

(D) Representatives from private businesses;

(E) Representatives from organizations that provide services for individuals with disabilities; and

(F) Other appropriate individuals.

(iii) A majority of the members of the SILC must be individuals with disabilities, as defined in §364.4(b), and not employed by any State agency or center.

(c) *Qualifications.* The SILC must be composed of members—

(1) Who provide statewide representation;

(2) Who represent a broad range of individuals with disabilities; and

(3) Who are knowledgeable about centers and IL services.

(d) *Voting members.* A majority of the voting members of the SILC must be individuals with disabilities, as defined in §364.4(b), and not employed by any State agency or center.

(e) *Chairperson*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the SILC shall select a chairperson from among the voting membership of the SILC.

(2) *Designation by Governor.* In States in which the Governor does not have veto power pursuant to State law, the Governor shall designate a voting member of the SILC to serve as the chairperson of the SILC or shall require the SILC to so designate a voting member.

(f) *Terms of appointment.* Each member of the SILC shall serve for term of three years, except that—

(1) A member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed must be appointed for the remainder of that term;

(2) The terms of service of the members initially appointed must be (as specified by the appointing authority) for the fewer number of years as will provide for the expiration of terms on a staggered basis; and

(3) No member of the SILC may serve for more than two consecutive full terms.

(g) *Duties.* The SILC shall—

(1) Jointly develop and sign (in conjunction with the DSU) the State plan required by section 704 of the Act and §364.20;

(2) Monitor, review, and evaluate the implementation of the State plan;

(3) Coordinate activities with the State Rehabilitation Advisory Council established under section 105 of the Act and councils that address the needs of specific disability populations and issues under other Federal law;

(4) Ensure that all regularly scheduled meetings of the SILC are open to the public and sufficient advance notice is provided; and

(5) Submit to the Secretary all periodic reports as the Secretary may reasonably request and keep all records, and afford access to all records, as the Secretary finds necessary to verify the periodic reports.

(h) *Hearings.* The SILC is authorized to hold any hearings and forums that the SILC determines to be necessary to carry out its duties.

(i) *Resource plan.* (1) The SILC shall prepare, in conjunction with the DSU, a resource plan for the provision of resources, including staff and personnel, made available under parts B and C of chapter 1 of title VII of the Act, part C of title I of the Act, and from other public and private sources that may be necessary to carry out the functions of the SILC under this part.

(2) The SILC's resource plan must, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the State plan.

(3) No conditions or requirements may be included in the SILC's resource plan that may compromise the independence of the SILC.

(4) The SILC is responsible for the proper expenditure of funds and use of resources that it receives under the resource plan.

(5) A description of the SILC's resource plan required by paragraph (i)(1) of this section must be included in the State plan.

(j) *Staff.* (1) The SILC shall, consistent with State law, supervise and evaluate its staff and other personnel as may be necessary to carry out its functions under this section.

(2) While assisting the SILC in carrying out its duties, staff and other personnel made available to the SILC by the DSU may not be assigned duties by the designated State agency or DSU, or any other agency or office of the State, that would create a conflict of interest.

(k) *Reimbursement and compensation.* The SILC may use the resources described in paragraph (i) of this section to reimburse members of the SILC for reasonable and necessary expenses of attending SILC meetings and performing SILC duties (including child care and personal assistance services) and to pay compensation to a member of the SILC, if the member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing SILC duties.

(l) *Conflict of interest.* The code of conduct provisions in 34 CFR 74.162 and the conflict of interest provisions in 34 CFR 75.524 and 75.525 apply to members of the SILC. For purposes of this paragraph and 34 CFR 74.162, 75.524, and 75.525, a SILC is not considered a government, governmental entity, or governmental recipient.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796d)

§364.22 What is the State's responsibility for administration of the programs authorized by chapter 1 of title VII?

(a) *General.* The State plan must identify the DSU as the entity that, on behalf of the State, shall—

(1) Receive, account for, and disburse funds received by the State under part B of chapter 1 and section 723 of title VII of the Act (and 34 CFR parts 365 and 366, as applicable) based on the plan;

(2) Provide, as applicable, administrative support services for the SILS and CIL programs under part B of chapter 1 and section 723 of title VII of the Act, respectively, and 34 CFR parts 365 and 366, respectively;

(3) Keep records and afford access to these records as the Secretary finds to be necessary with respect to the SILS and CIL programs; and

(4) Submit additional information or provide assurances as the Secretary may require with respect to the SILS and CIL programs.

(b) *Provision of administrative support services.* The State plan must describe the administrative support services to be provided by the DSU under paragraph (a)(2) of this section.

(c) *Designation of State unit for individuals who are blind.* The State plan may designate a State agency or the organizational unit of a State agency that is authorized under State law to provide VR services to individuals who

are blind under a State VR plan as the DSU to administer that part of the State IL plan under which IL services are provided to individuals who are blind. However, a State agency designated pursuant to this paragraph may not submit a separate State plan.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(c))

§ 364.23 What are the staffing requirements?

(a) *General staffing requirement.* The State plan must assure that the staff of the service provider includes personnel who are specialists in the development and provision of IL services and in the development and support of centers.

(b) *Alternative communication needs staffing.* The State plan must also assure that, to the maximum extent feasible, the service provider makes available personnel able to communicate—

(1) With individuals with significant disabilities who rely on alternative modes of communication, such as manual communication, nonverbal communication devices, Braille, or audio tapes, and who apply for or receive IL services under title VII of the Act; and

(2) In the native languages of individuals with significant disabilities whose English proficiency is limited and who apply for or receive IL services under title VII of the Act.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

§ 364.24 What assurances are required for staff development?

The State plan must assure that the service provider establishes and maintains a program of staff development for all classes of positions involved in providing IL services and, if appropriate, in administering the CIL program. The staff development program must emphasize improving the skills of staff directly responsible for the provision of IL services, including knowledge of and practice in the IL philosophy.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

§ 364.25 What are the requirements for a statewide network of centers for independent living?

(a) The State plan must include a design for the establishment of a statewide network of centers that comply with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of 34 CFR part 366.

(b) The design required by paragraph (a) of this section must identify unserved and underserved areas and must provide an order of priority for serving these areas.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796c(g))

§ 364.26 What are the requirements for cooperation, coordination, and working relationships?

(a) The State plan must include steps that will be taken to maximize the cooperation, coordination, and working relationships among—

(1) The SILS program, the SILC, and centers; and

(2) The DSU, other State agencies represented on the SILC, other councils that address the needs of specific disability populations and issues, and other public and private entities determined to be appropriate by the SILC.

(b) The State plan must identify the entities to which the DSU and the SILC will relate in carrying out the requirements of paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(i))

§ 364.27 What are the requirements for coordinating independent living (IL) services?

The State plan must describe how IL services funded under chapter 1 of title VII of the Act will be coordinated with, and complement, other services, to avoid unnecessary duplication with other Federal, State, and local programs, including the OIB program authorized by chapter 2 of title VII of the Act, that provide IL- or VR-related services. This description must include those services provided by State and local agencies administering the special education, vocational education,

developmental disabilities services, public health, mental health, housing, transportation, and veterans' programs, and the programs authorized under titles XVIII through XX of the Social Security Act within the State.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(j) and 752(i)(2)(C))

§364.28 What requirements relate to IL services for older individuals who are blind?

The State plan must include an assurance that the DSU will seek to incorporate into and describe in the State plan any new methods or approaches for the provision to older individuals who are blind of IL services that are developed under a project funded under chapter 2 of title VII of the Act and that the DSU determines to be effective.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c), 796c(j), and 796k(h))

§364.29 What are the requirements for coordinating Federal and State sources of funding?

(a) The State plan must describe efforts to coordinate Federal and State funding for centers and IL services.

(b) The State plan must identify the amounts, sources, and purposes of the funding to be coordinated under paragraph (a) of this section, including the amount of State funds earmarked for the general operation of centers.

(c) Cross-reference: See 34 CFR 366.30(a).

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(k))

§364.30 What notice must be given about the Client Assistance Program (CAP)?

The State plan must include satisfactory assurances that all service providers will use formats that are accessible to notify individuals seeking or receiving IL services under chapter 1 of title VII about—

(a) The availability of the CAP authorized by section 112 of the Act;

(b) The purposes of the services provided under the CAP; and

(c) How to contact the CAP.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 718a and 796c(m)(1))

§364.31 What are the affirmative action requirements?

The State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will take affirmative action to employ and advance in employment qualified individuals with significant disabilities on the same terms and conditions required with respect to the employment of individuals with disabilities under section 503 of the Act.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(m)(2))

§364.32 What are the requirements for outreach?

(a) With respect to IL services and centers funded under chapter 1 of title VII of the Act, the State plan must include steps to be taken regarding outreach to populations in the State that are unserved or underserved by programs under title VII, including minority groups and urban and rural populations.

(b) The State plan must identify the populations to be designated for targeted outreach efforts under paragraph (a) of this section and the geographic areas (i.e., communities) in which they reside.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(l))

§364.33 What is required to meet minority needs?

The State plan must demonstrate how the State will address the needs of individuals with significant disabilities from minority group backgrounds.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c), 718b(b), and 796c(l))

§ 364.34 What are the fiscal and accounting requirements?

In addition to complying with applicable EDGAR fiscal and accounting requirements, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will adopt those fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of and accounting for those funds.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(m)(3))

§ 364.35 What records must be maintained?

In addition to complying with applicable EDGAR recordkeeping requirements, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will maintain—

(a) Records that fully disclose and document—

(1) The amount and disposition by the recipient of that financial assistance;

(2) The total cost of the project or undertaking in connection with which the financial assistance is given or used;

(3) The amount of that portion of the cost of the project or undertaking supplied by other sources; and

(4) Compliance with the requirements of chapter 1 of title VII of the Act and this part; and

(b) Other records that the Secretary determines to be appropriate to facilitate an effective audit.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(m)(4))

§ 364.36 What are the reporting requirements?

With respect to the records that are required by § 364.35, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will submit reports that the Secretary determines to be appropriate.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(m)(4)(D))

§ 364.37 What access to records must be provided?

For the purpose of conducting audits, examinations, and compliance reviews, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 and chapter 2 of title VII of the Act will provide access to the Secretary and the Comptroller General, or any of their duly authorized representatives, to—

(a) The records maintained under § 364.35;

(b) Any other books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under chapter 1 of title VII of the Act; and

(c) All individual case records or files or consumer service records of individuals served under 34 CFR part 365, 366, or 367, including names, addresses, photographs, and records of evaluation included in those individual case records or files or consumer service records.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796c(m)(4)(c) and (5))

§ 364.38 What methods of evaluation must the State plan include?

The State plan must establish a method for the periodic evaluation of the effectiveness of the plan in meeting the objectives established in § 364.42, including evaluation of satisfaction by individuals with significant disabilities who have participated in the program.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(n))

§ 364.39 What requirements apply to the administration of grants under the Centers for Independent Living program?

In States in which State funding for centers equals or exceeds the amount of funds allotted to the State under

part C of title VII of the Act, as determined pursuant to 34 CFR 366.29 and 366.31, and in which the State elects to administer the CIL program as provided in section 723 of the Act, the State plan must include policies, practices, and procedures, including the order of priorities that the State may establish pursuant to 34 CFR 366.34(a), that are consistent with section 723 of the Act to govern the awarding of grants to centers and the oversight of these centers.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c (g) and (h), 796f–1(d), and 796f–2(d))

§364.40 Who is eligible to receive IL services?

The State plan must assure that—

(a) Any individual with a significant disability, as defined in §364.4(b), is eligible for IL services under the SILS and CIL programs authorized under chapter 1 of title VII of the Act;

(b) Any individual may seek information about IL services under these programs and request referral to other services and programs for individuals with significant disabilities, as appropriate; and

(c) The determination of an individual's eligibility for IL services under the SILS and CIL programs meets the requirements of §364.51.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 706(15)(B) and 796b)

§364.41 What assurances must be included regarding eligibility?

(a) The State plan must assure that the service provider applies eligibility requirements without regard to age, color, creed, gender, national origin, race, religion, or type of significant disability of the individual applying for IL services.

(b) The State plan must assure that the service provider does not impose any State or local residence requirement that excludes under the plan any individual who is present in the State and who is otherwise eligible for IL services from receiving IL services.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

§364.42 What objectives and information must be included in the State plan?

(a) The State plan must specifically describe—

(1) The objectives to be achieved;

(2) The financial plan for the use of Federal and non-Federal funds to meet these objectives. The financial plan must identify the source and amounts of other Federal and non-Federal funds to be used to meet these objectives; and

(3) How funds received under sections 711, 721, and 752 of the Act will further these objectives.

(b) The objectives required by paragraph (a) of this section must address—

(1) The overall goals and mission of the State's IL programs and services;

(2) The various priorities for the types of services and populations to be served; and

(3) The types of services to be provided.

(c) In developing the objectives required by paragraph (a) of this section, the DSU and the SILC shall consider, and incorporate if appropriate, the priorities and objectives established by centers pursuant to section 725(c)(4) of the Act.

(d) The State plan must establish timeframes for the achievement of the objectives required by paragraph (a) of this section.

(e) The State plan must explain how the objectives required by paragraph (a) of this section are consistent with and further the purpose of chapter 1 of title VII of the Act, as stated in section 701 of the Act and §364.2.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(d))

§364.43 What requirements apply to the provision of State IL services?

(a) The State plan must describe the extent and scope of IL services to be

provided under title VII of the Act to meet the objectives stated in § 364.42.

(b) The State plan must provide that the State directly, or through grants or contracts, will provide IL services with Federal, State, or other funds.

(c) Unless the individual signs a waiver stating that an IL plan is unnecessary, IL services provided to individuals with significant disabilities must be in accordance with an IL plan that meets the requirements of § 364.52 and that is mutually agreed upon by—

(1) An appropriate staff member of the service provider; and

(2) The individual.

(d) If the State provides the IL services that it is required to provide by paragraph (b) of this section through grants or contracts with third parties, the State plan must describe these arrangements.

(e) If the State contracts with or awards a grant to a center for the general operation of the center, the State shall delegate to the center the determination of an individual's eligibility for services from that center. If the State contracts with or awards a grant to a third party to provide specific IL services, the State may choose to delegate to the IL service provider the determination of eligibility for these services and the development of an IL plan for individuals who receive these services.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c), 796c(e)–(f), and 796f–4(b)(2))

Subpart D—What Conditions Must Be Met After an Award?

§ 364.50 What requirements apply to the processing of referrals and applications?

The service provider shall apply the standards and procedures established by the DSU pursuant to 34 CFR 365.30 to ensure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

(Authority: 29 U.S.C. 711(c) and 796–796f–5)

§ 364.51 What requirements apply to determinations of eligibility or ineligibility?

(a) *Eligibility*. (1) Before or at the same time as an applicant for IL services may begin receiving IL services funded under this part, the service provider shall determine the applicant's eligibility and maintain documentation that the applicant has met the basic requirements specified in § 364.40.

(2) The documentation must be dated and signed by an appropriate staff member of the service provider.

(b) *Ineligibility*. (1) If a determination is made that an applicant for IL services is not an individual with a significant disability, the service provider shall provide documentation of the ineligibility determination that is dated and signed by an appropriate staff member.

(2)(i) The service provider may determine an applicant to be ineligible for IL services only after full consultation with the applicant or, if the applicant chooses, the applicant's parent, guardian, or other legally authorized advocate or representative, or after providing a clear opportunity for this consultation.

(ii) The service provider shall notify the applicant in writing of the action taken and inform the applicant or, if the applicant chooses, the applicant's parent, guardian, or other legally authorized advocate or representative, of the applicant's rights and the means by which the applicant may appeal the action taken. (Cross-reference: See § 364.58(a).)

(iii) The service provider shall provide a detailed explanation of the availability and purposes of the CAP established within the State under section 112 of the Act, including information on how to contact the program.

(iv) If appropriate, the service provider shall refer the applicant to other agencies and facilities, including the State's VR program under 34 CFR part 361.

(c) *Review of ineligibility determination*. (1) If an applicant for IL services has been found ineligible, the service provider shall review the applicant's ineligibility at least once within 12 months after the ineligibility determination

has been made and whenever the service provider determines that the applicant's status has materially changed.

(2) The review need not be conducted in situations where the applicant has refused the review, the applicant is no longer present in the State, or the applicant's whereabouts are unknown.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796c(e))

§364.52 What are the requirements for an IL plan?

(a) *General.* (1) Unless the individual who is to be provided IL services under this part signs a waiver in accordance with paragraph (a)(2) of this section, the service provider, in collaboration with the individual with a significant disability, shall develop and periodically review an IL plan for the individual in accordance with the requirements in §364.43(c) and paragraphs (b) through (e) of this section.

(2) The requirements of this section with respect to an IL plan do not apply if the individual knowingly and voluntarily signs a waiver stating that an IL plan is unnecessary.

(3) Subject to paragraph (a)(2) of this section, the service provider shall provide each IL service in accordance with the IL plan.

(b) *Initiation and development of an IL plan.* (1) Development of an individual's IL plan must be initiated after documentation of eligibility under §364.51(a) and must indicate the goals or objectives established, the services to be provided, and the anticipated duration of the service program and each component service.

(2) The IL plan must be developed jointly and signed by the appropriate staff member of the service provider and the individual with a significant disability or, if consistent with State law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative.

(3) A copy of the IL plan, and any amendments, must be provided in an accessible format to the individual with a significant disability or, if consistent with State law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative.

(c) *Review.* (1) The IL plan must be reviewed as often as necessary but at least on an annual basis to determine whether services should be continued, modified, or discontinued, or whether the individual should be referred to a program of VR services under 34 CFR part 361 or to any other program of assistance.

(2) Each individual with a significant disability or, if consistent with State law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative, must be given an opportunity to review the IL plan and, if necessary, jointly redevelop and agree by signature to its terms.

(d) *Coordination with vocational rehabilitation, developmental disabilities, and special education programs.* The development of the IL plan and the provision of IL services must be coordinated to the maximum extent possible with any individualized—

(1) Written rehabilitation program for VR services for that individual;

(2) Habilitation program for the individual prepared under the Developmental Disabilities Assistance and Bill of Rights Act; and

(3) Education program for the individual prepared under part B of the Individuals with Disabilities Education Act.

(e) *Termination of services.* If the service provider intends to terminate services to an individual receiving IL services under an IL plan, the service provider shall follow the procedures in §364.51(b)(2)(ii) through (iv) and (c).

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796c(e) and (j))

§364.53 What records must be maintained for the individual?

For each applicant for IL services (other than information and referral) and for each individual receiving IL services (other than information and referral), the service provider shall maintain a consumer service record that includes—

(a) Documentation concerning eligibility or ineligibility for services;

(b) The services requested by the consumer;

(c) Either the IL plan developed with the consumer or a waiver signed by the consumer stating that an IL plan is unnecessary;

(d) The services actually provided to the consumer; and

(e) The IL goals or objectives—

(1) Established with the consumer, whether or not in the consumer's IL plan; and

(2) Achieved by the consumer.

(f) A consumer service record may be maintained either electronically or in written form, except that the IL plan and waiver must be in writing.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c), 712 and 796c(m)(4)(B))

§ 364.54 What are the durational limitations on IL services?

The service provider may not impose any uniform durational limitations on the provision of IL services, except as otherwise provided by Federal law or regulation.

(Authority: 29 U.S.C. 711(c) and 796–796f–5)

§ 364.55 What standards shall service providers meet?

In providing IL services to individuals with significant disabilities, service providers shall comply with—

(a) The written standards for IL service providers established by the DSU pursuant to 34 CFR 365.31; and

(b) All applicable State or Federal licensure or certification requirements.

(Authority: 29 U.S.C. 711(c) and 796–796f–5)

§ 364.56 What are the special requirements pertaining to the protection, use, and release of personal information?

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

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

(2) All applicants for, or recipients of, IL services and, as appropriate, those individuals' legally authorized representatives, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for gaining access to and releasing this information;

(3) All applicants or their legally authorized representatives are informed about the service provider's need to collect personal information and the policies governing its use, including—

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

(ii) Explanation of the principal purposes for which the service provider intends to use or release the information;

(iii) Explanation of whether providing requested information to the service provider is mandatory or voluntary and the effects to the individual of not providing requested information;

(iv) Identification of those situations in which the service provider requires or does not require informed written consent of the individual or his or her legally authorized representative before information may be released; and

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

(4) Persons who are unable to communicate in English or who rely on alternative modes of communication must be provided an explanation of service provider policies and procedures affecting personal information through methods that can be adequately understood by them;

(5) At least the same protections are provided to individuals with significant disabilities as provided by State laws and regulations; and

(6) Access to records is governed by rules established by the service provider and any fees charged for copies of records are reasonable and cover only extraordinary costs of duplication or making extensive searches.

(b) *Service provider use.* All personal information in the possession of the service provider may be used only for the purposes directly connected with the provision of IL services and the administration of the IL program under which IL services are provided. Information containing identifiable personal information may not be shared with advisory or other bodies that do

not have official responsibility for the provision of IL services or the administration of the IL program under which IL services are provided. In the provision of IL services or the administration of the IL program under which IL services are provided, the service provider may obtain personal information from other 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 recipients of IL services.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by a recipient of IL services, the service provider shall release all information in that individual's record of services to the individual or the individual's legally authorized representative in a timely manner.

(2) Medical, psychological, or other information that the service provider determines may be harmful to the individual may not be released directly to the individual, but must be provided through a qualified medical or psychological professional or the individual's legally authorized 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.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research activities only for purposes directly connected with the administration of an IL program, or for purposes that would significantly improve the quality of life for individuals with significant disabilities 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 personally identifying information without the informed written consent of the involved individual or the individual's legally authorized representative.

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

(2) Medical or psychological information may be released pursuant to paragraph (e)(1) of this section if the other agency or organization assures the service provider 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 service provider shall release personal information if required by Federal laws or regulations.

(4) The service provider 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 judicial order.

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

(Authority: 29 U.S.C. 711(c))

§364.57 What functions and responsibilities may the State delegate?

A DSU may carry out the functions and responsibilities described in §§364.50, 364.51 (subject to 364.43(d)), 364.52, 364.53, and 364.56 or, except as otherwise provided, may delegate these functions and responsibilities to the appropriate service provider with

which the DSU subgrants or contracts to provide IL services.

(Authority: 29 U.S.C. 711(c), 796c(f) and 796e–2)

§ 364.58 What appeal procedures must be available to consumers?

Each service provider shall—

(a) Establish policies and procedures that an individual may use to obtain review of decisions made by the service provider concerning the individual's request for IL services or the provision of IL services to the individual; and

(b) Use formats that are accessible to inform each individual who seeks or is receiving IL services from the service provider about the procedures required by paragraph (a) of this section.

(Authority: 29 U.S.C. 711(c))

§ 364.59 May an individual's ability to pay be considered in determining his or her participation in the costs of IL services?

(a) *No Federal requirement or prohibition.* (1) A State is neither required to allow nor prohibited from allowing service providers to charge consumers for the cost of IL services.

(2) If a State allows service providers to charge consumers for the cost of IL services, a State is neither required to allow nor prohibited from allowing service providers to consider the ability of individual consumers to pay for the cost of IL services in determining how much a particular consumer must contribute to the costs of a particular IL service.

(b) *State plan requirements.* If a State chooses to allow service providers to charge consumers for the cost of IL services or if a State chooses to allow service providers to consider the ability of individual consumers to pay for the cost of IL services, the State plan must—

(1) Specify the types of IL services for which costs may be charged and for which a financial need test may be applied; and

(2) Assure that any consideration of financial need is applied uniformly so that all individuals who are eligible for IL services are treated equally.

(c) *Financial need.* Consistent with paragraph (b) of this section, a service provider may choose to charge consumers for the cost of IL services or may choose to consider the financial need of an individual who is eligible for IL services.

(d) *Written policies and documentation.* If the service provider chooses to consider financial need—

(1) It shall maintain written policies covering the specific types of IL services for which a financial need test will be applied; and

(2) It shall document the individual's participation in the cost of any IL services, including the individual's financial need.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c))

PART 365—STATE INDEPENDENT LIVING SERVICES

Subpart A—General

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365.2 Who is eligible for an award?
365.3 What regulations apply?

Subpart B—How Does the Secretary Make a Grant to a State?

365.10 How does a State apply for a grant?
365.11 How is the allotment of Federal funds for State independent living (IL) services computed?
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365.13 What requirements apply if the State's non-Federal share is in cash?
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Subpart C—For What Purpose Are Funds Authorized or Required To Be Used?

365.20 What are the authorized uses of funds?
365.21 What funds may the State use to provide the IL core services?
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365.23 How does a State make a subgrant or enter into a contract?

Subpart D—What Conditions Must Be Met After an Award?

365.30 What are the standards for processing referrals and applications?
365.31 What are the standards for service providers?

AUTHORITY: 29 U.S.C. 796e–796e–2, unless otherwise noted.

SOURCE: 59 FR 41897, Aug. 15, 1994, unless otherwise noted.

Subpart A—General

§365.1 What is the State Independent Living Services (SILS) program?

The Secretary provides financial assistance to States under the SILS program authorized by part B of chapter 1 of title VII of the Act to—

(a) Provide the resources described in the resource plan required by section 705(e) of the Act and 34 CFR 364.21(d) relating to the Statewide IL Council (SILC);

(b) Provide to individuals with significant disabilities the independent living (IL) services required by section 704(e) of the Act;

(c) Demonstrate ways to expand and improve IL services;

(d) Support the operation of centers for independent living (centers) that are in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of 34 CFR part 366;

(e) Support activities to increase the capacities of public or nonprofit agencies and organizations and other entities to develop comprehensive approaches or systems for providing IL services;

(f) Conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to Federal, State, and local policy makers in order to enhance IL services for individuals with significant disabilities;

(g) Train individuals with significant disabilities, individuals with disabilities, individuals providing services to individuals with significant disabilities, and other persons regarding the IL philosophy; and

(h) Provide outreach to populations that are unserved or underserved by programs under title VII of the Act, including minority groups and urban and rural populations.

(Authority: 29 U.S.C. 796e)

§365.2 Who is eligible for an award?

Any designated State unit (DSU) identified by the State pursuant to 34 CFR 364.22 is eligible to apply for assistance under this part in accordance with 34 CFR 364.10 and 364.11.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(a)(1) and (c) and 796e(a))

§365.3 What regulations apply?

The following regulations apply to this part:

(a) The regulations in 34 CFR part 364.

(b) The regulations in this part 365.

(Authority: 29 U.S.C. 711(c) and 796e)

Subpart B—How Does the Secretary Make a Grant to a State?

§365.10 How does a State apply for a grant?

To receive a grant under this part, a State shall submit to the Secretary and obtain approval of a State plan that meets the requirements of part A of title VII of the Act and subparts B and C of 34 CFR part 364.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 796c(a)(1) and (c) and 796e(a))

§365.11 How is the allotment of Federal funds for State independent living (IL) services computed?

(a) The allotment of Federal funds for State IL services for each State is computed in accordance with the requirements of section 711(a)(1) of the Act.

(b) The allotment of Federal funds for Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau is computed in accordance with section 711(a)(2) of the Act.

(c) If the State plan designates, pursuant to § 364.22(c), a unit to administer the part of the plan under which State IL services are provided for individuals who are blind and a separate or different unit to administer the rest of the plan, the division of the State's allotment between these two units is a matter for State determination.

(Authority: 29 U.S.C. 711(c) and 796e(a))

§ 365.12 How are payments from allotments for IL services made?

(a) From the allotment of a State for a fiscal year under § 365.11, the Secretary pays to the State the Federal share of the expenditures incurred by the State during the year in accordance with the State plan approved under section 706 of the Act. After any necessary adjustments resulting from previously made overpayments or underpayments, the payments may be made in advance or by reimbursement, in installments, and on conditions that the Secretary may determine.

(b)(1) The Federal share with respect to any State for any fiscal year is 90 percent of the expenditures incurred by the State during that fiscal year under its State plan approved under section 706 of the Act.

(2) The non-Federal share of the cost of any project that receives assistance through an allotment under this part may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.

(Authority: U.S.C. 796e–1)

§ 365.13 What requirements apply if the State's non-Federal share is in cash?

(a) Except as further limited by paragraph (b) of this section, expenditures that meet the requirements of 34 CFR 80.24(a) through (b)(6) may be used to meet the non-Federal share matching requirement under section 712(b) of the Act if—

(1) The expenditures are made with funds made available by appropriation directly to the designated State agency or with funds made available by allotment or transfer from any other unit of State or local government;

(2) The expenditures are made with cash contributions from a donor that are deposited in the account of the designated State agency in accordance with State law for expenditure by, and at the sole discretion of, the DSU for activities identified or described in the State plan and authorized by § 365.20; or

(3) The expenditures are made with cash contributions from a donor that are earmarked for meeting the State's share for—

(i) Providing particular services (e.g., personal assistance services);

(ii) Serving individuals with certain types of disabilities (e.g., older individuals who are blind);

(iii) Providing services to specific groups that State or Federal law permits to be targeted for services (e.g., children of migrant laborers); or

(iv) Carrying out particular types of administrative activities permissible under State law.

(b) Cash contributions are permissible under paragraph (a)(3) of this section only if the cash contributions are not used for expenditures that benefit or will 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.

(c) The receipt of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act from the DSU is not considered a benefit to the donor of a cash contribution for purposes of paragraph (b) of this section if the grant, subgrant, or contract was awarded under the State's regular competitive procedures.

(d) For purposes of this section, a donor may be a private agency, a profit-making or nonprofit organization, or an individual.

(Authority: 29 U.S.C. 711(c) and 796e–1(b))

§ 365.14 What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?

(a) A State may not condition the award of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act on the requirement that the applicant for the grant

or subgrant make a cash or in-kind contribution of any particular amount or value to the State.

(b) An individual, entity, or organization that is a grantee or subgrantee of the State, or has a contract with the State, may not condition the award of a subgrant or subcontract under section 713 of the Act or section 723 of the Act on the requirement that the applicant for the subgrant or subcontract make a cash or in-kind contribution of any particular amount or value to the State or to the grantee or contractor of the State.

(Authority: 29 U.S.C. 711(c) and 796e–1(b))

§365.15 What requirements apply if the State's non-Federal share is in kind?

Subject to §365.14, in-kind contributions may be—

(a) Used to meet the matching requirement under section 712(b) of the Act if the in-kind contributions meet the requirements of 34 CFR 80.24 (b)(7) through (g) and if the in-kind contributions would be considered allowable costs under this part, as determined by the cost principles made applicable by either subpart Q of 34 CFR part 74 or 34 CFR 80.22, as appropriate; and

(b) Made to the program or project by the State or by a third party (i.e., an individual, entity, or organization, whether local, public, private, for profit, or nonprofit), including a third party that is a grantee, subgrantee, or contractor that is receiving or will receive assistance under section 713 or 723 of the Act.

(Authority: 29 U.S.C. 711(c) and 796e–1(b))

§365.16 What requirements apply to refunds and rebates?

The following must be treated as a reduction of expenditures charged to the grant, subgrant, or contract awarded under this part and may not be used for meeting the State's matching requirement under section 712(b) of the Act:

(a) Rebates, deductions, refunds, discounts, or reductions to the price of goods, products, equipment, rental property, real property, or services.

(b) Premiums, bonuses, gifts, and any other payments related to the purchase of goods, products, equipment, rental property, real property, or services.

(Authority: 29 U.S.C. 711(c), 796e–1(b), and OMB Circulars A–87 and A–122)

Subpart C—For What Purpose Are Funds Authorized or Required To Be Used?

§365.20 What are the authorized uses of funds?

The State may use funds received under this part to support the activities listed in §365.1 and to meet its obligation under section 704(e) of the Act and 34 CFR 364.43(b).

(Authority: 29 U.S.C. 796e–2)

§365.21 What funds may the State use to provide the IL core services?

(a) In providing IL services as required under section 704(e) of the Act and 34 CFR 364.43(b), a State may use funds provided under this part to provide directly, or through grants or contracts, the following IL core services:

(1) Information and referral services.

(2) IL skills training.

(3) Peer counseling, including cross-disability peer counseling.

(4) Individual and systems advocacy.

(b) Information and referral services may be provided independently of the other services described in paragraph (a) of this section and without regard to subpart G of 34 CFR part 366.

(Authority: 29 U.S.C. 711(c) and 796c(e))

§365.22 What additional IL services may the State provide?

In addition to the IL core services that the State may provide pursuant to §365.21(a) with funds received under part B of chapter 1 of title VII of the Act, the State also may use funds received under part B of chapter 1 of title VII of the Act to provide other IL services defined in 34 CFR 364.4 (Independent living services).

(Authority: 29 U.S.C. 796e–2(1))

§365.23 How does a State make a subgrant or enter into a contract?

If a State makes a subgrant or enters into a contract to provide IL services to meet its obligation under section 704(e) of the Act—

(a) The provisions of this part apply to both the State and the entity or individual to whom it awards a subgrant or with whom it enters into a contract; and

(b) The provisions concerning the administration of subgrants and contracts in 34 CFR parts 76 and 80 apply to the State.

(c) Cross-reference: See 34 CFR parts 74, 76, and 80.

(Authority: 29 U.S.C. 711(c), 796c(f), and 796e–2)

Subpart D—What Conditions Must Be Met After an Award?

§ 365.30 What are the standards for processing referrals and applications?

The DSU shall develop, establish, and maintain written standards and procedures to be applied by service providers to assure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c) and 796e)

§ 365.31 What are the standards for service providers?

(a) The DSU shall develop, establish, make available to the public, maintain, and implement written minimum standards for the provision of—

(1) IL services to be met by service providers that are not centers; and

(2) Specialized IL services to individuals with significant disabilities by centers under a contract with the DSU.

(b) The minimum standards developed pursuant to paragraph (a)(2) of this section may differ from the standards and assurances in section 725 of the Act and subparts F and G of 34 CFR part 366.

(c) The DSU shall assure that participating service providers meet all applicable State licensure or certification requirements.

(Approved by the Office of Management and Budget under control number 1820–0527)

(Authority: 29 U.S.C. 711(c))

PART 366—CENTERS FOR INDEPENDENT LIVING

Subpart A—General

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AUTHORITY: 29 U.S.C. 796d–1(b) and 796f–796f–6, unless otherwise noted.

SOURCE: 59 FR 41900, Aug. 15, 1994, unless otherwise noted.

Subpart A—General

§366.1 What is the Centers for Independent Living (CIL) program?

The CIL program provides financial assistance for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725(b) and (c) of the Act, consistent with the design included in the State plan pursuant to 34 CFR 364.25 for establishing a statewide network of centers.

(Authority: 29 U.S.C. 796f, 796f–1(a)(2), and 796f–2(a)(1)(A)(ii))

§366.2 What agencies are eligible for assistance under the CIL program?

(a) In any State in which the Secretary has approved the State plan required by section 704 of the Act, an applicant may receive a grant under subpart C or D of this part, as applicable, if the applicant demonstrates in its application submitted pursuant to §366.21, 366.24, 366.33, 366.35, or 366.36 that it—

(1) Has the power and authority to—

(i) Carry out the purpose of part C of title VII of the Act and perform the functions listed in section 725(b) and (c) of the Act and subparts F and G of this part within a community located within that State or in a bordering State; and

(ii) Receive and administer—

(A) Funds under this part;

(B) Funds and contributions from private or public sources that may be used in support of a center; and

(C) Funds from other public and private programs; and

(2) Is able to plan, conduct, administer, and evaluate a center consistent with the standards and assurances in

section 725(b) and (c) of the Act and subparts F and G of this part.

(b) An applicant that meets the requirements of paragraph (a) of this section is eligible to apply as a new center under §§ 366.24 or 366.36 if it—

(1) Is not receiving funds under part C of chapter 1 of title VII of the Act; or

(2) Proposes the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) at a different geographical location; and

(3) Meets the requirements of § 366.24;

(c) A State that received assistance in fiscal year (FY) 1993 to directly operate a center in accordance with section 724(a) of the Act is eligible to continue to receive assistance under this part to directly operate that center for FY 1994 or a succeeding fiscal year if, for the fiscal year for which assistance is sought—

(1) No nonprofit private agency submits and obtains approval of an acceptable application under section 722 or 723 of the Act or § 366.21 or § 366.24 to operate a center for that fiscal year before a date specified by the Secretary; or

(2) After funding all applications so submitted and approved, the Secretary determines that funds remain available to provide that assistance.

(d) Except for the requirement that the center be a private nonprofit agency, a center that is operated by a State that receives assistance under paragraph (a), (b), or (c) of this section shall comply with all of the requirements of part C of title VII of the Act and the requirements in subparts C or D, as applicable, and F of this part.

(e) Eligibility requirements for assistance under subpart B of this part are described in § 366.10.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c), 796f–1(b) and (d)(3), 796f–2(b), and 796f–3(a)(2) and (b))

§ 366.3 What activities may the Secretary fund?

(a) An eligible agency may use funds awarded under subpart B of this part to carry out activities described in § 366.11(b).

(b) An eligible agency may use funds awarded under subparts C and D of this part to—

(1) Plan, conduct, administer, and evaluate centers that comply with the standards and assurances in section 725(b) and (c) of the Act;

(2) Promote and practice the independent living (IL) philosophy in accordance with Evaluation Standard 1 (''Philosophy'');

(3) Provide IL services (including IL core services and, as appropriate, a combination of any other IL services specified in section 7(30)(B) of the Act) to individuals with a range of significant disabilities in accordance with Evaluation Standards 2 and 5 (''Provision of services'' and ''Independent living core services,'' respectively);

(4) Facilitate the development and achievement of IL goals selected by individuals with significant disabilities who seek assistance in the development and achievement of IL goals from the center in accordance with Evaluation Standard 3 (''Independent living goals'');

(5) Increase the availability and improve the quality of community options for independent living in order to facilitate the development and achievement of IL goals by individuals with significant disabilities in accordance with Evaluation Standard 4 (''Community options'');

(6) Increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities in accordance with Evaluation Standard 6 (''Activities to increase community capacity'');

(7) Conduct resource development activities to obtain funding from sources other than chapter 1 of title VII of the Act in accordance with Evaluation Standard 7 (Resource development activities); and

(8) Conduct activities necessary to comply with the assurances in section 725(c) of the Act, including, but not limited to the following:

(i) Aggressive outreach regarding services provided through the center in an effort to reach populations of individuals with significant disabilities that are unserved or underserved by

programs under title VII of the Act, especially minority groups and urban and rural populations.

(ii) Training for center staff on how to serve unserved and underserved populations, including minority groups and urban and rural populations.

(9) Cross-reference: See §366.71 in subpart G.

(Authority: 29 U.S.C. 796f through 796f–4)

§366.4 What regulations apply?

The following regulations apply to the CIL program:

(a) The regulations in 34 CFR part 364.

(b) The regulations in this part 366.

(Authority: 29 U.S.C. 711(c) and 796f–796f–5)

§366.5 What definitions apply to this program?

Decisionmaking position means the executive director, any supervisory position, and any other policymaking position within the center.

Staff position means a paid non-contract position within the center that is not included within the definition of a ''decisionmaking position.''

(Authority: 29 U.S.C. 796a(a))

[60 FR 39221, Aug. 1, 1995]

§366.6 How are program funds allotted?

(a) The Secretary allots Federal funds appropriated for FY 1994 and subsequent fiscal years for the CIL program to each State in accordance with the requirements of section 721 of the Act.

(b)(1) After the Secretary makes the reservation required by section 721(b) of the Act, the Secretary makes an allotment, from the remainder of the amount appropriated for a fiscal year to carry out part C of title VII of the Act, to each State whose State plan has been approved under section 706 of the Act and 34 CFR part 364.

(2) The Secretary makes the allotment under paragraph (b)(1) of this section subject to sections 721(c)(1)(B) and (C), 721(c)(2) and (3), and 721(d) of the Act.

(Authority: 29 U.S.C. 796f)

[59 FR 41900, Aug. 15, 1994. Redesignated at 60 FR 39221, Aug. 1, 1995]

Subpart B—Training and Technical Assistance

§366.10 What agencies are eligible for assistance to provide training and technical assistance?

Entities that have experience in the operation of centers are eligible to apply for grants to provide training and technical assistance under section 721(b) of the Act to eligible agencies, centers, and Statewide Independent Living Councils (SILCs).

(Authority: 29 U.S.C. 796f(b)(1))

§366.11 What financial assistance does the Secretary provide for training and technical assistance?

(a) From funds, if any, reserved under section 721(b)(1) of the Act to carry out the purposes of this subpart, the Secretary makes grants to, and enters into contracts, cooperative agreements, and other arrangements with, entities that have experience in the operation of centers.

(b) An entity receiving assistance in accordance with paragraph (a) of this section shall provide training and technical assistance to eligible agencies, centers, and SILCs to plan, develop, conduct, administer, and evaluate centers.

(Authority: 29 U.S.C. 796f(b)(1)–(3))

§366.12 How does the Secretary make an award?

(a) To be eligible to receive a grant or enter into a contract or other arrangement under section 721(b) of the Act and this subpart, an applicant shall submit an application to the Secretary containing a proposal to provide training and technical assistance to eligible agencies, centers, and SILCs and any additional information at the time and in the manner that the Secretary may require.

(b) The Secretary provides for peer review of grant applications by panels that include persons who are not Federal government employees and who have experience in the operation of centers.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f(b))

§ 366.13 How does the Secretary determine funding priorities?

In making awards under this section, the Secretary determines funding priorities in accordance with the training and technical assistance needs identified by the survey of SILCs and centers required by section 721(b)(3) of the Act.

(Authority: 29 U.S.C. 796f(b)(3))

§ 366.14 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant under this subpart on the basis of the criteria in § 366.15.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 796f(b)(3))

§ 366.15 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate applications for new awards for training and technical assistance:

(a) *Meeting the purposes of the program* (30 points). The Secretary reviews each application to determine how well the project will be able to meet the purpose of the program of providing training and technical assistance to eligible agencies, centers, and SILCs with respect to planning, developing, conducting, administering, and evaluating centers, including consideration of—

(1) The objectives of the project; and

(2) How the objectives further training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers.

(b) *Extent of need for the project* (20 points). The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in title VII of the Act, including consideration of—

(1) The needs addressed by the project;

(2) How the applicant identified those needs;

(3) How those needs will be met by the project; and

(4) The benefits to be gained by meeting those needs.

(c) *Plan of operation* (15 points). The Secretary reviews each application for information that shows the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Quality of key personnel* (7 points). (1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director, if one is to be used;

(ii) The qualifications of each of the other management and decision-making personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project;

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including members of racial or ethnic minority groups, women, persons with disabilities, and elderly individuals.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(e) *Budget and cost effectiveness* (5 points). The Secretary reviews each application for information that shows the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its goals and objectives; and

(3) Are objective and produce data that are quantifiable.

(4) Cross-reference: See 34 CFR 75.590.

(g) *Adequacy of resources* (3 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Extent of prior experience* (15 points). The Secretary reviews each application to determine the extent of experience the applicant has in the operation of centers and with providing training and technical assistance to centers, including—

(1) Training and technical assistance with planning, developing, and administering centers;

(2) The scope of training and technical assistance provided, including methods used to conduct training and technical assistance for centers;

(3) Knowledge of techniques and approaches for evaluating centers; and

(4) The capacity for providing training and technical assistance as demonstrated by previous experience in these areas.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f(b))

Subpart C—Grants to Centers for Independent Living (Centers) in States in Which Federal Funding Exceeds State Funding

§366.20 When does the Secretary award grants to centers?

The Secretary awards grants to centers in a State in a fiscal year if—

(a) The amount of Federal funds allotted to the State under section 721(c) and (d) of the Act to support the general operation of centers is greater than the amount of State funds earmarked for the same purpose, as determined pursuant to §§366.29 and 366.31; or

(b) The Director of a designated State unit (DSU) does not submit to the Secretary and obtain approval of an application to award grants under section 723 of the Act and §366.32(a) and (b).

(Authority: 29 U.S.C. 796f–1 and 796f–2(a)(2))

§366.21 What are the application requirements for existing eligible agencies?

To be eligible for assistance, an eligible agency shall submit—

(a) An application at the time, in the manner, and containing the information that is required;

(b) An assurance that the eligible agency meets the requirements of §366.2; and

(c) The assurances required by section 725(c) of the Act and subpart F of this part.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–1(b))

§366.22 What is the order of priorities?

(a) In accordance with a State's allotment and to the extent funds are available, the order of priorities for allocating funds among centers within a State is as follows:

(1) Existing centers, as described in §366.23, that comply with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of this part first receive the level of funding each center received in the previous year. However, any funds received by

an existing center to establish a new center at a different geographical location pursuant to proposed § 366.2(b)(2) are not included in determining the level of funding to the existing center in any fiscal year that the new center applies for and receives funds as a separate center.

(2) Existing centers that meet the requirements of paragraph (a)(1) of this section then receive a cost-of-living increase in accordance with procedures consistent with section 721(c)(3) of the Act.

(3) New centers, as described in § 366.2(b), that comply with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of this part.

(b) If, after meeting the priorities in paragraphs (a)(1) and (2) of this section, there are insufficient funds under the State's allotment under section 721(c) and (d) of the Act to fund a new center under paragraph (a)(3) of this section, the Secretary may—

(1) Use the excess funds in the State to assist existing centers consistent with the State plan; or

(2) Reallot these funds in accordance with section 721(d) of the Act.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–1(e))

§ 366.23 What grants must be made to existing eligible agencies?

(a) In accordance with the order of priorities established in § 366.22, an eligible agency may receive a grant if the eligible agency demonstrates in its application that it—

(1) Meets the requirements in § 366.21 or § 366.24;

(2) Is receiving funds under part C of title VII of the Act on September 30, 1993; and

(3) Is in compliance with the program and fiscal standards and assurances in section 725(b) and (c) of the Act and subparts F and G of this part. (The indicators of minimum compliance in subpart G of this part are used to determine compliance with the evaluation standards in section 725(b) of the Act.)

(b) For purposes of this section, an eligible agency is receiving funds under part C of title VII of the Act on September 30, 1993, if it was awarded a grant on or before that date, i.e., during FY 1993.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–1(c))

§ 366.24 How is an award made to a new center?

(a) To apply for a grant as a new center, an eligible agency shall—

(1) Meet the requirements of § 366.2(b);

(2) Submit an application that meets the requirements of § 366.21; and

(3) Meet the requirements of this section.

(b) Subject to the order of priorities established in § 366.22, a grant for a new center may be awarded to the most qualified eligible agency that applies for funds under this section, if—

(1)(i) No center serves a geographic area of a State; or

(ii) A geographic area of a State is underserved by centers serving other areas of the State;

(2) The eligible agency proposes to serve the geographic area that is unserved or underserved in the State; and

(3) The increase in the allotment of the State under section 721 of the Act for a fiscal year, as compared with the immediately preceding fiscal year, is sufficient to support an additional center in the State.

(c) The establishment of a new center under this subpart must be consistent with the design included in the State plan pursuant to 34 CFR 364.25 for establishing a statewide network of centers.

(d) An applicant may satisfy the requirements of paragraph (c) of this section by submitting appropriate documentation demonstrating that the establishment of a new center is consistent with the design in the State plan required by 34 CFR 364.25.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–1(d))

§366.25 What additional factor does the Secretary use in making a grant for a new center under §366.24?

In selecting from among applicants for a grant under §366.24 for a new center, the Secretary considers comments regarding the application, if any, by the SILC in the State in which the applicant is located.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–1(d)(1))

§366.26 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant under this subpart on the basis of the criteria in §366.27.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 796f(b)(3))

§366.27 What selection criteria does the Secretary use?

In evaluating each application for a new center under this part, the Secretary uses the following selection criteria:

(a) *Extent of the need for the project* (20 points). (1) The Secretary reviews each application for persuasive evidence that shows the extent to which the project meets the specific needs for the program, including considerations of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs (e.g., whether from the 1990 census data or other current sources);

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary looks for information that shows that the need for the center has been established based on an assessment of the ability of existing programs and facilities to meet the need for IL services of individuals with significant disabilities in the geographic area to be served.

(3) The Secretary looks for information that shows—

(i) That the applicant proposes to establish a new center to serve a priority service area that is identified in the current State plan; and

(ii) The priority that the State has placed on establishing a new center in this proposed service area.

(b) *Past performance* (5 points). The Secretary reviews each application for information that shows the past performance of the applicant in successfully providing services comparable to the IL core services and other IL services listed in section 7 (29) and (30) of the Act and 34 CFR 365.21 and 365.22 and other services that empower individuals with significant disabilities.

(c) *Meeting the standards and the assurances* (25 points). The Secretary reviews each application for information that shows—

(1) Evidence of demonstrated success in satisfying, or a clearly defined plan to satisfy, the standards in section 725(b) of the Act and subpart G of this part; and

(2) Convincing evidence of demonstrated success in satisfying, or a clearly defined plan to satisfy, the assurances in section 725(c) of the Act and subpart F of this part.

(d) *Quality of key personnel* (10 points). (1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director, if one is to be used;

(ii) The qualifications of each of the other management and decision-making personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project;

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Persons with disabilities; and

(D) Elderly individuals.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(e) *Budget and cost effectiveness* (10 points). The Secretary reviews each application for information that shows the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan* (5 points). The Secretary reviews each application for information that shows the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) Will determine how successful the project is in meeting its goals and objectives; and

(3) Are objective and produce data that are quantifiable.

(4) (Cross-reference: See 34 CFR 75.590.)

(g) *Plan of operation* (20 points). The Secretary reviews each application for information that shows the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality and adequacy of the applicant's plan to use its resources (including funding, facilities, equipment, and supplies) and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability; and

(6) A clear description of how the applicant will provide equal access to services for eligible project participants who are members of groups that have been traditionally under-represented, including—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Elderly individuals; and

(iv) Children and youth.

(h) *Involvement of individuals with significant disabilities* (5 points). (1) The Secretary reviews each application for information that shows that individuals with significant disabilities are appropriately involved in the development of the application.

(2) The Secretary looks for information that shows that individuals with significant disabilities or their parents, guardians, or other legally authorized advocates or representatives, as appropriate, will be substantially involved in planning, policy direction, and management of the center, and, to the greatest extent possible, that individuals with significant disabilities will be employed by the center.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–1(d)(2)(B))

§ 366.28 Under what circumstances may the Secretary award a grant to a center in one State to serve individuals in another State?

(a) The Secretary may use funds from the allotment of one State to award a grant to a center located in a bordering State if the Secretary determines that the proposal of the out-of-State center to serve individuals with significant disabilities who reside in the bordering State is consistent with the State plan of the State in which these individuals reside.

(b) An applicant shall submit documentation demonstrating that the arrangements described in paragraph (a) of this section are consistent with the State plan of the State in which the individuals reside.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f (c) and (d))

Subpart D—Grants to Centers in States in Which State Funding Equals or Exceeds Federal Funding

DETERMINING WHETHER STATE FUNDING EQUALS OR EXCEEDS FEDERAL FUNDING

§366.29 When may the Director of the designated State unit (DSU) award grants to centers?

(a) The Director of the DSU (Director) may award grants under section 723 of the Act and this subpart to centers located within the State or in a bordering State in a fiscal year if—

(1) The Director submits to the Secretary and obtains approval of an application to award grants for that fiscal year under section 723 of the Act and §366.32 (a) and (b); and

(2) The Secretary determines that the amount of State funds that were earmarked by the State to support the general operation of centers meeting the requirements of part C of chapter 1 of title VII of the Act in the second fiscal year preceding the fiscal year for which the application is submitted equaled or exceeded the amount of funds allotted to the State under section 721 (c) and (d) of the Act (or part B of title VII of the Act as in effect on October 28, 1992) for that preceding fiscal year.

(b) For purposes of section 723(a)(1)(A)(iii) of the Act and this subpart, the second fiscal year preceding the fiscal year for which the State submits an application to administer the CIL program is considered the ''preceding fiscal year.'' *Example:* If FY 1995 is the fiscal year for which the State submits an application to administer the CIL program under this subpart, FY 1993 is the ''preceding fiscal year.'' In determining the ''preceding fiscal year'' under this subpart, the Secretary makes any adjustments necessary to accommodate a State's multi-year funding cycle or fiscal year that does not coincide with the Federal fiscal year.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–2(a)(3))

§366.30 What are earmarked funds?

(a) For purposes of this subpart, the amount of State funds that were earmarked by a State to support the general operation of centers does not include—

(1) Federal funds used for the general operation of centers;

(2) State funds used to purchase specific services from a center, including State funds used for grants or contracts to procure or purchase personal assistance services or particular types of skills training;

(3) State attendant care funds; or

(4) Social Security Administration reimbursement funds.

(b) For purposes of this subpart, *earmarked funds* means funds appropriated by the State and expressly or clearly identified as State expenditures in the relevant fiscal year for the sole purpose of funding the general operation of centers.

(Authority: 29 U.S.C. 711(c) and 796f–2(a)(1)(A))

§366.31 What happens if the amount of earmarked funds does not equal or exceed the amount of Federal funds for a preceding fiscal year?

If the State submits an application to administer the CIL program under section 723 of the Act and this subpart for a fiscal year, but did not earmark the amount of State funds required by §366.29(a)(2) in the preceding fiscal year, the State shall be ineligible to make grants under section 723 of the Act and this subpart after the end of the fiscal year succeeding the preceding fiscal year and for each succeeding fiscal year.

Example: A State meets the earmarking requirement in FY 1994. It also meets this requirement in FY 1995. However, in reviewing the State's application to administer the CIL program in FY 1998, the Secretary determines that the State failed to meet the earmarking requirement in FY 1996. The State may continue to award grants in FY 1997 but may not do so in FY 1998 and succeeding fiscal years.

(Authority: 29 U.S.C. 796f–2(a)(1)(B))

AWARDING GRANTS

§ 366.32 Under what circumstances may the DSU make grants?

(a) To be eligible to award grants under this subpart and to carry out section 723 of the Act for a fiscal year, the Director must submit to the Secretary for approval an application at the time and in the manner that the Secretary may require and that includes, at a minimum—

(1) Information demonstrating that the amount of funds earmarked by the State for the general operation of centers meets the requirements in § 366.29(a)(1); and

(2) A summary of the annual performance reports submitted to the Director from centers in accordance with § 366.50(n).

(b) If the amount of funds earmarked by the State for the general operation of centers meets the requirements in § 366.29(a)(1), the Secretary approves the application and designates the Director to award the grants and carry out section 723 of the Act.

(c) If the Secretary designates the Director to award grants and carry out section 723 of the Act under paragraph (b) of this section, the Director makes grants to eligible agencies in a State, as described in § 366.2, for a fiscal year from the amount of funds allotted to the State under section 721(c) and (d) of the Act.

(d)(1) In the case of a State in which there is both a DSU responsible for providing IL services to the general population and a DSU responsible for providing IL services for individuals who are blind, for purposes of subparts D and E of this part, the ''Director'' shall be the Director of the general DSU.

(2) The State units described in paragraph (d)(1) of this section shall periodically consult with each other with respect to the provision of services for individuals who are blind.

(e) The Director may enter into assistance contracts with centers to carry out section 723 of the Act. For purposes of this paragraph, an assistance contract is an instrument whose principal purpose is to transfer funds allotted to the State under section 721 (c) and (d) of the Act and this part to an eligible agency to carry out section 723 of the Act. Under an assistance contract, the DSU shall assume a role consistent with that of the Secretary under section 722 of the Act. If the DSU uses an assistance contract to award funds under section 723 of the Act, the DSU may not add any requirements, terms, or conditions to the assistance contract other than those that would be permitted if the assistance contract were a grant rather than an assistance contract. Under an assistance contract, as defined in this paragraph, the role of the DSU is to ensure that the terms of the assistance contract, which are established by chapter 1 of title VII of the Act and the implementing regulations in this part and 34 CFR part 364, are satisfied.

(f) The Director may not enter into procurement contracts with centers to carry out section 723 of the Act. For purposes of this paragraph, a procurement contract is an instrument whose principal purpose is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the DSU. Under a procurement contract, the DSU prescribes the specific services it intends to procure and the terms and conditions of the procurement.

(g) In the enforcement of any breach of the terms and conditions of an assistance contract, the DSU shall follow the procedures established in §§ 366.40 through 366.45.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–2(a)(2))

§ 366.33 What are the application requirements for existing eligible agencies?

To be eligible for assistance under this subpart, an eligible agency shall comply with the requirements in § 366.21.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–2(b))

§ 366.34 What is the order of priorities?

(a) Unless the Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC,

jointly agree on another order of priorities, the Director shall follow the order of priorities in §366.22 for allocating funds among centers within a State, to the extent funds are available.

(b) If the order of priorities in §366.22 is followed and, after meeting the priorities in §366.22(a) (1) and (2), there are insufficient funds under the State's allotment under section 721(c) and (d) of the Act to fund a new center under §366.22(a)(3), the Director may—

(1) Use the excess funds in the State to assist existing centers consistent with the State plan; or

(2) Return these funds to the Secretary for reallotment in accordance with section 721(d) of the Act.

(Authority: 29 U.S.C. 711(c) and 796f–2(e))

§366.35 What grants must be made to existing eligible agencies?

In accordance with the order of priorities established in §366.34(a), an eligible agency may receive a grant under this subpart if the eligible agency meets the applicable requirements in §§366.2, 366.21, and 366.23.

(Authority: 29 U.S.C. 796f–2(c))

§366.36 How is an award made to a new center?

To be eligible for a grant as a new center under this subpart, an eligible agency shall meet the requirements for a new center in §§366.2(b) and 366.24, except that the award of a grant to a new center under this section is subject to the order of priorities in §366.34(a).

(Authority: 29 U.S.C. 796f–2(d))

§366.37 What procedures does the Director of the DSU (Director) use in making a grant for a new center?

(a) In selecting from among applicants for a grant for a new center under §366.24 of this subpart—

(1) The Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC, shall jointly appoint a peer review committee that shall rank applications in accordance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part and any criteria jointly established by the Director and the chairperson or other designated individual;

(2) The peer review committee shall consider the ability of each applicant to operate a center and shall recommend an applicant to receive a grant under this subpart, based on either the selection criteria in §366.27 or the following:

(i) Evidence of the need for a center, consistent with the State plan.

(ii) Any past performance of the applicant in providing services comparable to IL services.

(iii) The plan for complying with, or demonstrated success in complying with, the standards and the assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(iv) The quality of key personnel of the applicant and the involvement of individuals with significant disabilities by the applicant.

(v) The budget and cost-effectiveness of the applicant.

(vi) The evaluation plan of the applicant.

(vii) The ability of the applicant to carry out the plans identified in paragraphs (a)(2) (iii) and (vi) of this section.

(b) The Director shall award the grant on the basis of the recommendations of the peer review committee if the actions of the committee are consistent with Federal and State law.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–2(d)(2))

§366.38 What are the procedures for review of centers?

(a) The Director shall, in accordance with section 723(g)(1) and (h) of the Act, periodically review each center receiving funds under section 723 of the Act to determine whether the center is in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(b) The periodic reviews of centers required by paragraph (a) of this section must include annual on-site compliance reviews of at least 15 percent of the centers assisted under section 723 of the Act in that State in each year.

(c) Each team that conducts an on-site compliance review of a center shall

include at least one person who is not an employee of the designated State agency, who has experience in the operation of centers, and who is jointly selected by the Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC.

(d) A copy of each review under this section shall be provided to the Secretary and the SILC.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–2(g)(1) and (h))

Subpart E—Enforcement and Appeals Procedures

§ 366.39 What procedures does the Secretary use for enforcement?

(a) If the Secretary determines that any center receiving funds under this part is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part, the Secretary immediately notifies the center, by certified mail, return receipt requested, or other means that provide proof of receipt, that the center is out of compliance. The Secretary also offers technical assistance to the center to develop a corrective action plan to comply with the standards and assurances.

(b) The Secretary terminates all funds under section 721 of the Act to that center 90 days after the date of the notification required by paragraph (a) of this section unless—

(1) The center submits, within 90 days after receiving the notification required by paragraph (a) of this section, a corrective action plan to achieve compliance that is approved by the Secretary; or

(2) The center requests a hearing pursuant to paragraph (c) or (d) of this section.

(c) If the Secretary does not approve a center's corrective action plan submitted pursuant to paragraph (b)(1) of this section, the center has 30 days from receipt of the Secretary's written notice of disapproval of the center's corrective action plan to request a hearing by submitting a formal written request that gives the reasons why the center believes that the Secretary should have approved the center's corrective action plan.

(d) If the center does not submit a corrective action plan to the Secretary, the center has 90 days after receiving the notification required by paragraph (a) of this section to request a hearing by submitting a formal written request that gives the reasons why the center believes that the Secretary should have found the center in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(e) The date of filing a formal written request for a hearing to the Secretary under paragraph (c) or (d) of this section is determined in a manner consistent with the requirements of 34 CFR 81.12.

(f) The Secretary issues a written decision to terminate funds to the center if, after providing reasonable notice and an opportunity for a hearing, the Secretary finds that—

(1) The center receiving funds under this part is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part; or

(2) The center's corrective action plan submitted under paragraph (b)(1) of this section cannot be approved.

(g) The Secretary's decision to terminate funds to a center pursuant to paragraph (f) of this section takes effect upon issuance.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–1(g))

§ 366.40 How does the Director initiate enforcement procedures?

(a) If the Director determines that any center receiving funds under this part is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part, the Director shall immediately provide the center, by certified mail, return receipt requested, or other means that provide proof of receipt, with an initial written notice that the center is out of compliance with the standards and assurances and that the Director will terminate the center's funds or take other proposed significant adverse action against the center 90 days after the

center's receipt of this initial written notice. The Director shall provide technical assistance to the center to develop a corrective action plan to comply with the standards and assurances.

(b) Unless the center submits, within 90 days after receiving the notification required by paragraph (a) of this section, a corrective action plan to achieve compliance that is approved by the Director or, if appealed, by the Secretary, the Director shall terminate all funds under section 723 of the Act to a center 90 days after the later of—

(1) The date that the center receives the initial written notice required by paragraph (a) of this section; or

(2) The date that the center receives the Secretary's final decision issued pursuant to §366.46(c) if—

(i) The center files a formal written appeal of the Director's final written decision pursuant to §366.44(a); or

(ii) The center files a formal written appeal of the decision described in the Director's initial written notice pursuant to §366.44(b).

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–2(g) and (i))

§366.41 What must be included in an initial written notice from the Director?

The initial written notice required by §366.40(a) must—

(a) Include, at a minimum, the following:

(1) The name of the center.

(2) The reason or reasons for proposing the termination of funds or other significant adverse action against the center, including any evidence that the center has failed to comply with any of the evaluation standards or assurances in section 725(b) and (c) of the Act and subparts F and G of this part.

(3) The effective date of the proposed termination of funds or other significant adverse action against the center;

(b) Be given 90 days in advance of the date the Director intends to terminate a center's funds or take any other significant adverse action against the center;

(c) Inform the center that it has 90 days from the date the center receives the notice to submit a corrective action plan;

(d) Inform the center that it may seek mediation and conciliation in accordance with §366.40(a) to resolve any dispute with the Director within the 90 days before the proposed termination of funds or other significant adverse action against the center; and

(e) Inform the center that, if mediation and conciliation are not successful and the Director does not issue a final written decision pursuant to §366.42, the center may appeal to the Secretary the decision described in the Director's initial written notice on or after the 90th day, but not later than the 120th day, after the center receives the Director's initial decision.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–2 (g) and (i))

§366.42 When does a Director issue a final written decision?

(a) If the center submits a corrective action plan in accordance with §366.40(b), the Director shall provide to the center, not later than the 120th day after the center receives the Director's initial written notice, a final written decision approving or disapproving the center's corrective action plan and informing the center, if appropriate, of the termination of the center's funds or any other proposed significant adverse action against the center.

(b) The Director shall send the final written decision to the center by registered or certified mail, return receipt requested, or other means that provide a record that the center received the Director's final written decision.

(c) A Director's final written decision to terminate funds or take any other adverse action against a center may not take effect until 30 days after the date that the center receives it.

(d) If a center appeals pursuant to §366.44(a), the Director's final written decision to terminate funds or take any other adverse action against a center does not take effect until the Secretary issues a final decision.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–2 (g) and (i))

§ 366.43 What must be included in the Director's final written decision?

The Director's final written decision to disapprove a center's corrective action plan required by § 366.42 must—

(a) Address any response from the center to the Director's initial written notice to terminate funds or take other significant adverse action against the center;

(b) Include a statement of the reasons why the Director could not approve the corrective action plan; and

(c) Inform the center of its right to appeal to the Secretary the Director's final written decision to terminate funds or take any other significant adverse action against the center.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–2 (g) and (i))

§ 366.44 How does a center appeal a decision included in a Director's initial written notice or a Director's final written decision?

(a) To obtain the Secretary's review of a Director's final written decision to disapprove a center's corrective action plan submitted pursuant to § 366.40(b), the center shall file, within 30 days from receipt of the Director's final written decision, a formal written appeal with the Secretary giving the reasons why the center believes that the Director should have approved the center's corrective action plan. (Cross-reference: See § 366.42.)

(b) To obtain the Secretary's review of a decision described in a Director's initial written notice, a center that does not submit a corrective action plan to a Director shall file, in accordance with paragraph (c)(1)(i) of this section, a formal written appeal with the Secretary giving the reasons why the center believes that the Director should have found the center in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(c) To appeal to the Secretary a decision described in a Director's initial written notice or a Director's final written decision to disapprove a center's corrective action plan and to terminate or take other significant adverse action, a center shall file with the Secretary—

(1) A formal written appeal—

(i) On or after the 90th day but not later than the 120th day following a center's receipt of a Director's initial written notice; or

(ii) On or before the 30th day after a center's receipt of the Director's final written decision to disapprove a center's corrective action plan and to terminate or take other significant adverse action;

(2) A copy of the corrective action plan, if any, submitted to the Director; and

(3) One copy each of any other written submissions sent to the Director in response to the Director's initial written notice to terminate funds or take other significant adverse action against the center.

(d) The date of filing a formal written appeal to the Secretary under paragraph (c) of this section is determined in a manner consistent with the requirements of 34 CFR 81.12.

(e) If the center files a formal written appeal with the Secretary, the center shall send a separate copy of this appeal to the Director by registered or certified mail, return receipt requested, or other means that provide a record that the Director received a separate copy of the center's written appeal.

(f) The center's formal written appeal to the Secretary must state why—

(1) The Director has not met the burden of showing that the center is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and in subparts F and G of this part;

(2) The corrective action plan, if any, should have been approved; or

(3) The Director has not met the procedural requirements of §§ 366.40 through 366.45.

(g) As part of its submissions under this section, the center may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(h) A Director's decision to terminate funds that is described in an initial written notice or final written decision

is stayed as of the date (determined pursuant to paragraph (d) of this section) that the center files a formal written appeal with the Secretary.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–2(g)(2) and (i))

§366.45 What must a Director do upon receipt of a copy of a center's formal written appeal to the Secretary?

(a) If the center files a formal written appeal in accordance with §366.44(c), the Director shall, within 15 days of receipt of the center's appeal, submit to the Secretary one copy each of the following:

(1) The Director's initial written notice to terminate funds or take any other significant adverse action against the center sent to the center.

(2) The Director's final written decision, if any, to disapprove the center's corrective action plan and to terminate the center's funds or take any other significant adverse action against the center.

(3) Any other written documentation or submissions the Director wishes the Secretary to consider.

(4) Any other information requested by the Secretary.

(b) As part of its submissions under this section, the Director may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796f–2(g)(2) and (i))

§366.46 How does the Secretary review a center's appeal of a decision included in a Director's initial written notice or a Director's final written decision?

(a) If either party requests a meeting under §§366.44(g) or 366.45(b), the meeting is to be held within 30 days of the date of the Secretary's receipt of the submissions from the Director that are required by §366.45(a). The Secretary promptly notifies the parties of the date and place of the meeting.

(b) Within 30 days of the informal meeting permitted under paragraph (a) of this section or, if neither party has requested an informal meeting, within 60 days of the date of receipt of the submissions required from the Director by §366.45(a), the Secretary issues to the parties the Secretary's decision.

(c) The Secretary reviews a decision included in a Director's initial written notice or a Director's final written decision to disapprove the center's corrective action plan and to terminate the center's funds or take any other significant adverse action against the center based on the record submitted under §§366.44 and 366.45 and may affirm or, if the Secretary finds that the decision included in a Director's initial written notice or a Director's final written decision is not supported by the evidence or is not in accordance with the law, may—

(1) Remand the appeal for further findings; or

(2) Reverse the decision described in the Director's initial written notice or the Director's final written decision to disapprove the center's corrective action plan and to terminate funds or take any other significant adverse action against the center.

(d) The Secretary sends copies of his or her decision to the parties by registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

(e) If the Secretary affirms the decision described in a Director's initial written notice or the Director's final written decision, the Director's decision takes effect on the date of the Secretary's final decision to affirm.

(Authority: 29 U.S.C. 711(c) and 796f–2(g)(2) and (i))

Subpart F—Assurances for Centers

§366.50 What assurances shall a center provide and comply with?

To be eligible for assistance under this part, an eligible agency shall provide satisfactory assurances that—

(a) The applicant is an eligible agency;

(b) The center will be designed and operated within local communities by individuals with disabilities, including

an assurance that the center will have a board that is the principal governing body of the center and a majority of which must be composed of individuals with significant disabilities;

(c) The applicant will comply with the standards in subpart G;

(d) The applicant will establish clear priorities through—

(1) Annual and three-year program and financial planning objectives for the center, including overall goals or a mission for the center;

(2) A work plan for achieving the goals or mission, specific objectives, service priorities, and types of services to be provided; and

(3) A description that demonstrates how the proposed activities of the applicant are consistent with the most recent three-year State plan under section 704 of the Act;

(e) The applicant will use sound organizational and personnel assignment practices, including taking affirmative action to employ and advance in employment qualified individuals with significant disabilities on the same terms and conditions required with respect to the employment of individuals with disabilities under section 503 of the Act;

(f) The applicant will ensure that the majority of the staff, and individuals in decision-making positions, of the applicant are individuals with disabilities;

(g) The applicant will practice sound fiscal management, including making arrangements for an annual independent fiscal audit;

(h) The applicant will conduct an annual self-evaluation, prepare an annual performance report, and maintain records adequate to measure performance with respect to the standards in subpart G;

(i) The annual performance report and the records of the center's performance required by paragraph (h) of this section must each contain information regarding, at a minimum—

(1) The extent to which the center is in compliance with the standards in section 725(b) of the Act and subpart G of this part (Cross-reference: See §§ 366.70(a)(2) and 366.73);

(2) The number and types of individuals with significant disabilities receiving services through the center;

(3) The types of services provided through the center and the number of individuals with significant disabilities receiving each type of service;

(4) The sources and amounts of funding for the operation of the center;

(5) The number of individuals with significant disabilities who are employed by, and the number who are in management and decision-making positions in, the center;

(6) The number of individuals from minority populations who are employed by, and the number who are in management and decision-making positions in, the center; and

(7) A comparison, if appropriate, of the activities of the center in prior years with the activities of the center in most recent years;

(j) Individuals with significant disabilities who are seeking or receiving services at the center will be notified by the center of the existence of, the availability of, and how to contact the client assistance program;

(k) Aggressive outreach regarding services provided through the center will be conducted in an effort to reach populations of individuals with significant disabilities that are unserved or underserved by programs under title VII of the Act, especially minority groups and urban and rural populations;

(l) Staff at centers will receive training on how to serve unserved and underserved populations, including minority groups and urban and rural populations;

(m) The center will submit to the SILC a copy of its approved grant application and the annual performance report required under paragraph (h) of this section;

(n) The center will prepare and submit to the DSU, if the center received a grant from the Director, or to the Secretary, if the center received a grant from the Secretary, within 90 days of the end of each fiscal year, the annual performance report that is required to be prepared pursuant to paragraph (h) of this section and that contains the information described in paragraph (i) of this section; and

(o) An IL plan as described in section 704(e) of the Act will be developed for

each individual who will receive services under this part unless the individual signs a waiver stating that an IL plan is unnecessary.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796f–4)

Subpart G—Evaluation Standards and Compliance Indicators

SOURCE: 60 FR 39221, Aug. 1, 1995, unless otherwise noted.

§366.60 What are the project evaluation standards?

To be eligible to receive funds under this part, an applicant must agree to comply with the following evaluation standards:

(a) *Evaluation standard 1—Philosophy.* The center shall promote and practice the IL philosophy of—

(1) Consumer control of the center regarding decisionmaking, service delivery, management, and establishment of the policy and direction of the center;

(2) Self-help and self-advocacy;

(3) Development of peer relationships and peer role models;

(4) Equal access of individuals with significant disabilities to all of the center's services, programs, activities, resources, and facilities, whether publicly or privately funded, without regard to the type of significant disability of the individual; and

(5) Promoting equal access of individuals with significant disabilities to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, on the same basis that access is provided to other individuals with disabilities and to individuals without disabilities.

(b) *Evaluation standard 2—Provision of services.* (1) The center shall provide IL services to individuals with a range of significant disabilities.

(2) The center shall provide IL services on a cross-disability basis (i.e., for individuals with all different types of significant disabilities, including individuals with significant disabilities who are members of populations that are unserved or underserved by programs under title VII of this Act).

(3) The center shall determine eligibility for IL services. The center may not base eligibility on the presence of any one specific significant disability.

(c) *Evaluation standard 3—Independent living goals.* The center shall facilitate the development and achievement of IL goals selected by individuals with significant disabilities who seek assistance in the development and achievement of IL goals from the center.

(d) *Evaluation standard 4—Community options.* The center shall conduct activities to increase the availability and improve the quality of community options for IL to facilitate the development and achievement of IL goals by individuals with significant disabilities.

(e) *Evaluation standard 5—Independent living core services.* The center shall provide IL core services and, as appropriate, a combination of any other IL services specified in section 7(30)(B) of the Act.

(f) *Evaluation standard 6—Activities to increase community capacity.* The center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities.

(g) *Evaluation standard 7—Resource development activities.* The center shall conduct resource development activities to obtain funding from sources other than chapter 1 of title VII of the Act.

(Authority: 29 U.S.C. 796f–4)

§366.61 What are the compliance indicators?

(a) The compliance indicators establish the activities that a center shall carry out to demonstrate minimum compliance with the evaluation standards in §366.60.

(b) If a center fails to satisfy any one of the indicators, the center is out of compliance with the evaluation standards.

(Authority: 20 U.S.C. 796d–1(b))

§366.62 What are the requirements for continuation funding?

(a) To be eligible to receive a continuation award for the third or any

subsequent year of a grant, a center shall—

(1) Have complied fully during the previous project year with all of the terms and conditions of its grant;

(2) Provide adequate evidence in its most recent annual performance report that the center is in minimum compliance with the evaluation standards in § 366.60 (Cross-reference: See §§ 366.50 (h) and (i) and 34 CFR 75.118(a)); and

(3) Meet the requirements in this part 366.

(b) If a recipient receives funding for more than one center, each individual center that receives a continuation award shall meet the requirements of paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820–0606)

(Authority: 29 U.S.C. 711(c), 796d–1(b), 796e, and 796f–4)

§ 366.63 What evidence must a center present to demonstrate that it is in minimum compliance with the evaluation standards?

(a) *Compliance indicator 1—Philosophy*—(1) *Consumer control.* (i) The center shall provide evidence in its most recent annual performance report that—

(A) Individuals with significant disabilities constitute more than 50 percent of the center's governing board; and

(B) Individuals with disabilities constitute more than 50 percent of the center's—

(*1*) Employees in decisionmaking positions; and

(*2*) Employees in staff positions.

(ii) A center may exclude personal assistants, readers, drivers, and interpreters employed by the center from the requirement in paragraph (a)(1)(B) of this section.

(iii) The determination that over 50 percent of a center's employees in decisionmaking and staff positions are individuals with disabilities must be based on the total number of hours (excluding any overtime) for which employees are actually paid during the last six-month period covered by the center's most recent annual performance report. However, a center must include in this determination its employees who are on unpaid family or maternity leave during this six-month period.

(2) *Self-help and self-advocacy.* The center shall provide evidence in its most recent annual performance report that it promotes self-help and self-advocacy among individuals with significant disabilities (e.g., by conducting activities to train individuals with significant disabilities in self-advocacy).

(3) *Development of peer relationships and peer role models.* The center shall provide evidence in its most recent annual performance report that it promotes the development of peer relationships and peer role models among individuals with significant disabilities (e.g., by using individuals with significant disabilities who have achieved IL goals [whether the goals were achieved independently or through assistance and services provided by a center] as instructors [volunteer or paid] in its training programs or as peer counselors).

(4) *Equal access.* The center shall provide evidence in its most recent annual performance report that it—

(i) Ensures equal access of individuals with significant disabilities, including communication and physical access, to the center's services, programs, activities, resources, and facilities, whether publicly or privately funded. Equal access, for purposes of this paragraph, means that the same access is provided to any individual with a significant disability regardless of the individual's type of significant disability.

(ii) Advocates for and conducts activities that promote the equal access to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, for individuals with significant disabilities. Equal access, for purposes of this paragraph, means that the same access provided to individuals without disabilities is provided in the center's service area to individuals with significant disabilities.

(5) *Alternative formats.* To ensure that a center complies with § 366.63(a)(4) and for effective communication, a center shall make available in alternative formats, as appropriate, all of its written policies and materials and IL services.

(b) *Compliance indicator 2—Provision of services on a cross-disability basis.* The center shall provide evidence in its most recent annual performance report that it—

(1) Provides IL services to eligible individuals or groups of individuals without restrictions based on the particular type or types of significant disability of an individual or group of individuals, unless the restricted IL service (other than the IL core services) is unique to the significant disability of the individuals to be served;

(2) Provides IL services to individuals with a diversity of significant disabilities and individuals who are members of populations that are unserved or underserved by programs under title VII of the Act; and

(3) Provides IL core services to individuals with significant disabilities in a manner that is neither targeted nor limited to a particular type of significant disability.

(c) *Compliance indicator 3—Independent living goals.* (1) The center shall provide evidence in its most recent annual performance report that it—

(i) Maintains a consumer service record that meets the requirements of 34 CFR 364.53 for each consumer;

(ii) Facilitates the development and achievement of IL goals selected by individuals with significant disabilities who request assistance from the center;

(iii) Provides opportunities for consumers to express satisfaction with the center's services and policies in facilitating their achievement of IL goals and provides any results to its governing board and the appropriate SILC; and

(iv) Notifies all consumers of their right to develop or waive the development of an IL plan (ILP).

(2) The center shall provide evidence in its most recent annual performance report that the center maintains records on—

(i) The IL goals that consumers receiving services at the center believe they have achieved;

(ii) The number of ILPs developed by consumers receiving services at the center; and

(iii) The number of waivers signed by consumers receiving services at the center stating that an ILP is unnecessary.

(d) *Compliance indicator 4—Community options and community capacity.* The center shall provide evidence in its most recent annual performance report that, during the project year covered by the center's most recent annual performance report, the center promoted the increased availability and improved quality of community-based programs that serve individuals with significant disabilities and promoted the removal of any existing architectural, attitudinal, communication, environmental, or other type of barrier that prevents the full integration of these individuals into society. This evidence must demonstrate that the center performed at least one activity in each of the following categories:

(1) Community advocacy.

(2) Technical assistance to the community on making services, programs, activities, resources, and facilities in society accessible to individuals with significant disabilities.

(3) Public information and education.

(4) Aggressive outreach to members of populations of individuals with significant disabilities that are unserved or underserved by programs under title VII of the Act in the center's service area.

(5) Collaboration with service providers, other agencies, and organizations that could assist in improving the options available for individuals with significant disabilities to avail themselves of the services, programs, activities, resources, and facilities in the center's service area.

(e) *Compliance indicator 5—IL core services and other IL services.* The center shall provide evidence in its most recent annual performance report that it provides—

(1) Information and referral services to all individuals who request this type of assistance or services from the center in formats accessible to the individual requesting these services; and

(2) As appropriate in response to requests from individuals with significant disabilities who are eligible for IL services from the center, the following services:

(i) IL skills training.

(ii) Peer counseling (including cross-disability peer counseling).

(iii) Individual and systems advocacy.

(iv) A combination, as appropriate, of any two or more of the IL services defined in section 7(30)(B) of the Act.

(f) *Compliance indicator 6—Resource development activities.* The center shall provide evidence in its most recent annual performance report that it has conducted resource development activities within the period covered by the performance report to obtain funding from sources other than chapter 1 of title VII of the Act.

(Approved by the Office of Management and Budget under control number 1820–0606)

(Authority: 29 U.S.C. 711(c), 796d–1(b), and 796f–4)

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

Subpart A—General

Sec.

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367.2 Who is eligible for an award?
367.3 What activities may the Secretary fund?
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Subpart B—What Are the Application Requirements?

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AUTHORITY: 29 U.S.C. 796k, unless otherwise noted.

SOURCE: 59 FR 41909, Aug. 15, 1994, unless otherwise noted.

Subpart A—General

§ 367.1 What is the Independent Living Services for Older Individuals Who Are Blind program?

This program supports projects that—

(a) Provide any of the independent living (IL) services to older individuals who are blind that are described in § 367.3(b);

(b) Conduct activities that will improve or expand services for these individuals; and

(c) Conduct activities to help improve public understanding of the problems of these individuals.

(Authority: 29 U.S.C. 796k(a) and (b))

§ 367.2 Who is eligible for an award?

Any designated State agency (DSA) is eligible for an award under this program if the DSA—

(a) Is authorized to provide rehabilitation services to individuals who are blind; and

(b) Submits to and obtains approval from the Secretary of an application that meets the requirements of section 752(i) of the Act and §§ 367.10 and 367.11.

(Authority: 29 U.S.C. 796k(a)(2))

§367.3 What activities may the Secretary fund?

(a) The DSA may use funds awarded under this part for the activities described in §367.1 and paragraph (b) of this section.

(b) For purposes of §367.1(a), IL services for older individuals who are blind include—

(1) Services to help correct blindness, such as—

(i) Outreach services;

(ii) Visual screening;

(iii) Surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions; and

(iv) Hospitalization related to these services;

(2) The provision of eyeglasses and other visual aids;

(3) The provision of services and equipment to assist an older individual who is blind to become more mobile and more self-sufficient;

(4) Mobility training, Braille instruction, and other services and equipment to help an older individual who is blind adjust to blindness;

(5) Guide services, reader services, and transportation;

(6) Any other appropriate service designed to assist an older individual who is blind in coping with daily living activities, including supportive services and rehabilitation teaching services;

(7) IL skills training, information and referral services, peer counseling, and individual advocacy training; and

(8) Other IL services, as defined in section 7(30) of the Act and as listed in 34 CFR 365.22.

(Authority: 29 U.S.C. 796k (d) and (e))

§367.4 What regulations apply?

The following regulations apply to the Independent Living Services for Older Individuals Who Are Blind 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 an entity that is not a State or local government or Indian tribal organization.

(2) 34 CFR part 75 (Direct Grant Programs), with respect to grants under subpart C.

(3) 34 CFR part 76 (State-Administered Programs), with respect to grants under subpart D.

(4) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 367.

(c) The following provisions in 34 CFR part 364:

(1) Section 364.4 (What definitions apply?).

(2) Section 364.5 (What is program income and how may it be used?)

(3) Section 364.6 (What requirements apply to the obligation of Federal funds and program income?)

(4) Section 364.30 (What notice must be given about the Client Assistance Program (CAP)?).

(5) Section 364.37 (What access to records must be provided?).

(6) Section 364.56 (What are the special requirements pertaining to the protection, use, and release of personal information?).

(d) The following provisions in 34 CFR part 365:

(1) Section 365.13 (What requirements apply if the State's non-Federal share is in cash?).

(2) Section 365.14 (What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?).

(3) Section 365.15 (What requirements apply if the State's non-Federal share is in kind?).

(4) Section 365.16 (What requirements apply to refunds and rebates?).

(Authority: 29 U.S.C. 711(c) and 796k)

§ 367.5 What definitions apply?

In addition to the definitions in 34 CFR 364.4, the following definitions also apply to this part:

Independent living services for older individuals who are blind means those services listed in § 367.3(b).

Older individual who is blind means an individual age fifty-five or older whose severe visual impairment makes competitive employment extremely difficult to obtain but for whom IL goals are feasible.

(Authority: 29 U.S.C. 711(c) and 796j)

Subpart B—What Are the Application Requirements?

§ 367.10 How does a designated State agency (DSA) apply for an award?

To receive a grant under section 752(i) or a reallotment grant under section 752(j)(4) of the Act, a DSA must submit to and obtain approval from the Secretary of an application for assistance under this program at the time, in the form and manner, and containing the agreements, assurances, and information, that the Secretary determines to be necessary to carry out this program.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796k(c)(2) and (i)(1))

§ 367.11 What assurances must a DSA include in its application?

An application for a grant under section 752(i) or a reallotment grant under section 752(j)(4) of the Act must contain an assurance that—

(a) Grant funds will be expended only for the purposes described in § 367.1;

(b) With respect to the costs of the program to be carried out by the State pursuant to this part, the State will make available, directly or through donations from public or private entities, non-Federal contributions toward these costs in an amount that is not less than $1 for each $9 of Federal funds provided in the grant;

(c) In carrying out § 367.1(a) and (b), and consistent with 34 CFR 364.28, the DSA will seek to incorporate into and describe in the State plan under section 704 of the Act any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded under this part and that the DSA determines to be effective;

(d) At the end of each fiscal year, the DSA will prepare and submit to the Secretary a report, with respect to each project or program the DSA operates or administers under this part, whether directly or through a grant or contract, that contains, information that the Secretary determines necessary for the proper and efficient administration of this program, including—

(1) The number and types of older individuals who are blind, including older individuals who are blind from minority backgrounds, and are receiving services;

(2) The types of services provided and the number of older individuals who are blind and are receiving each type of service;

(3) The sources and amounts of funding for the operation of each project or program;

(4) The amounts and percentages of resources committed to each type of service provided;

(5) Data on actions taken to employ, and advance in employment, qualified—

(i) Individuals with significant disabilities;

(ii) Older individuals with significant disabilities who are blind;

(iii) Individuals who are members of racial or ethnic minority groups;

(iv) Women; and

(v) Elderly individuals;

(6) A comparison, if appropriate, of prior year activities with the activities of the most recent year; and

(7) Any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded under this part;

(e) The DSA will—

(1) Provide services that contribute to the maintenance of, or the increased

independence of, older individuals who are blind; and

(2) Engage in—

(i) Capacity-building activities, including collaboration with other agencies and organizations;

(ii) Activities to promote community awareness, involvement, and assistance; and

(iii) Outreach efforts;

(f) The application is consistent with the State plan for providing IL services required by section 704 of the Act and subpart C of 34 CFR part 364; and

(g) The applicant has been designated by the State as the sole State agency authorized to provide rehabilitation services to individuals who are blind.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796k(d), (f), (h), and (i))

Subpart C—How Does the Secretary Award Discretionary Grants on a Competitive Basis?

§367.20 Under what circumstances does the Secretary award discretionary grants on a competitive basis to States?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is less than $13,000,000, the Secretary awards discretionary grants under this part on a competitive basis to States.

(b) Subparts A, B, C, and E of this part govern the award of competitive grants under this part.

(Authority: 29 U.S.C. 796k(b)(1))

§367.21 How does the Secretary evaluate an application for a discretionary grant?

(a) The Secretary evaluates an application for a discretionary grant on the basis of the criteria in §367.22.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1))

§367.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a discretionary grant:

(a) *Extent of need for the project* (20 points). (1) The Secretary reviews each application to determine the extent to which the project meets the specific needs of the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary reviews each application to determine—

(i) The extent that the need for IL services for older individuals who are blind is justified, in terms of complementing or expanding existing IL and aging programs and facilities; and

(ii) The potential of the project to support the overall mission of the IL program, as stated in section 701 of the Act.

(b) *Plan of operation* (25 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality and adequacy of the applicant's plan to use its resources (including funding, facilities, equipment, and supplies) and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability;

(6) A clear description of how the applicant will provide equal access to services for eligible project participants who are members of groups that

have been traditionally under-represented, including members of racial or ethnic minority groups; and

(7) The extent to which the plan of operation and management includes involvement by older individuals who are blind in planning and conducting program activities.

(c) *Quality of key personnel* (10 points). (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other management and decision-making personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1)(i) and (ii) of this section will commit to the project;

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Persons with disabilities; and

(D) Elderly individuals.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the scope of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(d) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant demonstrates the cost-effectiveness of project services in comparison with alternative services and programs available to older individuals who are blind.

(e) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Accurately evaluate the success and cost-effectiveness of the project;

(2) Are objective and produce data that are quantifiable; and

(3) Will determine how successful the project is in meeting its goals and objectives.

(4) (Cross-reference: See 34 CFR 75.590.)

(f) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including accessibility of facilities, equipment, and supplies.

(g) *Service comprehensiveness* (20 points). (1) The Secretary reviews each application to determine the extent to which the proposed outreach activities promote maximum participation of the target population within the geographic area served by the project.

(2) The Secretary reviews each application to determine the extent to which the DSA addresses the unmet IL needs in the State of older individuals with varying degrees of significant visual impairment. In making this determination, the Secretary reviews the extent to which the DSA makes available appropriate services listed in § 367.3(b), which may include any or all of the following services:

(i) Orientation and mobility skills training that will enable older individuals who are blind to travel independently, safely, and confidently in familiar and unfamiliar environments.

(ii) Skills training in Braille, handwriting, typewriting, or other means of communication.

(iii) Communication aids, such as large print, cassette tape recorders, and readers.

(iv) Training to perform daily living activities, such as meal preparation, identifying coins and currency, selection of clothing, telling time, and maintaining a household.

(v) Provision of low-vision services and aids, such as magnifiers to perform reading and mobility tasks.

(vi) Family and peer counseling services to assist older individuals who are blind adjust emotionally to the loss of vision as well as to assist in their integration into the community and its resources.

(h) *Likelihood of sustaining the program* (10 points). The Secretary reviews each application to determine—

(1) The likelihood that the service program will be sustained after the completion of Federal project grant assistance;

(2) The extent to which the applicant intends to continue to operate the service program through cooperative agreements and other formal arrangements; and

(3) The extent to which the applicant will identify and, to the extent possible, use comparable services and benefits that are available under other programs for which project participants may be eligible.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1))

§367.23 What additional factor does the Secretary consider?

In addition to the criteria in §367.22, the Secretary considers the geographic distribution of projects in making an award.

(Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1))

Subpart D—How Does the Secretary Award Contingent Formula Grants?

§367.30 Under what circumstances does the Secretary award contingent formula grants to States?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is equal to or greater than $13,000,000, grants under this part are made to States from allotments under section 752(c)(2) of the Act.

(b) Subparts A, B, D, and E of this part govern the award of formula grants under this part.

(Authority: 29 U.S.C. 796k(c))

§367.31 How are allotments made?

(a) For purposes of making grants under section 752(c) of the Act and this subpart, the Secretary makes an allotment to each State in an amount determined in accordance with section 752(j) of the Act.

(b) The Secretary makes a grant to a DSA in the amount of the allotment to the State under section 752(j) of the Act if the DSA submits to and obtains approval from the Secretary of an application for assistance under this program that meets the requirements of section 752(i) of the Act and §§367.10 and 367.11.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796k(c)(2))

§367.32 How does the Secretary reallot funds under section 752(j)(4) of the Act?

(a) From the amounts specified in paragraph (b) of this section, the Secretary may make reallotment grants to States, as determined by the Secretary, whose population of older individuals who are blind has a substantial need for the services specified in section 752(d) of the Act and §367.3(b), relative to the populations in other States of older individuals who are blind.

(b) The amounts referred to in paragraph (a) of this section are any amounts that are not paid to States under section 752(c)(2) of the Act and §367.31 as a result of—

(1) The failure of a DSA to prepare, submit, and receive approval of an application under section 752(i) of the Act and in accordance with §§367.10 and 367.11; or

(2) Information received by the Secretary from the DSA that the DSA does not intend to expend the full amount of the State's allotment under section 752(c) of the Act and this subpart.

(c) A reallotment grant to a State under paragraph (a) of this section is subject to the same conditions as

grants made under section 752(a) of the Act and this part.

(d) Any funds made available to a State for any fiscal year pursuant to this section are regarded as an increase in the allotment of the State under § 367.31 for that fiscal year only.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796k(j)(4))

Subpart E—What Conditions Must Be Met After an Award?

§ 367.40 What matching requirements apply?

(a) Non-Federal contributions required by § 367.11(b) may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(b) For purposes of non-Federal contributions required by § 367.11(b), amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of non-Federal contributions.

(Authority: 29 U.S.C. 796k(f))

§ 367.41 When may a DSA award grants or contracts?

(a) A DSA may operate or administer the program or projects under this part to carry out the purposes specified in § 367.1, either directly or through—

(1) Grants to public or private nonprofit agencies or organizations; or

(2) Contracts with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations.

(b) Notwithstanding paragraph (a) of this section, a DSA may enter into assistance contracts, but not procurement contracts, with public or private nonprofit agencies or organizations in a manner consistent with 34 CFR 366.32(e).

(Authority: 29 U.S.C. 796k(g) and (i)(2)(A))

§ 367.42 When does the Secretary award noncompetitive continuation grants?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is less than $13,000,000, the Secretary awards noncompetitive continuation grants for a multi-year project to pay for the costs of activities for which a grant was awarded—

(1) Under chapter 2 of title VII of the Act; or

(2) Under part C of title VII of the Act, as in effect on October 28, 1992.

(b) To be eligible to receive a noncompetitive continuation grant under this part, a grantee must satisfy the applicable requirements in this part and in 34 CFR 75.253.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 796k(b)(2))

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

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369.1 What are the Vocational Rehabilitation Service Projects?
369.2 Who is eligible for assistance under these programs?
369.3 What regulations apply to these programs?
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369.20 What are the application procedures for these programs?
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369.30 How does the Secretary evaluate an application?
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369.40—369.41 [Reserved]
369.42 What special requirements affect provision of services to individuals with disabilities?
369.43 What are the affirmative action plan requirements affecting grantees?
369.44 What wage and hour standards apply to community rehabilitation programs?

369.45 What are the special requirements pertaining to the membership of project advisory committees?
369.46 What are the special requirements pertaining to the protection, use, and release of personal information?
369.47 What are the special requirements affecting the collection of data from State agencies?

AUTHORITY: 29 U.S.C. 711(c), 732, 750, 777(a)(1), 777b, 777f and 795g, unless otherwise noted.

SOURCE: 46 FR 5417, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§369.1 What are the Vocational Rehabilitation Service Projects?

(a) These programs provide financial assistance for the support of special project activities for providing vocational rehabilitation services and related services to individuals with disabilities and other persons.

(b) The Secretary awards financial assistance through the following programs—

(1) Vocational Rehabilitation Service Projects for American Indians with Disabilities (34 CFR part 371).

(2) Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities.

(3) Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers with Disabilities.

(4) Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youths with Disabilities (34 CFR part 376).

(5) Projects for Initiating Special Recreation Programs for Individuals with Disabilities.

(6) Projects with Industry (34 CFR part 379).

(Authority: Secs. 112, 130, 305, 308, 311a, 311(a)(3), 311(a)(4), 312, 316, and 621 of the Act; 29 U.S.C. 732, 750, 775, 776, 777(a)(1), 777(a)(3), 777(a)(4), 777(b), 777f, and 795g)

[46 FR 5417, Jan. 19, 1981, as amended at 50 FR 9962, Mar. 12, 1985; 51 FR 3895, Jan. 30, 1986; 53 FR 17142, 17143, May 13, 1988; 59 FR 8335, Feb. 18, 1994; 62 FR 10403, Mar. 6, 1997]

§369.2 Who is eligible for assistance under these programs?

(a) *Vocational rehabilitation service projects for American Indians with disabilities.* Governing bodies of Indian tribes and consortia of those governing bodies located on Federal and State reservations are eligible for assistance to support projects for providing vocational rehabilitation services to American Indians with disabilities.

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

(b) *Special projects and demonstrations for providing vocational rehabilitation services to individuals with disabilities.* States and public and other nonprofit agencies and organizations are eligible for expanding or otherwise improving vocational rehabilitation services to individuals with disabilities.

(Authority: Sec. 311(a)(1) of the Act; 29 U.S.C. 777(a)(1))

(c) *Vocational rehabilitation service projects for migratory agricultural workers and seasonal farmworkers with disabilities.* State vocational rehabilitation agencies, local agencies administering vocational rehabilitation programs under written agreements with State agencies, and nonprofit agencies working in collaboration with State vocational rehabilitation agencies are eligible for assistance to support projects for providing vocational rehabilitation services to migratory agricultural workers or seasonal farmworkers with disabilities.

(Authority: Sec. 312 of the Act; 29 U.S.C. 777(b))

(d) *Projects for initiating special recreation programs for individuals with disabilities.* State and other public agencies and private nonprofit agencies and organizations are eligible for assistance to support projects for initiating special recreation programs for individuals with disabilities.

(Authority: Sec. 316 of the Act; 29 U.S.C. 777(f))

(e) *Projects with industry.* Any designated State unit, labor union, community rehabilitation program provider, Indian tribe or tribal organization employer, trade association, or other agency or organization with the capacity to create and expand job and

career opportunities for individuals with disabilities is eligible for assistance to support a project with industry.

(Authority: Sec. 621 of the Act; 29 U.S.C. 795(g))

(f) *Special projects and demonstrations for providing transitional rehabilitation services to youths with disabilities.* State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Authority: Sec. 311(c) of the Act; 29 U.S.C. 777a(c))

[46 FR 5417, Jan. 19, 1981, as amended at 50 FR 9962, Mar. 12, 1985; 51 FR 3895, Jan. 30, 1986; 53 FR 17142, 17143, May 13, 1988; 59 FR 8335, Feb. 18, 1994; 62 FR 10403, Mar. 6, 1997]

§ 369.3 What regulations apply to these programs?

The following regulations apply to the programs listed in § 369.1(b):

(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).

(2) 34 CFR part 75 (Direct Grant 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); except the part 79 does not apply to the Vocational Rehabilitation Service Program for American Indians with Disabilities.

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(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 369.

(c) The regulations in 34 CFR parts 371, 372, 373, 374, 375, 376, 378, and 379, as appropriate.

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

[51 FR 3895, Jan. 30, 1986, as amended at 55 FR 21714, May 25, 1990; 59 FR 8335, Feb. 18, 1994]

§ 369.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR part 77 apply to the programs under Vocational Rehabilitation Service Projects—

Applicant
Application
Award
Budget Period
Department
EDGAR
Nonprofit
Profit
Project Period
Public
Secretary
Work of Art

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

(b) The following definitions also apply to programs under Vocational Rehabilitation Service Projects:

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

Community rehabilitation program means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement—

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

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(3) Recreational therapy;

(4) Physical and occupational therapy;

(5) Speech, language and hearing therapy;

(6) Psychiatric, psychological and social services, including positive behavior management;

(7) Assessment for determining eligibility and vocational rehabilitation needs;

(8) Rehabilitation technology;

(9) Job development, placement, and retention services;

(10) Evaluation or control of specific disabilities;

(11) Orientation and mobility services for individuals who are blind;

(12) Extended employment;

(13) Psychosocial rehabilitation services;

(14) Supported employment services and extended services;

(15) Services to family members when necessary to the vocational rehabilitation of the individual;

(16) Personal assistance services; or

(17) Services similar to the services described in paragraphs (1) through (16) of this definition.

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

Employment outcome means entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, the practice of a profession, self-employment, homemaking, farm or family work (including work for which payment is in kind rather than cash), extended employment in a community rehabilitation program, supported employment, or other gainful work.

(Authority: Sec 7(5) of the Act; 29 U.S.C. 706(5))

Individual who is blind means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

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

Individual with a disability means any individual who—

(1) Has a physical or mental impairment that for that individual constitutes or results in a substantial impediment to employment; and

(2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided under title I, III, VI, or VIII of the Act.

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

Individual with a severe disability means an individual with a disability—

(1) 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;

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

(3) 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), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined to cause comparable substantial functional limitation.

(Authority: Sec. 7(15)(A) of the Act; 29 U.S.C. 706(15)(A))

Physical and mental restoration services means—

(1) Medical or corrective surgical treatment for the purpose of correcting or modifying substantially a physical or mental condition that is stable or slowly progressive and constitutes a substantial impediment to employment and that is likely, within a reasonable period of time, to be corrected or substantially modified as a result of the medical or surgical treatment;

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

(3) Dentistry;

(4) Nursing services;

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

(6) Convalescent or nursing home care;

(7) Drugs and supplies;

(8) Prosthetic, orthotic, or other assistive devices, including hearing aids essential to obtaining or retaining employment;

(9) 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 qualified persons under State licensure laws, that are selected by the individual;

(10) Podiatry;

(11) Physical therapy;

(12) Occupational therapy;

(13) Speech and hearing therapy;

(14) Psychological services;

(15) Therapeutic recreation services;

(16) Medical or medically related social work services;

(17) 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;

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

(19) Other medical or medically related rehabilitation services, including art therapy, dance therapy, music therapy, and psychodrama.

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

Physical or mental impairment means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

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

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))

State agency means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the 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. 721(a)(1)(A))

State plan means the State plan for vocational rehabilitation services. (34 CFR part 361)

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

State unit, State vocational rehabilitation unit or designated State unit means either—

(1) 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; or

(2) 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) of the Act; 29 U.S.C. 706(3))

Substantial impediment to employment means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) significantly restricts an individual's occupational performance by preventing his preparing for, obtaining, or retaining employment consistent with his capacities and abilities.

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

Vocational rehabilitation services: (1) When provided to an individual, means any goods or services necessary to

render an individual with a disability employable, including, but not limited to, the following—

(i) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(ii) Counseling, guidance, and work-related placement services for individuals with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services, and follow-up, follow-along, and specific diagnosis services necessary to assist such individuals to maintain, regain, or advance in employment;

(iii) Vocational and other training services for individuals with disabilities, including personal and vocational adjustment, books, or other training materials;

(iv) Services to the families of such individuals with disabilities, if necessary to the adjustment or rehabilitation of such individuals;

(v) Physical and mental restoration services;

(vi) Maintenance for additional costs incurred while participating in rehabilitation;

(vii) Interpreter services and note-taking services for individuals who are deaf, including tactile interpreting for individuals who are deaf-blind;

(viii) Reader services and note-taking services for those individuals who are determined to be blind after an examination by qualified personnel under State licensure laws;

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

(x) Rehabilitation teaching services and orientation and mobility services for individuals who are blind;

(xi) Occupational licenses, tools, equipment, and initial stocks and supplies;

(xii) Transportation in connection with the rendering of any vocational rehabilitation service;

(xiii) Telecommunications, sensory, and other technological aids and devices;

(xiv) Rehabilitation technology services;

(xv) Referral and other services designed to assist individuals with disabilities in securing needed services from other agencies;

(xvi) Transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives;

(xvii) On-the-job or other related personal assistance services provided while an individual with a disability is receiving vocational rehabilitation services; and

(xviii) Supported employment services.

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

(2) When provided for the benefit of groups of individuals, *Vocational rehabilitation services* also means—

(i) In the case of any type of small business enterprise operated by individuals with the most severe disabilities under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

(ii) The establishment, development, or improvement of community rehabilitation programs, including, under special circumstances, the construction of a rehabilitation facility to provide services that promote integration and competitive employment;

(iii) The provision of services, including services provided at community rehabilitation programs, that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized written rehabilitation program of any one individual with disabilities;

(iv) The use of existing telecommunications systems;

(v) The use of services providing recorded material for persons who are blind and captioned films or video cassettes for persons who are deaf; and

(vi) Technical assistance and support services 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.

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

[46 FR 5417, Jan. 19, 1981, as amended at 50 FR 38630, Sept. 23, 1985; 53 FR 17143, May 13, 1988; 59 FR 8335, Feb. 18, 1994]

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 369.20 What are the application procedures for these programs?

The Secretary gives the appropriate State vocational rehabilitation unit an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in EDGAR §§ 75.155–75.159.

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

§ 369.21 What application requirement applies to these programs?

Each applicant for a grant under a program covered by this part must include in its application a description of the manner in which it will address the needs of individuals with disabilities from minority backgrounds.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sec. 21(b)(5) of the Act; 29 U.S.C. 718b)

[59 FR 8337, Feb. 18, 1994, as amended at 62 FR 10403, Mar. 6, 1997]

Subpart D—How Does the Secretary Make a Grant?

§ 369.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75.

(Authority: 29 U.S.C. 711(c))

[62 FR 10404, Mar. 6, 1997]

§ 369.32 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria used in accordance with the procedures in 34 CFR part 75, the Secretary, in making awards under these programs, considers such factors as—

(a) The geographical distribution of projects in each program category throughout the country; and

(b) The past performance of the applicant in carrying out similar activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

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

[46 FR 5417, Jan. 19, 1981, as amended at 51 FR 3895, Jan. 30, 1986; 62 FR 10404, Mar. 6, 1997]

Subpart E—What Conditions Must Be Met by a Grantee?

§§ 369.40—369.41 [Reserved]

§ 369.42 What special requirements affect provision of services to individuals with disabilities?

(a) Vocational rehabilitation services provided in projects assisted under these programs must be provided in the same manner as services provided under the State plan for vocational rehabilitation services under 34 CFR part 361.

(b) Each grantee under a program covered by this part must advise applicants for or recipients of services under its project, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State's Client Assistance Program, including information on seeking assistance from that program.

(Authority: Secs. 20 and 306(h) of the Act; 29 U.S.C. 718a and 776(h))

[46 FR 5417, Jan. 19, 1981, as amended at 53 FR 17144, May 13, 1988; 59 FR 8337, Feb. 18, 1994; 62 FR 10404, Mar. 6, 1997]

§369.43 What are the affirmative action plan requirements affecting grantees?

A recipient of Federal assistance must develop and implement an affirmative action plan to employ and advance in employment qualified individuals with disabilities. This plan must provide for specific action steps, timetables, and complaint and enforcement procedures necessary to assure affirmative action.

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

[46 FR 5417, Jan. 19, 1981, as amended at 53 FR 17144, May 13, 1988; 59 FR 8335, Feb. 18, 1994]

§369.44 What wage and hour standards apply to community rehabilitation programs?

All applicable Federal and State wage and hour standards must be observed in projects carried out in community rehabilitation programs.

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

[46 FR 5417, Jan. 19, 1981. Redesignated and amended at 59 FR 8337, Feb. 18, 1994]

§369.45 What are the special requirements pertaining to the membership of project advisory committees?

If an advisory committee is established under a project, its membership must include persons with disabilities or their representatives and other individuals to be assisted within the project, providers of services, and other appropriate individuals.

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

[46 FR 5417, Jan. 19, 1981, as amended at 53 FR 17144, May 13, 1988; 59 FR 8335, Feb. 18, 1994. Redesignated at 59 FR 8337, Feb. 18, 1994]

§369.46 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his or her representative, have been obtained in writing. The Secretary or other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

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

[46 FR 5417, Jan. 19, 1981. Redesignated at 59 FR 8337, Feb. 18, 1994]

§369.47 What are the special requirements affecting the collection of data from State agencies?

If the collection of data is necessary either from individuals with disabilities being served by two or more State agencies or from employees of two or more of these agencies, the project director must submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under this part.

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

[46 FR 5417, Jan. 19, 1981, as amended at 53 FR 17144, May 13, 1988; 59 FR 8335, Feb. 18, 1994. Redesignated at 59 FR 8337, Feb. 18, 1994]

PART 370—CLIENT ASSISTANCE PROGRAM

Subpart A—General

Sec.

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AUTHORITY: 29 U.S.C. 732, unless otherwise noted.

SOURCE: 60 FR 55766, Nov. 2, 1995, unless otherwise noted.

Subpart A—General

§ 370.1 What is the Client Assistance Program (CAP)?

The purpose of this program is to establish and carry out CAPs that—

(a) Advise and inform clients and client applicants of all services and benefits available to them through programs authorized under the Rehabilitation Act of 1973 (Act), as amended;

(b) Assist and advocate for clients and client applicants in their relationships with projects, programs, and community rehabilitation programs providing services under the Act; and

(c) Inform individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of the services and benefits available to them under the Act and under title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101–12213.

(Authority: 29 U.S.C. 732(a))

§ 370.2 Who is eligible for an award?

(a) Any State, through its Governor, is eligible for an award under this part if the State submits, and receives approval of, an application in accordance with § 370.20.

(b) The Governor of each State shall designate a public or private agency to conduct the State's CAP under this part.

(c) Except as provided in paragraph (d) of this section, the Governor shall designate an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals under the Act.

(d) The Governor may, in the initial designation, designate an agency that provides treatment, services, or rehabilitation to individuals with disabilities under the Act if, at any time before February 22, 1984, there was an agency in the State that both—

(1) Was a grantee under section 112 of the Act by serving as a client assistance agency and directly carrying out a CAP; and

(2) Was, at the same time, a grantee under any other provision of the Act.

(e) Except as permitted in paragraph (f) of this section, an agency designated by the Governor of a State to conduct the State's CAP under this part may not award a subgrant to or enter into a contract with an agency that provides services under this Act either to carry out the CAP or to provide services under the CAP.

(f) An agency designated by the Governor of a State to conduct the State's CAP under this part may enter into a contract with a center for independent living (center) that provides services under the Act if—

(1) On February 22, 1984, the designated agency was contracting with one or more centers to provide CAP services; and

(2) The designated agency meets the requirements of paragraph (g) of this section.

(g) A designated agency that contracts to provide CAP services with a center (pursuant to paragraph (f) of this section) or with an entity or individual that does not provide services under the Act remains responsible for—

(1) The conduct of a CAP that meets all of the requirements of this part;

(2) Ensuring that the center, entity, or individual expends CAP funds in accordance with—

(i) The regulations in this part; and

(ii) The cost principles applicable to the designated agency; and

(3) The direct day-to-day supervision of the CAP services being carried out by the contractor. This day-to-day supervision must include the direct supervision of the individuals who are employed or used by the contractor to provide CAP services.

(Authority: 29 U.S.C. 711(c) and 732(a) and (c)(1)(A))

§370.3 Who is eligible for services and information under the CAP?

(a) Any client or client applicant is eligible for the services described in §370.4.

(b) Any individual with a disability is eligible to receive information on the services and benefits available to individuals with disabilities under the Act and title I of the ADA.

(Authority: 29 U.S.C. 732(a))

§370.4 What kinds of activities may the Secretary fund?

(a) Funds made available under this part must be used for activities consistent with the purposes of this program, including—

(1) Advising and informing clients, client applicants, and individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of—

(i) All services and benefits available to them through programs authorized under the Act; and

(ii) Their rights in connection with those services and benefits;

(2) Informing individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of the services and benefits available to them under title I of the ADA;

(3) Upon the request of a client or client applicant, assisting and advocating on behalf of a client and client applicant in his or her relationship with projects, programs, and community rehabilitation programs that provide services under the Act by engaging in individual or systemic advocacy and pursuing, or assisting and advocating on behalf of a client and client applicant to pursue, legal, administrative, and other available remedies, if necessary—

(i) To ensure the protection of the rights of a client or client applicant under the Act; and

(ii) To facilitate access by individuals with disabilities and individuals with disabilities who are making the transition from public school programs to services funded under the Act; and

(4) Providing information to the public concerning the CAP.

(b) In providing assistance and advocacy services under this part with respect to services under title I of the Act, a designated agency may provide assistance and advocacy services to a client or client applicant to facilitate the individual's employment, including assistance and advocacy services with respect to the individual's claims under title I of the ADA, if those claims

under title I of the ADA are directly related to services under the Act that the individual is receiving or seeking.

(Authority: 29 U.S.C. 732(a))

§ 370.5 What regulations apply?

The following regulations apply to the expenditure of funds under the CAP:

(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) applies to the designated agency if the designated agency is not a State agency, local government agency, or Indian tribal organization. As the entity that eventually, if not directly, receives the CAP grant funds, the designated agency is considered a recipient for purposes of part 74.

(2) 34 CFR part 76 (State-Administered Programs) applies to the State and, if the designated agency is a State or local government agency, to the designated agency, except for—

(i) § 76.103;

(ii) §§ 76.125 through 76.137;

(iii) §§ 76.300 through 76.401;

(iv) § 76.708;

(v) § 76.734; and

(vi) § 76.740.

(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) applies to the State and, if the designated agency is a State or local government agency, to the designated agency.

(6) 34 CFR part 81 (General Education Provisions Act-Enforcement) applies to both the State and the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. As the entity that eventually, if not directly, receives the CAP grant funds, the designated agency is considered a recipient for purposes of Part 81.

(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)).

(b) The regulations in this part 370.

(c) The regulations in 34 CFR 369.43, 369.46 and 369.48, relating to various conditions to be met by grantees.

NOTE: Any funds made available to a State under this program that are transferred by a State to a designated agency do not comprise a subgrant as that term is defined in 34 CFR 77.1. The designated agency is not, therefore, in these circumstances a subgrantee, as that term is defined in that section or in 34 CFR part 74, 76, or 80.)

(Authority: 29 U.S.C. 711(c) and 732)

§ 370.6 What definitions apply?

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

Award
EDGAR
Fiscal year
Nonprofit
Private
Public
Secretary

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

Act means the Rehabilitation Act of 1973, as amended.

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. Advocacy may be formal, as in the case of a lawyer representing an individual in a court of law or in formal administrative proceedings before government agencies (whether State, local or Federal). Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether State, local or Federal), or as in the case of a lawyer or non-lawyer representing an individual's cause before private entities or organizations, or government agencies (whether State, local or Federal). Advocacy may be on behalf of—

(1) A single individual, in which case it is *individual advocacy;*

(2) More than one individual or a group or class of individuals, in which

case it is *systems* (or *systemic*) *advocacy;* or

(3) Oneself, in which case it is *self advocacy*.

Class action means a formal legal suit on behalf of a group or class of individuals filed in a Federal or State court that meets the requirements for a ''class action'' under Federal or State law. ''Systems (or systemic) advocacy'' that does not include filing a formal class action in a Federal or State court is not considered a class action for purposes of this part.

Client or client applicant means an individual receiving or seeking services under the Act, respectively.

Designated agency means the agency designated by the Governor under §370.2 to conduct a client assistance program under this part.

Mediation means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary, or conciliator may not be any entity or individual who is connected in any way with the eligible system or the agency, entity, or individual with whom the individual with a disability has a dispute. Mediation may involve the use of professional mediators or any other independent third party mutually agreed to by the parties to the dispute.

Services under the Act means vocational rehabilitation, independent living, supported employment, and other similar rehabilitation services provided under the Act. For purposes of the CAP, the term ''services under the Act'' does not include activities carried out under the protection and advocacy program authorized by section 509 of the Act (i.e., the Protection and Advocacy of Individual Rights (PAIR) program, 34 CFR part 381).

State means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, The United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (but only until September 30, 1998), except for purposes of the allotments under section 112 of the Act, in which case ''State'' does not mean or include Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

(Authority: 29 U.S.C. 711(c) and 732; Pub. L. 101–219 (Dec. 12, 1989); Pub. L. 99–658 (Nov. 14, 1986); and Pub. L. 99–239 (Jan. 14, 1986))

§370.7 What shall the designated agency do to make its services accessible?

The designated agency shall provide, as appropriate, the CAP services described in §370.4 in formats that are accessible to clients or client applicants who seek or receive CAP services.

(Authority: 29 U.S.C. 711(c))

Subpart B—What Requirements Apply to Redesignation?

§370.10 When do the requirements for redesignation apply?

(a) The Governor may not redesignate the agency designated pursuant to section 112(c) of the Act and §370.2(b) without good cause and without complying with the requirements of §§370.10 through 370.17.

(b) For purposes of §§370.10 through 370.17, a ''redesignation of'' or ''to redesignate'' a designated agency means any change in or transfer of the designation of an agency previously designated by the Governor to conduct the State's CAP to a new or different agency, unit, or organization, including—

(1) A decision by a designated agency to cancel its existing contract with another entity with which it has previously contracted to carry out and operate all or part of its responsibilities under the CAP (including providing advisory, assistance, or advocacy services to eligible clients and client applicants); or

(2) A decision by a designated agency not to renew its existing contract with another entity with which it has previously contracted. Therefore, an agency that is carrying out a State's CAP under a contract with a designated agency is considered a designated agency for purposes of §§370.10 through 370.17.

(c) For purposes of paragraph (a) of this section, a designated agency that does not renew a contract for CAP services because it is following State procurement laws that require contracts to be awarded through a competitive bidding process is presumed to have good cause for not renewing an existing contract. However, this presumption may be rebutted.

(d) If State procurement laws require a designated agency to award a contract through a competitive bidding process, the designated agency must hold public hearings on the request for proposal before awarding the new contract.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.11 What requirements apply to a notice of proposed redesignation?

(a) Prior to any redesignation of the agency that conducts the CAP, the Governor shall give written notice of the proposed redesignation to the designated agency, the State Rehabilitation Advisory Council (SRAC), and the State Independent Living Council (SILC) and publish a public notice of the Governor's intention to redesignate. Both the notice to the designated agency, the SRAC, and the SILC and the public notice must include, at a minimum, the following:

(1) The Federal requirements for the CAP (section 112 of the Act).

(2) The goals and function of the CAP.

(3) The name of the current designated agency.

(4) A description of the current CAP and how it is administered.

(5) The reason or reasons for proposing the redesignation, including why the Governor believes good cause exists for the proposed redesignation.

(6) The effective date of the proposed redesignation.

(7) The name of the agency the Governor proposes to administer the CAP.

(8) A description of the system that the redesignated (i.e., new) agency would administer.

(b) The notice to the designated agency must—

(1) Be given at least 30 days in advance of the Governor's written decision to redesignate; and

(2) Advise the designated agency that it has at least 30 days from receipt of the notice of proposed redesignation to respond to the Governor and that the response must be in writing.

(c) The notice of proposed redesignation must be published in a place and manner that provides the SRAC, the SILC, individuals with disabilities or their representatives, and the public with at least 30 days to submit oral or written comments to the Governor.

(d) Following public notice, public hearings concerning the proposed redesignation must be conducted in an accessible format that provides individuals with disabilities or their representatives an opportunity for comment. The Governor shall maintain a written public record of these hearings.

(e) The Governor shall fully consider any public comments before issuing a written decision to redesignate.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.12 How does a designated agency preserve its right to appeal a redesignation?

(a) To preserve its right to appeal a Governor's written decision to redesignate (see § 370.13), a designated agency must respond in writing to the Governor within 30 days after it receives the Governor's notice of proposed redesignation.

(b) The designated agency shall send its response to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received the designated agency's response.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.13 What are the requirements for a decision to redesignate?

(a) If, after complying with the requirements of § 370.11, the Governor decides to redesignate the designated agency, the Governor shall provide to the designated agency a written decision to redesignate that includes the rationale for the redesignation. The

Governor shall send the written decision to redesignate to the designated agency by registered or certified mail, return receipt requested, or other means that provides a record that the designated agency received the Governor's written decision to redesignate.

(b) If the designated agency submitted to the Governor a timely response to the Governor's notice of proposed redesignation, the Governor shall inform the designated agency that it has at least 15 days from receipt of the Governor's written decision to redesignate to file a formal written appeal with the Secretary.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(A))

§370.14 How does a designated agency appeal a written decision to redesignate?

(a) A designated agency may appeal to the Secretary a Governor's written decision to redesignate only if the designated agency submitted to the Governor a timely written response to the Governor's notice of proposed redesignation in accordance with §370.12.

(b) To appeal to the Secretary a Governor's written decision to redesignate, a designated agency shall file a formal written appeal with the Secretary within 15 days after the designated agency's receipt of the Governor's written decision to redesignate. The date of filing of the designated agency's written appeal with the Secretary will be determined in a manner consistent with the requirements of 34 CFR 81.12.

(c) If the designated agency files a written appeal with the Secretary, the designated agency shall send a separate copy of this appeal to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received a copy of the designated agency's appeal to the Secretary.

(d) The designated agency's written appeal to the Secretary must state why the Governor has not met the burden of showing that good cause for the redesignation exists or has not met the procedural requirements under §§370.11 and 370.13.

(e) The designated agency's written appeal must be accompanied by the designated agency's written response to the Governor's notice of proposed redesignation and may be accompanied by any other written submissions or documentation the designated agency wishes the Secretary to consider.

(f) As part of its submissions under this section, the designated agency may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§370.15 What must the Governor of a State do upon receipt of a copy of a designated agency's written appeal to the Secretary?

(a) If the designated agency files a formal written appeal in accordance with §370.14, the Governor shall, within 15 days of receipt of the designated agency's appeal, submit to the Secretary copies of the following:

(1) The written notice of proposed redesignation sent to the designated agency.

(2) The public notice of proposed redesignation.

(3) Transcripts of all public hearings held on the proposed redesignation.

(4) Written comments received by the Governor in response to the public notice of proposed redesignation.

(5) The Governor's written decision to redesignate, including the rationale for the decision.

(6) Any other written documentation or submissions the Governor wishes the Secretary to consider.

(7) Any other information requested by the Secretary.

(b) As part of the submissions under this section, the Governor may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.16 How does the Secretary review an appeal of a redesignation?

(a) If either party requests a meeting under § 370.14(f) or § 370.15(b), the meeting is to be held within 30 days of the submissions by the Governor under § 370.15, unless both parties agree to waive this requirement. The Secretary promptly notifies the parties of the date and place of the meeting.

(b) Within 30 days of the informal meeting permitted under paragraph (a) of this section or, if neither party has requested an informal meeting, within 60 days of the submissions required from the Governor under § 370.15, the Secretary issues to the parties a final written decision on whether the redesignation was for good cause.

(c) The Secretary reviews a Governor's decision based on the record submitted under §§ 370.14 and 370.15 and any other relevant submissions of other interested parties. The Secretary may affirm or, if the Secretary finds that the redesignation is not for good cause, remand for further findings or reverse a Governor's redesignation.

(d) The Secretary sends copies of the decision to the parties by registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.17 When does a redesignation become effective?

A redesignation does not take effect for at least 15 days following the designated agency's receipt of the Governor's written decision to redesignate or, if the designated agency appeals, for at least 5 days after the Secretary has affirmed the Governor's written decision to redesignate.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

Subpart C—How Does a State Apply for a Grant?

§ 370.20 What must be included in a request for a grant?

(a) Each State seeking assistance under this part shall submit to the Secretary, in writing, each fiscal year, an application that includes, at a minimum—

(1) The name of the designated agency; and

(2) An assurance that the designated agency meets the independence requirement of section 112(c)(1)(A) of the Act and § 370.2(c), or that the State is exempted from that requirement under section 112(c)(1)(A) of the Act and § 370.2(d).

(b)(1) Each State also shall submit to the Secretary an assurance that the designated agency has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of clients or client applicants within the State.

(2) The authority to pursue remedies described in paragraph (b)(1) of this section must include the authority to pursue those remedies against the State vocational rehabilitation agency and other appropriate State agencies. The designated agency meets this requirement if it has the authority to pursue those remedies either on its own behalf or by obtaining necessary services, such as legal representation, from outside sources.

(c) Each State also shall submit to the Secretary assurances that—

(1) All entities conducting, administering, operating, or carrying out programs within the State that provide services under the Act to individuals with disabilities in the State will advise all clients and client applicants of the existence of the CAP, the services provided under the program, and how to contact the designated agency;

(2) The designated agency will meet each of the requirements in this part; and

(3) The designated agency will provide the Secretary with the annual report required by section 112(g)(4) of the Act and § 370.44.

(d) To allow a designated agency to receive direct payment of funds under this part, a State must provide to the Secretary, as part of its application for assistance, an assurance that direct payment to the designated agency is not prohibited by or inconsistent with State law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 732 (b) and (f))

Subpart D—How Does the Secretary Allocate and Reallocate Funds to a State?

§370.30 How does the Secretary allocate funds?

(a) The Secretary allocates the funds available under this part for any fiscal year to the States on the basis of the relative population of each State. The Secretary allocates at least $50,000 to each State, unless the provisions of section 112(e)(1)(D) of the Act (which provides for increasing the minimum allotment if the appropriation for the CAP exceeds $7,500,000 or the appropriation is increased by a certain percentage described in section 112(e)(1)(D)(ii) of the Act) are applicable.

(b) The Secretary allocates $30,000 each, unless the provisions of section 112(e)(1)(D) of the Act are applicable, to American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Republic of Palau, except that the Secretary allocates to the Republic of Palau only 75 percent of this allotment in fiscal year 1996, only 50 percent of this allotment in fiscal year 1997, only 25 percent of this allotment in fiscal year 1998, and none of this allotment in fiscal year 1999 and thereafter.

(c) Unless prohibited or otherwise provided by State law, regulation, or policy, the Secretary pays to the designated agency, from the State allotment under paragraph (a) or (b) of this section, the amount specified in the State's approved request. Because the designated agency is the eventual, if not the direct, recipient of the CAP funds, 34 CFR parts 74 and 81 apply to the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. However, because it is the State that submits an application for and receives the CAP grant, the State remains the grantee for purposes of 34 CFR parts 76 and 80. In addition, both the State and the designated agency are considered recipients for purposes of 34 CFR part 81.

(Authority: 29 U.S.C. 732 (b) and (e); Pub. L. 101–219 (Dec. 12, 1989); Pub. L. 99–658 (Nov. 14, 1986); and Pub. L. 99–239 (Jan. 14, 1986))

§370.31 How does the Secretary reallocate funds?

(a) The Secretary reallocates funds in accordance with section 112(e)(2) of the Act.

(b) A designated agency shall inform the Secretary at least 90 days before the end of the fiscal year for which CAP funds were received whether the designated agency is making available for reallotment any of those CAP funds that it will be unable to obligate in that fiscal year.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 711(c) and 732(e)(2))

Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

§370.40 What are allowable costs?

(a) If the designated agency is a State or local government agency, the designated agency shall apply the cost principles in accordance with 34 CFR 80.22(b).

(b) If the designated agency is a private nonprofit organization, the designated agency shall apply the cost principles in accordance with subpart Q of 34 CFR part 74.

(c) In addition to those allowable costs established in EDGAR, and consistent with the program activities listed in §370.4, the cost of travel in connection with the provision to a client or client applicant of assistance under this program is allowable. The cost of travel includes the cost of travel for an attendant if the attendant must accompany the client or client applicant.

(d) The State and the designated agency are accountable, both jointly and severally, to the Secretary for the proper use of funds made available under this part. However, the Secretary may choose to recover funds under the procedures in 34 CFR part 81 from either the State or the designated agency, or both, depending on the circumstances of each case.

(Authority: 29 U.S.C. 711(c) and 732(c)(3))

§ 370.41 What conflict of interest provision applies to employees of a designated agency?

(a) Except as permitted by paragraph (b) of this section, an employee of a designated agency, of a center under contract with a designated agency (as permitted by § 370.2(f)), or of an entity or individual under contract with a designated agency, who carries out any CAP duties or responsibilities, while so employed, may not—

(1) Serve concurrently as a staff member of, consultant to, or in any other capacity within, any other rehabilitation project, program, or community rehabilitation program receiving assistance under the Act in the State; or

(2) Provide any services under the Act, other than CAP and PAIR services.

(b) An employee of a designated agency or of a center under contract with a designated agency, as permitted by § 370.2(f), may—

(1) Receive a traineeship under section 302 of the Act;

(2) Provide services under the PAIR program;

(3) Represent the CAP on any board or council (such as the SRAC) if CAP representation on the board or council is specifically permitted or mandated by the Act; and

(4) Consult with policymaking and administrative personnel in State and local rehabilitation programs, projects, and community rehabilitation programs, if consultation with the designated agency is specifically permitted or mandated by the Act.

(Authority: 29 U.S.C. 732(g)(1))

§ 370.42 What access must the CAP be afforded to policymaking and administrative personnel?

The CAP must be afforded reasonable access to policymaking and administrative personnel in State and local rehabilitation programs, projects, and community rehabilitation programs. One way in which the CAP may be provided that access would be to include the director of the designated agency among the individuals to be consulted on matters of general policy development and implementation, as required by sections 101(a) (18) and (23) of the Act.

(Authority: 29 U.S.C. 721(a) (18) and (23) and 732(g)(2))

§ 370.43 What requirement applies to the use of mediation procedures?

(a) Each designated agency shall implement procedures designed to ensure that, to the maximum extent possible, good faith negotiations and mediation procedures are used before resorting to formal administrative or legal remedies. In designing these procedures, the designated agency may take into account its level of resources.

(b) For purposes of this section, mediation may involve the use of professional mediators, other independent third parties mutually agreed to by the parties to the dispute, or an employee of the designated agency who—

(1) Is not assigned to advocate for or otherwise represent or is not involved with advocating for or otherwise representing the client or client applicant who is a party to the mediation; and

(2) Has not previously advocated for or otherwise represented or been involved with advocating for or otherwise representing that same client or client applicant.

(Authority: 29 U.S.C. 732(g)(3))

§ 370.44 What reporting requirement applies to each designated agency?

In addition to the program and fiscal reporting requirements in EDGAR that are applicable to this program, each designated agency shall submit to the Secretary, no later than 90 days after the end of each fiscal year, an annual report on the operation of its CAP during the previous year, including a summary of the work done and the uniform statistical tabulation of all cases handled by the program. The annual report must contain information on—

(a) The number of requests received by the designated agency for information on services and benefits under the Act and title I of the ADA;

(b) The number of referrals to other agencies made by the designated agency and the reason or reasons for those referrals;

(c) The number of requests for advocacy services received by the designated agency from clients or client applicants;

(d) The number of the requests for advocacy services from clients or client applicants that the designated agency was unable to serve;

(e) The reasons that the designated agency was unable to serve all of the requests for advocacy services from clients or client applicants; and

(f) Any other information that the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 732(g) (4) and (5))

§370.45 What limitation applies to the pursuit of legal remedies?

A designated agency may not bring any class action in carrying out its responsibilities under this part.

(Authority: 29 U.S.C. 732(d))

§370.46 What consultation requirement applies to a Governor of a State?

In designating a client assistance agency under §370.2, redesignating a client assistance agency under §370.10(a), and carrying out the other provisions of this part, the Governor shall consult with the director of the State vocational rehabilitation agency (or, in States with both a general agency and an agency for the blind, the directors of both agencies), the head of the developmental disability protection and advocacy agency, and representatives of professional and consumer organizations serving individuals with disabilities in the State.

(Authority: 29 U.S.C. 732(c)(2))

§370.47 When must grant funds be obligated?

(a) Any funds appropriated for a fiscal year to carry out the CAP that are not expended or obligated by the designated agency prior to the beginning of the succeeding fiscal year remain available for obligation by the designated agency during the succeeding fiscal year in accordance with 34 CFR 76.705 through 76.707.

(b) A designated agency shall inform the Secretary within 90 days after the end of the fiscal year for which the CAP funds were made available whether the designated agency carried over to the succeeding fiscal year any CAP funds that it was unable to obligate by the end of the fiscal year.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: 29 U.S.C. 718)

§370.48 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any designated agency under this part, including lists of names, addresses, photographs, and records of evaluation, must be held strictly confidential.

(b) The designated agency's use of information and records concerning individuals must be limited only to purposes directly connected with the CAP, including program evaluation activities. Except as provided in paragraphs (c) and (e) of this section, this information may not be disclosed, directly or indirectly, other than in the administration of the CAP, unless the consent of the individual to whom the information applies, or his or her parent, legal guardian, or other legally authorized representative or advocate (including the individual's advocate from the designated agency), has been obtained in writing. A designated agency may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraphs (d) and (e) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements are to have complete access to all—

(1) Records of the designated agency that receives funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d) For purposes of conducting any periodic audit, preparing or producing any report, or conducting any evaluation of the performance of the CAP established or assisted under this part,

the Secretary does not require the designated agency to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the CAP.

(e) Notwithstanding paragraph (d) of this section and consistent with paragraph (f) of this section, a designated agency shall disclose to the Secretary, if the Secretary so requests, the identity of, or any other personally identifiable information (i.e., name, address, telephone number, social security number, or any other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the CAP if—

(1) An audit, evaluation, monitoring review, State plan assurance review, or other investigation produces reliable evidence that there is probable cause to believe that the designated agency has violated its legislative mandate or misused Federal funds; or

(2) The Secretary determines that this information may reasonably lead to further evidence that is directly related to alleged misconduct of the designated agency.

(f) In addition to the protection afforded by paragraph (d) of this section, the right of a person or designated agency not to produce documents or disclose information to the Secretary is governed by the common law of privileges, as interpreted by the courts of the United States.

(Authority: 29 U.S.C. 711(c) and 732(g)(6))

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES

Subpart A—General

Sec.

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371.3 What regulations apply to this program?
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Subpart C—How Does One Apply for a Grant?

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371.31 How are grants awarded?

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371.41 What are allowable costs?
371.42 How are services to be administered under this program?
371.43 What other special conditions apply to this program?

AUTHORITY: 29 U.S.C. 711(c) and 750, unless otherwise noted.

SOURCE: 46 FR 5423, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 371.1 What is the Vocational Rehabilitation Services Program for American Indians with Disabilities?

This program is designed to provide vocational rehabilitation services to American Indians with disabilities who reside on Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment.

(Authority: Secs. 100(a)(2) and 130(a) of the Act; 29 U.S.C. 720(a)(2) and 750(a))

[60 FR 58137, Nov. 24, 1995]

§ 371.2 Who is eligible for assistance under this program?

Applications may be made only by the governing bodies of Indian tribes and consortia of those governing bodies

located on Federal and State reservations.

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

[46 FR 5423, Jan. 19, 1981, as amended at 52 FR 30555, Aug. 14, 1987]

§371.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR part 369;

(b) The regulations in this part 371.

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

§371.4 What definitions apply to this program?

(a) The definitions in 34 CFR part 369 apply to this program;

(b) The following definitions also apply specifically to this program—

American Indian means a person who is a member of an Indian tribe.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

Consortium means two or more eligible governing bodies of Indian tribes that make application as a single applicant under an agreement whereby each governing body is legally responsible for carrying out all of the activities in the application.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

Governing bodies of Indian tribes means those duly elected or appointed representatives of an Indian tribe or of an Alaskan native village. These representatives must have the authority to enter into contracts, agreements, and grants on behalf of their constituency.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

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

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

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: Secs. 12(c) and 130(c) of the Act; 29 U.S.C. 711(c) and 750(c))

[46 FR 5423, Jan. 19, 1981, as amended at 52 FR 30555, Aug. 14, 1987; 59 FR 8338, Feb. 18, 1994]

§371.5 What is the length of the project period under this program?

(a) The Secretary approves a project period of up to three years.

(b) The Secretary may extend a grant for up to two additional years if the grantee includes in its extension request—

(1) An assurance that the project is in compliance with all applicable program requirements; and

(2) Satisfactory evidence that—

(i) The project has made substantial and measurable progress in meeting the needs of American Indians with disabilities on the reservation or reservations it serves;

(ii) American Indians with disabilities who have received project services have achieved employment outcomes consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice; and

(iii) There is a continuing need for the project.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Section 130(b)(3) of the Act; 29 U.S.C. 750(b)(3))

[60 FR 58137, Nov. 24, 1995]

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§371.10 What types of projects are authorized under this program?

The Vocational Rehabilitation Service Program for American Indians with

Disabilities provides financial assistance for the establishment and operation of tribal vocational rehabilitation service programs for American Indians with disabilities who reside on Federal or State reservations.

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

[59 FR 8338, Feb. 18, 1994]

Subpart C—How Does One Apply for a Grant?

§ 371.20 What are the application procedures for this program?

In the development of an application, a governing body or consortium is required to consult with the designated State unit or the designated State units of the State or States in which vocational rehabilitation services are to be provided.

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

[46 FR 5423, Jan. 19, 1981, as amended at 52 FR 30555, Aug. 14, 1987]

§ 371.21 What are the special application requirements related to the State plan program?

Each applicant under this program must provide evidence that—

(a) Effort will be made to provide a broad scope of vocational rehabilitation services in a manner and at a level of quality at least comparable to those services provided by the designated State unit under 34 CFR part 361.

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

(b) All decisions affecting eligibility for and the nature and scope of vocational rehabilitation services to be provided, and the provision of these services, will be made by the tribal vocational rehabilitation program through its vocational rehabilitation unit and will not be delegated to another agency or individual.

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

(c) Priority in the delivery of vocational rehabilitation service will be given to those American Indians with disabilities who are the most severely disabled.

(Authority: Secs. 12(c) and 101(a)(5) of the Act; 29 U.S.C. 711(c) and 721(a)(5))

(d) An order of selection of individuals with disabilities to be served under the program will be specified if services cannot be provided to all eligible American Indians with disabilities who apply.

(Authority: Secs. 12(c) and 101(a)(5) of the Act; 29 U.S.C. 711(c) and 721(a)(5))

(e) All vocational rehabilitation services will be provided according to an individualized written rehabilitation program which has been developed jointly by the representative of the service providing organization and each American Indian with disabilities being served.

(Authority: Secs. 12(c) and 101(a)(9) of the Act; 29 U.S.C. 711(c) and 721(a)(9))

(f) American Indians with disabilities living on Federal or State reservations where service programs are being carried out under this part will have an opportunity to participate in matters of general policy development and implementation affecting vocational rehabilitation service delivery on the reservation.

(Authority: Secs. 12(c) and 101(a)(18) of the Act; 29 U.S.C. 711(c) and 721(a)(18))

(g) Cooperative working arrangements will be developed with the designated State unit, or designated State units, as appropriate, which are providing vocational rehabilitation services to other individuals with disabilities who reside in the State or States being served.

(Authority: Secs. 12(c) and 101(a)(11) of the Act; 29 U.S.C. 711(c) and 721(a)(11))

(h) Any similar benefits available to American Indians with disabilities under any other program which might meet in whole or in part the cost of any vocational rehabilitation service will be fully considered in the provision of vocational rehabilitation services in accordance with 34 CFR part 361.

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

(i) Any American Indian with disabilities who is an applicant or recipient of services, and who is dissatisfied with a determination made by a counselor or coordinator under this program and files a request for a review, will be afforded a review under procedures developed by the grantee comparable to those under the provisions of section 102(d) (1)–(3) of the Act.

(Authority: Secs. 12(c) and 102(d) of the Act; 29 U.S.C. 711(c) and 722(d))

(j) Minimum standards will be established for community rehabilitation programs and providers of service which will be comparable to the standards set by the designated State unit or designated State units in the State or States in which the program is to be provided; and

(Authority: Secs. 12(c) and 101(a) (6) and (7) of the Act; 29 U.S.C. 711(c) and 721(a) (6) and (7))

(k) Maximum use will be made of public or other vocational or technical training facilities or other appropriate community resources.

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

[46 FR 5423, Jan. 19, 1981, as amended at 52 FR 30555, Aug. 14, 1987; 59 FR 8337, 8338, Feb. 18, 1994]

Subpart D—How Does the Secretary Make a Grant?

§371.31 How are grants awarded?

To the extent that funds have been appropriated under this program, the Secretary approves all applications which meet acceptable standards of program quality. If any application is not approved because of deficiencies in proposed program standards, the Secretary provides technical assistance to the applicant Indian tribe with respect to any areas of the proposal which were judged to be deficient.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

Subpart E—What Conditions Apply to A Grantee Under This Program?

§371.40 What are the matching requirements?

(a) *Federal share.* Except as provided in paragraph (c) of this section, the Federal share may not be more than 90 percent of the total cost of the project.

(b) *Non-Federal share.* The non-Federal share of the cost of the project may be in cash or in kind, fairly valued.

(c) *Waiver of non-Federal share.* In order to carry out the purposes of the program, the Secretary may waive the non-Federal share requirement, in part or in whole, only if the applicant demonstrates that it does not have sufficient resources to contribute the non-Federal share of the cost of the project.

(Authority: Secs. 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(a))

[52 FR 30556, Aug. 14, 1987]

§371.41 What are allowable costs?

(a) In addition to those allowable costs established in EDGAR §§75.530–75.534, the following items are allowable costs under this program—

(1) Expenditures for the provision of vocational rehabilitation services and for the administration, including staff development, of a program of vocational rehabilitation services.

(2) Expenditures for services reflecting the cultural background of the American Indians being served, including treatment provided by native healing practitioners who are recognized as such by the tribal vocational rehabilitation program when the services are necessary to assist an individual with disabilities to achieve his or her vocational rehabilitation objective.

(b) Expenditures may not be made under this program to cover the costs of providing vocational rehabilitation services to individuals with disabilities

not residing on Federal or State reservations.

(Authority: Secs. 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(a))

[46 FR 5423, Jan. 19, 1981, as amended at 52 FR 30555, Aug. 14, 1987; 59 FR 8337, Feb. 18, 1994]

§ 371.42 How are services to be administered under this program?

(a) *Directly or by contract.* A grantee under this part may provide the vocational rehabilitation services directly or it may contract or otherwise enter into an agreement with a designated State unit, a community rehabilitation program, or another agency to assist in the implementation of the vocational rehabilitation service program for American Indians with disabilities.

(b) *Inter-tribal agreement.* A grantee under this part may enter into an inter-tribal arrangement with governing bodies of other Indian tribes for carrying out a project that serves more than one Indian tribe.

(c) *Comparable service program.* To the maximum extent feasible, services provided by a grantee under this part must be comparable to rehabilitation service provided under this title to other individuals with disabilities residing in the State.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

[52 FR 30556, Aug. 14, 1987, as amended at 59 FR 8337, 8338, Feb. 18, 1994]

§ 371.43 What other special conditions apply to this program?

(a) Any American Indian with disabilities who is eligible for service under this program but who wishes to be provided service by the designated State unit must be referred to the State unit for such services.

(b) Preference in employment in connection with the provision of vocational rehabilitation services under this section must be given to American Indians, with a special priority being given to American Indians with disabilities.

(c) The provisions of sections 5, 6, 7, and 102(a) of the Indian Self-Determination and Education Assistance Act also apply under this program. These provisions relate to grant reporting and audit requirements, maintenance of records, access to records, availability of required reports and information to Indian people served or represented, repayment of unexpended Federal funds, criminal activities involving grants, penalties, wage and labor standards, preference requirements for American Indians in the conduct and administration of the grant, and requirements affecting requests of tribal organizations to enter into contracts. For purposes of applying these requirements to this program, the Secretary carries out those responsibilities assigned to the Secretary of Interior.

(Authority: Secs. 12(c) and 130(b)(2) of the Act; 29 U.S.C. 711(c) and 750(b)(2))

[46 FR 5423, Jan. 19, 1981, as amended at 52 FR 30555, Aug. 14, 1987; 59 FR 8337, Feb. 18, 1994]

PART 376—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING TRANSITIONAL REHABILITATION SERVICES TO YOUTH WITH DISABILITIES

Subpart A—General

Sec.
376.1 What is the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth with Disabilities?
376.2 Who is eligible for assistance under this program?
376.3 What regulations apply to this program?
376.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

376.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

376.30 What priorities are considered for support by the Secretary under this part?

Subpart E—What Conditions Must Be Met by a Grantee?

376.40 What are the matching requirements?

376.41 What are the requirements for cooperation between grantees and other agencies and organizations?

AUTHORITY: 29 U.S.C. 777a(b), unless otherwise noted.

SOURCE: 51 FR 3895, Jan. 30, 1986, unless otherwise noted.

Subpart A—General

§376.1 What is the program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youths with Disabilities?

This program is designed to provide job training for youths with disabilities to prepare them for entry into the labor force, including competitive or supported employment.

(Authority: Sec. 311(b); 29 U.S.C. 777a(b))

[51 FR 3895, Jan. 30, 1986, as amended at 57 FR 28441, June 24, 1992; 59 FR 8340, Feb. 18, 1994]

§376.2 Who is eligible for assistance under this program?

State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Authority: Sec. 311(b); 29 U.S.C. 777a(b))

§376.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR part 369.

(b) The regulations in this part 376.

(c) The regulations in 34 CFR 380.20.

(Authority: Secs. 12(c) and 311(b); 29 U.S.C. 711(c) and 777a(b))

[51 FR 3895, Jan. 30, 1986, as amended at 57 FR 28441, June 24, 1992]

§376.4 What definitions apply to this program?

(a) The definitions in 34 CFR part 369.

(b) The definition of ''Supported employment'' in 34 CFR part 363.

(c) The definitions of ''Competitive employment'', ''Integrated setting'', ''On-going support services'', ''Transitional employment'', and ''Time-limited services'' in 34 CFR part 380.

(d) The following definitions also apply to this program:

(1) *Extended services* means on-going support services and other appropriate services provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds under this part, part 361, part 363, or part 380, after an individual with the most severe disabilities has made the transition from project support.

(2) *Transitional rehabilitation services* means any vocational rehabilitation services available under the State plan for vocational rehabilitation services under 34 CFR part 361 or the State plan for independent living services under 34 CFR part 365 and may also include—

(i) Jobs search assistance;

(ii) On-the-job training;

(iii) Job development, including work-site modification and use of advanced learning technology for skills training; and

(iv) Follow-up services for individuals placed in employment.

(3) *Youths with disabilities* means individuals with disabilities between the ages of 12 and 26.

(Authority: 29 U.S.C. 711(c) and 777a(b))

[57 FR 28441, June 24, 1992, as amended at 59 FR 8340, Feb. 18, 1994; 62 FR 6363, Feb. 11, 1997]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§376.10 What types of projects are authorized under this program?

(a) This program supports special projects and demonstrations, including research and evaluation, for the following purposes:

(1) To demonstrate effective ways in which to provide job training, placement, and other transitional rehabilitation services to youths with disabilities to prepare them for entry in the labor force, including competitive or supported employment.

(2) To demonstrate service programs for youths with disabilities reflecting cooperative efforts between local educational agencies, business and industry, vocational rehabilitation agencies, community rehabilitation programs,

parent groups, public or other nonprofit developmental disabilities agencies, organizations representing labor, and organizations responsible for promoting or assisting in local economic development.

(3) To develop and implement new patterns or practices of transitional rehabilitation service delivery and to conduct the field-testing and evaluation of these patterns or practices to determine the efficacy of their being replicated in other settings.

(b) Research and evaluation activities carried out under this program must be specifically related to a transitional rehabilitation service model under which direct services are provided.

(c) Projects funded under this part must serve youths with disabilities.

(d) A project funded under this part may include dissemination of information on project activities to business and industry.

(Authority: Secs. 12(c) and 311(b); 29 U.S.C. 711a(c) and 777(b))

[51 FR 3895, Jan. 30, 1986, as amended at 59 FR 8340, Feb. 18, 1994]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 376.30 What priorities are considered for support by the Secretary under this part?

The Secretary may select annually in a notice published in the FEDERAL REGISTER, one or more of the following priority areas for funding under this program:

(a) *Community-based transitional rehabilitation service delivery.* This priority supports projects that demonstrate exemplary models for developing and establishing community-based transitional rehabilitation service programs that result directly in competitive or supported employment for youths with disabilities within the labor force.

(b) *Statewide transitional rehabilitation service delivery.* This priority supports projects that demonstrate effective Statewide approaches to transitional rehabilitation service delivery for youths with disabilities and demonstrate cooperative efforts between State agencies responsible for service to youths with disabilities including but not limited to, special education, vocational rehabilitation, and day services for adults with developmental disabilities.

(c) *Transitional rehabilitation services for youths with disabilities who have special needs.* This priority supports projects that demonstrate transitional rehabilitation service programs focused on meeting the special job training and placement needs of one or more groups of individuals with physical or mental disabilities which present unusual and difficult rehabilitation problems including, but not limited to, blindness, cerebral palsy, deafness, epilepsy, mental illness, mental retardation, and learning disability.

(d) *Transitional rehabilitation services for institutionalized persons.* This priority supports projects that demonstrate effective ways to assist youths and young adults who are institutionalized, including those residing in skilled nursing or intermediate care facilities, to return to community living and competitive or supported employment.

(e) *Transitional rehabilitation services for unemployed youths with disabilities.* This priority supports projects that demonstrate ways to train and place in competitive or supported employment youths with disabilities who were unable to participate in special education programs or who recently graduated from those programs but have been unable to secure and maintain employment.

(f) *Home-based transitional rehabilitation services.* This priority supports projects that demonstrate ways in which youths with disabilities, including those residing in rural areas, who because of the severity of their disabilities are precluded from employment in the community, could be gainfully employed in home settings.

(Authority: Sec. 311(b); 29 U.S.C. 777 (a), (b))

[51 FR 3895, Jan. 30, 1986, as amended at 59 FR 8340, Feb. 18, 1994]

Subpart E—What Conditions Must Be Met by a Grantee?

§376.40 What are the matching requirements?

The Secretary may pay all or part of the costs of activities funded under this program. If part of the costs is to be paid by a grantee, the amount of grantee participation is specified in the application notice and will not be more than 10 percent of the total cost of the project.

(Authority: Secs. 12(c) and 311(b); 29 U.S.C. 711(c) and 777a(b))

[59 FR 8340, Feb. 18, 1994]

§376.41 What are the requirements for cooperation between grantees and other agencies and organizations?

Each project must be designed to demonstrate a cooperative effort between local educational agencies, business and industry, vocational rehabilitation programs, organizations representing labor, and organizations responsible for promoting or assisting in local economic development.

(Authority: Sec. 311(b); 29 U.S.C. 777a(b))

PART 377—DEMONSTRATION PROJECTS TO INCREASE CLIENT CHOICE PROGRAM

Subpart A—General

Sec.

377.1 What is the Demonstration Projects to Increase Client Choice Program?
377.2 Who is eligible for an award?
377.3 What types of activities may the Secretary fund?
377.4 What regulations apply?
377.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

377.10 How does an eligible entity apply for an award?
377.11 What is the content of an application for an award?

Subpart C—How Does the Secretary Make an Award?

377.20 How does the Secretary evaluate an application?
377.21 What selection criteria does the Secretary use?
377.22 What additional factors does the Secretary consider in making grants?

Subpart D—What Post-Award Conditions Must be Met by a Grantee?

377.30 What information must a grantee maintain and provide to the Secretary?
377.31 What information must a grantee provide to eligible clients?
377.32 What are the matching requirements?

AUTHORITY: Sec. 802(g) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g), unless otherwise noted.

SOURCE: 58 FR 40709, July 29, 1993, unless otherwise noted.

Subpart A—General

§377.1 What is the Demonstration Projects to Increase Client Choice Program?

The Demonstration Projects to Increase Client Choice Program is designed to provide financial assistance for projects that demonstrate ways to increase client choice in the vocational rehabilitation process, including choice in the selection of vocational rehabilitation goals, services, and providers.

(Authority: Sec. 802(g)(1) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1))

§377.2 Who is eligible for an award?

States and public and nonprofit agencies and organizations are eligible to receive a grant under this program.

(Authority: Sec. 802(g)(1) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1))

§377.3 What types of activities may the Secretary fund?

The Secretary provides financial assistance under this program for activities that are directly related to planning, operating, and evaluating projects to demonstrate effective ways to increase the choices available to eligible clients in the rehabilitation process as follows:

(a) At a minimum, all projects must demonstrate effective ways to increase the choices available to clients in selecting goals, services, and providers of services.

(b) Projects may also use these funds to demonstrate additional ways to increase the choices available to clients in the rehabilitation process.

(Authority: Secs. 802(g)(1) and 802(g)(2)(A) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g) (1) and (2))

§ 377.4 What regulations apply?

The following regulations apply to the Demonstration Projects to Increase Client Choice 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).

(2) 34 CFR part 75 (Direct Grant 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).

(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 following regulations in 34 CFR part 369 (Vocational Rehabilitation Service Projects): §§ 369.43, 369.46, and 369.47.

(c) The regulations in this part 377.

(Authority: Sec. 802(g) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g))

§ 377.5 What definitions apply?

(a) *Definitions in the Rehabilitation Act of 1973, as amended (the Act).* The following terms used in this part are defined in the Act:

Client or eligible client means an individual with a disability who is not currently receiving services under an individualized written rehabilitation program established through a designated State unit. (Section 802(g)(8) of the Act)

Individual with a disability means any individual who—

(1) Has a physical or mental impairment that for that individual constitutes or results in a substantial impediment to employment; and

(2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to title I, III, VI, or VIII of the Act. (Section 7(8)(A) of the Act)

Individual with a severe disability means an individual with a disability—

(1) 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;

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

(3) 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. (Section 7(15)(A) of the Act)

State means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect). (Section 7(16) of the Act)

Vocational rehabilitation services means the services authorized in section 103(a) of the Act. (Section 103(a) of the Act)

(b) *Definitions in EDGAR.* (1) The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Nonprofit
Project
Project period
Public
Secretary

(2) The following terms used in this part are defined in 34 CFR 74.3:

Grant
Grantee

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

Employment outcome means entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, the practice of a profession, self-employment, homemaking, farm or family work (including work for which payment is in kind rather than in cash), extended employment in a community rehabilitation program, supported employment, or other gainful work.

Voucher means a credit of specified monetary value, issued by a grantee to an eligible client, that the eligible client exchanges for vocational rehabilitation services from a qualified provider.

(Authority: Secs. 7(5), 7(8)(A), and 802(g) of the Rehabilitation Act of 1973; 29 U.S.C. 706 and 29 U.S.C. 797a(g))

[58 FR 40709, July 29, 1993, as amended at 59 FR 8340, Feb. 18, 1994]

Subpart B—How Does One Apply for an Award?

§377.10 How does an eligible entity apply for an award?

In order to apply for a grant, an eligible entity shall submit an application to the Secretary in response to an application notice published in the FEDERAL REGISTER.

(Authority: Sec. 802(g)(3) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(3))

§377.11 What is the content of an application for an award?

(a) The grant application must include a description of—

(1) The manner in which the applicant intends to promote increased client choice in the geographical area identified in the application;

(2) The manner in which the applicant intends to provide individuals, including individuals with cognitive disabilities, the information necessary to make informed choices, including, at a minimum, informed choices in the selection of goals, services, and providers.

(3) The outreach activities the applicant plans to conduct to obtain eligible clients, including clients who are individuals with a severe disability;

(4) The manner in which the applicant will ensure that service providers are accredited or meet any quality assurance and cost-control criteria established by the State;

(5) The manner in which the applicant will ensure that eligible clients are satisfied with the quality and scope of services provided;

(6) The manner in which the applicant will monitor and account for use of funds to purchase services;

(7) The manner in which the applicant will determine the monetary value of the services or products available to clients, including, if appropriate, the monetary value of vouchers;

(8) The manner in which the applicant will address the needs of individuals with disabilities who are from minority backgrounds; and

(9) Those features of the proposed project that the applicant considers to be essential and a discussion of their potential for widespread replication.

(b) The application also must include assurances from the applicant that—

(1) A written plan to provide vocational rehabilitation services will be established for, and with the full participation of, each eligible client, and,

if the client elects, with the participation also of family members, guardians, advocates, or authorized representatives, that at a minimum will include—

(i) A statement of the client's vocational rehabilitation goals, which must include goals that are designed to lead to an employment outcome consistent with the client's unique strengths, resources, priorities, concerns, abilities, and capabilities;

(ii) A statement of the specific vocational rehabilitation services to be provided and the projected dates for the initiation and termination of each service; and

(iii) A description of an evaluation procedure for determining whether the client's vocational rehabilitation goals are being achieved, including—

(A) Objective evaluation criteria; and

(B) An evaluation schedule;

(2) The Federal funds granted under this part will be used to supplement, and in no case to supplant, funds made available from other Federal and non-Federal sources for projects providing increased choice in the rehabilitation process;

(3) At least 80 percent of the funds awarded for any project under this part will be used to provide vocational rehabilitation services, as specifically chosen by eligible clients;

(4) The applicant will cooperate fully with the Secretary in a national evaluation, including assisting the Department's contractor in selecting and obtaining data for a control group established through random assignment or by the selection of a matched comparison group; and

(5) Individuals with disabilities will be involved in the development and implementation of the project.

(c) Each applicant also shall submit to the Secretary any other information and assurances that the Secretary determines to be necessary.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 21(b)(6), 802(g)(2), 802(g)(3), 802(g)(5), 802(g)(6), and 802(g)(7) of the Rehabilitation Act of 1973; 29 U.S.C. 718b and 29 U.S.C. 797a(g)(2), (3), (5), (6), and (7))

Subpart C—How Does the Secretary Make an Award?

§ 377.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 377.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: Sec. 802(g)(3) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(3))

§ 377.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Plan of operation.* (30 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purpose of the program to provide increased client choice in the rehabilitation process, including at a minimum increased choice in the selection of goals, services, and providers, leading to an employment outcome;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are objective and measurable for purposes of evaluation, including an estimate of the numbers of clients to be served;

(iv) Include objectives to be met during each budget period that can be used to determine the progress of the project toward meeting its intended outcomes;

(2) The extent to which the plan of operation specifies the methodology for accomplishing each objective of the project;

(3) The extent to which the applicant's plan of management, including resources and timelines, is designed to achieve each objective and intended outcome during the period of Federal funding;

(4) The extent to which the applicant's plan identifies the numbers of eligible clients by type of disability

and the number of eligible clients with severe disabilities who are available to participate in the project;

(5) The extent to which the applicant plans to conduct outreach activities to obtain eligible clients;

(6) The extent to which the applicant's plan ensures that clients who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, or age;

(7) The extent to which the applicant's plan describes a workable process for determining the monetary value of any service or product offered to eligible clients, including, if appropriate, the value of vouchers; and

(8) The extent to which the applicant's plan describes a satisfactory system for conducting vocational assessment with eligible clients to ensure that a full range of vocational goals are considered.

(b) *Key personnel and other resources.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel proposed for the project, including—

(i) The relevant experience and training of the project director;

(ii) The relevant experience and training of each of the other key personnel to be used on the project;

(iii) The amount of time that each person referred to in paragraphs (b)(1)(i) and (ii) of this section will commit to the project;

(iv) The extent to which persons referred to in paragraphs (b)(1)(i) and (ii) of this section are capable of providing technical assistance to other entities interested in replicating the project; and

(v) The extent to which the applicant will ensure that persons employed through the project are selected and work without regard to race, color, national origin, gender, age, or disabling condition.

(2) The Secretary reviews each application to determine the adequacy of the resources the applicant plans to devote to the project, including—

(i) The facilities that the applicant plans to use;

(ii) The equipment and supplies that the applicant plans to use; and

(iii) The recordkeeping capabilities of the applicant for financial and evaluation purposes.

(c) *Service provision.* (20 points) The Secretary reviews each application to determine the quality and comprehensiveness of the services to be offered and the applicant's capacity to provide increased choice in the provision of services to eligible clients, including the extent to which the applicant—

(1) Has the capacity to evaluate the eligibility of applicants for services and to develop written plans for services for individual clients;

(2) Has demonstrated knowledge of a wide range of potential service providers that can meet the needs of eligible clients;

(3) Has described a workable process for enabling eligible clients to choose from among a wide range of service providers;

(4) Has described satisfactory systems to account for the appropriate expenditure of funds; and

(5) Has described satisfactory systems to ensure the provision of quality services.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes; and

(3) Are objective and produce data that are quantifiable, including data that are required under §377.30.

(e) *National significance.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) Project findings might be effectively used within the State vocational rehabilitation service system; and

(2) Project activities might be successfully replicated by other entities.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sec. 802(g)(3) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(3))

§ 377.22 What additional factors does the Secretary consider in making grants?

In addition to the criteria in § 377.21, the Secretary considers the following factors in making grants under this program:

(a) The diversity of strategies to increase client choice, in order to ensure that a variety of approaches are demonstrated by funded projects.

(b) The diversity of clients to be served, in order to ensure that a variety of disability populations are served by funded projects.

(c) The geographical distribution of funded projects.

(Authority: Sec. 802(g)(4) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(4))

Subpart D—What Post-Award Conditions Must Be Met by a Grantee?

§ 377.30 What information must a grantee maintain and provide to the Secretary?

(a) Each grantee shall maintain the records that the Secretary requires to conduct an evaluation of projects funded under this program, which at a minimum must include information regarding the—

(1) Types of services provided;

(2) Costs of services provided;

(3) Number of clients served by disability, race, gender, and age;

(4) Number of clients with a severe disability served;

(5) Client outcomes obtained;

(6) Implementation issues addressed; and

(7) Any other information the Secretary requires.

(b) Each grantee shall comply with any request from the Secretary for those records.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 802(g)(5) and 802(g)(7) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(5) and (7))

§ 377.31 What information must a grantee provide to eligible clients?

Each grantee shall advise all clients and applicants for services under this program, or their parents, family members, guardians, advocates, or authorized representatives, of the availability and purposes of the Client Assistance Program under section 112 of the Act, including information on means of seeking assistance under that program.

(Authority: Sec. 20 of the Rehabilitation Act of 1973; 29 U.S.C 718a)

§ 377.32 What are the matching requirements?

Grants may be made for paying all or part of the costs of projects under this program. If part of the costs is to be covered by the grantee, the amount of grantee contribution is specified in the application notice and will not be required to be more than 10 percent of the total cost of the project.

(Authority: Sec. 802(g)(1) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1))

PART 379—PROJECTS WITH INDUSTRY

Subpart A—General

Sec.

379.1 What is the Projects With Industry (PWI) program?
379.2 Who is eligible for a grant award under this program?
379.3 Who is eligible for services under this program?
379.4 What regulations apply?
379.5 What definitions apply?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

379.10 What types of project activities are required of each grantee under this program?
379.11 What additional types of project activities may be authorized under this program?

Subpart C—How Does One Apply for an Award?

379.20 How does an eligible entity apply for an award?
379.21 What is the content of an application for an award?

Subpart D—How Does the Secretary Make a Grant?

379.30 What selection criteria does the Secretary use under this program?
379.31 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Must Be Met by a Grantee?

379.40 What are the matching requirements?
379.41 What are allowable costs?
379.42 What are the requirements for a continuation award?
379.43 What are the additional reporting requirements?

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?

379.50 What are the requirements for continuation funding?
379.51 What are the program compliance indicators?
379.52 How is grantee performance measured using the compliance indicators?
379.53 What are the weights, minimum performance levels, and performance ranges for each compliance indicator?
379.54 What are the reporting requirements for the compliance indicators?

APPENDIX TO PART 379—EVALUATION STANDARDS

AUTHORITY: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g, unless otherwise noted.

SOURCE: 46 FR 5432, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

SOURCE: 62 FR 5689, Feb. 6, 1997, unless otherwise indicated.

§379.1 What is the Projects With Industry (PWI) program?

This program is designed to—

(a) Create and expand job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process;

(b) Identify competitive job and career opportunities and the skills needed to perform these jobs;

(c) Create practical settings for job readiness and job training programs; and

(d) Provide job placements and career advancement.

(Authority: Sec. 621(a)(1) of the Act; 29 U.S.C. 795g(a)(1))

§379.2 Who is eligible for a grant award under this program?

(a) The Secretary may make a grant under this program to any—

(1) Community rehabilitation program provider;

(2) Designated State unit;

(3) Employer;

(4) Indian tribe or tribal organization;

(5) Labor union;

(6) Nonprofit agency or organization;

(7) Trade association; or

(8) Other agency or organization with the capacity to create and expand job and career opportunities for individuals with disabilities.

(b) New awards may be made only to those eligible entities identified in paragraph (a) of this section that propose to serve individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations that are currently unserved or underserved by the PWI program.

(Authority: Secs. 621(a)(2) and 621(e)(2) of the Act; 29 U.S.C. 795g(a)(2) and 795g(e)(2))

§379.3 Who is eligible for services under this program?

(a) An individual is eligible for services under this program if the appropriate State vocational rehabilitation unit determines the individual to be an individual with a disability or an individual with a severe disability, as defined in sections 7(8)(A) and 7(15)(A), respectively, of the Act.

(b) In making the determination under paragraph (a) of this section, the State vocational rehabilitation unit shall rely on the determination made by the recipient of the grant under which the services are provided, to the

extent that the determination is appropriate, available, and consistent with the requirements of the Act.

(c) If a State vocational rehabilitation unit does not notify a recipient of a grant within 60 days that the determination of the recipient is inappropriate, the recipient of the grant may consider the individual to be eligible for services.

(Authority: Sec. 621(a)(3) of the Act; 29 U.S.C. 795g(a)(3))

APPENDIX TO § 379.3

The following guidance is provided regarding the determination of eligibility for PWI project services:

(1) If an individual is referred to the PWI project by the State vocational rehabilitation (VR) unit and the individual has been determined by the State VR unit to be an ''individual with a disability'' under section 102(a)(1)(A) of the Act, then the PWI grantee may initiate services to that individual. In these instances, the State VR unit should provide documentation of this determination to the PWI grantee. If the State VR unit has determined that the individual also meets the definition of an ''individual with a severe disability'' under section 7(15)(A) of the Act, the PWI grantee should be advised of that determination and provided appropriate documentation of that determination.

(2) If an individual is not referred to the PWI project by the State VR unit, then the PWI grantee makes an initial or preliminary determination that the individual is eligible for services because the individual meets the definition of an ''individual with a disability'' or an ''individual with a severe disability.'' The State VR unit has a maximum of 60 days to assess the appropriateness of the preliminary determination. If the State VR unit does not decide that the preliminary eligibility determination is inappropriate within this time period, the eligibility determination becomes final.

§ 379.4 What regulations apply?

The following regulations apply to the Projects With Industry program:

(a) The regulations in this part 379; and

(b) The regulations in 34 CFR part 369, except for the regulations in §§ 369.30 and 369.31.

(Authority: Sec. 621 of the Act; 29 U.S.C. 795g)

§ 379.5 What definitions apply?

(a) The definitions in 34 CFR part 369 apply to this program.

(b) The following definitions also apply to this program:

(1) *Career advancement services* mean services that develop specific job skills beyond those required by the position currently held by an individual with a disability to assist the individual to compete for a promotion or achieve an advanced position.

(2) *Competitive employment,* as the placement outcome under this program, 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 or usual wage and terms and benefits provided by the employer for the same or similar work performed by individuals who are not disabled.

(3) *Integrated setting,* as part of the definition of *competitive employment,* means a setting typically found in the community in which individuals with disabilities interact with non-disabled individuals, other than non-disabled individuals who are providing services to them, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(4) *Job readiness training,* as used in § 379.41(a), means—

(i) Training in job-seeking skills;

(ii) Training in the preparation of resumes or job applications;

(iii) Training in interviewing skills;

(iv) Participating in a job club; or

(v) Other related activities that may assist an individual to secure competitive employment.

(5) *Job training,* as used in this part, means one or more of the following training activities provided prior to placement, as that term is defined in § 379.5(b)(7):

(i) Occupational skills training.

(ii) On-the-job training.

(iii) Workplace training combined with related instruction.

(iv) Job skill upgrading and retraining.

(v) Training to enhance basic work skills and workplace competencies.

(vi) On-site job coaching.

(6) *Person served* means an individual for whom services by a PWI project

have been initiated with the objective that those services will result in a placement in competitive employment.

(7) *Placement means* the attainment of competitive employment by a person who has received services from a PWI project and has maintained employment for a period of at least 90 days.

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

SOURCE: 62 FR 5690, Feb. 6, 1997, unless otherwise noted.

§379.10 What types of project activities are required of each grantee under this program?

Each grantee under the PWI program shall—

(a) Arrange for the provision of, or provide individuals with disabilities with, job training in a realistic work setting, if appropriate to the needs of the individual, in order to prepare individuals for employment and career advancement in the competitive labor market;

(b) Provide individuals with disabilities with job placement and career advancement services;

(c) Provide individuals with disabilities with supportive services that are necessary to permit them to maintain the employment and career advancement for which they have received training under this program;

(d) To the extent appropriate, provide for—

(1) The development and modification of jobs and careers to accommodate the special needs of the individuals with disabilities being trained and employed under this program;

(2) The purchase and distribution of rehabilitation technology to meet the needs of individuals with disabilities at job sites; and

(3) The modification of any facilities or equipment of the employer that are to be used by individuals with disabilities under this program; and

(e) Provide for the establishment of a Business Advisory Council (BAC) comprised of representatives of private industry, business concerns, organized labor, and individuals with disabilities and their representatives who will identify job and career availability within the community, the skills necessary to perform those jobs and careers, and prescribe appropriate training programs.

APPENDIX TO §379.10

A PWI grantee can meet the requirements of §379.10(a) (1) by directly providing job training to project participants, (2) by arranging for the provision of this training by other entities and taking appropriate follow-up measures to ensure that the training is, in fact, provided, or (3) by a combination of both (1) and (2). The job training provided must meet the definition of job training in §379.5(b)(5) and must be provided as appropriate to the needs of each individual served by the project. Although each individual served by the project may not need job training, the Secretary expects that each PWI project will have an identifiable job training component that is available to those individuals who need it. In order to meet the requirements of §379.10(a), the job training must be provided while the individual is participating in the project (i.e. prior to, or within 90 days of, attaining competitive employment). Therefore, training provided by an employer more than 90 days after the individual begins competitive employment would not meet this requirement. In addition, a project that provides only job readiness training, as defined in §379.5(b)(4), would not meet the requirements of §379.10(a).

(Authority: Sec. 621(a) of the Act; 29 U.S.C. 795g)

§379.11 What additional types of project activities may be authorized under this program?

The Secretary may include, as part of grant agreements with recipients under this program, authority for recipients to provide the following types of technical assistance:

(a) Assisting employers in hiring individuals with disabilities.

(b) Improving or developing relationships between grant recipients or prospective grant recipients and employers or organized labor.

(c) Assisting employers in understanding and meeting the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C 12101 *et seq.*) as that

Act relates to employment of individuals with disabilities.

(Authority: Sec. 621(a) of the Act; 29 U.S.C 795g)

Subpart C—How Does One Apply for an Award?

SOURCE: 62 FR 5690, Feb. 6, 1997, unless otherwise noted.

§ 379.20 How does an eligible entity apply for an award?

In order to apply for a grant, an eligible entity shall submit an application to the Secretary in response to an application notice published in the FEDERAL REGISTER.

(Approved by the Office of Management and Budget under control number 1820–0612)

(Authority: Sec. 621(e)(1)(B) of the Act; 29 U.S.C. 795g(e)(1)(B))

§ 379.21 What is the content of an application for an award?

(a) The grant application must include a description of—

(1) The proposed job training to prepare project participants for specific jobs in the competitive labor market for which there is a need in the geographic area to be served by the project, as identified by an existing current labor market analysis or other needs assessment or one conducted by the applicant in collaboration with private industry;

(2) The involvement of private industry in the design of the proposed project and the manner in which the project will collaborate with private industry in planning, implementing, and evaluating job training, job placement, and career advancement activities;

(3) The responsibilities of the BAC and how it will interact with the project in carrying out grant activities;

(4) The geographic area to be served by the project, including an explanation of how the area is currently unserved or underserved by the PWI program;

(5) A plan for evaluating annually the operation of the proposed project, which, at a minimum, provides for collecting and submitting to the Secretary the following information and any additional data needed to determine compliance with the program compliance indicators established in subpart F of this part:

(i) The numbers and types of individuals with disabilities served.

(ii) The types of services provided.

(iii) The sources of funding.

(iv) The percentage of resources committed to each type of service provided.

(v) The extent to which the employment status and earning power of individuals with disabilities changed following services.

(vi) The extent of capacity building activities, including collaboration with business and industry and other organizations, institutions, and agencies, including the State vocational rehabilitation unit.

(vii) A comparison, if appropriate, of activities in prior years with activities in the most recent year.

(viii) The number of project participants who were terminated from project placements and the duration of those placements;

(6) A description of the manner in which the project will address the needs of individuals with disabilities from minority backgrounds, as required by 34 CFR 369.21; and

(7) A description of how career advancement services will be provided to project participants.

(b) The grant application must also include assurances from the applicant that—

(1) The project will carry out all activities required in § 379.10;

(2) Individuals with disabilities who are placed by the project will receive compensation at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled;

(3) Individuals with disabilities who are placed by the project will be given terms and benefits of employment equal to those that are given to similarly situated co-workers and will not be segregated from their co-workers; and

(4) The project will maintain any records required by the Secretary and

make those records available for monitoring and audit purposes.

(Approved by the Office of Management and Budget under control number 1820–0612)

(Authority: Secs. 621(a)(4), 621(a)(5), 621(b), and 621(e)(1)(B) of the Act; 29 U.S.C. 795g(a)(4), 795g(a)(5), 795g(b), and 795g(e)(1)(B))

Subpart D—How Does the Secretary Make a Grant?

SOURCE: 62 FR 5691, Feb. 6, 1997, unless otherwise noted.

§379.30 What selection criteria does the Secretary use under this program?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for project* (20 points). The Secretary reviews each application to determine the extent to which the project meets demonstrated needs. The Secretary looks for evidence that—

(1) The applicant has described an existing current labor market analysis or other needs assessment, or one that it has performed in collaboration with private industry, that shows, for the geographic area to be served, a demand in the competitive labor market for the types of jobs for which project participants will be trained; and

(2) The job training to be provided meets the identified needs for personnel in specific occupations or occupational categories in the geographic area to be served.

(b) *Partnership with industry* (25 points). The Secretary looks for information that demonstrates—

(1) The extent of the project's proposed collaboration with private industry in the planning, implementation, and evaluation of job training, placement, and career advancement activities; and

(2) The extent of proposed participation of the BAC in the identification of job and career opportunities, the skills necessary to perform the jobs and careers identified, and the development of training programs designed to develop these skills.

(c) *Project design and plan of operation for achieving competitive employment outcomes* (25 points). The Secretary reviews each application to determine—

(1) The extent to which the project goals and objectives for achieving competitive employment outcomes for individuals with disabilities to be served by the project are clearly stated and meet the needs identified by the applicant and the purposes of the program;

(2) The extent to which the project provides for all services and activities required under §379.10;

(3) The feasibility of proposed strategies and methods for achieving project goals and objectives for competitive employment outcomes for project participants;

(4) The extent to which project activities will be coordinated with the State vocational rehabilitation unit and with other appropriate community resources in order to ensure an adequate number of referrals and a maximum use of comparable benefits and services;

(5) The extent to which the applicant's management plan will ensure proper and efficient administration of the project; and

(6) Whether the applicant has proposed a realistic timeline for the implementation of project activities to ensure timely accomplishment of proposed goals and objectives to achieve competitive employment outcomes for individuals with disabilities to be served by the project.

(d) *Adequacy of resources and quality of key personnel* (10 points). The Secretary reviews each application to determine—

(1) The adequacy of the resources (including facilities, equipment, and supplies) that the applicant plans to devote to the project;

(2) The quality of key personnel who will be involved in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The experience and training of key personnel in fields related to the objectives and activities of the project; and

(3) The way the applicant plans to use its resources and personnel to

achieve the project's goals and objectives, including the time that key personnel will commit to the project.

(e) *Budget and cost effectiveness* (10 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Project evaluation* (10 points). The Secretary reviews each application to determine the quality of the proposed evaluation plan with respect to—

(1) Evaluating project operations and outcomes;

(2) Involving the BAC in evaluating the project's job training, placement, and career advancement activities;

(3) Meeting the annual evaluation reporting requirements in § 379.21(a)(5);

(4) Determining compliance with the indicators; and

(5) Addressing any deficiencies identified through project evaluation.

(Approved by the Office of Management and Budget under control number 1820–0612)

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.31 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria in § 379.30, the Secretary, in making awards under this program, considers—

(a) The equitable distribution of projects among the States; and

(b) The past performance of the applicant in carrying out a similar PWI project under previously awarded grants, as indicated by factors such as compliance with grant conditions, soundness of programmatic and financial management practices, and meeting the requirements of subpart F of this part.

(Authority: Secs. 621(e)(2) and 621(f)(4) of the Act; 29 U.S.C. 795g(e)(2) and 795g(f)(4))

Subpart E—What Conditions Must Be Met by a Grantee?

SOURCE: 62 FR 5691, Feb. 6, 1997, unless otherwise noted.

§ 379.40 What are the matching requirements?

The Federal share may not be more than 80 percent of the total cost of a project under this program.

(Authority: Sec. 621(c) of the Act; 29 U.S.C. 795g(c))

APPENDIX TO § 379.40

(a) For example, if the total cost of a project is $500,000, the Federal share would be no more than $400,000 and the grantee's required minimum share (matching contribution) would be $100,000 (provided in cash or through third party in-kind contributions). The matching contribution is based upon the total cost of the project, not on the amount of the Federal grant award.

(b) The matching contribution must comply with the requirements of 34 CFR 74.23 (for grantees that are institutions of higher education, hospitals, or other nonprofit organizations) or 34 CFR 80.24 (for grantees that are State, local, or Indian tribal governments). The term *third party in-kind contributions* is defined in either 34 CFR 74.2 or 34 CFR 80.3, as applicable to the type of grantee.

§ 379.41 What are allowable costs?

In addition to those costs that are allowable in accordance with 34 CFR 74.27 and 34 CFR 80.22, the following items are allowable costs under this program:

(a) The costs of job readiness training, as defined in § 379.5(b)(4); job training, as defined in § 379.5(b)(5); job placement services; job development and modification; and related vocational rehabilitation services and supportive rehabilitation services.

(b) Instruction and supervision of trainees.

(c) Training materials and supplies, including consumable materials.

(d) Instructional aids.

(e) The purchase or modification of rehabilitation technology to meet the needs of individuals with disabilities.

(f) Alteration and renovation appropriate and necessary to ensure access to and use of buildings by persons with disabilities served by the project.

(g) The modification of any facilities or equipment of the employer to be used by individuals with disabilities under this program.

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g))

§379.42 What are the requirements for a continuation award?

(a) A grantee that wants to receive a continuation award must—

(1) Comply with the provisions of 34 CFR 75.253(a), including making substantial progress toward meeting the objectives in its approved application and submitting all performance and financial reports required by 34 CFR 75.118; and

(2) Submit data in accordance with §379.54 showing that it has met the program compliance indicators established in subpart F of this part.

(b) In addition to the requirements in paragraph (a) of this section, the following other conditions in 34 CFR 75.253(a) must be met before the Secretary makes a continuation award:

(1) Congress must appropriate sufficient funds under the program.

(2) Continuation of the project must be in the best interest of the Federal Government.

(Approved by the Office of Management and Budget under control number 1820–0612)

(Authority: Secs. 12(c) and 621(f)(4) of the Act; 29 U.S.C. 711(c) and 795g(f)(4))

§379.43 What are the additional reporting requirements?

Each grantee shall submit the data from its annual evaluation of project operations required under §379.21(a)(5) no later than 60 days after the end of each project year, unless the Secretary authorizes a later submission date.

(Approved by the Office of Management and Budget under control number 1820–0612)

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?

SOURCE: 54 FR 36103, Aug. 31, 1989, unless otherwise noted.

§379.50 What are the requirements for continuation funding?

Beginning with fiscal year 1990, in order to receive a continuation award for the third or any subsequent year of a PWI grant a grantee shall adhere to the provisions of its approved application and shall receive a minimum composite score of at least 70 points on the program compliance indicators contained in §379.53.

(Authority: Sec. 621(h)(4)(B) of the Act; 29 U.S.C. 795g(h)(4)(B))

§379.51 What are the program compliance indicators?

The program compliance indicators implement program evaluation standards, which are contained in an appendix to this part, by establishing minimum performance levels and performance ranges in essential project areas to measure the effectiveness of individual grantees.

(Authority: Secs. 621(d)(1) and 621(f)(1) of the Act; 29 U.S.C. 795g(d)(1) and 795g(f)(1))

§379.52 How is grantee performance measured using the compliance indicators?

(a) Each compliance indicator establishes a minimum performance level.

(b) Each compliance indicator also establishes three performance ranges with points assigned to each range. The higher the performance range, the greater the number of points assigned to that range.

(c) If a grantee does not achieve the minimum performance level for a compliance indicator, the grantee receives no points.

(d) If a grantee achieves or exceeds the minimum performance level, the grantee receives the points assigned to the particular performance range that corresponds to its actual level of performance.

(e) The maximum possible composite score that a grantee can receive is 150 points.

(f) A grantee must receive a composite score of at least 70 points to meet the evaluation standards and qualify for continuation funding.

(Authority: 621(h)(4)(B) of the Act; 29 U.S.C. 795g(h)(4)(B))

§379.53 What are the weights, minimum performance levels, and performance ranges for each compliance indicator?

(a) *Percent of persons served whose disabilities are severe.* (3–10 points) A minimum of 50 percent of persons served by the project are persons who have severe

disabilities. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—3 points.

(2) 60 percent to 75 percent—7 points.

(3) 76 percent or more—10 points.

(b) *Percent of persons served who have been unemployed for at least six months at the time of project entry.* (5–15 points) A minimum of 50 percent of persons served by the project have been unemployed for at least six months at the time of project entry. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—5 points.

(2) 60 percent to 75 percent—10 points.

(3) 76 percent or more—15 points.

(c) *Cost per placement.* (8–25 points) The average cost per placement of persons served by the project does not exceed $1600.00. The performance ranges and the points assigned to each range are as follows:

(1) $1351 to $1600—8 points.

(2) $1000 to $1350—17 points.

(3) Less than $1000—25 points.

(d) *Projected cost per placement.* (5–15 points) The actual average cost per placement of persons served by the project does not exceed 140 percent of the projected average cost per placement in the grantee's application. The performance ranges and the points assigned to each range are as follows:

(1) 126 percent to 140 percent—5 points.

(2) 111 percent to 125 percent—10 points.

(3) 110 percent or less—15 points.

(e) *Placement rate.* (8–25 points) A minimum of 40 percent of persons served by the project are placed in competitive employment. The performance ranges and the points assigned to each range are as follows:

(1) 40 percent to 49 percent—8 points.

(2) 50 percent to 69 percent—17 points.

(3) 70 percent or more—25 points.

(f) *Projected placement rate.* (5–15 points) The actual number of persons served by the project that are placed into competitive employment is at least 50 percent of the number of persons that the grantee, in the grant application, projected would be placed. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 74 percent—5 points.

(2) 75 percent to 94 percent—10 points.

(3) 95 percent or more—15 points.

(g) *Change in earnings.* (7–20 points) The earnings of persons served by the project who are placed into competitive employment have increased by an average of at least $75.00 a week over earnings at project entry. The performance ranges and the points assigned to each range are as follows:

(1) $75 to $124—7 points.

(2) $125 to $199—14 points.

(3) $200 or more—20 points.

(h) *Percent placed who have severe disabilities.* (3–10 points) At least 50 percent of persons served by the project who are placed into competitive employment are persons who have severe disabilities. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—3 points.

(2) 60 percent to 75 percent—7 points.

(3) 76 percent or more—10 points.

(i) *Percent unemployed placed.* (5–15 points) At least 50 percent of persons served by the project who are placed into competitive employment are persons who were unemployed for at least six months at the time of project entry. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—5 points.

(2) 60 percent to 75 percent—10 points.

(3) 76 percent or more—15 points.

(j) *Summary chart of weights and performance ranges.* The following composite chart shows the weights assigned to the performance ranges for each compliance indicator.

Indicator	Performance ranges:		
	Range (1)	Range (2)	Range (3)
Persons with severe disabilities served	3	7	10
Unemployed served	5	10	15
Cost per placement	8	17	25
Projected cost per placement	5	10	15
Placement rate	8	17	25
Projected placement rate	5	10	15
Change in earnings	7	14	20
Percent placed who have severe disabilities	3	7	10
Percent unemployed placed	5	10	15
Total possible score	49	102	150

(Approved by the Office of Management and Budget under control number 1820–0612)

(Authority: Sec. 621(f)(1) of the Act; 29 U.S.C. 795g(f)(1))

[54 FR 36103, Aug. 31, 1989, as amended at 62 FR 5692, Feb. 6, 1997]

§ 379.54 What are the reporting requirements for the compliance indicators?

(a) In order to receive continuation funding for the third or any subsequent year of a PWI grant, each grantee must submit data for the most recent complete project year no later than 60 days after the end of that project year, unless the Secretary authorizes a later submission date, in order for the Secretary to determine if the grantee has met the program compliance indicators established in this subpart F.

(b) If the data for the most recent complete project year provided under paragraph (a) of this section shows that a grantee has failed to achieve the minimum composite score required in § 379.52(f) to meet the program compliance indicators, the grantee may, at its option, submit data from the first 6 months of the current project year no later than 60 days after the end of that 6-month period, unless the Secretary authorizes a later submission date, to demonstrate that its project performance has improved sufficiently to meet the minimum composite score.

(Approved by the Office of Management and Budget under control number 1820–0612)

(Authority: Sec. 621(f)(2) of the Act; 29 U.S.C. 795g(f)(2))

NOTE: A grantee receives its second year of funding (or the first continuation award) under this program before data from the first complete project year is available. Data from the first project year, however, must be submitted and is used (unless the grantee exercises the option in paragraph (b) of this section) to determine eligibility for the third year of funding (or the second continuation award).

[62 FR 5692, Feb. 6, 1997]

APPENDIX TO PART 379—EVALUATION STANDARDS

Standard 1: The primary objective of the project shall be to assist individuals with disabilities to obtain competitive employment. The activities carried out by the project shall support the accomplishment of this objective.

Standard 2: The project shall serve individuals with disabilities that impair their capacity to obtain competitive employment. In selecting persons to receive services, priority shall be given to individuals with severe disabilities.

Standard 3: The project shall ensure the provision of services that will assist in the placement of persons with disabilities.

Standard 4: Funds shall be used to achieve the project's primary objective at minimum cost to the federal government.

Standard 5: The project's advisory council shall provide policy guidance and assistance in the conduct of the project.

Standard 6: Working relationships, including partnerships, shall be established with agencies and organizations in order to expand the project's capacity to meet its objectives.

Standard 7: The project shall obtain positive results in assisting individuals with disabilities to obtain competitive employment.

PART 380—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING SUPPORTED EMPLOYMENT SERVICES TO INDIVIDUALS WITH THE MOST SEVERE DISABILITIES AND TECHNICAL ASSISTANCE PROJECTS

Subpart A—General

Sec.

380.1 What is the program of special projects and demonstrations for providing supported employment services to individuals with the most severe disabilities and technical assistance projects?
380.2 Who is eligible for an award?
380.3 What types of projects are authorized?
380.4 What activities may the Secretary fund under Statewide supported employment demonstration projects?
380.5 What activities may the Secretary fund under community-based supported employment projects?
380.6 What activities may the Secretary fund under technical assistance supported employment projects?
380.7 What priorities may the Secretary establish?
380.8 What regulations apply?
380.9 What definitions apply?

Subpart B—How Does the Secretary Make an Award?

380.10 How does the Secretary evaluate an application?

380.14 What other factors does the Secretary consider in reviewing an application?
380.15 What application requirement applies to this program?

Subpart C—What Post–Award Conditions Must Be Met by a Grantee?

380.20 What requirements must a grantee meet before it provides for the transition of an individual in supported employment?
380.21 What information requirement applies to this program?

AUTHORITY: 29 U.S.C 711(c) and 777a(c), unless otherwise noted.

SOURCE: 54 FR 12400, Mar. 22, 1989, unless otherwise noted.

Subpart A—General

§ 380.1 What is the program of special projects and demonstrations for providing supported employment services to individuals with the most severe disabilities and technical assistance projects?

This program is designed to provide grants for special projects and demonstrations to expand or otherwise improve the provision of supported employment services to individuals with the most severe disabilities, including projects that demonstrate the effectiveness of natural supports or other alternative approaches for supporting and maintaining individuals in supported employment, and grants for technical assistance projects.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))

[59 FR 8342, Feb. 18, 1994]

§ 380.2 Who is eligible for an award?

(a) Applications for Statewide demonstration projects under § 380.4 may be submitted by public and nonprofit community rehabilitation programs, designated State units, and other public and private agencies and organizations.

(b) Applications for community-based projects under § 380.5 may be submitted by public and nonprofit community rehabilitation programs, designated State units, and other public and private agencies and organizations.

(c) Applications for technical assistance projects under § 380.6 may be submitted by public agencies and nonprofit private organizations that have experience in training and provision of supported employment services.

(Authority: 29 U.S.C. 777a(c))

[54 FR 12400, Mar. 22, 1989, as amended at 59 FR 8342, Feb. 18, 1994]

§ 380.3 What types of projects are authorized?

The following types of projects may be funded under this program:

(a) *Statewide demonstration projects* as described in § 380.4. The purpose of Statewide demonstration projects is to stimulate the development and provision of supported employment services on a statewide basis for individuals with the most severe disabilities.

(b) *Community-based projects* as described in § 380.5. The purposes of community-based projects are to stimulate the development of innovative approaches for improving and expanding the provision of supported employment services to individuals with the most severe disabilities, and to enhance local capacity to provide supported employment services.

(c) *Technical assistance projects* as described in § 380.6. The purpose of technical assistance projects is to provide technical assistance to States in implementing the State Supported Employment Services Program under 34 CFR part 363.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))

[54 FR 12400, Mar. 22, 1989, as amended at 59 FR 8342, Feb. 18, 1994]

§ 380.4 What activities may the Secretary fund under Statewide supported employment demonstration projects?

(a) *Authorized activities.* The Following activities are authorized under Statewide Supported Employment demonstration projects:

(1) Program development, including program start-up costs, for new or existing community organizations and employers.

(2) Staff training.

(3) Program evaluation.

(4) Reorganization, expansion, or, if appropriate, conversion of existing programs to provide supported employment services.

(b) *Restrictions on the use of funds.* (1) Statewide Supported Employment

demonstration project grants may not be used to provide supported employment services to individuals with the most severe disabilities.

(2) A grantee must provide, or ensure the provision of, those direct services needed by individuals with the most severe disabilities in order for them to obtain and maintain employment from funds other than those made available under this part. These supported employment services include but are not limited to—

(i) Job site training to prepare and enable individuals with the most severe disabilities to perform work and maintain the job;

(ii) Ongoing supervision of individuals with the most severe disabilities on the job;

(iii) Ongoing behavior management; and

(iv) Case management, including assistance to coordinate services from various sources.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))

[54 FR 12400, Mar. 22, 1989, as amended at 59 FR 8342, Feb. 18, 1994]

§380.5 What activities may the Secretary fund under community-based supported employment projects?

(a) *Authorized activities.* The following activities are authorized under community-based projects:

(1) Job search assistance.

(2) Job development, including work site modification and use of advanced learning technology for skills training.

(3) On-the-job training.

(4) Job placement.

(5) Application of rehabilitation technology in providing supported employment services.

(6) Provision of supported employment services for individuals placed in employment.

(7) Development of cooperative agreements with service providers for the provision of extended services.

(b) *Restrictions on the use of funds.* The Secretary does not provide financial assistance under Community-Based Supported Employment projects for the provision of extended supported employment services.

(Authority: 29 U.S.C. 777a(c))

[54 FR 12400, Mar. 22, 1989, as amended at 57 FR 28441, June 24, 1992; 59 FR 8342, Feb. 18, 1994]

§380.6 What activities may the Secretary fund under technical assistance supported employment projects?

The following activities are authorized under technical assistance projects:

(a) Staff training.

(b) Development of and placement in jobs for individuals with the most severe disabilities.

(c) Development of cooperative agreements with service providers for extended services.

(d) Reorganization, expansion, or, if appropriate, conversion of existing programs to provide supported employment services.

(Authority: 29 U.S.C. 777a(c)(2))

[54 FR 12400, Mar. 22, 1989, as amended at 59 FR 8342, Feb. 18, 1994]

§380.7 What priorities may the Secretary establish?

In any fiscal year, the Secretary may establish priorities for one or more of the types of projects described in §380.3 by publishing a notice in the FEDERAL REGISTER.

(Authority: 29 U.S.C. 777a(c)(2))

§380.8 What regulations apply?

The following regulations apply to the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with the Most Severe Disabilities and Technical Assistance Projects:

(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).

(2) 34 CFR part 75 (Direct Grant 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).

(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 380.

(c) The regulations in 34 CFR 369.46

(Authority: 29 U.S.C. 711(c) and 777a(c))

[54 FR 12400, Mar. 22, 1989, as amended at 55 FR 21714, May 25, 1990; 59 FR 8342, Feb. 18, 1994]

§ 380.9 What definitions apply?

(a) The following term used in this part is defined in 34 CFR part 363: Supported employment.

(b) The following terms used in this part are defined in 34 CFR part 369:

Designated State unit
Community rehabilitation program
Individual with a severe disability

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

(1) As used in the definition of ''supported employment''—

(i) *Competitive employment* means work—

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

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

(ii) *Integrated setting* means a setting typically found in the community in which an individual with the most severe disabilities interacts with non-disabled individuals, other than non-disabled individuals who are providing services to that individual, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(iii) *Supported employment services* means on-going support services provided by the grantee with funds under this part—

(A) For a period not to exceed 18 months, unless under special circumstances a longer period to achieve job stabilization has been jointly agreed to by the individual and the rehabilitation counselor and established in the individual's program of services, before an individual with the most severe disabilities makes the transition to extended services; and

(B) As discrete post-employment services following transition in accordance with 34 CFR 363.4(c)(3);

(iv) *Extended services* means on-going support services and other appropriate services provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part, part 361, part 363, or part 376 after an individual with the most severe disabilities has made the transition from project support; and

(v) *Transitional employment* means a series of temporary job placements in competitive work in an integrated work setting with on-going support services for individuals with the most severe disabilities due to mental illness. In transitional employment, the provision of on-going support services must include continuing sequential job placements until job permanency is achieved.

(2) *On-going support services* means services that are—

(i) Needed to support and maintain an individual with the most severe disabilities in supported employment;

(ii) Based on a determination by the grantee of the individual's needs as specified in a program of services; and

(iii) Furnished by the grantee from the time of job placement until transition to extended services, except as provided in 34 CFR 363.4(c)(3) and, following transition, 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. On-going support services must include, at a minimum, twice-monthly monitoring at the work site of each individual in supported employment to assess employment stability, unless under special circumstances, especially at the request of the individual, the individual's program of services provides for off-site monitoring, and, based upon that assessment, the coordination or provision of specific services, at or away from the work site, that are needed to maintain employment stability. If off-site monitoring is determined to be appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month. On-going support services consist of—

(A) Any particularized assessment needed to supplement the comprehensive assessment of rehabilitation needs;

(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 such as regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representative 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 rehabilitation services described in 34 CFR part 361; and

(I) Any service similar to the foregoing services.

(Authority: 29 U.S.C. 777a(c))

[54 FR 12400, Mar. 22, 1989, as amended at 57 FR 28441, June 24, 1992; 59 FR 8342, Feb. 18, 1994; 62 FR 6363, Feb. 11, 1997]

Subpart B—How Does the Secretary Make an Award?

§380.10 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75.

(Authority: 29 U.S.C. 777a(c))

[62 FR 10404, Mar. 6, 1997]

§380.14 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria used in accordance with the procedures in 34 CFR part 75, the Secretary, in making awards under this part, considers the geographical distribution of projects in each program category throughout the country.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))

[62 FR 10404, Mar. 6, 1997]

§380.15 What application requirement applies to this program?

Each applicant for a grant under this program must include in its application a description of the manner in which it will address the needs of individuals with the most severe disabilities from minority backgrounds.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 718b)

[59 FR 8343, Feb. 18, 1994]

Subpart C—What Post-Award Conditions Must Be Met by a Grantee?

§380.20 What requirements must a grantee meet before it provides for the transition of an individual in supported employment?

A grantee must provide for the transition of an individual with the most severe disabilities to extended services no later than 18 months after placement in supported employment, unless

a longer period is established in the individual's program of services, and only if the individual has made substantial progress toward meeting his or her hours-per-week work goal, is stabilized in the job, and extended services are available and can be provided without a hiatus in services.

(Authority: 29 U.S.C. 777a(c))

[57 FR 28442, June 24, 1992, as amended at 59 FR 8342, Feb. 18, 1994]

§ 380.21 What information requirement applies to this program?

Each grantee must advise recipients of services under its project or, as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State's Client Assistance Program, including information on seeking assistance from that program.

(Authority: 29 U.S.C. 718a)

[59 FR 8343, Feb. 18, 1994]

PART 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

Subpart A—General

Sec.

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381.2 Who is eligible for an award?
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Subpart B—How Does One Apply for an Award?

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381.30 How are services to be administered?
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AUTHORITY: 29 U.S.C. 794e, unless otherwise noted.

SOURCE: 58 FR 43022, Aug. 12, 1993, unless otherwise noted.

Subpart A—General

§ 381.1 What is the Protection and Advocacy of Individual Rights program?

This program is designed to support a system in each State to protect the legal and human rights of eligible individuals with disabilities.

(Authority: Sec. 509(a) of the Act; 29 U.S.C. 794e(a))

§ 381.2 Who is eligible for an award?

(a) A protection and advocacy system that is established under part C of the Developmental Disabilities Assistance and Bill of Rights Act (DDA), 42 U.S.C. 6041–6043, and that meets the requirements of § 381.10 is eligible to apply for a grant award under this program.

(b) In any fiscal year in which the amount appropriated to carry out this section is less than $5,500,000, a protection and advocacy system from any State or from Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Republic of Palau may apply for a grant under the Protection and Advocacy of Individual Rights (PAIR) program to plan for, develop outreach strategies for, and carry out a protection and advocacy program authorized under this part, except that the Republic of Palau may not apply for a grant under the PAIR program after the Compact of Free Association with Palau takes effect.

(c) In any fiscal year in which the amount appropriated to carry out this section is equal to or greater than $5,500,000, an eligible system from any State and from any of the jurisdictions named in paragraph (b) of this section may apply to receive the amount allotted pursuant to section 509(c)-(e) of the Act, except that the Republic of Palau

may receive an allotment under section 509 of the Act only until the Compact of Free Association with Palau takes effect.

(Authority: Sec. 509(b)-(e) of the Act; 29 U.S.C. 794e(b)-(e))

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8343, Feb. 18, 1994]

§381.3 What activities may the Secretary fund?

(a) Funds made available under this part must be used for the following activities:

(1) Establishing a system to protect, and advocate for, the rights of individuals with disabilities.

(2) Pursuing legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State.

(3) Providing information on and making referrals to programs and services addressing the needs of individuals with disabilities in the State, including individuals with disabilities who are exiting from public school programs.

(4) Coordinating the protection and advocacy program provided through an eligible system with the advocacy programs under—

(i) Section 112 of the Act (the Client Assistance Program (CAP));

(ii) The Older Americans Act of 1965 (the State long-term care ombudsman program);

(iii) Part C of the DDA; and

(iv) The Protection and Advocacy for Individuals with Mental Illness Act of 1986 (PAIMI), 42 U.S.C. 10801–10851.

(5) Developing a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities.

(6) Providing to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities described in §381.10(f).

(7) Establishing a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system.

(b) Funds made available under this part also may be used to carry out any other activities consistent with the purpose of this part and the activities listed in paragraph (a) of this section.

(Authority: Secs. 12 and 509(f) of the Act; 29 U.S.C. 711(c) and 794e(f)).

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994]

§381.4 What regulations apply?

The following regulations apply to the PAIR 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), if the eligible system is not a State or local government agency or Indian tribal organization.

(2) 34 CFR part 75 (Direct Grant Programs), if the appropriation for the PAIR program is less than $5,500,000.

(3) 34 CFR part 76 (State-Administered Programs), if the appropriation for the PAIR program is equal to or greater than $5,500,000 and the eligible system is a State or local government agency, except for—

(i) Section 76.103;

(ii) Sections 76.125 through 76.137;

(iii) Sections 76.300 through 76.401;

(iv) Section 76.704;

(v) Section 76.734; and

(vi) Section 76.740.

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), if the eligible system is a State or local government agency.

(7) 34 CFR part 81 (General Education Provisions Act— Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 381.

(c) The regulations in 34 CFR 369.43, 369.46 and 369.48 relating to certain conditions that must be met by grantees.

(Authority: Secs. 12 and 509 of the Act; 29 U.S.C. 711(c) and 794e)

§ 381.5 What definitions apply?

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

Award
EDGAR
Fiscal year
Nonprofit
Private
Public
Secretary

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

Act means the Rehabilitation Act of 1973, as amended.

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. Advocacy may be formal, as in the case of a lawyer representing an individual in a court of law or in formal administrative proceedings before government agencies (whether State, local or Federal). Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether State, local or Federal), or as in the case of a lawyer or non-lawyer representing an individual's cause before private entities or organizations, or government agencies (whether State, local or Federal). Advocacy may be on behalf of—

(1) A single individual, in which case it is *individual advocacy*;

(2) More than one individual or a group or class of individuals, in which case it is *systems* (or *systemic*) *advocacy*; or

(3) Oneself, in which case it is *self advocacy*.

Eligible individual with a disability means an individual who—

(1) Needs protection and advocacy services that are beyond the scope of services authorized to be provided by the CAP under section 112 of the Act; and

(2) Is ineligible for—

(i) Protection and advocacy programs under part C of the DDA; and

(ii) Protection and advocacy programs under the PAIMI.

Eligible system means a protection and advocacy system that is established under part C of the DDA, 42 U.S.C. 6041–6043, and that meets the requirements of § 381.10 of this part.

Mediation means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary, or conciliator must not be any entity or individual who is connected in any way with the eligible system or the agency, entity, or individual with whom the individual with a disability has a dispute. Mediation may involve the use of professional mediators or any other independent third party mutually agreed to by the parties to the dispute.

State means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association takes effect), except for purposes of the section 509(c)(3)(B) and (c)(4) of the Act, in which case State does not mean or include Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

(Authority: Secs. 12 and 509 of the Act; 29 U.S.C. 711(c) and 794e)

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994]

Subpart B—How Does One Apply for an Award?

§ 381.10 What are the application requirements?

(a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application

for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will—

(1) Have in effect a system to protect, and advocate for, the rights of eligible individuals with disabilities;

(2) Have the same general authorities, including access to records and program income, as in part C of the DDA;

(3) Have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State;

(4) Provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State, including individuals with disabilities who are exiting from public school programs;

(5) Develop a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities;

(6) Provide to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the eligible system including—

(i) The objectives and priorities for the activities of the eligible system for each year and the rationale for the establishment of those objectives and priorities; and

(ii) The coordination of programs provided through eligible systems with the advocacy programs under—

(A) Section 112 of the Act (CAP);

(B) The Older Americans Act of 1965 (the State long-term care ombudsman program);

(C) Part C of the DDA; and

(D) The PAIMI;

(7) Establish a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system;

(8) Use funds made available under this part to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided; and

(9) Implement procedures designed to ensure that, to the maximum extent possible, mediation (and other alternative dispute resolution) procedures, which include good faith negotiation, are used before resorting to formal administrative or legal remedies.

(b) To receive direct payment of funds under this part, an eligible system must provide to the Secretary, as part of its application for assistance, an assurance that direct payment is not prohibited by or inconsistent with State law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 12 and 509(f) of the Act; 29 U.S.C. 711(c) and 794e(f))

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994; 59 FR 33680, June 30, 1994]

Subpart C—How Does the Secretary Make an Award?

§381.20 How does the Secretary evaluate an application?

In any fiscal year in which the amount appropriated for the PAIR program is less than $5,500,000, the Secretary evaluates applications under the procedures in 34 CFR part 75.

(Authority: 29 U.S.C. 711(c) and 794e (b) and (f))

[62 FR 10404, Mar. 6, 1997]

§381.22 How does the Secretary allocate funds under this program?

(a) In any fiscal year in which the amount appropriated for this program is equal to or greater than $5,500,000—

(1) The Secretary sets aside not less than 1.8 percent but not more than 2.2 percent of the amount appropriated to provide training and technical assistance to eligible systems established under this program.

(2) After the reservation required by paragraph (a)(1) of this section, the Secretary makes allotments from the remainder of the amount appropriated in accordance with section 509(c)(2)-(e) of the Act.

(b) Notwithstanding any other provision of law, in any fiscal year in which the amount appropriated for this program is equal to or greater than $5,500,000, the Secretary pays directly to an eligible system that submits an application that meets the requirements of § 381.10 the amount of the allotment to the State pursuant to section 509 of the Act, unless the State provides otherwise.

(Authority: Sec. 509(c)-(e) of the Act; 29 U.S.C. 794e(c)-(e))

Subpart D—What Conditions Must Be Met After an Award?

§ 381.30 How are services to be administered?

(a) Each eligible system shall carry out the protection and advocacy program authorized under this part.

(b) An eligible system may not award a grant or subgrant to another entity to carry out, in whole or in part, the protection and advocacy program authorized under this part.

(c) An eligible system may contract with another agency, entity, or individual to carry out the PAIR program in whole or in part, but only if the agency, entity, or individual with whom the eligible system has contracted—

(1) Does not provide services under the Act or does not provide treatment, services, or habilitation to persons with disabilities; and

(2) Is independent of, and not connected financially or through a board of directors to, an entity or individual that provides services under the Act or that provides treatment, services, or habilitation to persons with disabilities.

(d) For purposes of paragraph (c) of this section, ''services under the Act'' and ''treatment, services, or habilitation'' does not include client assistance services under CAP, protection and advocacy services authorized under the protection and advocacy programs under part C of the DDA and the PAIMI, or any other protection and advocacy services.

(Authority: Secs. 12 and 509(i) of the Act; 29 U.S.C. 711(c) and 794e(i))

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994]

§ 381.31 What are the requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any eligible system under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The eligible system's use of information and records concerning individuals must be limited only to purposes directly connected with the protection and advocacy program, including program evaluation activities. Except as provided in paragraph (c) of this section, an eligible system may not disclose personal information about an individual, directly or indirectly, other than in the administration of the protection and advocacy program, unless the consent of the individual to whom the information applies, or his or her guardian, parent, or other authorized representative or advocate (including the individual's advocate from the eligible system), has been obtained in writing. An eligible system may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraph (d) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements must be given complete access to all—

(1) Records of the eligible system receiving funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d)(1) The privilege of a person or eligible system not to produce documents or provide information pursuant to paragraph (c) of this section is governed by the principles of common law

as interpreted by the courts of the United States, except that, for purposes of any periodic audit, report, or evaluation of the performance of the eligible system established or assisted under this part, the Secretary does not require the eligible system to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the PAIR program.

(2) However, notwithstanding paragraph (d)(1) of this section, if an audit, monitoring review, State plan assurance review, evaluation, or other investigation has already produced independent and reliable evidence that there is probable cause to believe that the eligible system has violated its legislative mandate or misused Federal funds, the eligible system shall disclose, if the Secretary so requests, the identity of, or any other personally identifiable information (i.e., name, address, telephone number, social security number, or other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the PAIR program, in accordance with the principles of common law as interpreted by the courts of the United States.

(Authority: Secs. 12 and 509(h) of the Act; 29 U.S.C. 711(c) and 794e(h))

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994]

§381.32 What are the reporting requirements?

Each eligible system shall provide to the Secretary, no later than 90 days after the end of each fiscal year, an annual report that includes information on the following:

(a) The types of services and activities undertaken by the eligible system and how these services and activities addressed the objectives and priorities developed pursuant to §381.10(e).

(b) The total number of individuals, by race, color, national origin, gender, age, and disabling condition, who requested services from the eligible system and the total number of individuals, by race, color, national origin, gender, age, and disabling condition, who were served by the eligible system.

(c) The types of disabilities represented by individuals served by the eligible system.

(d) The types of issues being addressed on behalf of individuals served by the eligible system.

(e) Any other information that the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 12(c), 13, and 509(l) of the Act; 29 U.S.C. 711(c), 712, and 794e(l))

§381.33 What are the requirements related to the use of funds provided under this part?

(a) Funds made available under this part must be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided under this part.

(b) In any State in which an eligible system is located within a State agency, that State or State agency may not use more than five percent of any allotment for the costs of administration of the eligible system supported under this part. For purposes of this paragraph, ''costs of administration'' include, but are not limited to, administrative salaries (including salaries for clerical and support staff), supplies, depreciation or use allowances, the cost of operating and maintaining facilities, equipment, and grounds (e.g., rental of office space or equipment, telephone, postage, maintenance agreements), and other similar types of costs that may be incurred by the State or State agency to administer the eligible system.

(c) Funds paid to a State or an eligible system within a State for a fiscal year to carry out this program that are not expended or obligated prior to the end of that fiscal year remain available to the State or an eligible system within a State for obligation during the succeeding fiscal year in accordance with 34 CFR 76.705–76.707.

(d) For determining when an eligible system makes an obligation for various kinds of property or services, 34 CFR 75.707 and 76.707, as appropriate, apply to this program. If the appropriation for the PAIR program is less than $5,500,000, §75.707 applies. If the appropriation for the PAIR program is equal

to or greater than $5,500,000, § 76.707 applies. An eligible system is considered a State for purposes of § 76.707.

(Authority: Secs. 12 and 509(f),(g), and (j) of the Act; 29 U.S.C. 711(c) and 794e(f), (g), and (j))

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994]

PART 385—REHABILITATION TRAINING

Subpart A—General

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385.3 What regulations apply to these programs?
385.4 What definitions apply to these programs?

Subpart B—[Reserved]

Subpart C—How Does One Apply For a Grant?

385.20 What are the application procedures for these programs?

Subpart D—How Does the Secretary Make a Grant?

385.30 [Reserved]
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AUTHORITY: 29 U.S.C. 711(c), 772, and 774, unless otherwise noted.

SOURCE: 45 FR 86379, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 385.1 What is the Rehabilitation Training program?

(a) The Rehabilitation Training program is designed to—

(1) Ensure that skilled personnel are available to provide rehabilitation services to individuals with disabilities through vocational, medical, social, and psychological rehabilitation programs, through supported employment programs, through independent living services programs, and through client assistance programs;

(2) Maintain and upgrade basic skills and knowledge of personnel employed to provide state-of-the-art service delivery systems and rehabilitation technology services; and

(3) Provide training and information to individuals with disabilities, the parents, families, guardians, advocates, and authorized representatives of the individuals, and other appropriate parties to develop the skills necessary for individuals with disabilities to access the rehabilitation system and to become active decisionmakers in the rehabilitation process.

(b) The Secretary awards grants and contracts to pay part of the costs of projects for training, traineeships, and related activities, including the provision of technical assistance, to assist in increasing the numbers of qualified personnel trained in providing rehabilitation services and other services provided under the Act, to individuals with disabilities. Financial assistance is provided through six categories of training programs:

(1) Rehabilitation Long-Term Training (34 CFR part 386).

(2) Experimental and Innovative Training (34 CFR part 387).

(3) State Vocational Rehabilitation Unit In-Service Training (34 CFR part 388).

(4) Rehabilitation Continuing Education Programs (34 CFR part 389).

(5) Rehabilitation Short-Term Training (34 CFR part 390).

(6) Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind (34 CFR part 396).

(Authority: Secs. 301 and 302 of the Act; 29 U.S.C. 770 and 774)

[59 FR 8344, Feb. 18, 1994]

§385.2 Who is eligible for assistance under these programs?

States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Training program.

(Authority: Secs. 7(19) and 302 of the Act; 29 U.S.C. 706(19) and 774)

[59 FR 8345, Feb. 18, 1994]

§385.3 What regulations apply to these programs?

The following regulations apply to the Rehabilitation Training 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).

(2) 34 CFR part 75 (Direct Grant 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).

(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 385.

(c) The regulations in 34 CFR parts 386, 387, 388, 389, 390, and 396, as appropriate.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

[59 FR 8345, Feb. 18, 1994]

§385.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR part 77 apply to the programs under the Rehabilitation Training Program—

Applicant
Application
Award
Budget Period
Department
EDGAR
Nonprofit
Private
Project
Project Period
Public
Secretary

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

(b) The following definitions also apply to programs under the Rehabilitation Training program:

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

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 functional capabilities of individuals with disabilities.

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. The term includes—

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

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

(4) Coordinating and using other therapies, interventions, or services

with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for an individual with disabilities, or, if appropriate, the family of an individual with disabilities; and

(6) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

Community rehabilitation program means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement—

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

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(3) Recreational therapy;

(4) Physical and occupational therapy;

(5) Speech, language, and hearing therapy;

(6) Psychiatric, psychological, and social services, including positive behavior management;

(7) Assessment for determining eligibility and vocational rehabilitation needs;

(8) Rehabilitation technology;

(9) Job development, placement, and retention services;

(10) Evaluation or control of specific disabilities;

(11) Orientation and mobility services for individuals who are blind;

(12) Extended employment;

(13) Psychosocial rehabilitation services;

(14) Supported employment services and extended services;

(15) Services to family members when necessary to the vocational rehabilitation of the individual;

(16) Personal assistance services; or

(17) Services similar to the services described in paragraphs (1) through (16) of this definition.

Designated State agency means an agency designated under section 101(a)(1)(A) of the Act.

Designated State unit means (1) Any State agency unit required under section 101(a)(2)(A) of the Act, or

(2) In cases in which no State agency unit is required, the State agency described in section 101(a)(2)(B)(i) of the Act.

Independent living core services means—

(1) Information and referral services;

(2) Independent living skills training;

(3) Peer counseling, including cross-disability peer counseling; and

(4) Individual and systems advocacy.

Independent living services includes—

(1) Independent living core services; and

(2)(i) Counseling services, including psychological, psychotherapeutic, and related services;

(ii) Services related to securing housing or shelter, including services related to community group living, and supportive of the purposes of this Act and of the titles of this Act, and adaptive housing services (including appropriate accommodations to and modifications of any space used to serve, or occupied by, individuals with disabilities);

(iii) Rehabilitation technology;

(iv) Mobility training;

(v) Services and training for individuals with cognitive and sensory disabilities, including life skills training, and interpreter and reader services;

(vi) Personal assistance services, including attendant care and the training of personnel providing these services;

(vii) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(viii) Consumer information programs on rehabilitation and independent living services available under this Act, especially for minorities and other individuals with disabilities who have traditionally been unserved or underserved by programs under this Act;

(ix) Education and training necessary for living in the community and participating in community activities;

(x) Supported living;

(xi) Transportation, including referral and assistance for transportation;

(xii) Physical rehabilitation;

(xiii) Therapeutic treatment;

(xiv) Provision of needed prostheses and other appliances and devices;

(xv) Individual and group social and recreational services;

(xvi) Training to develop skills specifically designed for youths who are individuals with disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

(xvii) Services for children;

(xviii) Services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with disabilities;

(xvix) Appropriate preventive services to decrease the need of individuals assisted under this Act for similar services in the future;

(xx) Community awareness programs to enhance the understanding and integration of individuals with disabilities; and

(xxi) Such other services as may be necessary and not inconsistent with the provisions of this Act.

Individual with a disability means any individual who—

(1) Has a physical or mental impairment, which for that individual constitutes or results in a substantial impediment to employment; and

(2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to title I, II, III, VI, or VIII of the Act.

Individual with a severe disability means an individual with a disability—

(1) 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;

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

(3) 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), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, 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.

Institution of higher education has the meaning given the term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

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 if the individual did not have a disability. The services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

Qualified personnel: (1) For designated State agencies or designated State units, means personnel who have met standards that are consistent with existing national or State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing vocational rehabilitation services.

(2) For other than designated State agencies or designated State units, means personnel who have met existing State certification or licensure requirements, or in the absence of State requirements, have met professionally accepted requirements established by national certification boards.

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.

State includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and the Republic of Palau (until the Compact of Free Association with Palau takes effect).

Stipend means financial assistance on behalf of individuals in support of their training, as opposed to salary payment for services provided within the project.

Supported employment means—

(1) Competitive work in integrated work settings for individuals with the most severe disabilities—

(i)(A) For whom competitive employment has not traditionally occurred; or

(B) For whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

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

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

Supported employment services means ongoing support services and other appropriate services needed to support and maintain an individual with most severe disability in supported employment, that are—

(1) Provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in entering or maintaining integrated, competitive employment;

(2) Based on a determination of the needs of an eligible individual, as specified in an individualized written rehabilitation program; and

(3) Provided by the designated State unit for a period of time not to extend beyond 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.

Vocational rehabilitation services means the same as the term is defined in 34 CFR 369.4(b).

(Authority: Secs. 7, 12(c), and 101(a)(7) of the Act; 29 U.S.C. 706, 711(c), and 721(a)(7))

[45 FR 86379, Dec. 30, 1980, as amended at 50 FR 38631, Sept. 23, 1985; 53 FR 17146, May 13, 1988; 59 FR 8345, Feb. 18, 1994]

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 385.20 What are the application procedures for these programs?

The Secretary gives the designated State agency an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in EDGAR §§ 75.155–75.159.

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

[45 FR 86379, Dec. 30, 1980, as amended at 59 FR 8347, Feb. 18, 1994]

Subpart D—How Does the Secretary Make a Grant?

§ 385.30 [Reserved]

§ 385.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates applications under the procedures in 34 CFR part 75.

(b) The Secretary evaluates each application using selection criteria identified in parts 386, 387, 388, 389 and 390, as appropriate.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 711(c))

[62 FR 10404, Mar. 6, 1997]

§385.33 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in §75.210 and parts 386 through 390, the Secretary, in making awards under this program, considers such factors as—

(a) The geographical distribution of projects in each Rehabilitation Training Program category throughout the country; and

(b) The past performance of the applicant in carrying out similar training activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

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

[45 FR 86379, Dec. 30, 1980, as amended at 62 FR 10404, Mar. 6, 1997]

Subpart E—What Conditions Must Be Met by a Grantee?

§385.40 What are the requirements pertaining to the membership of a project advisory committee?

If a project funded under 34 CFR parts 386 through 390 or 396 establishes an advisory committee, its membership must include individuals with disabilities or parents, family members, guardians, advocates, or other authorized representatives of the individuals; members of minority groups; trainees; and providers of vocational rehabilitation and independent living rehabilitation services.

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

[59 FR 8347, Feb. 18, 1994]

§385.41 What are the requirements affecting the collection of data from designated State agencies?

If the collection of data is necessary from individuals with disabilities being served by two or more designated State agencies or from employees of two or more of these agencies, the project director must submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under these programs.

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

[45 FR 86379, Dec. 30, 1980, as amended at 53 FR 17147, May 13, 1988; 59 FR 8347, Feb. 18, 1994]

§385.42 What are the requirements affecting the dissemination of training materials?

A set of any training materials developed under the Rehabilitation Training Program must be submitted to any information clearinghouse designated by the Secretary.

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

§385.43 What requirements apply to the training of rehabilitation counselors and other rehabilitation personnel?

Any grantee who provides training of rehabilitation counselors or other rehabilitation personnel under any of the programs in 34 CFR parts 386 through 390 shall train those counselors and personnel on the services provided under this Act, and, in particular, services provided in accordance with amendments made by the Rehabilitation Act Amendments of 1992. The grantee shall also furnish training to these counselors and personnel regarding the applicability of section 504 of this Act, title I of the Americans with Disabilities Act of 1990, and the provisions of titles II and XVI of the Social Security Act that are related to work

incentives for individuals with disabilities.

(Authority: Sec. 302(a)(3) of the Act; 29 U.S.C. 774(a)(3))

[59 FR 8347, Feb. 18, 1994]

§ 385.44 What requirement applies to the training of individuals with disabilities?

Any grantee or contractor who provides training under any of the programs in 34 CFR parts 386 through 390 and 396 shall give due regard to the training of individuals with disabilities as part of its effort to increase the number of qualified personnel available to provide rehabilitation services.

(Authority: Sec. 302(a)(1) of the Act; 29 U.S.C. 774(a)(1))

[59 FR 8347, Feb. 18, 1994]

§ 385.45 What additional application requirements apply to the training of individuals for rehabilitation careers?

(a) All applicants for a grant or contract to provide training under any of the programs in 34 CFR parts 386 through 390 and 396 shall demonstrate how the training they plan to provide will prepare rehabilitation professionals to address the needs of individuals with disabilities from minority backgrounds.

(b) All applicants for a grant under any of the programs in 34 CFR parts 386 through 390 and 396 shall include a detailed description of strategies that will be utilized to recruit and train persons so as to reflect the diverse populations of the United States, as part of the effort to increase the number of individuals with disabilities, and individuals who are members of minority groups, who are available to provide rehabilitation services.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 21(b)(5) and 302(a)(5) of the Act; 29 U.S.C. 718b(b)(6) and 774(a)(6))

[59 FR 8347, Feb. 18, 1994, as amended at 59 FR 33680, June 30, 1994]

§ 385.46 What limitations apply to the rate of pay for experts or consultants appointed or serving under contract under the Rehabilitation Training program?

An expert or consultant appointed or serving under contract pursuant to this section shall be compensated at a rate subject to approval of the Commissioner which shall not exceed the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code. Such an expert or consultant may be allowed travel and transportation expenses in accordance with section 5703 of title 5, United States Code.

(Authority: Sec. 302(g)(2) of the Act; 29 U.S.C. 774(g)(2))

[59 FR 8347, Feb. 18, 1994]

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

Subpart A—General

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386.2 Who is eligible for an award?
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386.4 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

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Subpart D—What Conditions Must Be Met After an Award?

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386.31 What are requirements for directing grant funds?
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Subpart E—What Conditions Must Be Met by a Scholar?

386.40 What are the requirements for scholars?
386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?
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386.43 What are the consequences of a scholar's failure to meet the terms and conditions of scholarship agreement?

AUTHORTIY: 29 U.S.C. 711(c) and 774, unless otherwise noted.

SOURCE: 59 FR 31066, June 16, 1994, unless otherwise noted.

Subpart A—General

§386.1 What is the Rehabilitation Long-Term Training program?

(a) The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in one of those fields of study identified in paragraph (b) of this section;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in one of those fields of study identified in paragraph (b) of this section; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

(b) The Rehabilitation Long-Term Training program is designed to provide academic training in areas of personnel shortages identified by the Secretary and published in a notice in the FEDERAL REGISTER. These areas may include—

(1) Vocational rehabilitation counseling;

(2) Rehabilitation technology;

(3) Rehabilitation medicine;

(4) Rehabilitation nursing;

(5) Rehabilitation social work;

(6) Rehabilitation psychiatry;

(7) Rehabilitation psychology;

(8) Rehabilitation dentistry;

(9) Physical therapy;

(10) Occupational therapy;

(11) Speech pathology and audiology;

(12) Physical education;

(13) Therapeutic recreation;

(14) Community rehabilitation program personnel;

(15) Prosthetics and orthotics;

(16) Specialized personnel for rehabilitation of individuals who are blind or have vision impairment;

(17) Rehabilitation of individuals who are deaf or hard of hearing;

(18) Rehabilitation of individuals who are mentally ill;

(19) Undergraduate education in the rehabilitation services;

(20) Independent living;

(21) Client assistance;

(22) Administration of community rehabilitation programs;

(23) Rehabilitation administration;

(24) Vocational evaluation and work adjustment;

(25) Services to individuals with specific disabilities or specific impediments to rehabilitation, including individuals who are members of populations that are unserved or underserved by programs under this Act;

(26) Job development and job placement services to individuals with disabilities;

(27) Supported employment services, including services of employment specialists for individuals with disabilities;

(28) Specialized services for individuals with severe disabilities;

(29) Recreation for individuals with disabilities;

(30) The use, applications, and benefits of assistive technology devices and assistive technology services; and

(31) Other fields contributing to the rehabilitation of individuals with disabilities.

(Authority: 29 U.S.C. 711 and 771a)

§386.2 Who is eligible for an award?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: 29 U.S.C. 771a(a))

§386.3 What regulations apply?

The following regulations apply to the Rehabilitation Training: Rehabilitation Long-Term Training program:

(a) The regulations in this part 386.

(b) The regulations in 34 CFR part 385.

(Authority: 29 U.S.C. 771a)

§ 386.4 What definitions apply?

The following definitions apply to this program:

(a) Definitions in 34 CFR 385.4.

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

Academic year means a full-time course of study—

(1) Taken for a period totaling at least nine months; or

(2) Taken for the equivalent of at least two semesters, two trimesters, or three quarters.

Certificate means a recognized educational credential awarded by a grantee under this part that attests to the completion of a specified series of courses or program of study.

Professional corporation or professional practice means—

(1) A professional service corporation or practice formed by one or more individuals duly authorized to render the same professional service, for the purpose of rendering that service; and

(2) The corporation or practice and its members are subject to the same supervision by appropriate State regulatory agencies as individual practitioners.

Related agency means—

(1) An American Indian rehabilitation program; or

(2) Any of the following agencies that provide services to individuals with disabilities under an agreement with a designated State agency in the area of specialty for which training is provided:

(i) A Federal, State, or local agency.

(ii) A nonprofit organization.

(iii) A professional corporation or professional practice group.

Scholar means an individual who is enrolled in a certificate or degree granting course of study in one of the areas listed in § 386.1(b) and who receives scholarship assistance under this part.

Scholarship means an award of financial assistance to a scholar for training and includes all disbursements or credits for student stipends, tuition and fees, and student travel in conjunction with training assignments.

State rehabilitation agency means the designated State agency.

(Authority: 29 U.S.C. 711(c))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 386.20 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of individuals with physical or mental disabilities through degree or certificate granting programs; or

(ii) To improve the skills and quality of professional personnel in the rehabilitation field in which the training is to be provided through the granting of a degree or certificate.

(b) *Nature and scope of curriculum.* (1) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that ensure student involvement in the provision of vocational rehabilitation, supported employment, or independent living rehabilitation services to individuals

with disabilities, especially individuals with severe disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, or independent living rehabilitation processes, concepts, programs, and services; and

(v) If applicable, there is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Authority: 29 U.S.C. 711(c) and 771a)

[62 FR 10404, Mar. 6, 1997]

Subpart D—What Conditions Must Be Met After an Award?

§386.30 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of a project under this program. The Secretary may waive part of the non-Federal share of the cost of the project after negotiations if the applicant demonstrates that it does not have sufficient resources to contribute the entire match.

(Authority: 29 U.S.C. 711(c))

§386.31 What are the requirements for directing grant funds?

(a) A grantee must use at least 75 percent of the total award for scholarships as defined in §386.4.

(b) The Secretary may award grants that use less than 75 percent of the total award for scholarships based upon the unique nature of the project, such as the establishment of a new training program or long-term training in an emerging field that does not award degrees or certificates.

(c) For multi-year projects in existence on October 1, 1994, the requirements of paragraph (a) of this section do not apply for the remainder of the project period.

(Authority: 29 U.S.C. 711(c) and 771a)

§386.32 What are allowable costs?

In addition to those allowable costs established in the Education Department General Administrative Regulations in 34 CFR 75.530 through 75.562, the following items are allowable under long-term training projects:

(a) Student stipends.

(b) Tuition and fees.

(c) Student travel in conjunction with training assignments.

(Authority: 29 U.S.C. 711(c) and 771a)

§386.33 What are the requirements for grantees in disbursing scholarships?

(a) Before disbursement of scholarship assistance to an individual, a grantee—

(1)(i) Shall obtain documentation that the individual is—

(A) A U.S. citizen or national; or

(B) A permanent resident of the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, or the Commonwealth of the Northern Mariana Islands; or

(ii) Shall confirm from documentation issued to the individual by the U.S. Immigration and Naturalization Service that he or she—

(A) Is a lawful permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(2) Shall confirm that the applicant has expressed interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation, supported employment, or independent living rehabilitation of individuals with disabilities, especially individuals with severe disabilities;

(3) Shall have documentation that the individual expects to maintain or seek employment in a designated State rehabilitation agency or in a nonprofit rehabilitation, professional corporation, professional practice group, or related agency providing services to individuals with disabilities or individuals with severe disabilities under an agreement with a designated State agency;

(4) Shall reduce the scholarship by the amount in which the combined awards would be in excess of the cost of attendance, if a scholarship, when added to the amount the scholar is to receive for the same academic year under title IV of the Higher Education

Act, would otherwise exceed the scholar's cost of attendance;

(5) Shall limit scholarship assistance to the individual's cost of attendance at the institution for no more than four academic years except that the grantee may provide an extension consistent with the institution's accommodations under section 504 of the Act if the grantee determines that an individual has a disability that seriously affects the completion of the course of study; and

(6) Shall obtain a Certification of Eligibility for Federal Assistance from each scholar as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.34 What assurances must be provided by a grantee that intends to provide scholarships?

A grantee under this part that intends to grant scholarships for any academic year beginning after June 1, 1992, shall provide the following assurances before an award is made:

(a) *Requirement for agreement.* No individual will be provided a scholarship without entering into a written agreement containing the terms and conditions required by this section. An individual will sign and date the agreement prior to the initial disbursement of scholarship funds to the individual for payment of the individual's expenses, such as tuition.

(b) *Disclosure to applicants.* The terms and conditions of the agreement that the grantee enters into with a scholar will be fully disclosed in the application for scholarship.

(c) *Form and terms of agreement.* Each scholarship agreement with a grantee will be in the form and contain the terms that the Secretary requires, including at a minimum the following provisions:

(1) The scholar will—

(i) Maintain employment—

(A) In a nonprofit rehabilitation agency or related agency or in a State rehabilitation agency or related agency, including a professional corporation or professional practice group through which the individual has a service arrangement with the designated State agency;

(B) On a full- or part-time basis; and

(C) For a period of not less than the full-time equivalent of two years for each year for which assistance under this section was received, within a period, beginning after the recipient completes the training for which the scholarship was awarded, of not more than the sum of the number of years required in this paragraph and two additional years; and

(ii) Repay all or part of any scholarship received, plus interest, if the individual does not fulfill the requirements of paragraph (c)(1(i) of this section, except as the Secretary by regulations may provide for repayment exceptions and deferrals.

(2) The employment obligation in paragraph (c)(1) of this section as applied to a part-time scholar will be based on the accumulated academic years of training for which the scholarship is received.

(3) Until the scholar has satisfied the employment obligation described in paragraph (c)(1) of this section, the scholar will inform the grantee of any change of name, address, or employment status and will document employment satisfying the terms of the agreement.

(4) Subject to the provisions in § 386.41 regarding a deferral or exception, when the scholar enters repayment status under § 386.43(e), the amount of the scholarship that has not been retired through eligible employment will constitute a debt owed to the United States that—

(i) Will be repaid by the scholar, including interest and costs of collection as provided in § 386.43; and

(ii) May be collected by the Secretary in accordance with 34 CFR part 30, in the case of the scholar's failure to meet the obligation of § 386.43.

(d) *Executed agreement.* The grantee will provide an original executed agreement upon request to the Secretary.

(e) *Standards for satisfactory progress.* The grantee will establish, publish, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's

course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution's program of study, if the institution's program of study is accredited by such an agency, and if the agency has those standards;

(2) For a scholar enrolled in an eligible program who is to receive assistance under the Rehabilitation Act, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under the Rehabilitation Act; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum timeframe in which the scholar shall complete the scholar's educational objective, degree, or certificate.

(iii) Consistent application of standards to all scholars within categories of students; e.g., full-time, part-time, undergraduates, graduate students, and students attending programs established by the institution.

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(v) Specific procedures for appeal of a determination that a scholar is not making satisfactory progress and for reinstatement of aid.

(f) *Exit certification.* The grantee has established policies and procedures for receiving written certification from scholars at the time of exit from the program acknowledging the following:

(1) The name of the institution and the number of the Federal grant that provided the scholarship.

(2) The scholar's field of study.

(3) The number of years the scholar needs to work to satisfy the work requirements in §386.34(c)(1)(i)(C).

(4) The total amount of scholarship assistance received subject to the work-or-repay provision in §386.34(c)(1)(ii).

(5) The time period during which the scholar must satisfy the work requirements in §386.34(c)(1)(i)(C).

(6) All other obligations of the scholar in §386.34.

(g) *Tracking system.* The grantee has established policies and procedures to determine compliance of the scholar with the terms of the agreement. In order to determine whether a scholar has met the work-or-repay provision in §386.34(c)(1)(i), the tracking system must include for each employment position maintained by the scholar—

(1) Documentation of the employer's name, address, dates of the scholar's employment, and the position the scholar maintained;

(2) Documentation of how the employment meets the requirements in §386.34(c)(1)(i); and

(3) Documentation that the grantee, if experiencing difficulty in locating a scholar, has checked with existing tracking systems operated by alumni organizations.

(h) *Reports.* The grantee shall make reports to the Secretary that are necessary to carry out the Secretary's functions under this part.

(i) *Records.* The grantee shall maintain the information obtained in paragraphs (g) and (h) of this section for a period of time equal to the time required to fulfill the obligation under §386.34(c)(1)(i)(C).

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 771a(b))

§386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

A grantee that is an institution of higher education provided assistance under this part shall cooperate with the following requests for information from a designated State agency:

(a) Information required by section 101(a)(7) of the Act which may include, but is not limited to—

(1) The number of students enrolled by the grantee in rehabilitation training programs; and

(2) The number of rehabilitation professionals trained by the grantee who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year.

(b) Information on the availability of rehabilitation courses leading to certification or licensure, or the credentials to qualify for certification or licensure, to assist State agencies in the planning of a program of staff development for all classes of positions that are involved in the administration and operation of the State agency's vocational rehabilitation program.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 771a)

Subpart E—What Conditions Must Be Met by a Scholar?

§ 386.40 What are the requirements for scholars?

A scholar—

(a) Shall receive the training at the educational institution or agency designated in the scholarship; and

(b) Shall not accept payment of educational allowances from any other Federal, State, or local public or private nonprofit agency if that allowance conflicts with the individual's obligation under § 386.33(a)(4) or § 386.34(c)(1).

(c) Shall enter into a written agreement with the grantee, before starting training, that meets the terms and conditions required in § 386.34;

(d) Shall be enrolled in a course of study leading to a certificate or degree in one of the fields designated in § 386.1(b); and

(e) Shall maintain satisfactory progress toward the certificate or degree as determined by the grantee.

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?

A deferral or repayment exception to the requirements of § 386.34(c)(1) may be granted, in whole or part, by the Secretary as follows:

(a) Repayment is not required if the scholar—

(1) Is unable to continue the course of study or perform the work obligation because of a disability that is expected to continue indefinitely or result in death; or

(2) Has died.

(b) Repayment of a scholarship may be deferred during the time the scholar is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Serving as a volunteer under the Peace Corps Act;

(4) Serving as a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973;

(5) Temporarily totally disabled, for a period not to exceed three years; or

(6) Unable to secure employment as required by the agreement by reason of the care provided to a disabled spouse for a period not to exceed 12 months.

(Authority: 29 U.S.C. 771(c) and 771a(b))

§ 386.42 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?

To obtain a deferral or exception to performance or repayment under a scholarship agreement, a scholar shall provide the following:

(a) *Written application.* A written application must be made to the Secretary to request a deferral or an exception to performance or repayment of a scholarship.

(b) *Documentation.* (1) Documentation must be provided to substantiate the grounds for a deferral or exception.

(2) Documentation necessary to substantiate an exception under § 386.41(a)(1) or a deferral under § 386.41(b)(5) must include a sworn affidavit from a qualified physician or other evidence of disability satisfactory to the Secretary.

(3) Documentation to substantiate an exception under § 386.41(a)(2) must include a death certificate or other evidence conclusive under State law.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 711(c) and 771a)

§386.43 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

In the event of a failure to meet the terms and conditions of a scholarship agreement or to obtain a deferral or an exception as provided in §386.41, the scholar shall repay all or part of the scholarship as follows:

(a) *Amount.* The amount of the scholarship to be repaid is proportional to the employment obligation not completed.

(b) *Interest rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.* (1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under §386.41.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the Secretary he or she does not plan to fulfill the employment obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the employment obligation within the number of years required in §386.34(c)(1).

(f) *Amounts and frequency of payment.* The scholar shall make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Authority: 29 U.S.C. 711(c) and 771a(b))

PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

Subpart A—General

Sec.
387.1 What is the Experimental and Innovative Training Program?
387.2 Who is eligible for assistance under this program?
387.3 What regulations apply to this program?
387.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

387.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

387.30 What additional selection criteria are used under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

387.40 What are the matching requirements?
387.41 What are the allowable costs?

AUTHORITY: 29 U.S.C. 711(c) and 774, unless otherwise noted.

SOURCE: 45 FR 86383, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§387.1 What is the Experimental and Innovative Training Program?

This program is designed—

(a) To develop new types of training programs for rehabilitation personnel and to demonstrate the effectiveness of these new types of training programs for rehabilitation personnel in providing rehabilitation services to individuals with disabilities; and

(b) To develop new and improved methods of training rehabilitation personnel so that there may be a more effective delivery of rehabilitation services by State and other rehabilitation agencies.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

[45 FR 86383, Dec. 30, 1980, as amended at 53 FR 17147, May 13, 1988; 59 FR 8347, Feb. 18, 1994]

§ 387.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§ 387.3 What regulations apply to this program?

(a) 34 CFR part 385 (Rehabilitation Training); and

(b) The regulations in this part 387.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§ 387.4 What definitions apply to this program?

The definitions in 34 CFR part 385 apply to this program.

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

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 387.10 What types of projects are authorized under this program?

The Experimental and Innovative Training Program supports time-limited pilot projects through which new types of rehabilitation workers may be trained or through which innovative methods of training rehabilitation workers may be demonstrated.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 387.30 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to public and private agencies involved in the rehabilitation of individuals with disabilities; or

(ii) To maintain and improve the skills and quality of rehabilitation workers.

(b) *Nature and scope of curriculum.* (1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed curriculum.

(2) The Secretary looks for information that shows that—

(i) The scope and nature of the training content can be expected to enable the achievement of the established project objectives of the training project;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practicum or other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities; and

(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services.

(Authority: 29 U.S.C. 711(c) and 774)

[62 FR 10405, Mar. 6, 1997]

Subpart E—What Conditions Must Be Met by a Grantee?

§387.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

§387.41 What are allowable costs?

In addition to those allowable costs established under EDGAR §§75.530–75.562, the following items are allowable under experimental and innovative training projects—

(a) Student stipends;

(b) Tuition and fees; and

(c) Student travel in conjunction with training assignments.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

PART 388—STATE VOCATIONAL REHABILITATION UNIT IN-SERVICE TRAINING

Subpart A—General

Sec.

388.1 What is the State Vocational Rehabilitation Unit In-Service Training program?
388.2 Who is eligible for an award?
388.3 What types of projects are authorized?
388.4 What activities may the Secretary fund?
388.5 What regulations apply?
388.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

388.20 What additional selection criterion is used under this program?
388.21 How does the Secretary determine the amount of a basic State award?
388.22 What priorities does the Secretary consider in making an award?

Subpart D—What Conditions Must Be Met After an Award?

388.30 What are the matching requirements?
388.31 What are the allowable costs?

AUTHORITY: 29 U.S.C. 711(c) and 774, unless otherwise noted.

SOURCE: 59 FR 40178, Aug. 5, 1994

Subpart A—General

§388.1 What is the State Vocational Rehabilitation Unit In-Service Training program?

This program is designed to support projects for training State vocational rehabilitation unit personnel in program areas essential to the effective management of the unit's program of vocational rehabilitation services or in skill areas that will enable staff personnel to improve their ability to provide vocational rehabilitation services leading to employment outcomes for individuals with disabilities. The State Vocational Rehabilitation Unit In-Service Training program responds to needs identified in the comprehensive system of personnel development in section 101(a)(7) of the Act. The program may include training designed—

(a) To address recruitment and retention of qualified rehabilitation professionals;

(b) To provide for succession planning;

(c) To provide for leadership development and capacity building; and

(d) For fiscal year 1994, to provide training on the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

(Authority: 29 U.S.C. 771a(g)(3))

§388.2 Who is eligible for an award?

Each designated State agency is eligible to receive an award under the

basic State award program described in § 388.21. If a designated State agency does not apply for an award during an announced competition, no funds may be made available for in-service training of the staff of that designated State agency under this program until there is a new competition for funding. At least 15 percent of the sums appropriated to carry out section 302 of the Act must be allocated to designated State agencies to be used, directly or indirectly, for projects for in-service training of rehabilitation personnel.

(Authority: 29 U.S.C. 771a(g)(3))

§ 388.3 What types of projects are authorized?

State vocational rehabilitation unit in-service training projects are concerned with the staff development and training of State vocational rehabilitation unit personnel in order to ensure an improved level of competence in serving State unit clients and to assist in expanding and improving vocational rehabilitation services for individuals with disabilities, especially those with severe disabilities, to ensure employment outcomes.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.4 What activities may the Secretary fund?

(a) Training activities supported under a State vocational rehabilitation unit in-service training grant focus primarily on program areas that are essential to the State unit's operation or on skill areas that will enable staff personnel to improve their ability to function on their job, or prepare for positions of greater responsibility within the unit, or to correct deficiencies identified in the State program. Projects may—

(1) Address recruitment and retention of qualified rehabilitation professionals;

(2) Provide for succession planning;

(3) Provide for leadership development and capacity building; and

(4) For fiscal year 1994, provide training on the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

(b) Training methods may include—

(1) The development of State unit training institutes related to the specific aspects of State unit administration or service provision;

(2) Group employee training at courses conducted in cooperation with or by an educational institution;

(3) Individualized directed study in priority areas of State unit service or practice;

(4) Employee access to current agency instructional resources for books, films, videos, tapes, and other human resource development resources;

(5) Distance learning through telecommunications; and

(6) Dissemination and information sharing with other designated State agencies.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.5 What regulations apply?

The following regulations apply to the State Vocational Rehabilitation Unit In-Service Training program:

(a) The regulations in this part 388.

(b) The regulations in 34 CFR part 385.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.6 What definitions apply?

The definitions in 34 CFR part 385 apply to this program.

(Authority: 29 U.S.C. 711(c) and 771(a)(g)(3))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 388.20 What additional selection criterion is used under this program?

In addition to the selection criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Evidence of need.* (1) The Secretary reviews each application for information that shows that the need for the in-service training has been adequately justified.

(2) The Secretary looks for information that shows—

(i) How the proposed project relates to the mission of the State-Federal rehabilitation service program and can be expected to improve the competence

of all State vocational rehabilitation personnel in providing vocational rehabilitation services to individuals with disabilities that will result in employment outcomes or otherwise contribute to more effective management of the State unit program;

(ii) That the State unit in-service training plan responds to needs identified in their training needs assessment and the proposed training relates to the unit's State plan, particularly the requirements in section 101(a)(7) of the Rehabilitation Act for each designated State unit to develop a comprehensive system of personnel development;

(iii) The need for in-service training methods and materials that will improve the effectiveness of services to individuals with disabilities assisted under the Rehabilitation Act and ensure employment outcomes; and

(iv) The State has conducted a needs assessment of the in-service training needs for all of the State unit employees.

(b) [Reserved]

(Authority: 29 U.S.C. 711(c), 770, and 771a)

[62 FR 10405, Mar. 6, 1997]

§388.21 How does the Secretary determine the amount of a basic State award?

(a) The Secretary distributes no more than 80 percent of the funds available for these awards as follows:

(1) For each competition the Secretary will determine a minimum score based upon the selection criteria in §388.20 that an applicant must receive in order for its application to be approved by the Secretary.

(2) Each designated State agency that submits an approved application receives an amount based upon a formula that provides each approved project an amount equal to the percentage that the designated State agency's staff, as reported by total person years to the Secretary on Form RSA–2, represents of all staff of all designated State agencies, as reported to the Secretary on Form RSA–2 for the most recent reporting period. A copy of Form RSA–2 may be obtained from the Department of Education, 400 Maryland Avenue, S.W., 3211 Switzer Building, Washington, D.C. 22204–2735.

(3) No designated State agency with an approved project receives less than one-third of one percent of the sums made available for the fiscal year.

(b) After determining a designated State agency's award under paragraph (a) of this section, the Secretary reserves the remaining funds to be allocated based on the quality of the application as determined by competitive reviews conducted by the Department using the criteria in §388.20 and the priorities in §388.22.

(c) Prior to award, negotiations may be conducted with applicants to resolve any problems or weaknesses in the application identified by the review process.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

§388.22 What priorities does the Secretary consider in making an award?

(a) The Secretary reserves funds to support some or all of the proposals that have been awarded a rating of 80 points or more under the criteria described in §388.20.

(b) In making a final selection of proposals to support under this program, the Secretary considers the extent to which proposals have exceeded a rating of 80 points and address one or more of the following priorities announced in the application notice:

(1) *Development and dissemination of model in-service training materials and practices.* The proposed project demonstrates an effective plan to develop and disseminate information on its State Vocational Rehabilitation In-Service Training program, including the identification of training approaches and successful practices, in order to permit the replication of these programs by other State vocational rehabilitation units.

(2) *Distance education.* The proposed project demonstrates innovative strategies for training State vocational rehabilitation unit personnel through distance education methods, such as interactive audio, video, computer technologies, or existing telecommunications networks.

(3) *Enhanced employment outcomes for specific populations.* The proposed project supports specialized training in

the provision of vocational rehabilitation or related services to individuals with disabilities to increase the rehabilitation rate into competitive employment for all individuals or specified target groups.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

Subpart D—What Conditions Must be Met After an Award?

§ 388.30 What are the matching requirements?

(a) The Secretary may make grants for paying part of the costs of projects under this program. Except as provided for in paragraphs (b) and (c) of this section, the grantee shall provide at least 10 percent of the total costs of the project.

(b) Grantees designated in § 388.21(a)(3) to receive a minimum share of one third of one percent of the sums made available for the fiscal year shall provide at least four percent of the total costs of the project.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

§ 388.31 What are the allowable costs?

In addition to those allowable costs established in 34 CFR 75.530 through 75.562 (Education Department General Administrative Regulations), the following items are allowable under State vocational rehabilitation unit in-service training projects:

(a) Trainee per diem costs.

(b) Trainee travel in connection with a training course.

(c) Trainee tuition and fees.

(d) Telecommunications and technology fees.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

PART 389—REHABILITATION CONTINUING EDUCATION PROGRAMS

Subpart A—General

Sec.
389.1 What is the Rehabilitation Continuing Education Program?
389.2 Who is eligible for assistance under this program?
389.3 What regulations apply to this program?
389.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

389.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

389.30 What additional selection criterion is used under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

389.40 What are the matching requirements?
389.41 What are allowable costs?

AUTHORITY: 29 U.S.C. 711(c) and 774, unless otherwise noted.

SOURCE: 45 FR 86385, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 389.1 What is the Rehabilitation Continuing Education Program?

This program is designed to support training centers that serve either a Federal region or another geographical area and provide for a broad integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§ 389.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§ 389.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR part 385 (Rehabilitation Training); and

(b) The regulations in this part 389.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§389.4 What definitions apply to this program?

The definitions in 34 CFR part 385 apply to this program.

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

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§389.10 What types of projects are authorized under this program?

Rehabilitation Continuing Education Programs—

(a) Train newly employed State agency staff at the administrative, supervisory, professional, subprofessional, or clerical levels in order to develop needs skills for effective agency performance;

(b) Provide training opportunities for experienced State agency personnel at all levels of State agency practice to upgrade their skills and to develop mastery of new program developments dealing with significant issues, priorities and legislative thrusts of the State/Federal vocational rehabilitation program; and

(c) Develop and conduct training programs for staff of—

(1) Private rehabilitation agencies and facilities which cooperate with State vocational rehabilitation units in providing vocational rehabilitation and other rehabilitation services;

(2) Centers for independent living; and

(3) Client assistance programs.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

[45 FR 86385, Dec. 30, 1980, as amended at 50 FR 38631, Sept. 23, 1985]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§389.30 What additional selection criterion is used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary reviews each application for information that shows that the proposed project includes an assessment of the potential of existing programs within the geographical area (including State vocational rehabilitation unit in-service training) to meet the needs for which support is sought.

(3) The Secretary looks for information that shows that the proposed project can be expected to improve the competence of professional and other personnel in the rehabilitation agencies serving individuals with severe disabilities.

(b) [Reserved]

(Authority: 29 U.S.C. 711(c))

[62 FR 10405, Mar. 6, 1997]

Subpart E—What Conditions Must Be Met by a Grantee?

§389.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the cost to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

§389.41 What are allowable costs?

In addition to those allowable costs established under EDGAR §§75.530–75.562, the following items are allowable under Rehabilitation Continuing Education programs—

(a) Trainee per diem costs;

(b) Trainee travel in connection with a training course;

(c) Trainee tuition and fees; and

(d) Special accommodations for trainees with handicaps.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

[45 FR 86385, Dec. 30, 1980, as amended at 53 FR 17147, May 13, 1988]

PART 390—REHABILITATION SHORT-TERM TRAINING

Subpart A—General

Sec.
390.1 What is the Rehabilitation Short-Term Training Program?
390.2 Who is eligible for assistance under this program?
390.3 What regulations apply to this program?
390.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

390.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

390.30 What additional selection criterion is used under this program?

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390.40 What are the matching requirements?
390.41 What are allowable costs?

AUTHORITY: 29 U.S.C. 711(c) and 774, unless otherwise noted.

SOURCE: 45 FR 86386, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 390.1 What is the Rehabilitation Short-Term Training program?

This program is designed for the support of special seminars, institutes, workshops, and other short-term courses in technical matters relating to the vocational, medical, social, and psychological rehabilitation programs, independent living services programs, and client assistance programs.

(Authority: Secs. 12(a)(2) and 302 of the Act; 29 U.S.C. 711(a)(2) and 774)

[59 FR 8348, Feb. 18, 1994]

§ 390.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§ 390.3 What regulations apply to this program?

(a) 34 CFR part 385 (Rehabilitation Training); and

(b) The regulations in this part 390.

(Authority: Sec. 302 of the Act; 29 U.S.C. 774)

§ 390.4 What definitions apply to this program?

The definitions in 34 CFR part 385 apply to this program.

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

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 390.10 What types of projects are authorized under this program?

(a) Projects under this program are designed to provide short-term training and technical instruction in areas of special significance to the vocational, medical, social, and psychological rehabilitation programs, supported employment programs, independent living services programs, and client assistance programs.

(b) Short-term training projects may be of regional or national scope.

(c) Conferences and meetings in which training is not the primary focus may not be supported under this program.

(Authority: Secs. 12(a)(2) and 302 of the Act; 29 U.S.C. 711(a)(2) and 774)

[45 FR 86386, Dec. 30, 1980, as amended at 59 FR 8348, Feb. 18, 1994]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§390.30 What additional selection criterion is used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary looks for information that shows that the proposed project can be expected to improve the skills and competence of—

(i) Personnel engaged in the administration or delivery of rehabilitation services; and

(ii) Others with an interest in the delivery of rehabilitation services.

(b) [Reserved]

(Authority: 29 U.S.C. 711(c) and 774)

[62 FR 10406, Mar. 6, 1997]

Subpart E—What Conditions Must Be Met by a Grantee?

§390.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

§390.41 What are allowable costs?

(a) In addition to those allowable costs established in EDGAR §§75.530–75.562, the following items are allowable under short-term training projects:

(1) Trainee per diem costs;

(2) Trainee travel in connection with a training course;

(3) Trainee registration fees; and

(4) Special accommodations for trainees with handicaps.

(b) The preparation of training materials may not be supported under a short-term training grant unless the materials are essential for the conduct of the seminar, institute, workshop or other short course for which the grant support has been provided.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 774)

[45 FR 86386, Dec. 30, 1980, as amended at 53 FR 17148, May 13, 1988]

PART 395—VENDING FACILITY PROGRAM FOR THE BLIND ON FEDERAL AND OTHER PROPERTY

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395.38 Reports.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; 20 U.S.C. 107a.

SOURCE: 42 FR 15802, Mar. 23, 1977, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980, and further redesignated at 46 FR 5417, Jan. 19, 1981.

Subpart A—Definitions

§ 395.1 Terms.

Unless otherwise indicated in this part, the terms below are defined as follows:

(a) *Act* means the Randolph-Sheppard Vending Stand Act (Pub. L. 74–732), as amended by Pub. L. 83–565 and Pub. L. 93–516, 20 U.S.C., ch. 6A, Sec 107.

(b) *Blind licensee* means a blind person licensed by the State licensing agency to operate a vending facility on Federal or other property.

(c) *Blind person* means a person who, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever such person shall select, has been determined to have

(1) Not more than 20/200 central visual acuity in the better eye with correcting lenses, or

(2) An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20°.

(d) *Cafeteria* means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria and table or booth seating facilities are always provided.

(e) *Secretary* means the Secretary of the Rehabilitation Services Administration.

(f) *Direct competition* means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor, except that vending machines or vending facilities operated in areas serving employees the majority of whom normally do not have direct access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered to be in direct competition with the vending facility operated by a blind vendor.

(g) *Federal property* means any building, land, or other real property owned, leased, or occupied by any department, agency or instrumentality of the United States (including the Department of Defense and the U.S. Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States.

(h) *Individual location installation or facility* means a single building or a self-contained group of buildings. In order for two or more buildings to be considered to be a self-contained group of buildings, such buildings must be located in close proximity to each other, and a majority of the Federal employees housed in any such building must regularly move from one building to another in the course of official business during normal working days.

(i) *License* means a written instrument issued by the State licensing agency to a blind person, authorizing such person to operate a vending facility on Federal or other property.

(j) *Management services* means supervision, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors. *Management services* does not include those services or costs which pertain to the on-going operation of an individual facility after the initial establishment period.

(k) *Net proceeds* means the amount remaining from the sale of articles or services of vending facilities, and any

vending machine or other income accruing to blind vendors after deducting the cost of such sale and other expenses (excluding set-aside charges required to be paid by such blind vendors).

(l) *Nominee* means a nonprofit agency or organization designated by the State licensing agency through a written agreement to act as its agent in the provision of services to blind licensees under the State's vending facility program.

(m) *Normal working hours* means an eight hour work period between the approximate hours of 8:00 a.m., to 6:00 p.m., Monday through Friday.

(n) *Other property* means property which is not Federal property and on which vending facilities are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

(o) *Permit* means the official approval given a State licensing agency by a department, agency or instrumentality in control of the maintenance, operation, and protection of Federal property, or person in control of other property, whereby the State licensing agency is authorized to establish a vending facility.

(p) *Program* means all the activities of the licensing agency under this part related to vending facilities on Federal and other property.

(q) *Satisfactory site* means an area fully accessible to vending facility patrons and having:

(1) Effective on March 23, 1977 a minimum of 250 square feet available for the vending and storage of articles necessary for the operation of a vending facility; and

(2) Sufficient electrical plumbing, heating, and ventilation outlets for the location and operation of a vending facility in accordance with applicable health laws and building codes.

(r) *Secretary* means the Secretary of Education.

(s) *Set-aside funds* means funds which accrue to a State licensing agency from an assessment against the net proceeds of each vending facility in the State's vending facility program and any income from vending machines on Federal property which accrues to the State licensing agency.

(t) *State* means a State, territory, possession, Puerto Rico, or the District of Columbia.

(u) *State vocational rehabilitation agency* means that agency in the State providing vocational rehabilitation services to the blind as the sole State agency under a State plan for vocational rehabilitation services approved pursuant to the provisions of the Rehabilitation Act of 1973 (29 U.S.C., ch. 16).

(v) *State licensing agency* means the State agency designated by the Secretary under this part to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

(w) *United States* includes the several States, territories, and possessions of the United States, Puerto Rico, and the District of Columbia.

(x) *Vending facility* means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of changes for any lottery authorized by State law and conducted by an agency of a State within such State.

(y) *Vending machine*, for the purpose of assigning vending machine income under this part, means a coin or currency operated machine which dispenses articles or services, except that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

(z) *Vending machine income* means receipts (other than those of a blind vendor) from vending machine operations on Federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs in accordance with customary business

practices of commercial vending concerns, where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind vendor) by a commercial vending concern which operates, services, and maintains vending machines on Federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

(aa) *Vendor* means a blind licensee who is operating a vending facility on Federal or other property.

(bb) *Vocational rehabilitation services* means those services as defined in § 1361.1(ee) (1) and (2) of this chapter.

Subpart B—The State Licensing Agency

§ 395.2 Application for designation as a State licensing agency; general.

(a) An application for designation as a State licensing agency may be submitted only by the State vocational rehabilitation agency providing vocational rehabilitation services to the blind under an approved State plan for vocational rehabilitation services under part 1361 of this chapter.

(b) Such application shall be:

(1) Submitted in writing to the Secretary;

(2) Approved by the chief executive of the State; and

(3) Transmitted over the signature of the administrator of the State agency making application.

§ 395.3 Application for designation as State licensing agency; content.

(a) An application for designation as a State licensing agency under § 395.2 shall indicate:

(1) The State licensing agency's legal authority to administer the program, including its authority to promulgate rules and regulations to govern the program;

(2) The State licensing agency's organization for carrying out the program, including a description of the methods for coordinating the State's vending facility program and the State's vocational rehabilitation program, with special reference to the provision of such post-employment services necessary to assure that the maximum vocational potential of each blind vendor is achieved;

(3) The policies and standards to be employed in the selection of suitable locations for vending facilities;

(4) The methods to be used to ensure the continuing and active participation of the State Committee of Blind Vendors in matters affecting policy and program development and administration.

(5) The policies to be followed in making suitable vending facility equipment and adequate initial stock available to a vendor;

(6) The sources of funds for the administration of the program;

(7) The policies and standards governing the relationship of the State licensing agency to the vendors, including their selection, duties, supervision, transfer, promotion, financial participation, rights to a full evidentiary hearing concerning a State licensing agency action, and, where necessary, rights for the submittal of complaints to an arbitration panel;

(8) The methods to be followed in providing suitable training, including on-the-job training and, where appropriate, upward mobility training, to blind vendors;

(9) The arrangements made or contemplated, if any, for the utilization of the services of any nominee under § 395.15; the agreements therefor and the services to be provided; the procedures for the supervision and control of the services provided by such nominee and the methods used in evaluating services received, the basis for remuneration, and the fiscal controls and accounting procedures;

(10) The arrangements made or contemplated, if any, for the vesting in accordance with the laws of the State, of the right, title to, and interest in vending facility equipment or stock (including vending machines), used in the program, in a nominee to hold such right, title to, and interest for program purposes; and

(11) The assurances of the State licensing agency that it will:

(i) Cooperate with the Secretary in applying the requirements of the Act in a uniform manner;

(ii) Take effective action, including the termination of licenses, to carry out full responsibility for the supervision and management of each vending facility in its program in accordance with its established rules and regulations, this part, and the terms and conditions governing the permit;

(iii) Submit promptly to the Secretary for approval a description of any changes in the legal authority of the State licensing agency, its rules and regulations, blind vendor agreements, schedules for the setting aside of funds, contractual arrangements for the furnishing of services by a nominee, arrangements for carrying general liability and product liability insurance, and any other matters which form a part of the application;

(iv) If it intends to set aside, or cause to be set aside, funds from the net proceeds of the operation of vending facilities, obtain a prior determination by the Secretary that the amount of such funds to be set aside is reasonable;

(v) Establish policies against discrimination of any blind vendor on the basis of sex, age, physical or mental impairment, creed, color, national origin, or political affiliation;

(vi) Furnish each vendor a copy of its rules and regulations and a description of the arrangements for providing services, and take adequate steps to assure that each vendor understands the provisions of the permit and any agreement under which he operates, as evidenced by his signed statements:

(vii) Submit to an arbitration panel those grievances of any vendor unresolved after a full evidentiary hearing;

(viii) Adopt accounting procedures and maintain financial records in a manner necessary to provide for each vending facility and for the State's vending facility program a classification of financial transactions in such detail as is sufficient to enable evaluation of performance; and

(ix) Maintain records and make reports in such form and containing such information as the Secretary may require, make such records available for audit purposes, and comply with such provisions as the Secretary may find necessary to assure the correctness and verification of such reports.

(b) An application submitted under §395.2 shall be accompanied by a copy of State rules and regulations affecting the administration and operation of the State's vending facility program.

§395.4 State rules and regulations.

(a) The State licensing agency shall promulgate rules and regulations which have been approved by the Secretary and which shall be adequate to assure the effective conduct of the State's vending facility program (including State licensing agency procedures covering the conduct of full evidentiary hearings) and the operation of each vending facility in accordance with this part and with the requirements and conditions of each department, agency, and instrumentality in control of the maintenance, operation, and protection of Federal property, including the conditions contained in permits, as well as in all applicable Federal and State laws, local ordinances and regulations.

(b) Such rules and regulations and amendments thereto shall be filed or published in accordance with State law.

(c) Such rules and regulations shall include provisions adequate to insure that the right, title to, and interest in each vending facility used in the program and the stock will be vested in accordance with the laws of the State in only the following:

(1) The State licensing agency; or

(2) Its nominee, subject to the conditions specified in §395.15(b); or

(3) The vendor, in accordance with State determination.

(d) Notwithstanding the provisions of paragraph (c) of this section, any right, title to, or interest which existed on June 30, 1955, in stock may continue so long as:

(1) The interest is in the stock of a facility established under the program prior to July 1, 1955, and

(2) The vendor was licensed in the program (whether or not for the operation of the vending facility in question) prior to July 1, 1955.

§395.5 Approval of application for designation as State licensing agency.

When the Secretary determines that an application submitted by a State

vocational rehabilitation agency under § 395.2, and the accompanying rules and regulations indicate a plan of program operations which will stimulate and enlarge the economic opportunities for the blind, and which will meet all other requirements of this part, he shall approve the application and shall designate the applying State vocational rehabilitation agency as the State licensing agency.

§ 395.6 Vendor ownership of vending facilities.

(a) If a State licensing agency determines under § 395.4(c) that the right, title to, and interest in a vending facility may be vested in the blind vendor, the State licensing agency shall enter into a written agreement with each vendor who is to have such ownership. Such agreement shall contain in full the terms and conditions governing such ownership in accordance with criteria in the State licensing agency's regulations, this part, and the terms and conditions of the permit. The criteria established to govern the determination that the title may be so vested shall contain reasonable provisions to enable a vendor to purchase vending facility equipment and to ensure that no individual will be denied the opportunity to become a vendor because of his inability to purchase the vending facility equipment or the initial stock;

(b) The State licensing agency shall establish in writing and maintain policies determining whether the vendor-owner or the State licensing agency shall be required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment; and if the former, such policies shall provide that upon such vendor-owner's failure to do so, the State licensing agency may make the necessary maintenance, replacement, or repairs and make equitable arrangements for reimbursement;

(c) Where the vendor owns such equipment and is required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment, or agrees to purchase additional new equipment, service charges for such purposes shall be equitably reduced and the method for determining such amount shall be established by the State licensing agency in writing;

(d) Where the vendor owns such equipment, the State licensing agency shall retain a first option to repurchase such equipment, and in the event the vendor-owner dies, or for any other reason ceases to be a licensee, or transfers to another vending facility, ownership of such equipment shall become vested in the State licensing agency for transfer to a successor licensee subject to an obligation on its part to pay to such vendor-owner or his estate, the fair value therein; and

(e) The vendor-owner, his personal representative or next of kin shall be entitled to an opportunity for a full evidentiary hearing with respect to the determination of the amount to be paid by the State licensing agency for a vendor's ownership in the equipment. When the vendor-owner is dissatisfied with any decision rendered as a result of such hearing, he may file a complaint with the Secretary under § 395.13 to request the convening of an ad hoc arbitration panel.

§ 395.7 The issuance and conditions of licenses.

(a) The State licensing agency shall establish in writing and maintain objective criteria for licensing qualified applicants, including a provision for giving preference to blind persons who are in need of employment. Such criteria shall also include provisions to assure that licenses will be issued only to persons who are determined by the State licensing agency to be:

(1) Blind;

(2) Citizens of the United States; and

(3) Certified by the State vocational rehabilitation agency as qualified to operate a vending facility.

(b) The State licensing agency shall provide for the issuance of licenses for an indefinite period but subject to suspension or termination if, after affording the vendor an opportunity for a full evidentiary hearing, the State licensing agency finds that the vending facility is not being operated in accordance with its rules and regulations, the terms and conditions of the permit, and the terms and conditions of the agreement with the vendor.

(c) The State licensing agency shall further establish in writing and maintain policies which have been developed with the active participation of the State Committee of Blind Vendors and which govern the duties, supervision, transfer, promotion, and financial participation of the vendors. The State licensing agency shall also establish procedures to assure that such policies have been explained to each blind vendor.

§395.8 Distribution and use of income from vending machines on Federal property.

(a) Vending machine income from vending machines on Federal property which has been disbursed to the State licensing agency by a property managing department, agency, or instrumentality of the United States under §395.32 shall accrue to each blind vendor operating a vending facility on such Federal property in each State in an amount not to exceed the average net income of the total number of blind vendors within such State, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind vendor in any amount exceeding the average net income of the total number of blind vendors in the United States. No blind vendor shall receive less vending machine income than he was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this paragraph. No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced, or operated by a blind vendor. Vending machine income disbursed by a property managing department, agency or instrumentality of the United States to a State licensing agency in excess of the amounts eligible to accrue to blind vendors in accordance with this paragraph shall be retained by the appropriate State licensing agency.

(b) The State licensing agency shall disburse vending machine income to blind vendors within the State on at least a quarterly basis.

(c) Vending machine income which is retained under paragraph (a) of this section by a State licensing agency shall be used by such agency for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind vendors in such State, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency has provided to each such vendor information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used by the State licensing agency for the maintenance and replacement of equipment, the purchase of new equipment, management services, and assuring a fair minimum return to vendors. Any assessment charged to blind vendors by a State licensing agency shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

§395.9 The setting aside of funds by the State licensing agency.

(a) The State licensing agency shall establish in writing the extent to which funds are to be set aside or caused to be set aside from the net proceeds of the operation of the vending facilities and, to the extent applicable, from vending machine income under §395.8(c) in an amount determined by the Secretary to be reasonable.

(b) Funds may be set aside under paragraph (a) of this section only for the purposes of:

(1) Maintenance and replacement of equipment;

(2) The purchase of new equipment;

(3) Management services;

(4) Assuring a fair minimum of return to vendors; or

(5) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency provides to each such vendor information on all matters relevant to such proposed purposes.

(c) The State licensing agency shall further set out the method of determining the charge for each of the above purposes listed in paragraph (b) of this section, which will be determined with the active participation of the State Committee of Blind Vendors and which will be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required for that purpose. The State licensing agency shall maintain adequate records to support the reasonableness of the charges for each of the purposes listed in this section, including any reserves necessary to assure that such purposes can be achieved on a consistent basis.

§ 395.10 The maintenance and replacement of vending facility equipment.

The State licensing agency shall maintain (or cause to be maintained) all vending facility equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the facility.

§ 395.11 Training program for blind individuals.

The State licensing agency shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to blind individuals as vocational rehabilitation services under the Rehabilitation Act of 1973 (Pub. L. 93–112), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516). Such programs shall include on-the-job training in all aspects of vending facility operation for blind persons with the capacity to operate a vending facility, and upward mobility training (including further education and additional training or retraining for improved work opportunities) for all blind licensees. The State licensing agency shall further ensure that post-employment services shall be provided to blind vendors as vocational rehabilitation services as necessary to assure that the maximum vocational potential of such vendors is achieved and suitable employment is maintained within the State's vending facility program.

§ 395.12 Access to program and financial information.

Each blind vendor under this part shall be provided access to all financial data of the State licensing agency relevant to the operation of the State vending facility program, including quarterly and annual financial reports, provided that such disclosure does not violate applicable Federal or State laws pertaining to the disclosure of confidential information. Insofar as practicable, such data shall be made available in braille or recorded tape. At the request of a blind vendor State licensing agency staff shall arrange a convenient time to assist in the interpretation of such financial data.

§ 395.13 Evidentiary hearings and arbitration of vendor complaints.

(a) The State licensing agency shall specify in writing and maintain procedures whereby such agency affords an opportunity for a full evidentiary hearing to each blind vendor (which procedures shall also apply to cases under § 395.6(e)) dissatisfied with any State licensing agency action arising from the operation or administration of the vending facility program. When such blind vendor is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary. Such complaint shall be accompanied by all available supporting documents, including a statement of the decision which was rendered and the reasons in support thereof.

(b) The filing of a complaint under paragraph (a) of this section with either the State licensing agency or the Secretary shall indicate consent by the blind vendor for the release of such information as is necessary for the conduct of a full evidentiary hearing or the hearing of an ad hoc arbitration panel.

(c) Upon receipt of a complaint filed by a blind vendor which meets the requirements established by the Secretary, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. chapter 5, subchapter II, give notice, conduct a hearing, and render its decision which shall be final and binding on the parties except that such

decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. chapter 7.

(d) The arbitration panel convened by the Secretary to hear the grievances of blind vendors shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the blind vendor; and

(3) One individual not employed by the State licensing agency or, where appropriate, its parent agency, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(e) If either the State licensing agency or the blind vendor fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(f) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(g) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

(h) The provisions of this section shall not require the participation of grantors of permits for the operation of vending facilities on property other than Federal property.

§395.14 The State Committee of Blind Vendors.

(a) The State licensing agency shall provide for the biennial election of a State Committee of Blind Vendors which, to the extent possible, shall be fully representative of all blind vendors in the State program on the basis of such factors as geography and vending facility type with a goal of providing for proportional representation of blind vendors on Federal property and blind vendors on other property. Participation by any blind vendor in any election shall not be conditioned upon the payment of dues or any other fees.

(b) The State Committee of Blind Vendors shall:

(1) Actively participate with the State licensing agency in major administrative decisions and policy and program development decisions affecting the overall administration of the State's vending facility program;

(2) Receive and transmit to the State licensing agency grievances at the request of blind vendors and serve as advocates for such vendors in connection with such grievances;

(3) Actively participate with the State licensing agency in the development and administration of a State system for the transfer and promotion of blind vendors;

(4) Actively participate with the State licensing agency in the development of training and retraining programs for blind vendors; and

(5) Sponsor, with the assistance of the State licensing agency, meetings and instructional conferences for blind vendors within the State.

§395.15 Use of nominee agreements.

(a) The State licensing agency may enter into an agreement whereby another agency or organization undertakes to furnish services to blind vendors. Such agreement shall be in writing and shall contain provisions which:

(1) Clearly insure the retention by the State licensing agency of full responsibility for the administration and operation of all phases of the program;

(2) Specify the type and extent of the services to be provided under such agreement;

(3) Provide that no set-aside charges will be collected from blind vendors except as specified in such agreement;

(4) Specify that no nominee will be allowed to exercise any function with respect to funds for the purchase of new equipment or for assuring a fair minimum of return to vendors, except to collect and hold solely for disposition in accordance with the order of the State licensing agency any charges authorized for those purposes by the licensing agency; and

(5) Specify that only the State licensing agency shall have control with respect to selection, placement, transfer, financial participation and termination of the vendors, and the preservation, utilization, and disposition of program assets.

(b) If the State licensing agency permits any agency or organization other

than a vendor to hold any right, title to, or interest in vending facilities or stock, the arrangement shall be one permitted by State law and shall specify in writing that all such right, title to, or interest is held by such agency or organization as the nominee of the State licensing agency for program purposes and subject to the paramount right of the State licensing agency to direct and control the use, transfer, and disposition of such vending facilities or stock.

§ 395.16 Permit for the establishment of vending facilities.

Prior to the establishment of each vending facility, other than a cafeteria, the State licensing agency shall submit an application for a permit setting forth the location, the amount of space necessary for the operation of the vending facility; the type of facility and equipment, the number, location and type of vending machines and other terms and conditions desired to be included in the permit. Such application shall be submitted for the approval of the head of the Federal property managing department, agency, or instrumentality. When an application is not approved, the head of the Federal property managing department, agency, or instrumentality shall advise the State licensing agency in writing and shall indicate the reasons for the disapproval.

§ 395.17 Suspension of designation as State licensing agency.

(a) If the Secretary has reason to believe that, in the administration of the program, there is a failure on the part of any State licensing agency to comply substantially with the Act and this part, he shall so inform such agency in writing, setting forth, in detail, the areas in which there is such failure and giving it a reasonable opportunity to comply.

(b) If, after the lapse of a reasonable time, the Secretary is of the opinion that such failure to comply still continues and that the State licensing agency is not taking the necessary steps to comply, he shall offer to such agency, by reasonable notice in writing thereto and to the chief executive of the State, an opportunity for a hearing before the Secretary (or person designated by the Secretary) to determine whether there is a failure on the part of such agency to comply substantially with the provisions of the Act and of this part.

(c) If it is thereupon determined that there is a failure on the part of such agency to comply substantially with the Act and this part, appropriate written notice shall be given to such agency and to the chief executive of the State suspending such agency's designation as licensing agency effective 90 days from the date of such notice. A copy of such written notice shall be given to each department, agency, or instrumentality of the United States responsible for the maintenance, operation, and protection of Federal property on which vending machines subject to the requirements of § 395.32 are located in the State. Upon the suspension of such designation, vending machine income from vending machines on Federal property due for accrual to the State licensing agency under § 395.32 shall be retained in escrow by such department, agency, or instrumentality of the United States responsible for the maintenance, operation and protection of the Federal property on which such vending machines are located, pending redesignation of the State licensing agency or rescission of the suspension under paragraph (e) of this section.

(d) If, before the expiration of such 90 days, the Secretary (or person designated by him) determines that the State licensing agency is taking the necessary steps to comply, he may postpone the effective date of such suspension for such time as he deems necessary in the best interest of the program.

(e) If, prior to the effective date of such suspension, the Secretary (or person designated by him) finds that there is no longer a failure on the part of the State licensing agency to comply substantially with the provisions of the Act and this part, he shall so notify the agency, the chief executive of the State, and each Federal department, agency, or instrumentality required to place funds in escrow under paragraph (c) of this section, in which event the suspension of the designation shall not

become effective and the requirement to place funds in escrow shall be terminated.

Subpart C—Federal Property Management

§395.30 The location and operation of vending facilities for blind vendors on Federal property.

(a) Each department, agency, or instrumentality of the United States in control of the maintenance, operation, and protection of Federal property shall take all steps necessary to assure that, wherever feasible, in light of appropriate space and potential patronage, one or more vending facilities for operation by blind licensees shall be located on all Federal property *Provided* that the location or operation of such facility or facilities would not adversely affect the interests of the United States. Blind persons licensed by State licensing agencies shall be given priority in the operation of vending facilities on any Federal property.

(b) Any limitation on the location or operation of a vending facility for blind vendors by a department, agency or instrumentality of the United States based on a finding that such location or operation or type of location or operation would adversely affect the interests of the United States shall be fully justified in writing to the Secretary who shall determine whether such limitation is warranted. A determination made by the Secretary concerning such limitation shall be binding on any department, agency, or instrumentality of the United States affected by such determination. The Secretary shall publish such determination in the FEDERAL REGISTER along with supporting documents directly relating to the determination.

(c) Priority in the operation of vending facilities in areas administered by the National Park Service or the National Aeronautics and Space Administration shall be given to blind vendors. Priority in the awarding of contracts for the operation of concessions in such areas when such concessions provide accommodations, facilities, and services of a scope or of a character not generally available in vending facilities operated by blind vendors shall be given in accordance with the provisions of the Concession Policy Act (Pub. L. 98–249, 16 U.S.C. 1) or the National Aeronautics and Space Act of 1958, as amended (Pub. L. 85–568, 42 U.S.C. 2473). The provisions of this part shall not apply when all accommodations, facilities, or services in such areas are operated by a single responsible concessioner.

§395.31 Acquisition and occupation of Federal property.

(a) Effective January 2, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, or lease, or to otherwise occupy, in whole or in part, any building unless it is determined that such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a purchase contract, an agreement to lease, or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply.

(b) Effective January 2, 1975, no department, agency, or instrumentality of the United States, shall undertake to occupy, in whole or in part, any building which is to be constructed, substantially altered, or renovated, or in the case of a building which is occupied on January 2, 1975 by a department, agency, or instrumentality of the United States, no such department, agency, or instrumentality shall undertake to substantially alter or renovate such building, unless it is determined that the design for such construction, substantial alteration, or renovation includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a design contract or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply. For purposes of this paragraph, *substantial alteration or renovation of a building* means a permanent material change in the floor area of such building which would render such building appropriate for the location and operation of a vending facility by a blind vendor.

(c) The determination that a building contains a satisfactory site or sites

under paragraph (a) or (b) of this section shall be made after consultation between the State licensing agency and the head of the department, agency, or instrumentality of the United States which is planning to acquire or otherwise occupy such building. In order to make such determination, effective on the publication date of this part each such department, agency, or instrumentality shall provide to the appropriate State licensing agency written notice of its intention to acquire or otherwise occupy such building. Such written notice shall be by certified or registered mail with return receipt and shall be provided as early as practicable but no later than 60 days prior to such intended action. The written notice shall indicate that a satisfactory site or sites for the location and operation of a vending facility by blind persons is included in the plans for the building to be acquired or otherwise occupied and shall further assure that the State licensing agency shall be afforded the opportunity to determine whether such building includes a satisfactory site or sites for a vending facility. The written notice shall further assure that the State licensing agency, subject to the approval of the head of the Federal property managing department, agency, or instrumentality, shall be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to the completion of the final space layout of the building. The receipt of such written notice shall be acknowledged in writing promptly by the State licensing agency but no later than within 30 days and the State licensing agency shall indicate at that time whether it is interested in establishing a vending facility. A copy of the written notice to the State licensing agency and the State licensing agency's acknowledgement shall be provided to the Secretary.

(d) When, after a written notice has been provided under paragraph (c) of this section, the State licensing agency determines that the number of persons using the Federal property is or will be insufficient to support a vending facility, and the Secretary concurs with such determination, the provisions of paragraphs (a) and (b) of this section shall not apply. The provisions of paragraphs (a) and (b) of this section shall also not apply when fewer than 100 Federal Government employees are or will be located during normal working hours in the building to be acquired or otherwise occupied or when such building contains less than 15,000 square feet of interior space to be utilized for Federal Government purposes in the case of buildings in which services are to be provided to the public.

(e) The operation of a vending facility established under pre-existing arrangements shall not be affected by the provisions of this section. The provisions of this section shall further not preclude future arrangements under which vending facilities to be operated by blind vendors may be established in buildings of a size or with an employee population less than that specified in paragraph (d) of this section: *Provided,* That both the State licensing agency and the Federal property managing department, agency or instrumentality concur in such establishment.

(f) Each department, agency, and instrumentality of the United States, when leasing property in privately owned buildings, shall make every effort to lease property capable of accommodating a vending facility. When, however, such department, agency, or instrumentality is leasing part of a privately owned building in which prior to the execution of the lease, the lessor or any of his tenants had in operation or had entered into a contract for the operation of a restaurant or other food facility in a part of the building not included in such lease and the operation of a vending facility by a blind vendor would be in proximate and substantial direct competition with such restaurant or other food facility, the provisions of paragraphs (a), (b), and (c) of this section shall not apply.

§ 395.32 Collection and distribution of vending machine income from vending machines on Federal property.

(a) The on-site official responsible for the Federal property of each property managing department, agency, or instrumentality of the United States, in accordance with established procedures

of such department, agency, or instrumentality, shall be responsible for the collection of, and accounting for, vending machine income from vending machines on Federal property under his control and shall otherwise ensure compliance with the provisions of this section.

(b) Effective January 2, 1975, 100 per centum of all vending machine income from vending machines on Federal property which are in direct competition with a vending facility operated by a blind vendor shall accure to the State licensing agency which shall disburse such income to such blind vendor operating such vending facility on such property provided that the total amount of such income accruing to such blind vendor does not exceed the maximum amount determined under §395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under §395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with §395.8(c).

(c) Effective January 2, 1975, 50 per centum of all vending machine income from vending machines on Federal property which are not in direct competition with a vending facility operated by a blind vendor shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating such vending facility on such property. In the event that there is no blind vendor, such income shall accrue to the State licensing agency, except as indicated under paragraph (d) of this section. The total amount of such income disbursed to such blind vendor shall not exceed the maximum amount determined under §395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may accrue to the blind vendor under §395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with §395.8(c).

(d) Effective January 2, 1975, 30 per centum of all vending machine income from vending machines, which are not in direct competition with a vending facility operated by a blind vendor and which are on Federal property at which at least 50 per centum of the total hours worked on the premises occurs during a period other than normal working hours, shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating a vending facility on such property. In the event that there is no blind vendor on such property, such income shall accrue to the State licensing agency. The total amount of such income disbursed to such blind vendor shall not exceed the maximum amount determined under §395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under §395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with §395.8(c).

(e) The determination that a vending machine on Federal property is in direct competition with a vending facility operated by a blind vendor shall be the responsibility of the on-site official responsible for the Federal property of each property managing department, agency or instrumentality of the United States, subject to the concurrence of the State licensing agency.

(f) In the case of vending machine income which, prior to the effective date of this part, has been disbursed to a blind vendor by a property managing department, agency, or instrumentality from proceeds which accrued from operations subsequent to January 2, 1975, pursuant to agreements in effect prior to such time, such income may be deducted, at the discretion of such property managing department, agency or instrumentality, from vending machine income due to the State licensing agency under paragraphs (b), (c), or (d) of this section.

(g) The collection of vending machine income and its disbursement to the appropriate State licensing agency shall be conducted on at least a quarterly basis.

(h) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to, State licensing agencies, shall be renegotiated upon the expiration of the

existing contract or other arrangement for consistency with the provisions of this section.

(i) The provisions of this section shall not apply to income from vending machines within operated retail sales outlets under the control of post exchange or ships' stores systems authorized under title 10 U.S.C.; to income from vending machines operated by the Veterans Canteen Service; or to income from vending machines not in direct competition with a blind vending facility at individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed $3,000 annually.

(j) The provisions of this section shall not operate to preclude pre-existing or future arrangements, or regulations of departments, agencies, or instrumentalities of the United States, under which blind vendors or State licensing agencies may:

(1) Receive a greater percentage or amount of vending machine income than that specified in paragraphs (b), (c), and (d) of this section, or

(2) Receive vending machine income from individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed $3,000 annually.

§ 395.33 Operation of cafeterias by blind vendors.

(a) Priority in the operation of cafeterias by blind vendors on Federal property shall be afforded when the Secretary determines, on an individual basis, and after consultation with the appropriate property managing department, agency, or instrumentality, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees, whether by contract or otherwise. Such operation shall be expected to provide maximum employment opportunities to blind vendors to the greatest extent possible.

(b) In order to establish the ability of blind vendors to operate a cafeteria in such a manner as to provide food service at comparable cost and of comparable high quality as that available from other providers of cafeteria services, the appropriate State licensing agency shall be invited to respond to solicitations for offers when a cafeteria contract is contemplated by the appropriate property managing department, agency, or instrumentality. Such solicitations for offers shall establish criteria under which all responses will be judged. Such criteria may include sanitation practices, personnel, staffing, menu pricing and portion sizes, menu variety, budget and accounting practices. If the proposal received from the State licensing agency is judged to be within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award, the property managing department, agency, or instrumentality shall consult with the Secretary as required under paragraph (a) of this section. If the State licensing agency is dissatisfied with an action taken relative to its proposal, it may file a complaint with the Secretary under the provisions of § 395.37.

(c) All contracts or other existing arrangements pertaining to the operation of cafeterias on Federal property not covered by contract with, or by permits issued to, State licensing agencies shall be renegotiated subsequent to the effective date of this part on or before the expiration of such contracts or other arrangements pursuant to the provisions of this section.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, Federal property managing departments, agencies, and instrumentalities may afford priority in the operation of cafeterias by blind vendors on Federal property through direct negotiations with State licensing agencies whenever such department, agency, or instrumentality determines, on an individual basis, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees: *Provided, however,* That the provisions of paragraphs (a) and (b) of this section shall apply in the event that the negotiations authorized by this paragraph do not result in a contract.

§395.34 Application for permits.

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing on the appropriate form, and submitted for the review and approval of the head of the Federal property managing department, agency, or instrumentality.

§395.35 Terms of permit.

Every permit shall describe the location of the vending facility including any vending machines located on other than the facility premises and shall be subject to the following provisions:

(a) The permit shall be issued in the name of the applicant State licensing agency which shall:

(1) Prescribe such procedures as are necessary to assure that in the selection of vendors and employees for vending facilities there shall be no discrimination because of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation; and

(2) Take the necessary action to assure that vendors do not discriminate against any person or persons in furnishing, or by refusing to furnish, to such person or persons the use of any vending facility, including any and all services, privileges, accommodations, and activities provided thereby, and comply with title VI of the Civil Rights Act of 1964 and regulations issued pursuant thereto.

(b) The permit shall be issued for an indefinite period of time subject to suspension or termination on the basis of compliance with agreed upon terms.

(c) The permit shall provide that:

(1) No charge shall be made to the State licensing agency for normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas;

(2) Cleaning necessary for sanitation, and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment shall be without cost to the department, agency, or instrumentality responsible for the maintenance of the Federal property; and

(3) Articles sold at vending facilities operated by blind licensees may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or services as are determined by the State licensing agency, in consultation with the on-site official responsible for the Federal property of the property managing department, agency or instrumentality, to be suitable for a particular location. Such articles and services may be dispensed automatically or manually and may be prepared on or off the premises in accordance with all applicable health laws.

(d) The permit shall further provide that vending facilities shall be operated in compliance with applicable health, sanitation, and building codes or ordinances.

(e) The permit shall further provide that installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval and supervision of the on-site official responsible for the Federal property of the property managing department, agency, or instrumentality, and the State licensing agency; that costs of relocations initiated by the State licensing agency shall be paid by the State licensing agency; and that costs of relocations initiated by the department, agency, or instrumentality shall be borne by such department, agency, or instrumentality.

(f) The operation of a cafeteria by a blind vendor shall be covered by a contractual agreement and not by a permit.

§395.36 Enforcement procedures.

(a) The State licensing agency shall attempt to resolve day-to-day problems pertaining to the operation of the vending facility in an informal manner with the participation of the blind vendor and the on-site official responsible for the property of the property managing department, agency, or instrumentality as necessary.

(b) Unresolved disagreements concerning the terms of the permit, the Act, or the regulations in this part and any other unresolved matters shall be

reported in writing to the State licensing agency supervisory personnel by the Regional or other appropriate official of the Federal property managing department, agency, or instrumentality in an attempt to resolve the issue.

§ 395.37 Arbitration of State licensing agency complaints.

(a) Whenever any State licensing agency determines that any department, agency, or instrumentality of the United States which has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of the Act or of this part and all informal attempts to resolve the issues have been unsuccessful, such licensing agency may file a complaint with the Secretary.

(b) Upon receipt of a complaint filed under paragraph (a) of this section, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. ch. 5, subchapter II, give notice, conduct a hearing and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. ch. 7. The arbitration panel convened by the Secretary to hear complaints filed by a State licensing agency shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the head of the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose; and

(3) One individual, not employed by the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(c) If either the State licensing agency or the head of the Federal department, agency, or instrumentality fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(d) If the panel finds that the acts or practices of any department, agency, or instrumentality are in violation of the Act or of this part, the head of any such department, agency, or instrumentality (subject to any appeal under paragraph (b) of this section) shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

(e) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(f) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

§ 395.38 Reports.

At the end of each fiscal year, each property managing department, agency, or instrumentality of the United States shall report to the Secretary the total number of applications for vending facility locations received from State licensing agencies, the number accepted, the number denied, the number still pending, the total amount of vending machine income collected and the amount of such vending machine income disbursed to the State licensing agency in each State.

PART 396—TRAINING OF INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF AND INDIVIDUALS WHO ARE DEAF-BLIND

Subpart A—General

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396.33 What priorities does the Secretary apply in making awards?

AUTHORITY: 29 U.S.C. 771a(f), unless otherwise noted.

SOURCE: 59 FR 52220, Oct. 14, 1994, unless otherwise noted.

Subpart A—General

§396.1 What is the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program?

The Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program is designed to establish interpreter training programs or to assist ongoing programs to train a sufficient number of skilled interpreters throughout the country in order to meet the communication needs of individuals who are deaf and individuals who are deaf-blind by—

(a) Training manual, tactile, oral, and cued speech interpreters;

(b) Ensuring the maintenance of the skills of interpreters; and

(c) Providing opportunities for interpreters to raise their level of competence.

(Authority: 29 U.S.C. 771a(f))

§396.2 Who is eligible for an award?

Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under this program.

(Authority: 29 U.S.C. 771a(f))

§396.3 What regulations apply?

The following regulations apply to the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind 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).

(2) 34 CFR part 75 (Direct Grant 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).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Government 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 396.

(c) The following regulations in 34 CFR part 385:

(1) Section 385.32.

(2) Section 385.40.

(3) Section 385.44.

(4) Section 385.45.

(5) Section 385.46.

(Authority: 29 U.S.C. 771a(f))

§396.4 What definitions apply?

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

Applicant
Application
Award
Equipment
Grant
Nonprofit
Private
Project
Public
Secretary
Supplies

(b) *Definitions in the rehabilitation training regulations.* The following terms defined in 34 CFR 385.4(b) apply to this part:

Individual With a Disability
Institution of Higher Education

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

Existing program that has demonstrated its capacity for providing interpreter

training services means an established program with—

(1) A record of training interpreters who are serving the deaf and deaf-blind communities; and

(2) An established curriculum that is suitable for training interpreters.

Individual who is deaf means an individual who has a hearing impairment of such severity that the individual must depend primarily upon visual modes, such as sign language, lip reading, and gestures, or reading and writing to facilitate communication.

Individual who is deaf-blind means an individual—

(1)(i) Who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both of these conditions;

(ii) Who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and

(iii) For whom the combination of impairments described in paragraphs (1)(i) and (ii) of this definition causes extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation;

(2) Who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining vocational objectives; or

(3) Who meets any other requirements that the Secretary may prescribe.

Interpreter for individuals who are deaf means a qualified professional who uses sign language skills, cued speech, or oral interpreting skills, as appropriate to the needs of individuals who are deaf, to facilitate communication between individuals who are deaf and other individuals.

Interpreter for individuals who are deaf-blind means a qualified professional who uses tactile or other manual language or fingerspelling modes, as appropriate to the needs of individuals who are deaf-blind, to facilitate communication between individuals who are deaf-blind and other individuals.

Qualified professional means an individual who has either—

(1) Met existing national or state certification or evaluation requirements; or

(2) Successfully demonstrated equivalent interpreting skills through prior work experience.

(Authority: 29 U.S.C. 711(c) and 771a(f); 29 U.S.C 1905)

§ 396.5 What activities may the Secretary fund?

The Secretary provides assistance for projects that provide training in interpreting skills for persons preparing to serve, and persons who are already serving, as interpreters for individuals who are deaf and as interpreters for individuals who are deaf-blind in public and private agencies, schools, and other service-providing institutions.

(Authority: 29 U.S.C. 771a(f))

Subpart B—[Reserved]

Subpart C—How Does One Apply for an Award?

§ 396.20 What must be included in an application?

Each applicant shall include in the application—

(a) A description of the manner in which the proposed interpreter training program will be developed and operated during the five-year period following the award of the grant;

(b) A description of the geographical area to be served by the project;

(c) A description of the applicant's capacity or potential for providing training for interpreters for individuals who are deaf and interpreters for individuals who are deaf-blind;

(d) An assurance that any interpreter trained or retrained under this program shall meet any minimum standards of competency that the Secretary may establish;

(e) An assurance that the project shall cooperate or coordinate its activities, as appropriate, with the activities of other projects funded under this program; and

(f) The descriptions required in 34 CFR 385.45 with regard to the training of individuals with disabilities, including those from minority groups, for rehabilitation careers.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: 29 U.S.C. 718b(b)(6), 777a(a)(5), and 771a(f))

Subpart D—How Does the Secretary Make an Award?

§396.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates applications under the procedures in 34 CFR part 75.

(b) The Secretary evaluates each application using selection criteria in §396.31.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 771a(f))

[62 FR 10406, Mar. 6, 1997]

§396.31 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 396.30(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Demonstrated relationships with service providers and consumers.* The Secretary reviews each application to determine the extent to which—

(1) The proposed interpreter training project was developed in consultation with service providers;

(2) The training is appropriate to the needs of both individuals who are deaf and individuals who are deaf-blind and to the needs of public and private agencies that provide services to either individuals who are deaf or individuals who are deaf-blind in the geographical area to be served by the training project;

(3) There is a working relationship between the interpreter training project and service providers; and

(4) There are opportunities for individuals who are deaf and individuals who are deaf-blind to be involved in the training project.

(Authority: 29 U.S.C. 771a(f))

[62 FR 10406, Mar. 6, 1997]

§396.32 What additional factors does the Secretary consider in making awards?

In addition to the selection criteria listed in §396.31 and 34 CFR 75.210, the Secretary, in making awards under this part, considers the geographical distribution of projects throughout the country, as appropriate, in order to best carry out the purposes of this program. To accomplish this, the Secretary may in any fiscal year make awards of regional or national scope.

(Authority: 29 U.S.C. 771a(f))

[59 FR 52220, Oct. 14, 1994, as amended at 62 FR 10406, Mar. 6, 1997]

§396.33 What priorities does the Secretary apply in making awards?

The Secretary, in making awards under this part, gives priority to public or private nonprofit agencies or organizations with existing programs that have demonstrated their capacity for providing interpreter training services.

(Authority: 29 U.S.C. 771a(f))

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FINDING AIDS

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380.9 (c)(1)(i) and (ii) revised 6363
380.10 Revised 10404

34 CFR—Continued

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380.11 Removed 10404
380.12 Removed 10404
380.13 Removed 10404
380.14 Revised 10404
381 Interpretation 14638
381.20 Revised 10404
381.21 Removed 10404
385 Interpretation 14638
385.31 Revised 10404
385.32 Removed 10404
385.33 Introductory text amended 10404
386 Interpretation 14638
386.20 Revised 10404
387 Interpretation 14638
387.30 Revised 10405
388 Interpretation 14638
388.20 Revised 10405
389 Interpretation 14638
389.30 Revised 10405
390 Interpretation 14638
390.30 Revised 10406
396 Interpretation 14638
396.30 Revised 10406
396.31 Revised 10406
396.32 Amended 10406

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