DEPARTMENT OF EDUCATION

34 CFR Part 366

RIN 1820–AA81

Centers for Independent Living

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Centers for Independent Living (CIL) program. These regulations are needed to establish indicators of minimum compliance with the evaluation standards for centers for independent living enacted in the Rehabilitation Act of 1973 (Act), as amended by the Rehabilitation Act Amendments of 1992 (1992 Amendments) and the Rehabilitation Act Amendments of 1993 (1993 Amendments).

EFFECTIVE DATE: These regulations take effect August 31, 1995.

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SUPPLEMENTARY INFORMATION: The CIL program supports the planning for and establishing, conducting, administrating, assisting, and evaluating of centers. These regulations add a new subpart G to 34 CFR part 366, which contains the regulations governing the CIL program. Section 725(b) of the Act establishes evaluation standards for centers. Section 706(b) of the Act requires the Secretary to publish indicators of what constitutes minimum compliance with the evaluation standards. Subpart G incorporates these evaluation standards and compliance indicators into the program regulations.

The CIL program is an important part of the National Education Goals. This program supports the National Education Goal that, by the year 2000, every adult American 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.

The Rehabilitation Act Amendments of 1986, Pub. L. 99–506, required that the Secretary publish indicators of what constitutes minimum compliance with the evaluation standards under section 711(e) of the Act, as it existed prior to the 1992 Amendments, Pub. L. 102–569. The Secretary published proposed compliance indicators in the **Federal Register** in an advance notice of proposed rulemaking (ANPRM) on July 10, 1992. The Secretary received over 100 written comments during the comment period on the ANPRM, as well as 35 oral comments during a public meeting held on August 27, 1992. Following the publication of the ANPRM, the Secretary also solicited and received input from experts in the field concerning alternative approaches to the indicators.

The major elements of six of the evaluation standards proposed by the U.S. Department of Education (Department) in the ANPRM were codified as part of the Act by the 1992 Amendments, which was enacted shortly after publication of the ANPRM. In addition, the 1992 Amendments requires that the Secretary publish indicators of what constitutes minimum compliance with the evaluation standards under section 725(b) of the Act.

On October 27, 1993, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 57942) proposing to amend existing regulations for the CIL program by establishing indicators of minimum compliance with the new evaluation standards. On December 21, 1993 (58 FR 67383), the Secretary extended the comment period on the NPRM to coincide with the comment period on the proposed regulations implementing other changes to Title VII of the Act. The major issues related to the CIL program were discussed in the preamble to the NPRM.

In general, the commenters agreed with the direction that the Department had taken. However, a significant number of the commenters were opposed to the bifurcated approach of demonstrating compliance with the evaluation standards through (1) Baseline requirements that had to be met by all centers and (2) a selection of various activities that centers could choose from to earn a minimum number of bonus points. Some commenters believed that this approach placed small centers at a disadvantage. Another commenter stated that this approach appeared to establish two sets of minimum standards without establishing one absolute minimum standard. The Secretary agrees that the indicators should be simplified by eliminating the requirement that centers engage in various activities within each of the indicators to earn a minimum number of bonus points to comply with the evaluation standards. Therefore, in response to these and other public comments, the final regulations delete the bonus point approach, including all of the bonus point activities. In addition, the final regulations include other changes to the NPRM made in response to public comment.

The Secretary also is moving to 34 CFR part 366 two of the definitions that were proposed to be added to 34 CFR part 364 in the NPRM.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 99 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. General comments are discussed first, followed by comments on specific sections of the regulations. Because the bonus point activities have been eliminated as part of the elimination of the bonus point approach, comments on each of these bonus point activities are not discussed. In addition, technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

General Comments

Comments: One commenter expressed concern that the proposed regulations did not include or mention assistive technology services and devices. This commenter recommended that centers demonstrate how these services and devices are provided.

Discussion: Although a center may provide assistive services and devices to a particular individual, assistive services and devices are not listed in the Act as a specific IL service that a center is required to provide. Therefore, the Secretary does not believe centers should be required to demonstrate that they have provided these services to achieve minimum compliance with the evaluation standards for the CIL program.

Changes: None.

Comments: Several commenters recommended that the regulations place more emphasis on advocacy activities and less on service delivery. In addition, some commenters recommended that the regulations place more emphasis on outcomes and less on process.

Discussion: The Secretary believes that the final regulations properly reflect the emphasis on advocacy activities, service delivery, and outcomes found in the Act.

Changes: None.

Comments: None.

Discussion: Since publication of the NPRM, the Secretary has amended 34 CFR 75.118(a) and deleted the requirement for applications for non-competing continuation awards. In the place of an application, an applicant for

a continuation award needs to submit only a simple performance report.
Changes: The Secretary has deleted all references to an application for a continuation award and substituted ''annual performance report'' in its place in these final regulations.

Definitions (§ 366.5)

Comments: None.
Discussion: Since publication of the NPRM, the Secretary has reviewed the final regulations for IL services programs (34 CFR part 366) that were published in the **Federal Register** on August 15, 1994 (59 FR 41880) and determined that a definitions section was inadvertently left out of part 366. This omission was the result of the separate publication of this subpart G, which included proposed definitions applicable only to part 366 but did not add a definitions section to part 366. Therefore, the Secretary is correcting this omission at this time.
Changes: The Secretary is adding a new ''§ 366.5 *What definitions apply to this program*?'' to 34 CFR part 366 of the final regulations for IL services programs. In addition, the Secretary is redesignating current ''§ 366.5 *How are program funds allotted*?'' as § 366.6.
Comments: None.
Discussion: Since publication of the NPRM, the Secretary has published final regulations for the IL services programs. See 59 FR 41880–41912. The Secretary included definitions for the following terms in those final regulations: ''Individual with a significant disability,'' ''Minority group,'' ''Significant disability,'' and ''Unserved and underserved groups or populations.'' Therefore, the Secretary does not believe it is necessary to repeat those definitions in these final regulations. In addition, the Secretary has determined that the proposed definitions of ''consumer,'' ''consumer service record,'' ''cross-disability peer counseling,'' ''information and referral services,'' ''independent living skills training,'' and ''peer counseling'' are unnecessary. The Secretary does not believe it is necessary or useful to establish definitions for these terms through regulations. The Secretary expects that States and centers will interpret these terms in a manner that will provide for the efficient and proper administration of this program. However, comments on requirements related to the terms ''decisionmaking position'' and ''staff position'' indicate that definitions of these terms will assist centers in determining how to comply with these requirements.
Changes: The Secretary has deleted the definitions of ''consumer,'' ''consumer service record,'' ''cross-disability peer counseling,'' ''information and referral services,'' ''independent living skills training,'' ''individual with a significant disability,'' ''minority group,'' ''peer counseling,'' ''significant disability,'' and ''unserved or underserved'' from the final regulations.
Comments: Several commenters suggested that the definition of ''decisionmaking position'' be clarified.
Discussion: The Secretary agrees that this definition should be clarified by removing the reference to first-line and second-line supervisors. The Secretary believes that any supervisor should be included in the definition of ''decisionmaking position.'' The Secretary also believes that this definition provides flexibility for centers to determine who exercises decisionmaking authority within a center.
Changes: The Secretary has revised the definition of a ''decisionmaking position'' to clarify that any position within a center that carries the authority to establish policy for the center is included within this definition.
Comments: A few commenters recommended that the proposed definition of ''staff position'' be revised to conform with the definition of this term established by the U.S. Department of Labor (DOL). However, none of the commenters stated the DOL definition or identified where this definition can be found. One commenter suggested that decisionmakers be included in the definition of ''staff position'' because decisionmakers are also ''staff.''
Discussion: Neither the Secretary nor DOL staff consulted by ED staff is aware of a DOL definition of ''staff position'' or ''decisionmaking position.'' Although a definition exists for the term ''employee'' in regulations implementing the Fair Labor Standards Act, the Secretary does not believe DOL's definition of ''employee'' is either helpful or necessary for purposes of this indicator. Nevertheless, nothing in the definition of ''staff position'' in the final regulations is inconsistent with DOL's definition of ''employee.'' The Secretary does not agree that decisionmakers should be included as ''staff'' for purposes of this indicator because this would create an unnecessary overlap between the meaning of the terms ''staff position'' and ''decisionmaking position.''
Changes: None.
Comments: Several commenters recommended additional definitions for the following terms: ''increasing and improving community options,'' ''increasing and improving community capacity,'' ''self-help and self-advocacy,'' and ''systems advocacy.''
Discussion: The Secretary does not believe it is necessary or useful to establish definitions for these terms through regulations. The Secretary expects that States and centers will interpret these terms in a manner that will provide for the efficient and proper administration of this program.
Changes: None.

Multi-State Centers (§ 366.62)

Comments: Several commenters recommended that centers serving more than one State or region and receiving funds from multiple sources be reviewed for compliance with the evaluation standards as a single center.
Discussion: The Secretary agrees with the commenters. The regulations are silent on this issue and neither require nor permit the Department to conduct separate reviews of a center for each grant that the center receives from the Department. The Secretary believes section 706(c)(1) of the Act provides sufficient guidance on the Secretary's responsibility to conduct on-site compliance reviews of centers and does not believe it is necessary to regulate further on this issue.
Changes: None.

Staff Positions (§ 366.63(a)(1))

Comments: A few commenters agreed with the exclusion of personal care assistants, readers, and interpreters from the determination of a center's compliance with the requirement that more than 50 percent of a center's decisionmaking and staff positions be filled by individuals with disabilities. These commenters recommended adding van drivers to the list of those persons to be excluded from this determination. A couple of commenters disagreed with the exclusion of personal care assistants, readers, and interpreters from this determination.
Discussion: The Secretary believes that a center should have the option of excluding drivers, as well as interpreters, personal assistants, and readers, from the determination of a center's compliance with this provision.
Changes: The Secretary has added drivers to § 366.63(a)(1)(ii) of the final regulations and given a center the option of excluding drivers, interpreters, personal assistants, and readers from the determination of the center's compliance with this requirement.
Comments: Several commenters did not understand or disagreed with the proposed use of total number of hours worked by paid employees to determine a center's compliance with the requirement that more than 50 percent

of a center's decisionmaking and staff positions must be filled by individuals with disabilities. One commenter stated that this approach would be burdensome and would require unnecessary reporting and recordkeeping. A couple of commenters suggested that only ''positions'' be considered to determine compliance with this requirement and that the positions must be based on 40 full-time equivalent (FTE) hours per week. Another commenter questioned whether the total number of hours worked will be determined using expected or actual number of hours worked.

Discussion: The Secretary does not agree that this requirement is burdensome or will require unnecessary reporting and recordkeeping. Centers already are required to maintain records of the number of hours their paid employees work each week. Using the number of hours worked to determine compliance with the greater than 50 percent staffing requirement would not require additional recordkeeping. In addition, the Secretary believes that overtime hours should be excluded from this determination because extra hours worked by individual employees could produce a distorted representation of a center's work force. Also, centers with equal numbers of staff who are individuals with significant disabilities and who are not individuals with significant disabilities might simply assign overtime to their staff who are individuals with significant disabilities to comply with the greater than 50 percent staffing requirement. Excluding overtime will simplify the calculation that a center needs to make to comply with this requirement.

Finally, the Secretary believes that only those hours for which an employee is compensated should be considered to determine compliance with the greater than 50 percent staffing requirement because of the difficulty in determining the number of extra hours an employee may have worked for which the employee was not compensated.

Changes: The Secretary has revised § 366.63(a)(1)(iii) to exclude overtime from the determination of a center's compliance with this requirement. In addition, the Secretary has revised this provision to include only those hours for which an employee is actually paid in determining a center's compliance with this requirement.

Comments: Several commenters disagreed with the proposed use of the three-month period preceding the application date to determine a center's compliance with the requirement that more than 50 percent of a center's decisionmaking and staff positions must be filled by individuals with disabilities. Several commenters recommended that the relevant period be the six-month period preceding the application date because data collected during the six-month period preceding the end of the project year would be more reliable. A couple of commenters suggested that the relevant period be the 12-month period preceding the application date.

Discussion: The Secretary agrees with the commenters that the three-month period is too short and that the six-month period preceding the end of the reporting period is the least burdensome timeframe for a center to gather information concerning its paid employees. The Secretary also agrees that data collected during the six-month period preceding the end of the project year will be more reliable than the three-month period proposed in the NPRM.

In addition, the NPRM was published before the Department eliminated the need for grantees to submit applications for non-competing continuation awards. Grantees are now required only to submit an annual performance report that demonstrates their compliance with statutory and regulatory requirements and the terms of the grant award. The final regulations reflect this change by eliminating any reference to continuation applications and referring instead to annual performance reports.

Changes: The Secretary has changed the period of consideration in § 366.63(a)(1)(iii) of the final regulations from the three-month period preceding the date the center submits its continuation application to the last six months of the period covered by the center's most recent annual performance report.

Comments: A couple of commenters recommended that individuals who are on family or maternity leave be counted during the three-month period preceding the application date to determine a center's compliance with the 50 percent requirement.

Discussion: The Secretary agrees that an individual who is on unpaid family or maternity leave during any or all of the six-month period should be included in this determination. Compliance with the 50 percent requirement should not be affected just because an employee of a center is on unpaid family or maternity leave during this six-month period. In making its determination, a center will use the number of weekly hours worked by an employee prior to going on unpaid family or maternity leave.

Changes: The Secretary has added language to § 366.63(a)(1)(iii) to permit a center to include employees on unpaid family or maternity leave for determining its compliance with the 50 percent requirement. A center must include in this determination its employees who are on unpaid family or maternity leave during the six-month period.

Self-Help and Self-Advocacy

Comments: None.

Discussion: Pursuant to the NPRM, a center would have been required to provide evidence that it established written policies for promoting self-help and self-advocacy among individuals with significant disabilities. Since publication of the NPRM, the Secretary has reviewed this section and determined that whether or not a center has written policies is unimportant if the center actually promotes self-help and self-advocacy among individuals with significant disabilities.

Changes: The Secretary has deleted the requirement for written policies from the final regulations.

Development of Peer Relationships and Peer Role Models (§ 366.63(3)(iii))

Comments: One commenter stated that the use of individuals with significant disabilities as instructors is more effective than written policies and procedures.

Discussion: The Secretary agrees that written policies are unimportant if the center actually promotes the development of peer relationships and peer role models among individuals with significant disabilities. However, the Secretary also believes that the development of peer relationships and peer role models among individuals with significant disabilities can be accomplished in a variety of ways and does not believe it is necessary to require a center to use individuals with significant disabilities as instructors to meet this requirement.

Changes: The Secretary has deleted the requirement for written policies from the final regulations.

Equal Access (§ 366.63(a)(4)) and Provision of Services on a Cross-Disability Basis (§ 366.63(b)(1))

Comments: Some commenters recommended that the proposed regulations be clarified to permit centers to provide services or programs that are targeted or limited to persons with a single type of disability (e.g., individuals who are blind or deaf).

Discussion: The 1992 Amendments require that centers receiving funds under Title VII of the Act provide IL services to individuals with significant disabilities without regard to the type or

types of specific significant disabilities of the individuals or groups of individuals. Under the final regulations, a center must provide the IL core services to individuals with significant disabilities in a manner that is neither targeted nor limited to a particular type of significant disability. In addition, a center may not limit the provision of any other IL service that could be provided to individuals with a variety of significant disabilities to individuals with a particular type of significant disability. For example: A center may not limit the provision of personal assistance services to individuals who are blind. However, a center may limit the provision of Braille instruction to individuals who are blind. The availability of an IL service (other than the IL core services) may be limited to individuals with a particular type of significant disability only if that IL service is unique to the significant disability of the individuals to be served.

Whether a center may target individuals with a particular type of significant disability for a particular type of IL service is a different question. If a center has identified individuals with a particular type of significant disability as an ''unserved or underserved group or population'' pursuant to the definition in 34 CFR 364.4(b), the center may target this unserved or underserved group or population for any IL service, including the IL core services. However, the center may not limit the IL services it provides to only this group or population of individuals with a particular type of significant disability.

Changes: The Secretary has added language to § 366.63(b)(1) of the final regulations that allows a center to restrict the availability of an IL service (other than the IL core services) to individuals with a particular type of significant disability if the IL service (other than the IL core services) is unique to that significant disability of the individuals to be served.

Comments: One commenter recommended that the proposed regulations include an assurance that centers conduct affirmative action programs to hire members of minority groups. This commenter believes that Federal laws generally require recipients of Federal funds to conduct affirmative action programs to hire members of minority groups, even though the commenter did not identify any specific statute.

Discussion: Although section 725(c)(5) of the Act requires that an applicant for funds under Part C of Chapter 1 of Title VII of the Act take affirmative action to employ and advance in employment qualified individuals with significant disabilities, nothing in Title VII requires centers receiving funds under Part C of Chapter 1 of Title VII of the Act to take affirmative action to employ and advance in employment qualified minorities.

Changes: None.

Comments: One commenter recommended that a center's written policies and materials be available in alternative formats as a means of providing equal access to individuals with disabilities.

Discussion: The Secretary agrees that a center should make available, as appropriate, all of its written policies and materials in alternative formats for effective communication. In addition, the Secretary believes that, as appropriate, a center should make its IL services available in alternative formats. For example, if a center provides a list of available housing units that are accessible to individuals with significant disabilities as part of its information and referral services, then the center should make this list available, as appropriate, either orally, in Braille, or on tape, if the written form of the list prevents effective communication with an individual requesting the list.

Changes: The Secretary has added a new § 366.63(a)(5) to the final regulations that requires a center to make available, as appropriate, all of its written policies and materials in alternative formats for effective communication. In addition, this new provision requires a center to make available, as appropriate, its IL services in alternative formats.

Cross-Disability (§ 366.63(b))

Comments: One commenter recommended that a center be able to comply with the cross-disability requirement by demonstrating a fairly even distribution of services across a simple majority of the Federal disability reporting categories.

Discussion: The Secretary agrees that a center that demonstrates a fairly even distribution of services across a simple majority of the Federal disability reporting categories is presumed to be in compliance with the cross-disability requirement, if no evidence exists that the center has denied eligibility for an IL service to any individual with a significant disability based on the type of the individual's disability. Because other evidence may exist that a center is not in compliance with this requirement, the Secretary does not believe it is appropriate to create an irrebuttable presumption of compliance.

Changes: None.

Comments: One commenter recommended that the proposed regulations be clarified to ensure that all of the core services are available to an individual regardless of the individual's disability. Another commenter recommended that the proposed regulations be revised to prevent a center from relying on an individual's secondary disability to comply with the cross-disability requirement. Another commenter recommended that centers maintain a tracking system to ensure that all individuals in need of IL services are served by the center.

Discussion: The Secretary agrees that the language in the proposed regulations should be clarified to ensure that all of the core services are available to an individual regardless of the individual's disability and to prevent a center from relying on an individual's disability (whether ''secondary'' or otherwise) to comply with the cross-disability requirement. By forbidding a center from targeting or limiting the IL core services based on an individual's type of significant disability, the classification of an individual's significant disability as ''primary'' or ''secondary'' will be irrelevant for purposes of providing the IL core services and for complying with the cross-disability requirement.

In addition, the Secretary believes that the reporting requirements and recordkeeping requirements are adequate to prevent discrimination on the basis of type of disability and to ensure that centers provide the IL core services to individuals with a broad range of disabilities. Therefore, the Secretary does not agree that these regulations should require centers to maintain a tracking system as suggested by the commenter.

Changes: The Secretary has added language to § 366.63(b)(3) of the final regulations to clarify that a center may not target or limit the IL core services to any individual or group of individuals with significant disabilities based on the type of significant disability of the individual or group of individuals.

IL Goals (§ 366.63(c))

Comments: One commenter recommended that centers be required to achieve a 25 percent success rate on the IL goals identified by consumers. Another commenter stated that the attempt to achieve an IL goal is as important as achieving it.

Discussion: The Secretary does not believe it is appropriate to establish a percentage that centers must attain for the achievement of IL goals developed

by consumers. The populations served by different centers may vary so widely that a reasonable percentage for one center may be unrealistic for another center.

Changes: None.

Comments: A few commenters stated that requiring a center to measure or track the achievement of IL goals by consumers is inappropriate or may be nearly impossible.

Discussion: Any measurement of the achievement of IL goals would require uniformity to be meaningful. However, IL goals and how they are achieved is not uniform. Therefore, the Secretary agrees that requiring a center to measure the achievement of IL goals by a consumer is inappropriate. However, the Secretary believes that maintaining records of the IL goals that consumers believe they have achieved is appropriate and feasible, both for the consumer and the center.

Changes: The Secretary has deleted the requirement that a center measure the achievement of IL goals by consumers but has specified that consumer service records meet the requirements of 34 CFR 364.53. Section 364.53 includes the requirements that a consumer service record include (1) the IL goals or objectives established and achieved by the consumer; and (2) either an IL plan or a waiver signed by the consumer that an IL plan is unnecessary.

Comments: None.

Discussion: Pursuant to the NPRM, a center was required to facilitate the development and achievement of IL goals selected by individuals with significant disabilities who request assistance from the center. Since publication of the NPRM, the Secretary has reviewed this section and determined that compliance with this standard can best be accomplished by requiring a center to assess consumer satisfaction with the center's services and policies in facilitating consumers' achievement of IL goals. In addition, the Secretary believes compliance will be further insured by requiring a center to provide this information to its governing board and the appropriate SILC. Finally, the Secretary believes that notifying consumers of their right to develop or waive the development of an IL plan (ILP) also is important to insure compliance with this standard.

Changes: The Secretary has added a requirement to the final regulations that a center (1) assess consumer satisfaction with the center's services and policies in facilitating consumers' achievement of IL goals and provide this information to its governing board and the appropriate SILC; and (2) notify all consumers of their right to develop or waive the development of an ILP.

Comments: A few commenters recommended that any reporting requirements be limited in scope and suggested that a consumer service record not be required for ''casual services.'' A couple of commenters suggested that an ''intake sheet'' be sufficient as a case service record. Another commenter recommended that a case service record include only the consumer's application form and any notes by the center staff member who works with the consumer.

Discussion: The information that must be included in a consumer service record is described in 34 CFR 364.53. The Secretary believes that this information is necessary for the proper and efficient administration of this program. An ''intake sheet'' or an application form and notes made by the center's staff member who works with the consumer are sufficient if they include the information required by 34 CFR 364.53.

Changes: The Secretary has added language to the definition of consumer service record in the final regulations to clarify that a consumer service record must meet the requirements of 34 CFR 364.53.

Community Options and Community Capacity (§ 366.63(d))

Comments: One commenter stated that this indicator is meaningless without further explanation and definitions of the required activities. Another commenter recommended that these regulations require more specific measures of compliance. Another commenter recommended that the term ''community advocacy,'' which is used in this provision, be defined. Another commenter stated that clarification is needed on what constitutes a center's service area.

Discussion: The Secretary does not believe it is necessary to define further the activities that a center must carry out to comply with this indicator. The Secretary believes that each center should have flexibility in defining these activities within the context of its own operating environment and service area. The Secretary also expects that each center will define its own service area and describe the area it expects to serve in its application for funding under this program. Finally, the Secretary believes that the term ''community advocacy'' is encompassed by the term ''systems (or systemic) advocacy,'' which is defined in 34 CFR 364.4(b) of the IL regulations. The IL regulations were published on August 15, 1994 (59 FR 41880).

Changes: None.

Comments: A few commenters recommended that centers not be responsible for removing community barriers or for serving as a catalyst for change in the community. One of these commenters recommended that centers not be evaluated on how well the community responds to the needs of individuals with disabilities.

Discussion: Nothing in the proposed regulations required a center to remove community barriers or to serve as a catalyst for change in the community. Furthermore, nothing in the proposed regulations provided that centers would be evaluated on how well the community responds to the needs of individuals with disabilities. However, to the extent that a center engages in systems advocacy, the Secretary fully expects that a center will engage in activities that are designed to accomplish these goals.

Changes: None.

Comments: One commenter recommended that a center's compliance with the community options and community capacity indicator not be based solely on the center's activities within its service area.

Discussion: Although a center may engage in advocacy or other activities that may have an impact outside of its service area, the Secretary believes that a center's performance under its Title VII grant must be assessed in terms of the beneficiaries the grant was intended to serve, i.e., the individuals within the center's service area.

Changes: None.

Comments: One commenter recommended that centers be required to provide annual community accessibility updates to help centers develop strategies for prioritizing the removal of identified community barriers and to document the results of activities that have been completed to remove those barriers.

Discussion: The Secretary does not believe that centers should be required to develop strategies for prioritizing the removal of identified community barriers. The Secretary believes it is sufficient for a center to comply with the requirements already established for this indicator.

Changes: None.

Comments: One commenter recommended that outreach materials be provided in accessible formats.

Discussion: The Secretary believes that new § 366.63(a)(5) will ensure that a center will provide outreach materials in accessible formats.

Changes: None.

IL Services (§ 366.63(e))

Comments: One commenter stated that cross-disability counseling is not a valid service because the commenter believes that ''peer'' means a person with a similar disability.

Discussion: The Secretary disagrees that ''peer counseling'' is limited to counseling by an individual with a disability that is similar to the disability of the consumer. The Secretary believes that an individual with a significant disability may engage in peer counseling for another individual with a significant disability, regardless of the types of significant disabilities of the two individuals.

Changes: None.

Resource Development (§ 366.63(f))

Comments: One commenter recommended that a center be rewarded only for specific activities that result in increased funding and that automatic State appropriations not be included in determining the success of a center's fundraising activities.

Discussion: The Secretary encourages States to participate in the funding of centers. Therefore, the Secretary believes it is appropriate to include State funds in determining the success of a center's fundraising activities.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Paperwork Reduction Act of 1980

Sections 366.62 and 366.63 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education submitted a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

States and centers are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 40 hours per response for 200 respondents, including the time for gathering and maintaining the data needed and for completing and reviewing the collection of information.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 366

Education, Grant programs—social programs, Vocational rehabilitation, Recordkeeping and reporting requirements.

(Catalog of Federal Domestic Assistance Number 84.132—Centers for Independent Living)

Dated: July 26, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends Part 366 of Title 34 of the Code of Federal Regulations as follows:

PART 366—CENTERS FOR INDEPENDENT LIVING

1. The authority citation for part 366 is revised to read as follows:

Authority: 29 U.S.C. 796d–1(b) and 796f–796f–6, unless otherwise noted.

§ 366.6 [Redesignated from § 366.5]

2. Section 366.5 is redesignated as § 366.6.

3. A new § 366.5 is added to read as follows:

§ 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))

4. Part 366 is amended by adding a new Subpart G consisting of §§ 366.60 through 366.63 to read as follows:

Subpart G—Evaluation Standards and Compliance Indicators

Sec.
366.60 What are project evaluation standards?
366.61 What are the compliance indicators?
366.62 What are the requirements for continuation funding?
366.63 What evidence must a center present to demonstrate that it is in minimum compliance with the evaluation standards?

Subpart G—Evaluation Standards and Compliance Indicators

§ 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)

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