WIOA NPRM

Workforce Innovation and Opportunity Act, Miscellaneous Program Changes

(U.S. Dept. of Education only)

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DEPARTMENT OF EDUCATION

34 CFR Parts 367, 369, 370, 371, 373, 376, 377, 379, 381, 385, 386, 387, 388, 389, 390, and 396

RIN 1820–AB71

[Docket No. 2015–ED–OSERS–0002]

Workforce Innovation and Opportunity Act, Miscellaneous Program Changes

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing a number of programs administered by the Rehabilitation Services Administration (RSA) to implement changes to the Rehabilitation Act of 1973 (Act) made by the Workforce Innovation and Opportunity Act, enacted on July 22, 2014.

The Secretary also proposes to implement changes to the Act made by the Workforce Investment Act, enacted on August 7, 1998, that have not previously been implemented in regulations, and to otherwise update, clarify, and improve RSA's current regulations.

DATES: We must receive your comments on or before June 15, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Janet LaBreck, U.S. Department of Education, 400 Maryland Avenue SW., Room 5086 Potomac Center Plaza (PCP), Washington, DC 20202–2800.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Janet LaBreck, U.S. Department of Education, 400 Maryland Avenue SW., Room 5086 PCP, Washington, DC 20202–2800.

Telephone: (202) 245–7488, or by email: *Janet.LaBreck@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in Room 5093, Potomac Center Plaza, 550 12th Street SW., Washington, DC, between 8:30 a.m. and 4:00 p.m. Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The Secretary proposes to amend the regulations governing a number of programs administered by the Rehabilitation Services Administration (RSA) to implement changes to the Rehabilitation Act of 1973 (Act) made by the Workforce Innovation and Opportunity Act (WIOA), enacted on July 22, 2014 (Pub. L. 113–128). These programs and their corresponding regulations are:

- The Independent Living Services for Older Individuals Who Are Blind (OIB) program, 34 CFR part 367;
- The Client Assistance Program (CAP), 34 CFR part 370;
- The American Indian Vocational Rehabilitation Services (AIVRS) program, 34 CFR part 371 (formerly known as "Vocational Rehabilitation Service Projects for American Indians with Disabilities");
- The Rehabilitation National Activities program, 34 CFR part 373 (formerly known as "Special Demonstration Projects");
- The Protection and Advocacy of Individual Rights (PAIR) program, 34 CFR part 381;
- The Rehabilitation Training program, 34 CFR part 385;
- The Rehabilitation Long-Term Training program, 34 CFR part 386;
- The Innovative Rehabilitation Training Program, 34 CFR part 387 (formerly known as the "Experimental and Innovative Training");
- The Rehabilitation Short-Term Training Program, 34 CFR part 390; and
- The Training of Interpreters for Individuals Who are Deaf or Hard of Hearing and Individuals who are Deaf-Blind program, 34 CFR part 396 (formerly known as the "Training of Interpreters for Individuals Who are Deaf and Individuals who are Deaf-Blind program").

WIOA also repealed the statutory authority for four programs, and the Secretary, therefore, proposes to remove their corresponding regulations. These programs and regulations are:

- Vocational Rehabilitation Service Projects for Migratory Agricultural Workers and Seasonal Farmworkers with Disabilities (Migrant Workers) program, portions of 34 CFR part 369;
- Projects for Initiating Special Recreation Programs for Individuals with Disabilities (Recreational programs), portions of 34 CFR part 369;
- Projects with Industry, 34 CFR part 379 and portions of part 369; and
- The State Vocational Rehabilitation Unit In-Service Training program, 34 CFR part 388.

In addition, the Secretary proposes to implement changes to the Act made by

the Workforce Investment Act (WIA), enacted August 7, 1998 (Pub. L. 105–220). These changes were not previously implemented in the applicable regulations. The Secretary proposes these changes to the OIB, CAP, AIVRS, and PAIR program regulations.

Separate and apart from amendments to the Act made by WIOA and WIA, the Secretary proposes to update and clarify the regulations governing the various rehabilitation training programs—34 CFR parts 373, 385, 386, 387, and 396—and 34 CFR part 390, which governs the Rehabilitation Short-Term Training program. These regulations have not been updated in some time, and updating them now is intended to improve how these programs function.

Finally, as part of this update, the Secretary proposes to remove regulations that are superseded or obsolete and to consolidate regulations, where appropriate. The Secretary proposes to remove the balance of 34 CFR part 369 that does not apply to the Migrant Workers program, the Recreational Programs, the Projects With Industry program, and parts 376, 377, and 389.

Proposed Regulations

Because the amendments we propose in this document are so many and varied, we discuss first those programs whose regulations we propose to amend and not remove. We discuss them in the order in which their parts appear in the Code of Federal Regulations (CFR). For each part, we provide a short background of the program, a summary of the changes we propose, and a detailed discussion of the significant proposed regulations. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

Independent Living Services for Older Individuals Who Are Blind (OIB), 34 CFR Part 367

Background

The program makes grants to designated State agencies (DSAs) that provide vocational rehabilitation services to individuals who are blind. DSAs provide to older individuals who are blind or visually impaired independent living services designed to increase or maintain their ability to live independently. The Department last published regulations for this program in 1994 (59 FR 41909 (August 15, 1994)).

Summary of Proposed Changes

These proposed regulations would implement the changes WIOA made to title VII, Chapter 2, of the Act. We would require that not less than 1.8 percent and not more than 2 percent of the funds for this program be reserved to provide training and technical assistance to DSAs or other providers of independent living services for older individuals who are blind.

In addition, the Secretary proposes to incorporate into part 367 the text of relevant provisions of parts 364 and 365 regarding general independent living and State independent living services that were previously incorporated only by reference. This change is necessary because WIOA transferred the Independent Living Services and Centers for Independent Living programs to the Administration for Community Living of the Department of Health and Human Services. Due to this transfer, parts 364 and 365 will no longer be applicable to programs administered by the Department of Education and will eventually be removed.

Significant Proposed Regulations

Because we propose to make a number of structural and numbering revisions to part 367, we discuss the proposed changes by subpart and, within each subpart, by subject or section.

Subpart A — General

Statute: WIOA added a new subparagraph (E) in section 7(17) of the Act. This new subparagraph specifies that services to facilitate the transition of individuals from nursing homes and other institutions to home and community based residences with the requisite supports and services are core IL services and, as such, may be provided by the OIB program. Grantees may also provide assistance and services to older individuals who are blind and who are at risk of entering institutions so that they may remain in the community.

Current Regulations: Current § 367.3(b)(7) does not list this service specifically. It lists a broad array of independent living services that may be provided to older individuals who are blind, but does not reference the specific service added by WIOA.

Proposed Regulations: Current § 367.3(b)(7) would be expanded to include the specific IL service authorized by WIOA in the new subparagraph (E) in section 7(17) of the Act as an allowable service under the OIB program.

Reasons: The inclusion of the IL service in the proposed regulations is consistent with changes in the IL core services defined in WIOA and allows for the provision of these services by the OIB program.

Transfer of Title VII, Chapter 1 IL Programs

Statute: Title VII, Chapter 1, Section 701A of the Act (29 U.S.C. 796), as amended by WIOA, establishes within the Administration for Community Living (ACL) of the Department of Health and Human Services an Independent Living Administration that will be the principal agency to carry out the Independent Living Services and Centers for Independent Living programs. WIOA transfers these programs to ACL from RSA. The Department of Education continues to administer title VII, Chapter 2 of the Act, which authorizes OIB.

Current Regulations: Current § 367.4(c) refers to certain sections of parts 364 and 365 rather than restating the same text in full. The relevant sections in part 364 address definitions; the use and obligation of Federal funds and program income; notice of the Client Assistance Program (CAP); access to records; and special requirements for the protection, use, and release of personal information. The sections in part 365 set out requirements and conditions for cash or in-kind contributions as they apply to a State's non-Federal share, awards, subawards, or contractors.

Proposed Regulations: We propose to remove these cross references from current § 367.4 and amend current part 367 to provide the full text of the relevant sections in parts 364 and 365 to which current § 367.4 now only cross references.

Reasons: With the transfer of the Independent Living Services and Centers for Independent Living programs from RSA to ACL, parts 364 and 365 will no longer be applicable to programs administered by the Department of Education and will eventually be removed. We propose to move language into part 367 that is relevant to the functioning of the OIB program.

Proposed New Subpart B — Training and Technical Assistance (Replaces Current Subpart B)

Statute: WIOA added to title VII, chapter 2 of the Act section 751A, which requires that, beginning in FY 2015, not less than 1.8 percent and not more than 2 percent of the funds for this program be reserved to provide, either directly or through grants, contracts, or cooperative agreements, training and technical assistance to DSAs or other providers of independent living services for older individuals who are blind that

are funded under the OIB program; that the Secretary conduct a survey of DSAs that are OIB program grantees to determine funding priorities for the training and technical assistance; and that the Secretary shall provide for peer review of applications to provide training and technical assistance from eligible entities by panels that include persons who are not government employees and who have experience in the provision of services to older individuals who are blind.

Current Regulations: None.

Proposed Regulations: We propose to add a new subpart B to part 367, consisting of §§ 367.20 through 367.24, to govern how the Department would assess the grantees' training and technical assistance needs and how it would provide training and technical assistance under OIB.

Proposed § 367.20 would provide that the Secretary reserve not less than 1.8 percent and not more than 2 percent of the funds appropriated to carry out the OIB program to provide training and technical assistance in any fiscal year, beginning in FY 2015, to DSAs or other providers of independent living services for older individuals who are blind during such fiscal year.

Proposed § 367.21 would explain how the Secretary uses the funds specified in § 367.20 to provide training and technical assistance, either directly or through grants, contracts, or cooperative agreements to entities that have the capacity to provide such training and technical assistance. Any selected entity receiving funding would provide training and technical assistance to DSAs or other service providers, assisting them to improve the operation and performance of the program leading to enhanced independence and self-sufficiency for older individuals who are blind.

Proposed § 367.22 would describe how the Secretary makes an award under subpart B for training and technical assistance. It would require an applicant to submit an application to the Secretary containing a proposal for the provision of training and technical assistance to DSAs and other providers of services under the OIB program. Proposed § 367.22 would also require applications to be peer reviewed by panels that include individuals who are not Federal or State government employees and who have experience in the provision of services to older individuals who are blind.

Proposed § 367.23 would provide that the Secretary conduct a survey of DSAs that receive OIB grants to assess their training and technical assistance needs and to inform decisions about funding priorities.

Proposed § 367.24(a) and (b) would provide that the Secretary evaluate applications for a grant, cooperative agreement, or contract under subpart B on the basis of selection criteria chosen from the general selection criteria found in EDGAR at 34 CFR 75.210. If a contract is awarded, it would be made in accordance with regulations at 34 CFR part 75.

Reasons: The proposed new subpart B gives effect to the new training and technical assistance requirements and the manner in which these requirements are implemented, including a survey of needs and the funding of activities either directly or through a peer reviewed competitive process consistent with the Department's practices.

Proposed New Subpart C — What Are the Application Requirements Under This Part? (Current Subpart B)

Statute: None.

Current Regulations: Current subpart B consists of §§ 367.10 and 367.11, which set out the manner in which a DSA applies for an award or a reallotment grant and the required assurances that a DSA must include in an application.

Proposed Regulations: We propose to redesignate current subpart B as subpart C and to change its title to "What Are the Application Requirements Under this Part?" We propose as well to renumber the sections in the new subpart §§ 367.30 and 367.31.

Reason: We propose to redesignate current subpart B as subpart C to make room for a new subpart that addresses WIOA's requirement to provide training and technical assistance to DSAs or other providers of independent living services for older individuals who are blind.

Removal of State Plan for Independent Living OIB Requirements

Statute: WIOA deletes the requirement in section 752(h) of the Act (29 U.S.C. 796k(h)) for the State to seek to incorporate into the State Plan for Independent Living any new methods and approaches relating to independent living services for older individuals who are blind.

Current Regulations: Current § 367.11(c) requires the DSA to seek to incorporate into and describe in the State plan for independent living (SPIL) any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded by OIB and that the DSA determines to be effective.

Current § 367.11(f) requires that applications be consistent with the SPIL for providing required independent living services under section 704 of the Act.

Proposed Regulations: We propose to remove current § 367.11(c) and (f).

Reason: Removing current § 367.11(c) and (f) would implement WIOA's removal of these requirements from the OIB program and eliminate the connection of OIB to the State Plan for Independent Living, required by title VII, chapter 1, now administered by ACL.

Proposed New Subpart D — How does the Secretary award discretionary grants? (Current Subpart C)

Statute: None.

Current Regulations: The current subpart C consists of §§ 367.20 through 367.23 and is entitled "How Does the Secretary Award Discretionary Grants on a Competitive Basis?"

Current § 367.22 provides specific selection criteria used by the Secretary in awarding discretionary grants.

Current § 367.23 provides for the consideration of geographical distribution of projects in making an award.

Current § 367.42(a) and (b) provide the basis for noncompetitive continuation grants.

Proposed Regulations: We propose to redesignate and retitle subpart C as "Subpart D—How Does the Secretary Award Discretionary Grants?" We propose to renumber the sections within subpart D to begin with § 367.40.

Proposed § 367.40(b) would insert the basis for the award of noncompetitive continuation grants by the Secretary for a multi-year project. This is in current regulations at § 367.42(a) and (b).

We propose to eliminate the specific selection criteria included in current § 367.22. In its place, proposed § 367.41(a) would provide for the evaluation of applications based on the selection criteria chosen from the general selection criteria found in EDGAR at 34 CFR 75.210.

Proposed § 367.41(b) would allow for consideration of geographical distribution of projects in making an award, replacing the current regulation at § 367.23.

Reasons: Though the Department currently does not make discretionary grants under OIB, we are nonetheless proposing to update the relevant regulations to ensure that we have appropriate flexibility in designing competitions and awarding grants should the appropriation ever fall below $13 million.

Proposed New Subpart E — How does the Secretary award formula grants? (Current Subpart D)

Formula Grant Awards—Reallotment

Statute: Section 752(i)(4) of the Act, as amended by WIOA, provides for the disposition of certain amounts under formula grants.

Current Regulations: Current Subpart D consists of § 367.30 through § 367.32.

Current § 367.32 sets out the procedures for how the Secretary reallots funds under the formula grants program.

Proposed Regulations: We propose to redesignate current subpart D as "Subpart E—"How Does the Secretary Award Formula Grants?" We propose to renumber the sections in this subpart to begin with § 367.50.

Proposed § 367.52(e) would require that an OIB grantee inform the Secretary 45 days prior to the end of the fiscal year that funds would be available for reallotment.

Reasons: This proposed change would bring the OIB program reallotment requirements into alignment with other formula grants administered by RSA. This timeline would ensure that RSA receives timely notice of relinquished funds and is able to award realloted funds to grantees prior to the end of the Federal fiscal year. This proposed change is consistent with RSA's current practices.

Proposed New Subpart F — What conditions must be met after an award? (Current Subpart E)

Statute: Section 701A of the Act (29 U.S.C. 796 *et seq.*), as amended by WIOA, establishes within the Administration for Community Living in the Department of Health and Human Services a new Independent Living Administration that will administer the independent living programs under chapter 1 of title VII of the Act. Consequently, the independent living regulations in parts 364 and 365, which are referenced in part 367, will no longer be administered by the Department of Education. Therefore, the relevant sections of parts 364 and 365 are being incorporated into part 367.

Current Regulations: Current subpart E consists of §§ 367.40 through 367.42, which provide the conditions that must be met after an award is made, including matching requirements, when a DSA may award grants or contracts, and when continuation awards may be made.

Proposed Regulations: We propose to redesignate current subpart E as subpart F, to remove the provisions in current subpart E, and to replace them with new sections beginning with § 367.60.

Proposed § 367.60 would provide guidance on when a DSA may make subawards or contracts under the OIB program.

Proposed § 367.61 would provide the regulatory requirements to meet the non-Federal contribution required by § 367.31(b).

Proposed § 367.62 would address the requirements that apply if a State's non-Federal share is in cash.

Proposed § 367.63 would provide the requirements that apply if a State's non-Federal share is in kind.

Proposed § 367.64 would provide for a prohibition against a State conditioning a subaward or contract based on a cash or in-kind contribution.

Proposed § 367.65 would provide the definition of program income and how it may be used.

Proposed § 367.66 would provide the requirements that apply to the obligation of Federal funds and program income.

Proposed § 367.67 would describe the notice that must be given about the Client Assistance Program.

Proposed § 367.68 would provide the specific requirements pertaining to the protection, use, and release of personal information belonging to applicants or recipients of services.

Proposed § 367.69 would provide the requirements related to the provision of access to records.

Proposed § 367.70 would provide requirements regarding the maintenance of records by DSAs and other providers.

Reasons: OIB grantees have always been required to comply with these proposed provisions because current § 367.4 incorporates them by reference from parts 364 and 365. Because the IL programs implementing parts 364 and 365 will no longer be administered by the Department of Education, and because those parts will be removed in the future, we propose to move the text of the applicable provisions to part 367 so that the OIB program can continue to function appropriately.

Client Assistance Program (CAP), 34 CFR Part 370

Background

CAP is authorized under section 112 of the Act (29 U.S.C. 732). CAP grantees provide information to individuals with disabilities about the services and benefits available under the Act and their rights under title I of the Americans with Disabilities Act. In addition, CAP grantees are authorized to provide advocacy and legal representation to individuals seeking or receiving services under the Act in order to resolve disputes with programs providing those services, including vocational rehabilitation services.

The Department last updated the regulations at 34 CFR part 370, which govern the CAP, on November 2, 1995 (60 FR 55766).

Summary of Proposed Changes

Both WIOA and WIA made significant changes to section 112 of the Act. To implement those changes made by WIA, the Secretary proposes to amend the regulations governing the redesignation of a designated CAP agency to require the Governor to redesignate the designated CAP agency if it is internal to the designated State agency (DSA) for the Vocational Rehabilitation program and that DSA undergoes a significant reorganization that meets certain statutory criteria.

The Secretary proposes three substantive changes to incorporate statutory changes made to section 112 by WIOA. First, we would add the protection and advocacy system serving the American Indian Consortium as an entity eligible to receive a CAP grant. Second, we would require the Secretary to reserve funds from the CAP appropriation, once it reaches a specified level, to award a grant for the provision of training and technical assistance to designated CAP agencies. Finally, we would clarify that authorized activities under the CAP include assisting client and client-applicants who are receiving services under sections 113 and 511 of the Act.

In addition to substantive changes required by statutory amendments, the Secretary also proposes other changes to update part 370 so that it, among other things, conforms with RSA practice (*i.e.,* with regard to submission of application and assurances) or reflects current CAP grantee practice (*i.e.,* with regard to contracts with centers for independent living).

Significant Proposed Regulations

We organize our discussion of proposed changes by subject and section.

Clients and Client-Applicants (§ 370.1)

Statute: Section 112(a) of the Act, as amended by WIOA (29 U.S.C. 732(a)), clarifies that CAP grantees may provide information, advocacy, and representation to clients and client-applicants to facilitate their access to services available under the Act, including pre-employment transition services provided under section 113 and the services provided pursuant to

section 511 regarding limitations on the use of subminimum wages.

In addition, the Act, as amended by WIOA, includes new definitions for a ''student with a disability'' and a ''youth with a disability,'' at section (7)(37) and (42), respectively, for the purpose of receiving pre-employment transition services and/or other transition services through the vocational rehabilitation program.

Current Regulations: The current § 370.1(a) states that CAP grantees are authorized to inform and assist client and client-applicants about services available through programs authorized under the Act. Current § 370.1(a) does not mention the services provided under sections 113 and 511, nor does current § 370.4 specifically refer to students and youth with disabilities since these are new statutory requirements.

Proposed Regulations: We propose to amend current § 370.1(a) to clarify that the CAP may assist individuals who are receiving or applying to receive services under sections 113 and 511 of the Act.

We propose to amend current § 370.4(a)(3)(ii) to clarify that students and youth with disabilities applying for and receiving services under the Act are considered clients and client-applicants for the purpose of receiving CAP services.

Finally, we propose to amend current § 370.4(b) to clarify that in all instances, references to services provided under the Act in the context of this paragraph are those provided under title I of the Act.

Reasons: While WIOA does not expand the scope of authorized activities or those individuals with disabilities who may be served by CAP grantees, the amendments to section 112 make specific reference to individuals receiving services under sections 113 and 511 of the Act. The proposed regulations incorporate these same references for the purpose of clarification. For clarification purposes, the proposed regulations also incorporate references to students and youth with disabilities.

Centers for Independent Living (§ 370.2)

Statute: None.

Current Regulations: Current § 370.2(f) permits a designated CAP agency that, at the time of its initial designation prior to February 22, 1984, was contracting for CAP services with centers for independent living, to continue those contracts. This was promulgated as an exception to the general prohibition in current § 370.2(e) against contracting with entities that provide treatment and services under the Act.

Proposed Regulations: We propose to amend paragraphs (e) through (g) of current § 370.2 to eliminate the CAP's authority to contract with centers for independent living. We also propose to amend current § 370.41 by deleting all references to the authority to contract with centers for independent living.

Reasons: According to information available to the Secretary, no CAP agency that had contracted with centers for independent living for the provision of CAP services at the time of its initial designation still does so, thus making the need for the exception and the reference to contracting with centers for independent living obsolete.

The Definition of ''State'' (§ 370.6)

Statute: Section 7(32) of the Act, as amended by WIA (29 U.S.C. 705(32)), deleted the Republic of Palau from the definition of the term ''State.'' As a result, ''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, and the Commonwealth of the Northern Mariana Islands. Section 7(32) of the Act was renumbered as section 7(34) by WIOA.

Current Regulations: Current § 370.6 includes Palau in the definition of ''State'' because the statutory definition changed after part 370 was last updated. Current § 370.30(b), last updated in 1995, provides for the funding of the territories, including the Republic of Palau.

Proposed Regulations: We propose to delete the Republic of Palau from the definition of ''State'' at current § 370.6. We also propose to amend current § 370.30(b) to delete reference to the Republic of Palau.

Reasons: This change is necessary to implement the new statutory definition of ''State,'' which forms the basis for determining eligibility for grants under the Act.

Definition of ''Systemic Advocacy'' (§ 370.6)

Statute: Section 112(d) of the Act (29 U.S.C. 732(d)) prohibits CAP grantees from engaging in class action litigation as a form of systemic advocacy. This statutory prohibition remains unchanged.

Current Regulations: The definition of ''systemic advocacy'' in current § 370.6 includes reference to class action lawsuits.

Proposed Regulations: We propose to amend the definition of ''systemic advocacy'' by removing reference to class action lawsuits.

Reasons: Although the Act specifically prohibits a CAP agency from engaging in class actions, CAP grantees are permitted to engage in systemic advocacy, which could be carried out without the initiation of a class action lawsuit. We believe that the proposed definition of ''systemic advocacy'' is broad enough to encompass all allowable systemic advocacy activities, while also eliminating the potential for misinterpreting § 370.6 as allowing CAP grantees to engage in class action lawsuits.

Requirements for Redesignation (§ 370.10)

Statute: Section 112(c)(1)(B)(ii) of the Act, as amended by WIA (29 U.S.C. 732(c)(1)) requires the Governor to redesignate a CAP agency housed in a DSA for the vocational rehabilitation program, if the DSA is reorganized to create one or more agencies or is merged into another agency.

Current Regulations: Current § 370.10 describes when a Governor must redesignate a CAP agency, but does not include this particular requirement because part 370 was last updated in 1995, prior to the amendments to the Act made by WIA.

Proposed Regulations: We propose to amend current § 370.10 by adding a new paragraph (a) that would require the Governor to redesignate an internal CAP—*e.g.,* a CAP that is housed within the DSA for the vocational rehabilitation program—when the DSA undergoes a significant reorganization that meets the criteria stated in the statute.

We also propose to amend this section by adding references to 34 CFR 361.5(c)(12) to clarify the meaning of designated State agency in this context in order to eliminate any potential confusion, given the similarities of the terms ''designated agency'' for the CAP grantees and ''designated State agency'' for the vocational rehabilitation program.

Reasons: These proposed changes would implement the 1998 amendments to the Act contained in WIA.

Submission of Application (§ 370.20)

Statute: Section 112(f) of the Act (29 U.S.C. 732(f)) requires CAP grantees to submit an application at the time and in the manner prescribed by the Secretary as a condition for receiving funding. The statutory requirement remains unchanged.

Current Regulations: Current § 370.20(a) requires CAP grantees to

submit an application annually as a condition for receiving funding.

Proposed Regulations: We propose to amend current § 370.20(a) by deleting the requirement for annual submission and, instead, mirroring statutory language that gives the Secretary flexibility for the timing of these submissions.

Reasons: Proposed § 370.20(a) would be consistent with the statutory requirements at section 112(f) of the Act, thereby giving the Secretary the flexibility to determine when submission of an application, including assurances, is necessary for efficient program administration. Since 2005, the Department has required Governors to submit the application, including assurances, only at the time of an initial designation or redesignation of a CAP grantee.

American Indian Consortium (§ 370.30)

Statute: Section 112(e)(1)(E) of the Act, as amended by WIOA (29 U.S.C. 732(e)), requires the Secretary to reserve funds from the CAP appropriation to make a grant to the protection and advocacy system serving the American Indian Consortium in an amount equal to that allotted to the territories.

Current Regulations: Current § 370.30 describes allotments to CAP grantees, but does not mention the protection and advocacy system serving the American Indian Consortium since this is a new statutory requirement.

Proposed Regulations: We propose to amend current § 370.30 by adding a new paragraph (c) that would require the Secretary to reserve funds to award a CAP grant to the protection and advocacy system serving the American Indian Consortium. This grant would be made at the level of funding authorized for a territory. We also propose to make conforming amendments to the following related regulations.

We propose to amend current § 370.2(a) to add the protection and advocacy system serving the American Indian Consortium as eligible to receive a CAP grant.

We propose to amend current § 370.6 to: (a) Incorporate references to tribal governmental agencies in the definition of ''advocacy''; (b) add new definitions for the terms ''American Indian Consortium'' and ''protection and advocacy system''; and (c) amend the definition of ''designated agency'' to include the protection and advocacy system serving the American Indian Consortium.

We propose to amend current § 370.20, which governs applications for CAP grants, by adding references to the protection and advocacy system serving the American Indian Consortium, to clarify that this entity is responsible for submitting the application and assurances for a CAP grant. For all other CAP grantees, the Governor would submit the application and assurances on behalf of the grantees.

We propose to amend current § 370.40(c) to clarify that the protection and advocacy system serving the American Indian Consortium is responsible and accountable for the CAP to the Secretary, and the Secretary may seek recovery of funds from that entity, if determined necessary.

Reasons: The proposed changes are necessary to implement new statutory requirements that add the protection and advocacy system serving the American Indian Consortium as eligible to receive a CAP grant. The protection and advocacy system serving the American Indian Consortium is established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000. Until the enactment of WIOA, this particular protection and advocacy system was authorized to provide services under other components of the protection and advocacy system, including the Protection and Advocacy of Persons with Developmental Disabilities, the Protection and Advocacy of Individuals with Mental Illness, and the Protection and Advocacy of Individual Rights programs, but not CAP. In addition, the Secretary believes it is critical to clarify through the regulations that the CAP administered by the protection and advocacy system serving the American Indian Consortium, as a new grantee, has the ability to engage in advocacy on behalf of clients and client-applicants with tribal governmental agencies since those agencies likely would be most relevant to the issues raised by clients and client-applicants of that particular CAP. Therefore, we propose to clarify that advocacy includes acting on behalf of the clients or client-applicants with tribal governmental agencies. Finally, we believe it is important to clarify that the protection and advocacy system serving the American Indian consortium is specifically established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000; therefore, this CAP agency is not one that is designated by the Governor as are all other CAP grantees.

Training and Technical Assistance (§ 370.30)

Statute: Section 112(e)(1)(F) of the Act, as amended by WIOA (29 U.S.C. 732(e)(1)(F)), requires the Secretary to reserve a portion of the total CAP appropriation, once it equals or exceeds $14 million, to award a grant for the purpose of providing training and technical assistance to CAP grantees.

Current Regulations: Current § 370.30 describes the allotment process, but does not address this particular reservation of funds since it is a new statutory requirement.

Proposed Regulations: We propose to amend current § 370.30 by adding a new paragraph (d) that requires the Secretary to reserve funds from the CAP appropriation, once it equals or exceeds $14 million, to fund training and technical assistance to designated CAP agencies. The training and technical assistance provided under this section, as proposed, must be carried out in coordination with the training and technical assistance activities provided under the Protection and Advocacy of Individual Rights program at 34 CFR part 381.

We also propose to revise current § 370.5(a)(1) to clarify that part 75 of EDGAR applies to the grant made in accordance with § 370.30(d)(1).

Reasons: The changes are necessary to implement amendments to section 112 of the Act made by WIOA that require the Secretary to award a grant for the purpose of providing training and technical assistance to CAP grantees once the CAP appropriation reaches a certain level and are intended to help designated CAP agencies improve their operations and service delivery.

Reallotment (§ 370.31)

Statute: Section 112(e)(2) of the Act (29 U.S.C. 732(e)(2)) sets forth the process by which the Secretary reallots funds when a CAP grantee cannot use all funds awarded to it. This statutory provision remains unchanged.

Current Regulations: Current § 370.31(a) requires a CAP grantee to notify the Secretary 90 days prior to the end of the fiscal year of funds awarded for that year that are available for reallotment.

Proposed Regulations: We propose to amend current § 370.31(a) to reduce to 45 days the period a designated CAP agency has to inform the Secretary if funds will be available for reallotment.

Reasons: This change is necessary to bring the CAP requirements into alignment with current practices for other formula grants administered by the Rehabilitation Services Administration. The Secretary believes this proposed change would benefit CAP grantees because each would have 45 more days to determine whether it would be unable to use the awarded funds and, thus, would need to relinquish those funds for reallotment. In practice, CAP grantees rarely

relinquish funds since those funds are available for use in the succeeding fiscal year.

Carryover (§ 370.47)

Statute: Section 19 of the Act permits CAP grantees to carry over funds received under section 112 of the Act to the succeeding fiscal year. This statutory provision remains unchanged.

Current Regulations: Current § 370.47(b) requires CAP grantees to notify the Secretary if they are carrying over funds into the fiscal year succeeding that in which the funds were awarded.

Proposed Regulations: We propose to delete paragraph (b) of current § 370.47 to align the regulations with section 19 of the Act and current Department practice, neither of which requires grantees to inform the Department of an intent to carry over funds.

We propose to renumber current § 370.47 as § 370.48 and include language clarifying reallotment funds that are not obligated or expended by the designated agency prior to the beginning of the succeeding fiscal year, may be carried over to the succeeding fiscal year and remain available for obligation and expenditure in that succeeding fiscal year.

Reasons: Neither section 19 of the Act nor the Department's current practice require designated agencies to inform the Secretary that funds, including any reallotment funds, are being carried over into the succeeding fiscal year.

Program Income (§ 370.47)

Statute: Section 19 of the Act governs the use of program income received by various programs, including the CAP. This statutory provision remains unchanged.

Current Regulations: None.

Proposed Regulations: We propose to rename § 370.47 as ''What is program income and how may it be used?'' Proposed § 370.47 would define program income, identify its uses, and permit it to be treated as either an addition or deduction to the CAP award.

In addition, we propose amending renumbered § 370.48 to permit program income to be carried over into the succeeding fiscal year.

Reasons: These regulations are necessary to govern the use and treatment of program income, consistent with section 19 of the Act. Additionally, designated CAP agencies that earn program income, or receive transferred Social Security Administration payments from the vocational rehabilitation program, have historically been permitted to spend the program income as an addition to their Federal award.

American Indian Vocational Rehabilitation Services Program (AIVRS), 34 CFR Part 371

Background

The program makes grants to the governing bodies of Indian tribes located on Federal and State reservations (and consortia of those governing bodies). Grantees provide vocational rehabilitation services for American Indians who are individuals with disabilities residing on or near these reservations, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that these individuals may prepare for, and engage in, high-quality employment that will increase opportunities for economic self-sufficiency. The Department last made a comprehensive revision of the regulations for this program on February 18, 1994 (59 FR 8338).

Summary of Proposed Changes

These proposed regulations would implement the changes WIOA made to section 121 of title I of the Act. WIOA expanded the definition of ''Indian'' to include natives and descendants of natives under the Alaska Native Claims Settlement Act. WIOA amended the definition of ''Indian tribe'' to include a ''tribal organization.'' Proposed subpart B would amend the AIVRS regulations to implement the WIOA requirement that not less than 1.8 percent and not more than 2 percent of the funds for the AIVRS program be reserved to provide training and technical assistance to the governing bodies of Indian tribes and consortia of those governing bodies eligible for a grant under this program.

The proposed amendments also implement changes made by WIA in 1998 that have not previously been incorporated, such as the expansion of services to American Indians with disabilities living ''near'' a reservation, as well as ''on'' a reservation and the change of the project period from up to three to up to five years. Additionally, we propose to incorporate relevant sections of part 369, which the Department proposes to repeal, and relevant sections of part 361, particularly definitions found in each of those parts.

Significant Proposed Regulations

Because we propose to make a number of structural and numbering revisions to part 371, we discuss the proposed changes by subpart and, within each subpart, by subject or section.

Subpart A — General

Statute: The statutory title of this program is ''American Indian Vocational Rehabilitation Services.''

Current Regulations: The current title for the program in the regulation is ''Vocational Rehabilitation Service Projects for American Indians with Disabilities.''

Proposed Regulations: We propose to change the title of part 371 to ''American Indian Vocational Rehabilitation Services.''

Reasons: The change would make the title of the regulations consistent with the statutory title of the program, eliminating any confusion.

Statute: WIOA clarified the purpose of the AIVRS program. It added language to section 121(a) of the Act describing that services would be provided to American Indians with disabilities consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individuals may prepare for, and engage in, high-quality employment that will increase opportunities for economic self-sufficiency.

WIA amendments in 1998 added the ability of AIVRS projects to serve American Indians with disabilities who live ''near'' the reservation in addition to ''on'' the reservation. Additionally, section 121(b)(B) of the Act authorizes projects funded under this program to include ''services traditionally used by Indian tribes.''

Current Regulations: Current § 371.1 does not include the ability of projects to serve individuals ''near'' a reservation, nor does it make clear that projects may provide culturally appropriate services (*i.e.,* services traditionally used by Indian tribes). While it includes some of the language regarding the purpose of the program, it does not include all of the new language added by WIOA.

Proposed Regulations: We propose to amend § 371.1 to restate the purpose of the program and include the new language added to section 121 of the Act by WIOA. Current § 371.1 would also be updated to include the expanded eligibility of beneficiaries in the WIA 1998 amendments to section 121.

Reasons: The regulations would properly reflect the purpose of the program restated by WIOA and the expansion of services to American Indians with disabilities who live ''near'' the reservation made by WIA in 1998.

Statute: WIOA affects eligibility for the AIVRS program by including a ''tribal organization (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))'' in the definition of ''Indian tribe'' under section 7(19) of the Act. By adding the authority to make awards of grants, contracts, or cooperative agreements for training and technical assistance under this program, WIOA also expands the eligibility of entities able to apply for funding under this program.

Current Regulations: Section 371.2 does not reflect the expanded eligibility of tribal organizations for AIVRS projects or of other entities for the new training and technical assistance funds, providing only that applications may be made by the governing bodies of Indian tribes and consortia of those governing bodies located on Federal and State reservations.

Proposed Regulations: Proposed § 371.2 would explain how a governing body of an Indian tribe, a consortium, and a tribal organization may each be an applicant for a grant under the AIVRS program. In order to ensure that a tribal organization is capable of carrying out the purposes of the AIVRS program, proposed § 371.2(a)(2) would require that the tribal organization has, as one of its functions, the vocational rehabilitation of American Indians with disabilities. Proposed § 371.2(a)(3) would require that a grant to an applicant serving more than one tribe must have the approval of each tribe it proposes to serve. This section would also identify those entities eligible to be applicants for a training and technical assistance award under the AIVRS program.

Reasons: The proposed amendments would incorporate the WIOA changes to eligibility for awards under the AIVRS program for both AIVRS projects and the training and technical assistance funds. The amendments would also clarify certain requirements the applicant for an AIVRS award must meet in order to fulfill the purposes of the program.

Statute: Section 121(a) of the Act describes the type of projects that are authorized to be funded under the AIVRS program.

Current Regulations: Current § 371.10 describes the types of projects that are authorized under the AIVRS program but does not include the 1998 amendments made by WIA that expanded the individuals that could be served to those who live ''near,'' as well as ''on,'' the reservation.

Proposed Regulations: We propose to renumber current § 371.10 to § 371.3 and to add the authority for AIVRS projects to serve individuals who reside ''near'' a reservation as well as ''on'' a reservation. We also propose to change the language of this section to reflect the change in the title of this part to be consistent with the statutory title of the program.

Reason: We propose to move and renumber § 371.10 to § 371.3 in order to move that provision to accompany the other general provisions in subpart A. We propose to update the language in order to be consistent with the statutory changes made by WIA in 1998 and the change made to the title of the regulations in this part.

Statute: Section 121(b)(3) of the Act was amended by WIA in 1998 to provide that projects funded under the AIVRS program are effective for a period up to 60 months.

Current Regulations: Current § 371.5 provides that a project is effective for up to three years and includes authorization for an extension up to two additional years if certain conditions are met.

Proposed Regulations: We propose to renumber current § 371.5 to § 371.4 and to update the regulation to provide for a project period of up to 60 months.

Reason: We propose this change in order to move this general section before the sections addressing applicable regulations and definitions at the end of subpart A. We propose to update the language in order to be consistent with the statutory changes made by WIA in 1998.

Statute: WIOA amended section 7 of the Act, changing several definitions relevant to the AIVRS program.

Current Regulations: Section 371.4 provides that the definitions in part 369 apply to the AIVRS program and also defines five additional words and phrases applicable to the AIVRS program.

Proposed Regulations: Proposed § 371.4 would be moved and renumbered to § 371.6 and revised to be a comprehensive definitions section. It would include the definitions in current § 371.4 and referenced by current § 371.3, some of which we would revise; definitions from part 369, which the Department proposes to repeal; relevant definitions from sections 7 and 121 of the Act added by WIOA; relevant definitions from part 361; and other definitions of terms commonly used in this part that are needed to provide clarity.

The definitions that we would add from Section 361 are: ''Assessment for determining eligibility and vocational needs''; ''Comparable services and benefits''; ''Eligible Individual''; ''Employment outcome''; ''Family member''; ''Maintenance''; ''Physical and mental restoration services''; ''Physical or mental impairment''; ''Post-employment services''; ''Substantial impediment to employment''; ''Supported employment''; ''Supported employment services''; ''Transition services''; and ''Transportation.''

The definitions that we would add from part 369 are: ''Act''; ''Community rehabilitation program''; ''Individual with a disability''; ''Individual with a significant disability''; and ''Vocational Rehabilitation Services.''

The new definitions required by WIOA are: ''Competitive integrated employment''; ''Customized Employment''; Representative of the tribal vocational rehabilitation program; ''Tribal organization;'' and ''Tribal Vocational Rehabilitation Program''.

The definitions of common terms we would add for clarity are: ''Representative of the Tribal Vocational Rehabilitation program'' and ''Subsistence.''

The current definitions that we would change are ''Consortium''; and ''Indian''; ''American Indian''; ''Indian American''; and ''Indian tribe.'' ''Reservation'' was amended, following public notice and comment, by a final regulation issued on February 5, 2015 (80 FR 6452). Proposed substantive changes to individual definitions will be discussed throughout this NPRM in conjunction with relevant topical discussions.

Reasons: We propose to include relevant definitions from part 369, which we propose to repeal, in proposed § 371.6 so that these definitions still apply to the AIVRS program.

We propose to add definitions of terms as they are defined in sections 7 and 121 of the Act, as amended by WIOA, in order to be consistent with the statute.

We propose to include definitions from part 361 as the same terms are used in the AIVRS program, and adding definition of these terms to part 371 will make this part easier to use.

We propose to add definitions of ''Representative of the Tribal Vocational Rehabilitation program'' and ''Subsistence.'' We propose to include ''Representative of the Tribal Vocational Rehabilitation program'', as used in § 371.21 *pertaining to the special application requirements for projects funded under part 371,* because we believe the definition would help the AIVRS grantees to more effectively implement the program and fiscal requirements and to improve employment outcomes for American

Indians with disabilities. We propose to define ''subsistence'' to make clear that it is a form of self-employment and that it continues to be an allowable employment outcome under the AIVRS program.

Finally, we propose to revise the definitions of ''American Indian,'' ''Consortium'' and ''Indian tribe'' to implement WIOA changes and to clarify eligibility under the program.

Proposed New Subpart B — Training and Technical Assistance (Replaces Current Subpart B)

Statute: WIOA added to section 121 of the Act, a new subsection (c), which requires that, beginning in FY 2015, not less than 1.8 percent and not more than 2 percent of the funds for this program be reserved to provide, either directly or through grants, contracts, or cooperative agreements, training and technical assistance to the governing bodies of Indian tribes and consortia of those governing bodies awarded a grant under this program. Section 121(c) also provides that the Secretary must conduct a survey of such governing bodies to determine funding priorities for the training and technical assistance; and that the Secretary shall provide for peer review of applications to provide training and technical assistance from eligible entities by panels that include persons who are not government employees and who have experience in the operation of AIVRS programs.

Current Regulations: None.

Proposed Regulations: We propose to add a new subpart B to part 371, consisting of §§ 371.10 through 371.14, to govern how the Department would assess the need for, and provide training and technical assistance to, grantees under the AIVRS program.

Proposed § 371.10 would provide that the Secretary reserve not less than 1.8 percent and not more than 2 percent of the funds appropriated to carry out the AIVRS program to provide training and technical assistance in any fiscal year, beginning in FY 2015, to the governing bodies of Indian tribes and consortia of those governing bodies awarded a grant under this program.

Proposed § 371.11 would explain how the Secretary uses the funds specified in § 371.10 to provide training and technical assistance, either directly or through grants, contracts, or cooperative agreements to entities that have the capacity to provide such training and technical assistance. Any selected entity receiving funding would provide training and technical assistance to the governing bodies of Indian tribes and consortia of those governing bodies awarded a grant under this program with respect to developing, conducting, administering, and evaluating tribal vocational rehabilitation programs funded under this part.

Proposed § 371.12 would describe how the Secretary makes an award under subpart B for training and technical assistance, requiring an applicant to submit an application to the Secretary containing a proposal for the provision of training and technical assistance to the governing bodies of Indian tribes and consortia of those governing bodies awarded a grant under this program. Section 371.12 would also require applications to be peer reviewed by panels that include individuals who are not Federal or State government employees and who have experience in the operation of AIVRS programs.

Proposed § 371.13 would provide that the Secretary determines funding priorities for training and technical assistance by conducting a survey of the governing bodies of Indian tribes funded under this part to assess training and technical assistance needs.

Proposed § 371.14(a) would provide that the Secretary evaluates applications for a grant, cooperative agreement, or contract under subpart B on the basis of selection criteria chosen from the general selection criteria found in EDGAR at 34 CFR 75.210. Proposed § 371.14(b) would allow for a competitive preference to be given to applications that include as project personnel in a substantive role, individuals that have been employed as a project director or VR counselor by a Tribal Vocational Rehabilitation unit funded under this part. Proposed § 371.14(c) would provide that, if a contract is awarded, it will be made in accordance with regulations at 34 CFR part 75.

Reasons: The proposed new subpart B gives effect to the new WIOA training and technical assistance requirements and the manner in which these requirements are implemented, including a survey of needs and the funding of activities either directly or through a peer reviewed competitive process consistent with the Department's practices.

Subpart C — How does one apply for a grant?

Statute: None.

Current Regulations: Section 371.20 requires the applicant to consult with the DSU for the State Vocational Rehabilitation program in the State or States in which the AIVRS program is providing services.

Proposed Regulations: We propose to update current § 371.20 to include the language from current § 369.20 that references the specific provisions of EDGAR in 34 CFR 75.155–75.159 that the AIVRS projects should use when consulting with the DSU in the State or States in which the AIVRS program is providing services.

Reason: Incorporating the specific provisions from current § 369.20 would clarify the procedures that the AIVRS projects should use when consulting with the DSU or DSUs in the State or States in which it is providing services.

Statute: WIOA added to section 121(b)(1)(D) of the Act that applicants for a AIVRS grant provide assurances that (i) all decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available vocational rehabilitation services and the provision of such services will, consistent with title I, be made by a representative of the tribal vocational rehabilitation program funded through the grant; and (ii) such decisions will not be delegated to another agency or individual.

In addition, the WIA 1998 amendments made certain amendments to the Act reflected throughout, such as changing ''severely disabled'' to ''significantly disabled;'' ''similar benefits'' to ''comparable benefits;'' and changing the ''individualized written rehabilitation program'' to the ''individualized plan for employment.'' These amendments also authorized AIVRS projects to provide services to American Indians with disabilities living ''near'' as well as ''on'' a reservation in section 121(a).

Finally, the 1998 amendments made changes relevant to the AIVRS program to subsection (6) of section 101(a) of the Act that address standards for facilities and providers of services and deleted the requirement in subsection (7) to make maximum use of public or other vocational or technical training facilities or other appropriate community resources.

Current Regulations: Section 371.21 lists the special application requirements for projects funded under the AIVRS program. The requirements have not, however, been updated to reflect the statutory changes made by the WIA 1998 amendments and the WIOA amendments.

Proposed Regulations: Current § 371.21(b) already includes the requirement that all decisions affecting eligibility and the nature, scope and provision of vocational rehabilitation services will be made by a tribal vocational rehabilitation program through its vocational rehabilitation unit and will not be delegated to another agency or individual. However, we propose to update the language

consistent with the inclusion of the term ''representative of the tribal vocational rehabilitation program'' in the statute by the WIOA amendments. We also propose to update other paragraphs of current § 371.21 to reflect changes made by the WIA 1998 amendments to the Act. Additionally, we would revise § 371.21(j) to reflect the statutory requirement for the accessibility of facilities, and we would add § 371.21(k) to require service providers to communicate with applicants in language or modes of communication they understand. Finally, we propose to delete current § 371.21(k) since the provision in the statute on which it was based has been removed.

Reason: We are proposing these changes so that § 371.21 is consistent with statutory provisions in the Act, which have changed since the last time these regulations were amended, and to provide for a more culturally sensitive and efficient administration of the program.

Subpart D — How does the Secretary make a grant?

Statute: Section 121(b)(1)(A) of the Act provides that an application must be made at such time, in such manner, and contain such information as the Commissioner may require.

Current Regulations: Section 369.32(b) provides that the Secretary considers other factors in addition to the selection criteria in making awards, such as past performance of the applicant in carrying out similar activities under previously awarded grants. Specifically, the Secretary considers such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

Proposed Regulations: We propose to move current § 369.32(b) into part 371 as proposed § 371.32.

Reasons: Because the Department is repealing part 369, we are proposing these changes to provide continuity of practice in how the Department makes the awards under this program.

Subpart E — What conditions apply to a grantee under this program?

Statute: None.

Current Regulations: Current §§ 371.40 and 371.41 describe the requirements for matching and allowable costs, but they do not include the authority to serve American Indians with disabilities located ''near,'' as well as ''on,'' the reservation in section 121(a) added by the WIA amendments in 1998 or any reference to the OMB Uniform Guidance adopted by the Department.

Proposed Regulations: We propose to add to § 371.40 regarding matching and § 371.41 regarding allowable costs the references to the sections in 2 CFR 200 that address these subjects. In addition, we propose to update the language in § 371.41 regarding the ability of AIVRS projects to serve American Indians with disabilities located ''near,'' as well as ''on,'' a reservation.

Reasons: These proposed changes would make §§ 371.40 and 371.41 consistent with the changes made to section 121(a) of the Act in 1998 by the WIA amendments and would clarify that the Department has adopted the OMB Uniform Guidance in 2 CFR part 200 and will apply that guidance going forward instead of the EDGAR provisions it replaces.

Statute: Section 121(b)(1)(B) of the Act requires that applicants for an award under the AIVRS program provide an assurance that the vocational rehabilitation services provided to American Indians with disabilities residing on or near a reservation in a State shall be, to the maximum extent feasible, comparable to vocational rehabilitation services provided under the State Vocational Rehabilitation program to other individuals with disabilities residing in the State.

Current Regulations: Current § 371.43 describes the special conditions that apply to the AIVRS program.

Proposed Regulations: We propose to add two additional paragraphs to § 371.43. Proposed paragraph (d) would describe the nature of the written policies that the AIVRS project would have to develop in order to ensure that the provision of services is based on the vocational rehabilitation needs of each individual as identified in the individual's IPE and is consistent with the individual's informed choice. Proposed paragraph (e) would describe the necessary elements of an AIVRS project's policies and procedures developed to ensure each individual who is an applicant for, or eligible to receive, vocational rehabilitation services is afforded the opportunity to exercise informed choice throughout the vocational rehabilitation process.

Reasons: We propose to add paragraphs (d) and (e) to § 371.43 in order to ensure that the AIVRS projects provide vocational rehabilitation services that are comparable to those services provided by the State and to ensure efficient administration of the projects funded under the AIVRS program. The nature and scope of the vocational rehabilitation services provided by the AIVRS projects, and respect for the informed choice of the consumers who utilize those services, are central tenets of vocational rehabilitation. While AIVRS projects would have been implementing these central requirements of the vocational rehabilitation program, we believe it is essential to require the AIVRS projects funded under this program to develop and maintain written policies and procedures that address these issues.

Statute: Section 121(b)(1)(B) of the Act requires that applicants for an award under the AIVRS program provide an assurance that the vocational rehabilitation services provided to American Indians with disabilities residing on or near a reservation in a State shall be, to the maximum extent feasible, comparable to vocational rehabilitation services provided under the State Vocational Rehabilitation program to other individuals with disabilities residing in the State.

Current Regulations: Current § 369.46 describes the special requirements pertaining to the protection, use, and release of personal information.

Proposed Regulations: We propose to add a new § 371.44 that describes the special requirements pertaining to the protection, use, and release of personal information.

Reasons: Because the Department is proposing to remove part 369, which currently applies to the AIVRS program, we propose to incorporate the provisions related to the protection, use, and release of personal information into part 371. However, because vocational rehabilitation services provided under the AIVRS program are required to be, to the maximum extent feasible, comparable to vocational rehabilitation services provided under the State Vocational Rehabilitation program, we believe that the section in part 361 that describes the special requirements pertaining to the protection, use, and release of personal information would provide better guidance to the AIVRS projects.

Statute: Section 20 of the Act requires all programs that provide services to individuals with disabilities under the Act to advise them or their representatives of the availability and purposes of the client assistance program under section 112, including information on means of seeking assistance under that program.

Current Regulations: Current § 369.42(b) requires the AIVRS projects to advise applicants or recipients of services or, as appropriate, their parents, family members, guardians, advocates, or authorized representatives, of the availability and purposes of the State's Client Assistance Program, including

information on seeking assistance from that program.

Proposed Regulations: We propose to move current § 369.42(b) into a new section of part 371, proposed § 371.45.

Reasons: Because the Department is proposing to remove part 369, which currently applies to the AIVRS program, we propose to incorporate into part 371 the provisions related to the requirement to advise consumers about the existence and purpose of CAP and how to contact CAP, which now includes as a grantee the protection and advocacy system serving the American Indian Consortium.

Rehabilitation National Activities Program, 34 CFR Part 373

Background

The purpose of this program is to provide competitive grants (including cooperative agreements) to, or enter into contracts with, eligible entities to expand and improve the provision of vocational rehabilitation and other services authorized under the Act, or to support activities that increase the provision, extent, availability, scope, and quality of rehabilitation services, including related research and evaluation activities. The Department last published regulations for this program, on December 11, 2000 (65 FR 77433).

Summary of Proposed Changes

These proposed regulations would implement the changes WIOA made to section 303(b) of the Act. We are proposing a new name for the program—the Rehabilitation National Activities Program—that better describes the broad nature of the types of activities that may be funded under this authority. As appropriate, we propose to add a definition of ''vocational rehabilitation services'' and to replace the term ''rehabilitation services'' with ''vocational rehabilitation services.'' We will retain the more general term ''rehabilitation services'' in instances when the services listed go beyond vocational rehabilitation services. The change would clarify that the types of projects that may be funded under the Rehabilitation National Activities Program are not limited to vocational rehabilitation services as they are defined in title I of the Act but rather may address the broader range of services encompassed by the term ''rehabilitation services.''

Further, we propose to add two new statutory priorities pertaining to transition from education to employment and competitive integrated employment and add four additional priorities to address the technical assistance and training needs of State vocational rehabilitation agencies and their personnel.

Significant Proposed Regulations

We arrange our discussion of proposed changes to this part by subject.

Title

Statute: None.

Current Regulations: The current part 373 is called ''Special Demonstration Programs.''

Proposed Regulations: We propose to change the name of the part to ''Rehabilitation National Activities Program.''

Reasons: The new name would better describe the activities funded under this program.

Cooperative Agreements

Statute: None.

Current Regulations: Although authorizing the awarding of grants, the current part 373 does not specifically state that the Department may also award cooperative agreements.

Proposed Regulations: We propose to amend § 373.1 to state that grants and cooperative agreements may be awarded to serve the purpose of the Rehabilitation National Activities Program authorized under the Act.

Reasons: The proposed change would clarify that the Secretary may make cooperative agreements, which are one type of grant, to pay all or part of the costs of the activities covered under this program.

Competitive Integrated Employment

Statute: Section 303 of the Act, as amended by WIOA, mandates that, in announcing competitions for the special demonstration programs, the Commissioner shall give priority consideration to initiatives focused on improving transition from education to employment, particularly in competitive integrated employment, for youth who are individuals with significant disabilities and to increasing competitive integrated employment for individuals with significant disabilities. Section 7 of the Act now defines the term ''competitive integrated employment.''

Current Regulations: The current part 373 does not address competitive integrated employment.

Proposed Regulations: We propose to include a provision in § 373.7 stating that the Commissioner will give priority consideration to activities on improving transition from education to employment, including competitive integrated employment. We also propose to add a definition of ''competitive integrated employment'' in § 373.4.

Reasons: The proposed change is necessary to conform part 373 to the changes to the Act made by WIOA.

Vocational Rehabilitation Services

Statute: The Act refers to the provision of ''vocational rehabilitation services'' throughout title I, and section 7 defines the term ''vocational rehabilitation services.'' Section 303 of the Act, however, does not refer to the term ''vocational rehabilitation services'' but rather authorizes special demonstration programs to expand and improve the provision of rehabilitation and other services under the Act.

Current Regulations: There is no reference to the term ''vocational rehabilitation services'' in part 373. Also, part 373 includes a definition of ''rehabilitation services'' that is virtually identical to section 103(a) of the Act, which details vocational rehabilitation services for individuals.

Proposed Regulations: We propose to amend part 373 by replacing, when appropriate, the term ''rehabilitation services'' with the term ''vocational rehabilitation services.'' In addition, we propose adding a definition for the term ''vocational rehabilitation services'' that is identical to the current definition for the term ''rehabilitation services.'' Finally, we propose to change the definition of the term ''rehabilitation services'' in a manner that is broader than the proposed definition for the term ''vocational rehabilitation services.''

Reasons: These proposed changes are necessary to conform part 373 to titles I and III of the Act and to differentiate between rehabilitation services and vocational rehabilitation services. These proposed changes would clarify that the types of projects that may be funded under the Rehabilitation National Activities Program are not limited to vocational rehabilitation services but rather may address the broader range of services encompassed by the term ''rehabilitation services'' authorized by title III of the Act.

Supported Employment

Statute: Section 303 of the Act mandates that, in announcing competitions under this program, the Commissioner shall give priority consideration to supported employment programs. Section 7 of the Act defines the term ''supported employment.''

Current Regulations: The current part 373 does not include a definition of the term ''supported employment.''

Proposed Regulations: We propose to amend § 373.4 to include a definition of ''supported employment'' that is currently contained in § 361.5(b)(53).

Reasons: The proposed change would better assist eligible entities in determining how to comply with any requirement to address supported employment. Specifically, in implementing the priority listed in proposed § 373.7(a)(2), in which the term ''supported employment'' is used, we are proposing that the same definition of this term that is used in 34 CFR part 361 be used here.

Projects That May Be Funded

Statute: Under section 303 of the Act, projects funded under the special demonstration programs may include special projects and demonstrations of service delivery, model demonstration projects, technical assistance projects, systems change projects, special studies and evaluations, and dissemination and utilization activities.

Current Regulations: Part 373 lists these types of projects along with potential project priorities in § 373.6, which is entitled ''What are the priorities and other factors and requirements for competitions?''

Proposed Regulations: We propose to amend current § 373.6 to change the section title to ''What types of projects may be funded?'' and to include only the six types of projects authorized by the statute under this section.

Reasons: The proposed change is necessary to conform part 373 to the Act and to clarify that the types of projects that may be funded under the Rehabilitation National Activities Program are not priorities for funding.

Priorities for Competitions

Statute: Section 303(b)(5) of the Act, as amended by WIOA, adds transition from education to employment and competitive integrated employment to supported employment as priorities for competitions.

Current Regulations: Section 373.6 lists three statutory priorities, two of which have been deleted by WIOA, and the third, pertaining to supported employment, does not contain the full statutory language.

Proposed Regulations: We propose to amend part 373 by adding a new § 373.7 entitled ''What are the priorities and other factors and requirements for competitions?'' This proposed section contains the full statutory language for the two new statutory priorities pertaining to transition from education to employment and competitive integrated employment and for the preexisting statutory priority for supported employment.

Reasons: The proposed change is necessary to conform part 373 to the new statutory priorities contained in WIOA.

Priorities and Other Factors and Requirements for Competitions

Statute: Section 303 of the Act mandates that, in announcing competitions for grants and contracts under the special demonstration programs, the Commissioner shall give priority consideration to ''priority for competitions'' under section 303(b)(5)(A), and may require applicants to address one or more ''additional competitions'' under section 303(b)(5)(B).

Current Regulations: Part 373 addresses priority projects in § 373.6 but does not specify or differentiate among ''priority for competitions'' and ''additional competitions.''

Proposed Regulations: We propose to move the content of priorities from the current § 373.6 into a new § 373.7. In addition to the statutory priorities that are listed in the current § 373.6, we propose that § 373.7 include the following four additional priorities for competitions under this program to address the technical assistance and training needs of State vocational rehabilitation agencies and their personnel:

§ 373.7(b)(6) Technical assistance to designated State units and their personnel in working with employers to identify competitive integrated employment opportunities and career exploration opportunities in order to facilitate the provision of vocational rehabilitation services and transition services for youth with disabilities and students with disabilities.

§ 373.7(b)(7) Consultation, training and technical assistance to businesses that have hired or are interested in hiring individuals with disabilities.

§ 373.7(b)(8) Technical assistance and training to designated State units and their personnel on establishment and maintenance of education and experience requirements, to ensure that the personnel have an understanding of the evolving labor force and the needs of individuals with disabilities. This would align with the work of the current Job Development Training and Technical Assistance Center.

§ 373.7(b)(9) Technical assistance to State vocational rehabilitation agencies and their partners to improve their performance to meet the requirements of WIOA designed to improve the numbers and quality of employment outcomes.

Finally, the proposed § 373.7 would also clarify that the Secretary may limit the priorities listed in paragraphs (a) and (b) of § 373.7 to address one or more of the factors in § 373.7(c).

Reasons: The proposed changes are necessary to conform part 373 to the changes to the Act made by WIOA and to clarify the additional competition priorities and factors that the Secretary may apply to any competitions under this program. We expect that these proposed changes would expand and improve the Rehabilitation National Activities Program and further the purpose of the Act.

Protection and Advocacy of Individual Rights Program (PAIR), 34 CFR Part 381

Background

The PAIR program is authorized under section 509 of the Act (29 U.S.C. 794e). The purpose of the PAIR program is to support the protection and advocacy system in each State to protect the legal and human rights of individuals with disabilities who need services that are beyond the scope of the CAP, and who are not eligible for services under the Protection and Advocacy for Persons with Developmental Disabilities and the Protection and Advocacy of Individuals with Mental Illness programs.

The Department last updated the regulations at 34 CFR part 381, which govern the PAIR program, on March 6, 1997 (62 FR 10404).

Summary of Proposed Changes

Both WIA and WIOA made a few significant changes to section 509 of the Act. With regard to the statutory changes made to section 509 by WIA, we propose to add the protection and advocacy system serving the American Indian Consortium as an entity eligible to receive a PAIR grant.

With regard to statutory changes made to section 509 by WIOA, we propose to clarify that PAIR grantees have the same general authorities, including to access records and program income, as the protection and advocacy system established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

We propose to clarify that the Secretary may award funds for the provision of training and technical assistance for PAIR grantees through a grant, contract, or cooperative agreement.

Significant Proposed Regulations

We organize our discussion of proposed changes by subject and section.

The Definition of ''State'' (§ 381.2)

Statute: Section 7(32) of the Act, as amended by WIA (29 U.S.C. 705(32)), deleted the Republic of Palau from the definition of the term ''State.'' As a result, ''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, and the Commonwealth of the Northern Mariana Islands. Section 7(32) of the Act was renumbered as section 7(34) by WIOA.

Current Regulations: Current part 381 makes several references to the Republic of Palau (*i.e.,* current § 381.2 regarding eligibility for a PAIR grant and current § 381.5 regarding definition of ''State'').

Proposed Regulations: We propose to delete all references to the Republic of Palau in part 381.

Reasons: This change is necessary to implement the current statutory definition of ''State,'' which forms the basis for determining eligibility for grants under the Act.

Public School Programs (§ 381.3)

Statute: None.

Current Regulations: The current § 381.3(a)(3) permits PAIR grantees to provide information on, and make referrals to, programs and services that address the needs of individuals with disabilities, including those individuals with disabilities who are exiting public school programs. Current § 381.10(a)(4) requires PAIR grantees to make an assurance to provide information on and make referrals to programs and services that address the needs of individuals with disabilities, including those individuals with disabilities who are exiting public school programs.

Proposed Regulations: We propose to make two changes in this part. First, we propose to amend current § 381.3(a)(3) to clarify that PAIR grantees are authorized to provide information and referral services to individuals with disabilities exiting any school program. Second, we propose to amend § 381.10(a)(4) to require PAIR grantees to assure that they will provide information and referral services to individuals with disabilities exiting any school program.

Reasons: In proposing to use the term ''school,'' rather than ''public school,'' we recognize that many more individuals with disabilities are being educated in both public and private schools and that they may need information and referral services by PAIR grantees to enable them to participate in the programming offered in these settings.

Access to Records (§ 381.10)

Statute: Section 509(f)(2) of the Act, as amended by WIOA (29 U.S.C. 794e(f)), requires that PAIR grantees have the same general authorities, including the authority to access records and program income, as given to the Protection and Advocacy for Persons with Developmental Disabilities program established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

Current Regulations: Current § 381.10(a)(2) gives that PAIR grantees the same general authorities, including to access records and program income, as in part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

Proposed Regulations: We propose to amend § 381.10(a)(2) to add specific reference to ''title I'' of the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

Reasons: The proposed change is necessary to conform to the language of section 509, as amended by WIOA. This proposed change is primarily technical in nature as this authority existed prior to enactment of WIOA.

Training and Technical Assistance (§ 381.22)

Statute: Section 509(c)(1)(A) of the Act, as amended by WIOA (29 U.S.C. 794e(f)), clarifies that the training and technical assistance to PAIR grantees may be provided by the Secretary through a grant, cooperative agreement, or contract.

Current Regulations: Current § 381.22(a)(1) establishes the set aside for training and technical assistance to eligible systems, but does not specify the allowable mechanisms for funding the training and technical assistance since this is a new statutory requirement.

Proposed Regulations: We propose to amend § 381.22(a)(1) to clarify the funds for training and technical assistance may be awarded as a grant, contract, or cooperative agreement.

Reasons: The proposed changes are necessary to conform to the changes in the Act made by WIOA. The changes are primarily technical, as the Secretary always could use these mechanisms for awarding funds to provide training and technical assistance to PAIR grantees.

The American Indian Consortium (§ 381.22)

Statute: Section 509(c)(1)(B) of the Act, as amended by WIA (29 U.S.C. 794e(c)), requires the Secretary to reserve $50,000 to make a grant to the protection and advocacy system serving the American Indian Consortium, established under section 102 of the Developmental Disabilities Assistance and Bill of rights Act of 2000, for any fiscal year in which appropriations for the PAIR program is at least $10.5 million.

Current Regulations: Current § 381.22 does not address the funding of the protection and advocacy system serving the American Indian Consortium because part 381 was last updated prior to the 1998 amendments to the Act.

Proposed Regulations: We propose to amend § 381.22 by adding a new paragraph (a)(2) to require a minimum grant of $50,000 to the protection and advocacy system serving the American Indian Consortium when the total PAIR appropriation equals or exceeds $10.5 million. We also propose to make related changes to four other sections in this part.

Current § 381.2 would be amended to include the American Indian Consortium as an eligible entity for a PAIR grant.

Current § 381.3 would be amended to clarify that the protection and advocacy system serving the American Indian Consortium has the authority to provide information, provide advocacy and legal representation, and make referrals for individuals with disabilities within the American Indian Consortium when describing the authorized activities of PAIR grantees.

Current § 381.5 would be amended to incorporate references to tribal governmental agencies in the definition of ''advocacy.''

Current § 381.10 would be amended to require the protection and advocacy system serving the American Indian Consortium to submit assurances as a PAIR grantee when applying for funding as part of the application requirements.

Reasons: The proposed changes are necessary to implement the amendments to the Act made by WIA in 1998. Previously, this protection and advocacy system was eligible for funding under other components of the protection and advocacy system, including the Protection and Advocacy of Persons with Developmental Disabilities and the Protection and Advocacy of Individuals with Mental Illness programs, but not under the PAIR program.

Reallotment (§ 381.22)

Statute: Section 509(e) of the Act (29 U.S.C. 794e(e)) sets forth the process by which the Secretary reallots PAIR funds when a grantee cannot use all funds allotted to it. This statutory provision remains unchanged.

Current Regulations: Current § 381.22 addresses how the Secretary allocates funds but does not cover the reallotment requirements.

Proposed Regulations: We propose to add a new paragraph (d) to § 381.22 to clarify that the Secretary may reallot funds to other eligible systems when an existing eligible system within the State is not able to expend its funds in that fiscal year or the subsequent fiscal year.

Reasons: While the reallotment of PAIR funds has been permitted under section 509 of the Act, PAIR grantees have not returned funds to the Department for this purpose. However, we believe it is important to describe the reallotment requirements in this part in the event reallotment funds become available.

Program Income (§ 381.33)

Statute: Section 19 of the Act governs the use of program income received by grantees, including PAIR grantees, under the Act. This statutory provision remains unchanged.

Current Regulations: Current § 381.33 describes how a grantee may use or carry over funds but it does not address how a grantee may spend program income

Proposed Regulations: We propose to add a new paragraph (e) to § 381.33 that defines program income, identifies its uses, permits it to be treated as either an addition or deduction to the PAIR award, and permits program income to be carried over into the fiscal year succeeding that in which it was earned.

Reasons: These proposed regulations are necessary to govern the use and treatment of program income, consistent with sections 19 and 509 of the Act. Although this is not a new statutory requirement, we believe it is important to include these regulations into part 381 since PAIR grantees frequently receive large sums of program income.

Rehabilitation Training Program, 34 CFR Part 385

Background

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 independent living services programs, and through client assistance programs; (2) maintain and upgrade basic skills and knowledge of personnel trained to deliver rehabilitation services; and (3) provide training and information to individuals with disabilities, and their parents, families, guardians, advocates, and authorized representatives, to develop the skills necessary to access the rehabilitation system and to become active decision makers in the vocational rehabilitation process. The Department last published regulations for this program, on March 6, 1997 (62 FR 10398).

Summary of Proposed Changes

We propose to add supported employment and economic and business development programs to the list of programs that may benefit individuals with disabilities.

We propose to emphasize the importance of maintaining and upgrading the skills of personnel who provide supported employment services and customized employment services to individuals with the most significant disabilities, as well as personnel assisting individuals with disabilities whose employment outcome is self-employment, business ownership, or telecommuting.

We propose to add a definition of ''vocational rehabilitation services'' and to replace the term ''rehabilitation services'' with ''vocational rehabilitation services'' as appropriate. We will retain the more general term ''rehabilitation services'' in instances when the services listed go beyond vocational rehabilitation services. Finally, we would add definitions of ''supported employment'' and ''assistive technology'' consistent with definitions in title I of the Act.

Significant Proposed Regulations

We organize our discussion by subject.

Purpose

Statute: Section 301(a) of the Act states the purpose of the programs authorized under Title III of the Act and describes the types of programs whose personnel may benefit from rehabilitation training. Section 301(a)(1) authorizes the Commissioner to make grants and contracts to train personnel who work in economic and business development programs. WIOA added language to section 302(a)(1)(E) specifically highlighting the need to train personnel in programs that provide supported employment and customized employment for individuals with the most significant disabilities. Section 302(a)(1)(F) describes personnel assisting individuals with disabilities whose employment outcome is self-employment, business ownership, or telecommuting.

Current Regulations: The current part 385 does not specifically address training personnel who deliver supported employment services and customized employment services to individuals with the most significant disabilities, nor is training personnel who assist individuals with disabilities whose employment outcome is self-employment, business ownership, or telecommuting specifically mentioned.

Proposed Regulations: We propose to amend current § 385.1(a)(1) by adding supported employment and economic and business development programs to the list of programs that may benefit individuals with disabilities. We also propose to amend current § 385.1(a)(2) to emphasize the importance of maintaining and upgrading the skills both of personnel who provide supported employment services and customized employment services to individuals with the most significant disabilities and personnel assisting individuals with disabilities whose employment outcome is self-employment, business ownership, or telecommuting.

Reasons: The proposed changes in the regulations are necessary to conform the regulations to current sections 301(a) and 302(a) of the Act.

Assistive Technology Terms

Statute: Section 302(a)(1)(H) of the Act, as amended by WIOA, authorizes the Rehabilitation Training program to assist eligible entities to provide rehabilitation personnel training in providing assistive technology services.

Current Regulations: The current part 385 does not address ''assistive technology services'' although the term ''rehabilitation technology'' is used in § 385.1(a)(2), and § 385.4 includes definitions of ''assistive technology device'' and ''assistive technology services.''

Proposed Regulations: We propose to add a definition of ''assistive technology'' to the definitions ''assistive technology device'' and ''assistive technology services'' already in current § 385.4. Specifically we define ''assistive technology'' to mean ''technology designed to be utilized in an assistive technology device or assistive technology service.'' In addition, we propose to add to the definition of ''assistive technology services'' services that would expand the availability of access to technology, including electronic and information technology, to individuals with disabilities.

Reasons: The proposed changes are necessary to conform part 385 to the changes to the Act made by WIOA.

Definition of State

Statute: The Workforce Investment Act of 1998 deleted the Republic of Palau from the definition of the term ''State'' in section 7(32). As a result, ''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, and the Commonwealth of the Northern Mariana Islands, but it has excluded the Republic of Palau.

Current Regulations: The current § 385.4 includes the Republic of Palau in the definition of ''State.''

Proposed Regulations: We propose to delete the Republic of Palau from the areas included in the definition of ''State.''

Reasons: The change conforms the definition of ''State'' to the current statutory definition.

Vocational Rehabilitation Services

Statute: The Act refers to ''vocational rehabilitation services'' throughout title I, and section 7 defines the term ''vocational rehabilitation services.''

Current Regulations: The current part 385 does not include a definition of ''vocational rehabilitation services.''

Proposed Regulations: We propose to amend part 385 by adding a definition of ''vocational rehabilitation services.'' The proposed definition mirrors the definition provided in section 7 of the Act. We also propose to replace the term ''rehabilitation services'' with ''vocational rehabilitation services'' in part 385 as appropriate. We would retain the more general term ''rehabilitation services'' in instances when the services listed go beyond vocational rehabilitation services.

Reasons: The proposed changes are necessary to conform part 385 to titles I and III of the Act.

Supported Employment

Statute: The changes to section 302 of the Act made by WIOA include a new authority in 302(a)(1) to train rehabilitation personnel to deliver supported employment services and customized employment services to individuals with the most significant disabilities. In addition, section 7(38) of the Act, as amended by WIOA, includes a definition of ''supported employment.''

Current Regulations: The current part 385 does not address the provision of training for rehabilitation personnel to deliver supported employment services and customized employment services to individuals with the most significant disabilities.

Proposed Regulations: We propose to amend the definitions of ''supported employment'' and ''supported employment services'' in current § 385.4 to address the amendments made to the Act by WIOA.

Reasons: The proposed changes are necessary to conform part 385 to changes to section 7(38) of the Act made by WIOA. The fact that supported employment services now include ''customized employment'' and the fact that supported employment services may be provided for up to 24 months are changes that need to be reflected in the regulations.

Rehabilitation Long-Term Training Program, 34 CFR Part 386

Background

The purpose of the Rehabilitation Long-Term Training program is to provide financial assistance for projects that provide basic or advanced training leading to an academic degree or certificate in one of 30 fields of study and for projects that provide support for medical residents enrolled in training programs in physical medicine and rehabilitation. The program is designed to provide academic training that leads to an academic degree or academic certificate in areas of personnel shortages. The Department last published regulations for this program on March 6, 1997 (62 FR 10398).

Summary of Changes

We propose to add two areas to the training areas supported by this program: (1) Assisting and supporting individuals with disabilities pursuing self-employment, business ownership, and telecommuting, and (2) supported employment services and customized employment services to individuals with the most significant disabilities.

We are also proposing to reduce from 75 percent to 65 percent the required percentage of the total award that grantees must spend on financial assistance to scholars.

We propose to prohibit scholars from concurrently receiving financial assistance from multiple grants.

We propose that the grantee must document that the scholar will seek employment in the field of study in which the scholar was trained or where the field of study is directly relevant to the job functions being performed.

We are proposing a number of changes to the exit processes that will help scholars be more aware of the requirements of their service obligation.

We propose to set out the consequences for a grantee that has failed to request or maintain the required documentation for a scholar who does not meet the service obligation.

We propose to allow some scholars to start satisfying the service obligation before completion of the program of study but to prohibit other scholars who do not complete the program of study from performing the service obligation.

We propose to disallow internships, practicums, or any other work-related requirement necessary to complete the educational program as qualifying employment for the service obligation.

Finally, we propose some changes regarding deferrals and exceptions. For an exception based on disability, the scholar must have a disability either that did not exist at the time the scholar entered the program or that has worsened since the scholar entered the program. We are proposing that documentation of disability be less than three months old. With regard to deferrals, we propose to allow for up to four years deferral for a member on active duty in the Armed Forces, an increase from the three years in current regulations. We are proposing to restrict a deferral based on a scholar's pursuing higher education only to advanced education that is in the rehabilitation field.

Significant Proposed Regulations

We organize our discussion by section number and subject.

Section 386.1 (Purpose)

Statute: Section 302(a)(1) of the Act provides examples of the types of personnel who can be trained with funds under the long-term training program. Specifically, section 302(a)(1)(F) references the need to train personnel assisting and supporting individuals with disabilities pursuing self-employment, business ownership, and telecommuting. In addition, section 302(a)(1)(E) lists the need for personnel specifically trained to deliver supported employment services and customized employment services to individuals with the most significant disabilities.

Current Regulations: Current § 386.1(b) lists the categories of personnel who may receive training through the Rehabilitation Long-Term Training Program but does not include the categories in sections 302(a)(1)(E) and (F).

Proposed Regulations: In the list of personnel who may receive training through the Rehabilitation Long-Term Training Program in current § 386.1(b), we propose to add paragraph (1) listing personnel assisting and supporting individuals with disabilities pursuing self-employment, business ownership,

and telecommuting. In paragraph (3) of proposed § 386.1(b), we would combine paragraphs (2) and (30) in current § 386.1(b) into one item on rehabilitation technology. In paragraph (14) of proposed § 386.1(b), we would combine paragraphs (13) and (29) in current § 386.1(b) into one item on therapeutic recreation. In paragraph (17) of current § 386.1(b), we would clarify the meaning of the specialty of ''rehabilitation of individuals who are blind or visually impaired'' by providing two examples of the types of personnel in this specialty area. Finally, in paragraph (28) of proposed § 386.1(b), we would include customized employment in addition to supported employment.

Reasons: We are proposing these changes in § 386.1(b) to better align the regulations with the Act and to clarify language in current regulations.

Section 386.4 (Definitions)

Statute: None.

Current Regulations: Current § 386.4(b) defines terms that apply to the Rehabilitation Long-Term Training Program.

Proposed Regulations: We proposed to clarify two terms appearing in the list in current § 386.4(b), Other definitions. First, we would clarify that a ''scholarship'' may cover the costs of books and supplies, in addition to student stipends, tuition and fees, and student travel in conjunction with training assignments. We would also clarify that the ''State vocational rehabilitation agency'' is the same as the designated State agency referenced in current § 361.5(b)(13).

Reasons: With regard to the definition of ''scholarship,'' our policy has been to consider ''books and supplies'' as allowable expenses to be covered with scholarship funds under this program; we are simply incorporating this policy into the regulations. The proposed changes to the definition of ''State vocational rehabilitation agency'' would clarify the meaning of the current definition.

Section 386.21 (Applications)

Statute: Section 302(b)(2) of the Act describes application requirements for grantees receiving support under the Rehabilitation Training program.

Current Regulations: These application requirements are not contained in current regulations.

Proposed Regulations: We propose to incorporate the application requirements in section 302(b)(2) into a new § 386.21.

Reasons: Including these application requirements in the regulations will help to make grantees aware of the statutory requirement.

Section 386.30 (Matching requirements)

Statute: Section 302(a)(1) states that grants under this program pay part of the costs of the projects.

Current Regulations: Current § 386.30 states that the Federal share cannot be greater than 90 percent of the total project cost.

Proposed Regulations: Current § 386.30 has been reworded to state that the grantee is required to contribute at least ten percent of the total cost of the project.

Reasons: Although having the same meaning, the proposed language more clearly states the requirement in terms of the amount of the cost the grantee must cover. We believe this affirmative language would lead to less confusion and greater compliance with the match requirement.

Section 386.31 (Funding Requirements)

Statute: None.

Current Regulations: In § 386.31(a), grantees are required to expend 75 percent of their award on financial assistance to scholars.

Proposed Regulations: We would reduce this 75 percent requirement and are instead proposing in § 386.31(a) that a minimum of 65 percent of the total project cost (including both the Federal grant and the cost share) must be expended on financial assistance for scholars. In addition, in § 386.31(c), we are proposing a new provision to clarify that scholars may not receive concurrent scholarships from more than one project under this program.

Reasons: Many grantees have had problems meeting the current regulatory provision in § 386.31(a). Specifically, we have found that requiring grantees to dedicate 75 percent of their Federal award and their non-Federal share to scholarships leaves very little flexibility in their budgets and makes administering these grants problematic. Therefore, we are proposing to reduce the percentage that the grantee is required to expend on financial assistance for scholars. This proposed change is also consistent with the threshold used by the Office of Special Education Programs in their personnel preparation grants under the Individuals with Disabilities Education Act (IDEA).

The additional provision in proposed § 386.31(c) is necessary because some grantees have funded scholars from multiple grants under this program. While it can be difficult to ensure that scholarships are not duplicative, we are also concerned that scholars who receive simultaneous scholarships under multiple grants under this program would be responsible for service obligations for each scholarship received, which could, at a minimum, double the scholar's service obligation. This proposed provision would make the grantee's reporting on scholars clear and would also avoid confusion on the part of the scholar regarding the service obligation.

Section 386.32 (Allowable Costs)

Statute: Section 302(b)(4) allows grants to provide scholarships and necessary stipends and allowances.

Current Regulations: In addition to allowable costs described in the statute as well as in the Education Department General Administrative Regulations, other allowable costs under the Rehabilitation Long-Term Training Program are described in § 386.32. In current regulations, these costs include student stipends, tuition and fees, and student travel in conjunction with training assignments.

Proposed Regulations: We have clarified that allowable costs, which grantees may cover as part of the financial assistance they provide to scholars, may include the costs of books and supplies.

Reasons: Our policy has been to consider ''books and supplies'' as allowable expenses to be covered with scholarship funds under this program; we are simply proposing to incorporate this policy into the regulations.

Section 386.33 (Disbursing Scholarships)

Statute: None.

Current Regulations: Current § 386.33 allows permanent residents of the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands to be eligible for scholarships.

Proposed Regulations: In § 386.33(a)(1)(ii), we have deleted references to the Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau (referred to as the Freely Associated States (FAS)) as areas from which permanent residents can qualify for scholarships. We have also added Puerto Rico, the United States Virgin Islands, Guam, and American Samoa as areas from which permanent residents can qualify for scholarships.

Reasons: Because only States are eligible to receive grants under title I of the Act, the FAS are no longer eligible to receive title I grants to carry out Rehabilitation Act programs within their jurisdictions. Additionally, section 302(b)(2) of the Act requires each

applicant for a long-term training grant to include a description how the State rehabilitation agency designated under title I will participate in the project and to identify potential employers that would satisfy the service obligation requirements for scholars. According to § 386.40(a)(6), these employers must be the State rehabilitation agency or have an arrangement with that agency to provide rehabilitation services. Given that the FAS are no longer eligible to receive grants to carry out programs under title I of the Act, there are no State agencies designated under title I or other potential employers for the service obligation available in the FAS. Thus, there is no authority in the Act to allow permanent residents of the FAS to continue to be eligible for scholarships. FAS permanent residents, however, would still be eligible for scholarships, in the same manner as citizens or permanent residents of any other country, as long as they demonstrate that they are eligible under the remaining provisions in § 386.33(a), *i.e.* being a lawful permanent resident of the United States or being in the United States with the intention of becoming a citizen or permanent resident.

We also amend this section to include Puerto Rico, the United States Virgin Islands, Guam, and American Samoa as areas from which permanent residents may be identified as eligible for scholarships. These areas are considered ''States'' as that term is defined in section 7 of the Act and, as a result, are eligible to receive grant funds under the title I of the Act to carry out vocational rehabilitation and other programs authorized by the Act.

Statute: None.

Proposed Regulations: We propose to renumber and reorganize current § 386.33. Also, in proposed § 386.33(c), we would clarify that the grantee must document that the scholar will seek employment in the field of study in which the scholar was provided training or employment where it can be demonstrated that the field of study is directly relevant to the job functions being performed.

Reasons: The proposed requirements that employment must be in the field of study in which the training was received and where the job functions must be directly relevant to the field of study in which the training was received merely reflect current policy. We believe it is advisable to clarify this practice through regulations to ensure a consistent approach among all grantees as they inform scholars about the requirements to carry out the service obligation for the financial assistance they receive. Without these requirements, it is not clear whether scholars may obtain employment that does not directly use the skills they learned while pursuing a degree or certificate under the Rehabilitation Long-Term Training Program.

Section 386.34 (Assurances)

Statute: Section 302(b)(5) of the Act requires that grantees assure that each scholar will enter into an agreement with the grantee to perform the service obligation or repay the costs of the scholarship.

Current Regulations: Current § 386.34 lists the assurances that a grantee wishing to provide scholarships must provide.

Proposed Regulations: We are proposing the following:

- In § 386.34(a) that, for each year after the initial payback agreement has been signed, the grantee and scholar must have a signed executed agreement containing the terms and conditions outlined in the section.
- In § 386.34(c) that the scholar be informed annually of the total indebtedness.
- In § 386.34(c) incorporating by reference the provisions of current § 386.40 rather than repeating them here as in the current regulations.
- In § 386.34(f) clarifying that the grantee must provide the scholar with certain information related to the scholar's payback obligation upon the scholar's exiting the program and the scholar must then sign a certificate acknowledging the receipt of such information.
- In § 386.34(g)(1) that the grantee obtain the name of the scholar's supervisor, the duties the scholar will perform, and whether the position is full- or part-time.
- In § 386.34(j) that records be maintained not less than one year beyond the date that all scholars provided financial assistance under the grant have completed their service obligation or otherwise entered into repayment status.

Reasons: We are proposing these revisions for the following reasons:

- Proposed § 386.34(a) and (c) would bring this information to the forefront for scholars. Requiring that such information be provided only once, at the beginning of the scholarship support, has resulted in misunderstandings and disagreements about the nature of the obligations.
- Proposed § 386.34(c) would be streamlined rather than repeating provisions in § 386.40 for the sake of efficiency.
- Proposed § 386.34(f) would be more specific about the need for grantees to provide scholars with certain information upon their exit from the program and would emphasize the need for grantees to ask scholars to sign the certification acknowledging receipt of the information. We believe that the more that can be done to help scholars understand their obligations, the fewer instances of misunderstanding will occur and the more likely it will be that scholars will complete their service obligations.
- Proposed § 386.34(g)(1) would assist the grantee in determining whether or not a scholar's employment qualifies to repay the scholarship.
- Proposed § 386.34(i) would ensure that the Department has sufficient information to properly monitor and administer the grant as contemplated by 34 CFR 75.730–75.732, and it would ensure that sufficient time would be available to resolve any disputes about whether a scholar's service obligation has been met or whether repayment must be initiated.

Section 386.36 (Incomplete or Inaccurate Information)

Statute: None.

Current Regulations: The current regulations do not plainly describe the grantee's liability for failing to provide accurate and complete scholar information to the Department.

Proposed Regulations: We propose to add a new paragraph in § 386.36 describing the consequences for a grantee that has failed to request or maintain the documentation required in current § 386.34 for a scholar who does not meet the service obligation. Specifically, the Department would be able to recover, in whole or in part, from the grantee the debt amount and any collection costs described in current §§ 386.40 and 386.43, if the Department: (a) Is unable to collect, or improperly collected, some or all of these amounts or costs from a scholar, and (b) determines that the grantee failed to provide to the Department accurate and complete documentation described in current §§ 386.34 and 386.40.

Reasons: We propose to add this section to clarify the grantee's responsibilities to report complete and accurate information on scholars and their payback obligations and to clarify the consequences associated with noncompliance. The authority of the Department to recover collection costs is new and may be necessary to fully reimburse a scholar who is eligible for a refund for any debt that has already been referred to the U.S. Treasury for collection. While the Department has always had the authority in EDGAR to recover the debt amount, we propose

this language to ensure that grantees are more aware of this authority.

Section 386.40 (Requirements for Scholars)

Statute: Section 302(b)(5) of the Act requires a scholar to perform a service obligation or repay the cost of the scholarship.

Current Regulations: Current § 386.40 outlines the requirements for scholars, although some of the payback requirements are described in current § 386.34(c).

Proposed Regulations: We have proposed to add the following:

- § 386.40(a)(6) describing the payback obligations in current § 386.34(c) and clarifying that the service obligation must be in the field of study the scholar pursued or where the field of study is directly relevant to the job functions performed.
- § 386.40(b)(1) allowing scholars who are in multi-year programs of study and who are currently employed or are seeking employment to start satisfying the service obligation after completion of at least one year of study. This provision would also prohibit scholars who do not complete the program of study from performing the service obligation, except for scholars who complete at least one year of a multi-year program. We request specific comments on this proposal.
- § 386.40(b)(2) making it clear that an internship, practicum, or any other work-related requirement necessary to complete the educational program would not be considered qualifying employment.
- § 386.40(c) clarifying that, if the scholar is pursuing coursework on a part-time basis, the service obligation for these part-time courses would be based on the full-time equivalent total of actual academic years of training received.
- § 386.40(a)(9) requiring the scholar to provide all information necessary to monitor the service obligation.
- § 386.40(d) making a scholar in repayment status responsible for any costs assessed in the collection process if the scholar does not provide information on his or her employment status or if the scholar fails to provide other information that the grantee requests, even if the information is subsequently provided.

Reasons: We are proposing these revisions for the following reasons:

- Proposed § 386.40(a)(6)(i) would reflect current policy. We believe it is advisable to clarify this practice through regulations to assure a consistent approach among all grantees as they inform scholars about the requirements to repay the financial assistance they receive.
- Proposed § 386.40(b)(1) would implement RSA's policy that, for multi-year courses of study, scholars who have completed at least one year are likely to have made substantial gains in their knowledge and skills such that they would be able to provide improved vocational rehabilitation services. RSA believes that these scholars should be given the opportunity to start satisfying the service obligation even before they have completed the program of study. Except for scholars who complete at least one year of a multi-year program, this provision would also prohibit all scholars who do not complete the program of study from being eligible to perform the service obligation. These scholars would be responsible for repayment of the scholarship under § 386.43. This provision reflects the longstanding policy of the Office of Special Education Programs in its personnel preparation program.
- Proposed § 386.40(b)(2) would clearly make ineligible for the service obligation any employment required in order to complete the course of study.
- Proposed § 386.40(c) would ensure consistency among all grantees. We believe this is a fair interpretation of the payback requirement, which states that a scholar must repay two years of service for every one year of financial assistance received. This would clarify, for example, that a half-time scholar, who may require four years rather than the traditional two years to complete a master's degree program, would not have to complete eight years of service for the same program that a full-time scholar would only have to complete four years of service. This accommodation is appropriate, particularly in light of the fact that many more scholars are part-time, and they are often non-traditional students who have been in the workforce for a number of years and cannot afford to drop out of employment to pursue full-time study.
- Proposed §§ 386.40(a)(9) and 386.40(d) would require scholars to remain in contact with the grantee and to provide the necessary information about their repayment status. It is our hope that having such requirements in regulations would reinforce the importance of these scholar responsibilities. In particular, we are concerned that a scholar may be placed in repayment status only because the scholar failed to provide complete and accurate information. If accurate information is later submitted that allows the scholar to receive a refund of debt payments made, that scholar potentially would not receive a full refund if collection costs have been incurred by the Federal government. Making scholars who receive a refund aware that collection costs could be their responsibility would help achieve better compliance by scholars in providing complete and accurate information.

Section 386.41 (Granting Deferrals and Exceptions)

Statute: Section 302(b)(5)(A)(ii) of the Act states that RSA may by regulation provide for repayment exceptions and deferrals.

Current Regulations: In current § 386.41, the provisions for obtaining an exception or deferral of the payback obligation are described.

Proposed Regulations: In proposed § 386.41(a), we clarify the basis for an exception based on disability. The scholar would have to have a disability that either (1) was not diagnosed at the time the scholar entered the program, or (2) has worsened since the scholar entered the program.

We are also proposing some changes to current § 386.41(b), which are the provisions applying to deferrals to the service obligation. In proposed § 386.41(b)(1), we would restrict a deferral for a scholar engaging in a full-time course of study at an institution of higher education to scholars who are pursuing degrees or certificates in the field of rehabilitation. In proposed § 386.41(b)(2), we would allow for a deferral of up to four years for a scholar who is on active duty with the Armed Forces rather than the three years in the current regulations. We also propose to add a new § 386.41(c) to address exceptional circumstances when a deferral might reasonably be granted. We give as examples the care of a disabled spouse, partner, or child or the circumstance when a scholar would have to accompany a spouse or partner who is on active duty in the Armed Forces.

Reasons: We do not believe exceptions should be granted simply because scholars have a disability. When individuals with a disability enter a program of study, there needs to be an expectation on their part that they will complete the service obligation. Therefore, granting an exception purely on the basis of an existing disability would not be warranted. However, if scholars are diagnosed with a disability after enrolling in the program or if a disability worsens, then an exception on the basis of these circumstances might be warranted.

With regard to the reasons for deferral, we believe restricting a deferral

on the basis of full-time study in the field of rehabilitation is more appropriate than the current basis for a deferral, which is that the scholar is pursuing full-time study at an institution of higher education. If the scholar is pursuing a course of study unrelated to rehabilitation, it is less likely that he or she will then seek qualifying employment in the field of rehabilitation; therefore, it would make more sense for the scholar to begin the financial repayment process. Increasing the possible deferral period for a scholar who is on active duty from three to four years, as we propose in § 386.41(b)(2), seems reasonable for a scholar who has two two-year tours of duty. We also recognize that we cannot anticipate all of the exceptional circumstances that may warrant a deferral. Therefore, in § 386.41(c), we have added a broader authority to grant deferrals and we propose a few examples of circumstances that might warrant such a deferral. These are illustrative and are not meant to be all-inclusive. Each request for a deferral will be considered on a case-by-case basis.

Section 386.42 (Applying for Deferrals and Exceptions)

Statute: None.

Current Regulations: Current § 386.42 describes the documentation that a scholar must provide to substantiate a deferral or exception.

Proposed Regulations: In § 386.42(b)(1) and (3), we are proposing more specific requirements for the documentation to substantiate a deferral or an exception based on disability. This documentation would apply to a scholar who has a permanent or temporary disability or to the disability of a spouse, partner, or child for whom the scholar is providing care, which would require the scholar to seek a deferral. In all of these cases, the scholar would have to provide a letter from a physician or other medical professional on official stationery that describes the diagnosis and prognosis for the disability and, in the case of a request for an exception, explains that the scholar cannot work with accommodations. The documentation would have to be less than three months old.

Reasons: It is important that any deferral or exception be carefully documented so that the Department's decisions regarding these matters are well-founded. We have encountered numerous instances in which the documentation provided by scholars was ambiguous or insufficient. To that end, we propose to include greater specificity, particularly around a deferral or exception based on a disability.

Innovative Rehabilitation Training Program, 34 CFR Part 387

Background

This program is designed to develop new and improved methods of training for rehabilitation personnel so that State vocational rehabilitation agencies may more effectively deliver rehabilitation services. The Department last published regulations for this program, codified in part 387, on March 6, 1997 (62 FR 10398).

Summary of Proposed Changes

We are proposing a new name for this program—Innovative Rehabilitation Training—that better describes the nature of activities to be funded under this authority.

We are proposing changes to incorporate new statutory language in sections 301 and 302 of WIOA and to better describe the broad authority available to the Department in these regulations.

We propose to clarify that the Secretary may award grants to develop new and improved methods of training not only for the rehabilitation personnel of State vocational rehabilitation agencies but also for rehabilitation personnel of other public or non-profit rehabilitation service agencies or organizations.

Finally, we propose to address new statutory language in section 101(a)(7) of the Act related to rehabilitation personnel having a 21st century understanding of the evolving labor force and the needs of individuals with disabilities so they can more effectively provide vocational rehabilitation services to individuals with disabilities.

Significant Proposed Regulations

We organize our discussion by subject.

Title

Statute: None.

Current Regulations: The current part 387 is called ''Experimental and Innovative Training.''

Proposed Regulations: We propose to change the name of the part to ''Innovative Rehabilitation Training.''

Reason: The new title would better describe the activities funded under this program.

Training for Personnel of Public or Non-Profit Rehabilitation Service Agencies or Organizations

Statute: Section 302 of the Act authorizes the Commissioner to provide grants and contracts to assist in training rehabilitation personnel who provide vocational, medical, social, and psychological rehabilitation services, and who provide other services to individuals with disabilities under the Act.

Current Regulations: The current § 387.1(b) states that this program is designed to develop new and improved methods of training for rehabilitation personnel so that State vocational rehabilitation agencies may more effectively deliver rehabilitation services. Current regulations do not address whether personnel from other public or non-profit rehabilitation service agencies or organizations may also receive the training.

Proposed Regulations: We propose to amend § 387.1(b) to include personnel of other public or non-profit rehabilitation service agencies or organizations as recipients of the training.

Reasons: The change is necessary for the regulation to be consistent with the statute, which authorizes the development of new and improved methods of training for rehabilitation personnel including personnel from State vocational rehabilitation agencies as well as from other public or non-profit rehabilitation service agencies or organizations.

21st Century Understanding

Statute: Section 101(a)(7) of the Act, as amended by WIOA, requires that the State vocational rehabilitation agencies ensure that their personnel have a 21st century understanding of the evolving labor force and the needs of individuals with disabilities.

Current Regulations: Although the current § 387.1 states that this program is designed to develop new types of training programs and new and improved methods of training for State rehabilitation agencies, it does not specifically address these new statutory requirements.

Proposed Regulations: We propose to amend § 387.1 to state that the program is designed to develop new innovative training programs for vocational rehabilitation professionals and paraprofessionals to have a 21st century understanding of the evolving labor force and the needs of individuals with disabilities so they can more effectively provide vocational rehabilitation services to individuals with disabilities.

Reasons: The proposed change would align innovative rehabilitation training projects awarded under 34 CFR part 387 with the needs of the field as described in WIOA. We anticipate that this change will have a positive effect on the Comprehensive System of Personnel

Development among State vocational rehabilitation agencies.

Rehabilitation Short-Term Training Program, 34 CFR Part 390

Background

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. The Department last published regulations for this program on March 6, 1997 (62 FR 10398).

Summary of Proposed Changes

We are proposing to add an additional selection criterion for grant competitions under this program—evidence of training needs as identified through training needs assessment.

Significant Proposed Regulations

Statute: Section 302(b) authorizes the Commissioner to provide grants and contracts to eligible entities to train rehabilitation personnel who provide rehabilitation services to individuals with disabilities. Section 12(a)(2) specifically authorizes the Commissioner to provide short-term training and technical instructions to rehabilitation personnel. Section 12(c) authorizes the Secretary to promulgate such regulations as are considered appropriate to carry out the Commissioner's duties under the Act.

Current Regulations: Current § 390.30(b) sets out selection criteria that may be used by the Secretary to evaluate application but it does not specifically state that the Secretary will review each application for evidence of the training needs of rehabilitation personnel.

Proposed Regulations: We propose to add a new paragraph (b) to current § 390.30 to state that the Secretary would review each application for evidence of training needs as identified through training needs assessment conducted by the applicant, designated State agencies, designated State units, or any other public or private nonprofit rehabilitation service agencies or organizations that provide rehabilitation services and other services authorized under the Act and whose personnel will receive the training.

Reasons: The proposed change is necessary to ensure that the proposed short-term training projects address the training needs of the rehabilitation personnel of designated State agencies or designated State units or any other public and private nonprofit rehabilitation service agencies or organizations whose personnel will receive the training. This proposed criterion would expand and improve the Rehabilitation Short-Term Training program and further the purpose of the Act.

Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who are Deaf-Blind, 34 CFR Part 396

Background

This program is designed to establish interpreter training programs or to provide financial assistance for ongoing interpreter programs to train a sufficient number of qualified interpreters to meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind. The Department last published regulations for this program on March 6, 1997 (62 FR 10398).

Summary of Proposed Changes

We are proposing changes to conform to section 302 of the Act, which adds individuals who are hard of hearing to the individuals served by this program. We are also proposing changes to ensure that the program accurately reflects the training needs of qualified interpreters in order to effectively meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

We propose to amend the definition of a qualified professional in order to ensure that the highest level of competency is incorporated into the training of interpreters.

We propose to add selection criteria for the program to encourage evidence-based and promising practices.

We propose to add priorities for increasing the skill level of interpreters in unserved or underserved geographic areas, existing programs that have demonstrated their ability to raise the skill level of interpreters to meet the highest standards approved by certifying associations, and specialized topical training.

Significant Proposed Regulations

We organize our discussion by subject and section.

Changes That Affect Part 396 in Its Entirety

Hard of Hearing

Statute: Section 302(f) of the Act authorizes the training of qualified interpreters to meet the needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

Current Regulations: 34 CFR part 396 does not address the training of interpreters for individuals who are hard of hearing.

Proposed Regulations: We propose to address the training of interpreters for individuals who are hard of hearing, as relevant, throughout part 396.

Reasons: This would conform part 396 to the Act.

Skilled Interpreters

Statute: Section 302(f) of the Act uses the term ''qualified interpreters.''

Current Regulations: 34 CFR part 396 uses the term ''skilled interpreters.''

Proposed Regulations: Proposed § 396.1 would replace the term ''skilled interpreters'' with the term ''qualified interpreters.''

Reasons: Although this change in terminology from ''skilled interpreters'' to ''qualified interpreters'' does not convey a substantive change in meaning, this change would conform 34 CFR part 396 to section 302(f) of the Act.

An Individual Who Is Deaf or Hard of Hearing

Statute: Section 302(f) of the Act authorizes training of qualified interpreters to meet the communications needs of individuals who are deaf or hard of hearing, and individuals who are deaf-blind.

Current Regulations: 34 CFR part 396 does not contain a definition for an ''individual who is hard of hearing.''

Proposed Regulations: We propose to add the following definition in § 396.4(c): ''an individual who has a hearing impairment such that, in order to facilitate communication, the individual depends upon visual modes, such as sign language, speech reading, and gestures, or reading and writing, in addition to any other auditory information.''

Reasons: This program is to serve individuals who are hard of hearing in addition to individuals who are deaf and individuals who are deaf-blind. We believe it is important to propose a definition of ''individual who is hard of hearing'' to clarify for grantees what population is meant by this term. We used the definition of ''individual who is deaf'' as a starting point and made some modifications to this definition as appropriate. We emphasized the communication needs of this population, as this program is specifically meant to address the communication needs of individuals who are deaf, hard of hearing, or deaf-blind. We particularly encourage the

public to comment on the appropriateness of this definition in the context of this program.

Other Definitions

Statute: None.

Current Regulations: Current § 396.4(c) defines the term ''Existing program that has demonstrated its capacity for providing interpreter training service.''

Proposed Regulations: We propose to expand this definition to include evidence-based practices in the training of interpreters and promising practices when evidence-based practices are not available.

Reasons: The Department believes that providing further context for the expectations regarding the curricula of interpreter training programs will provide greater guidance to grantees and the public. We also recognize that there are a number of promising practices available, several of which were developed through grants funded by this program and therefore should be utilized when evidence-based practices are not available.

Statute: None.

Current Regulations: Current § 396.4(c) defines the term ''Qualified professional''.

Proposed Regulations: We propose to amend the definition consistent with the final priority published in the **Federal Register** on September 1, 1999 (64 FR 48068) as follows: ''to mean an individual who has (1) met existing certification or evaluation requirements equivalent to the highest standards approved by certifying associations; or (2) successfully demonstrated interpreting skills that reflect the highest standards approved by certifying associations through prior work experience.''

Reasons: We want to ensure that the highest level of competency is incorporated into the training of interpreters in interpreter training programs funded by RSA. Since 2000, the Department has funded national and regional interpreter education centers that train qualified interpreters to meet the competencies equivalent to the highest standards approved by certifying associations. Thus, this standard has been in effect for 15 years, and we propose to change the definition to reflect this reality.

Statute: None.

Current Regulations: Current § 396.4(c) does not contain a definition for the term ''related agency.''

Proposed Regulations: We propose to add the definition of ''related agency'' from § 386.4. That section defines the term as an American Indian rehabilitation program or any Federal, State, or local agency; non-profit organization; or professional corporation or practice group that provides services to individuals with disabilities on behalf of a designated State agency.

Reasons: This is the current definition used in part 386 and would clarify what the Department means when it refers to the term ''related agency.'' Adopting this definition of ''related agency'' would assure consistency between the Rehabilitation Long-Term Training Program and the program for Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind.

Subpart A — General § 396.1

Statute: None.

Current Regulations: Current § 396.1(a) states that grantees will receive grant funds, in part, to train manual, tactile, oral, and cued speech interpreters.

Proposed Regulations: We propose to expand this description to read ''training interpreters to effectively interpret and transliterate between spoken language and sign language, and to transliterate between spoken language and oral or tactile modes of communication.''

Reasons: This would clarify the type of training offered by this program and ensure the training of interpreters accurately reflects the needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

Selection Criteria, § 396.31

Statute: None.

Current Regulations: Current § 396.31(a) provides additional selection criteria to evaluate an application based upon demonstrated relationships with service providers and consumers.

Proposed Regulations: We propose to amend this section to refer to an additional factor: The curriculum for the training of interpreters includes evidence-based practices, and promising practices when evidence-based practices are not available.

Reasons: The new factor would ensure consistency with the changes to definitions we have proposed in § 396.4(c)(2) to encourage and support the use of evidence-based and promising practices.

Statute: None.

Current Regulations: Current § 396.31 discusses additional selection criteria the Secretary uses to evaluate an application. Current § 396.31(a) provides a selection criterion for demonstrated relationships with service providers and consumers.

Proposed Regulations: We propose to amend § 396.31(a) to cover demonstrated relationships with State Vocational Rehabilitation agencies and their related agencies and consumers.

Reasons: This would clarify the goal and expectation of the program, which is to meet the needs of deaf consumers of the State Vocational Rehabilitation agency and their related agencies.

Priorities, § 396.33

Statute: Section 302(f) of the Act requires the Department, in making awards under this part, to give priority to public or private nonprofit agencies or organizations with existing programs that have demonstrated their capacity for providing interpreter training services.

Current Regulations: Current § 396.33(a) contains the statutory priority in section 302(f).

Proposed Regulations: We propose adding § 396.33(b), which would allow the Secretary to give priority consideration when announcing competitions for awards in the following three areas: (1) Increasing the skill level of interpreters for individuals who are deaf or hard of hearing and individuals who are deaf-blind in unserved or underserved geographic areas; (2) Existing programs that have demonstrated their capacity for providing interpreter training services that raise the skill level of interpreters in order to meet the highest standards approved by certifying associations; and (3) Specialized topical training based on the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

Reasons: These priorities reflect the types of projects that the Department intends to focus on in the future, and we propose them here for future use.

Matching Requirements, § 396.34

Statute: Section 302(f) of the Act requires the Department to pay only part of the costs for projects under this program.

Current Regulations: Part 396 does not contain a match requirement.

Proposed Regulations: We propose to add a new § 396.34 that would include a requirement that 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 would be determined by the Secretary at the time of the grant award.

Reasons: This would conform part 396 to the statutory provision that this program have a matching requirement.

Proposed Changes, Regulations To Be Removed

We next discuss those regulations that we propose to remove. We discuss first the regulations for programs WIOA deauthorized, then regulations that are superseded or unnecessary.

Removal of Regulations Required by WIOA

Statute: WIOA eliminated the following programs: The Projects with Industry program (title VI, part A of WIOA), The State Vocational Rehabilitation Unit In-Service Training program (section 441(b) of WIOA), the Migrants and Seasonal Farmworkers program, (section 441(a) of WIOA) and the Recreation Programs for Individuals with Disabilities program (section 441(a) of WIOA).

Current Regulations: The regulations governing the Projects with Industry program are found at part 379. The regulations governing the State Vocational Rehabilitation Unit In-Service Training program are found at part 388. The regulations governing the Migrants and Seasonal Farmworkers program are found at § 369.1(b)(3) and § 369.2(c). The regulations governing the Recreation Programs for Individuals with Disabilities program are found at § 369.1(b)(5) and § 369.2(d).

Proposed Regulations: We propose to remove parts 379, 388, and 369.

Reasons: The removal of the regulations at parts 379, 388, and 369 is required by the Act as amended by WIOA. We propose to delay the effective date for the removal of parts 388 and 369 so that the Department can complete administration of the last grants under these programs.

The Balance of Part 369

Statute: None.

Current Regulations: All of part 369 other than §§ 369.1(b)(3), (5), and (6), 369.2(c), (d), and (e).

Proposed regulations: The Secretary proposes to remove the balance of part 369.

Reasons: Beyond the Migrants and Seasonal Farmworkers Program, Recreation Programs for Individuals with Disabilities, and the Projects With Industry Program, part 369 implements three other kinds of vocational rehabilitation (VR) service projects: VR service projects for American Indians with disabilities, special projects and demonstrations for providing VR services to individuals with disabilities, and special projects and demonstrations for providing transitional rehabilitation services to youth with disabilities.

We propose to incorporate into part 371 those regulations in part 369 that apply to the American Indian Vocational Rehabilitation Services program, under which the governing bodies of Indian tribes, and consortia of those governing bodies, provide VR services for American Indians with disabilities. Keeping these regulations in part 369 is unnecessarily duplicative.

As for the special projects for VR services and transition services, the Department has not used the regulations in part 369 for these projects in some time. The regulations were superseded by the more specific regulations in part 373, which the Department adopted on December 11, 2000, after the 1998 amendments to the Act.

However, we also propose to make this removal effective on September 30, 2016, the last day of fiscal year (FY) 2016, when the Department's administration of the last grants under the Migrants and Seasonal Farmworkers Program will be complete.

Removal of Regulations Not Required by WIOA

Statute: None.

Current Regulations: 34 CFR part 376 governs the Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth with Disabilities program. 34 CFR part 377 governs the Demonstration Projects to Increase Client Choice program.

Proposed Regulations: The Secretary proposes to remove parts 376 and 377.

Reasons: Parts 376 and 377 are outdated. The Department has not used these parts for more than 15 years. They have been superseded by the more specific regulations in part 373, which the Department adopted on December 11, 2000, after the 1998 amendments to the Act.

Rehabilitation Continuing Education Programs, 34 CFR Part 389

Statute: None.

Current Regulations: 34 CFR part 389 govern the Rehabilitation Continuing Education programs.

Proposed Regulations: The Secretary proposes to remove part 389.

Reasons: Part 389 is duplicative and outdated. The Department adopted this short part on December 30, 1980 (45 FR 86385) and amended it on September 23, 1985 (50 FR 38631), May 13, 1988 (53 FR 17147), and March 6, 1997 (62 FR 10405). As drafted, part 389 is very prescriptive. It allows the Department only to create and support regional training centers to provide continuing education and technical assistance to currently employed VR professionals throughout the country.

Over time, however, the RSA's focus has shifted away from providing continuing education to concentrating on technical assistance and training. In January 2014, for example, President Obama issued a memorandum to the Secretaries of Labor, Commerce, and Education directing them to take action to address job-driven training for the nation's workers.

The memorandum instructed the Secretaries to make Federal workforce and training programs and policies more focused on imparting skills with job-market value, more easily accessed by employers and job seekers, and more accountable for producing positive employment and earnings outcomes for the people they serve. The memorandum also set out training principles for the Departments to follow and incorporate, such as promoting engagement with industry, employers, employer associations, and worker representatives to identify the skills and supports workers need.

As a result, in FY 2014, RSA ran a competition to establish a job-driven vocational rehabilitation technical assistance center that would provide training and technical assistance to State VR agencies to upgrade the knowledge and skills of the personnel and providers so that they are better able to build effective partnerships with employers and assist VR consumers in obtaining the skills needed in today's labor market.

To the extent that RSA does want to fund continuing-education projects, part 389 is not necessary. RSA can do so through a number of other regulations, such as part 387 (innovative rehabilitation training programs) or part 390 (rehabilitation short-term training programs), and it can do so more flexibly, *i.e.* without the requirement of establishing regional centers.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or

communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, we have determined that the benefits would justify the costs.

Part 367—Independent Living Services for Older Individuals Who Are Blind

In general, unless expressly noted below, we do not estimate that changes to this part will result in any additional costs to grantees.

Subpart B — Training and Technical Assistance

New Subpart B of Part 367 implements the WIOA amendments requiring the Department to reserve from 1.8 to 2 percent of appropriated funds for training and technical assistance to grantees. While these set-asides will result in a reduction in funding available to grantees, we believe that these training and technical assistance projects will increase the efficiency of the program and provide substantial benefits to both grantees and individuals with disabilities.

To ensure that grantees receive the maximum amount of funds available for the provision of services to individuals, we would provide funding for training and technical assistance at the minimum allowable level of 1.8 percent. Prior to this proposed regulation, grantees have been largely responsible for meeting the training needs of their program staff. This may have contributed to duplicative training and technical assistance efforts across grantees that could have easily been coordinated nationally. The coordination of these efforts by RSA would generate efficiencies across the entire program, thus providing more benefits to grantees than they would have realized if the funds had been directly provided to them.

Based on the FY 2015 authorized appropriation of $33,317,000 for the OIB program under WIOA, the estimated set-aside would be $599,706, based upon the minimum percentage established by the Act. Therefore, if grantees were to receive no benefit from the training and technical assistance supported by the Department, grantees would experience a loss in benefits of $599,706. However, since the Department will sponsor training and technical assistance services directly for this group in the amount of $599,706, we expect there to be no net loss of benefits. Additionally, as noted above, the efficiencies realized by this centralization of training and technical assistance efforts may actually result in a net increase in benefits for grantees.

Subpart C — What are the application requirements under this part?

Under this Subpart, we have removed the requirement for States to seek to incorporate into the State Plan for Independent Living (SPIL) any new methods and approaches relating to independent living services for older individuals who are blind. Incorporating this information into the SPIL required minimal time (approximately 15 minutes) every three years upon submission of the SPIL; therefore, any savings realized from this change would be negligible.

Subpart E — How does the Secretary award formula grants?

Under Subpart E, we have clarified that OIB grantees are to inform the Secretary 45 days prior to the end of the fiscal year that funds would be available for reallotment. We do not believe that this requirement will generate additional costs to grantees, as the change only provides a timeline for an action that is already occurring and does not, therefore, generate any new burden on grantees.

Part 370—Client Assistance Program

WIOA requires that the proposed set-aside for training and technical assistance for CAP take effect in any fiscal year in which the appropriation equals or exceeds $14,000,000. To ensure that grantees receive the maximum amount of funds available for the provision of services to individuals, we would provide funding for training and technical assistance at the minimum allowable level of 1.8 percent. In FY 2015, the appropriation for CAP was $13,000,000, requiring a 7.7 percent increase in the overall appropriation before the 1.8 percent set aside becomes effective. Because the set-aside is not triggered under the statute until grantees realize a substantial increase in benefits under this program, the set-aside will not have a substantial impact on the activities of grantees, a $1,000,000 increase in the overall appropriation

will result in a set-aside of $252,000 which would be used to provide support to grantees. Additionally, as noted above in the discussion of costs and benefits associated with Part 367, we believe that the consolidation of training and technical assistance activities at the national level will ultimately yield net benefits to grantees greater than if those activities were coordinated locally.

Part 371—American Indian Vocational Rehabilitation Services Program

New Subpart B of Part 371 implements the WIOA amendments requiring the Department to reserve from 1.8 to 2 percent of appropriated funds for training and technical assistance to grantees. While these set-asides will result in a reduction in funding available to grantees, we believe that these training and technical assistance projects will increase the efficiency of the program and provide substantial benefits to both grantees and individuals with disabilities.

Based on the FY 2014 amount set aside by the Department for the AIVRS program (approximately $37,201,000), the estimated set-aside would have been $669,618. As noted above, since these funds are being used to provide services and support to grantees, we do not anticipate any net loss of benefit. However, if efficiencies are realized due to centralized coordination of these activities, grantees may experience a net gain in benefits.

Part 373—Rehabilitation National Activities Program

We do not anticipate any changes to this section resulting in increased burden or costs for grantees.

Part 381—Protection and Advocacy for Individual Rights Program

A proposed amendment to § 381.20 (current § 381.22) clarifies in paragraph (a)(1) that when the PAIR appropriation equals or exceeds $5,500,000, requiring the Secretary to set aside between 1.8 and 2.2 percent of funds for the provision of training and technical assistance, the funding mechanism for the provision of training and technical assistance may include a grant, contract, or cooperative agreement. Previously, while the Department had authority to provide training and technical assistance to grantees, we historically opted to ensure that grantees receive the maximum amount of funds available for the provision of services to individuals, by funding training and technical assistance at the minimum allowable level of 1.8 percent. This revision would have no impact on PAIR grantees since previous amendments to the Act have allowed for the provision of training and technical assistance.

Additionally, the PAIR appropriation has been equal to, or greater than, $5,500,000 for at least 15 fiscal years (in FY 2015, the appropriation was $17,650,000). This proposed amendment simply provides the Secretary with additional flexibility in the funding mechanism through which training and technical assistance is provided.

Part 385—Rehabilitation Training

We do not anticipate any changes to this section resulting in increased burden or costs for grantees.

Part 386—Rehabilitation Long-Term Training

Except as detailed below, we do not anticipate changes to this section to result in increased burden or costs for grantees.

Section 386.31 (Funding Requirement)

In § 386.31 we are proposing that program grantees dedicate 65 percent to scholarships rather than 75 percent as required by current regulations. This requirement would apply to both the federal award and the non-federal share. This change acknowledges the fact that grantees incur costs in administering these programs, particularly in terms of staff time needed to track scholar progress in completing their program of study and their service obligation. This decrease in the cost to grantees brought about by proposed changes in § 386.31 balances some of the increased costs created by proposed changes made in other sections of the regulations. In FY 2014, the Department made approximately $17,075,000 in new or continuation awards under the Rehabilitation Long-Term Training program. Assuming all grantees made the minimum match of 10% of the project cost, the reduction in the scholarship requirement would free up approximately $1,897,000 in project funding to be used for activities other than scholarship support. While this does not represent any additional funding for grantees, it does represent additional flexibility provided by the regulation.

Section 386.33 (Disbursing Scholarships)

Changes to this section require grantees to document that scholars will seek employment in the field of study in which the scholar was provided training or employment where it can be demonstrated that the field of study is directly relevant to the job functions being performed. Currently, grantees obtain sufficient documentation of other requirements that we do not believe this new requirement will represent a substantial burden on grantees. However, if we assume that obtaining this additional documentation would take, on average, 10 minutes per scholar, and using a wage rate of $17.69 (the mean hourly wage for office and administrative support staff at colleges, universities, and professional schools) and the 1,367 scholars receiving support in FY 2014, we estimate this provision would cost $4,030.37.

Section 386.34 (Assurances)

Changes to this section require grantees to annually obtain signed executed agreements with scholars containing the terms and conditions outlined in this section. It has been the Department's policy to encourage annual updating of scholar information; these regulations simply formalize this policy. As such, we estimate that these changes to the regulation will have little actual impact on grantees or scholars. However, if grantees were previously only collecting these agreements once per scholar rather than every year that support is received, there would be additional costs. Of all scholars reported in qualifying employment in FY 2014, 88.4% received support for more than one year. If we assumed that this change required an additional half hour of time each year beyond the first year of support to update their information with their program, and using an average wage rate of $17.69, we estimate an additional cost of $10,641 (given that we estimate that 1,203 of the 1,367 scholars receiving support in FY 2014 were multi-year scholars). We emphasize that this is an overestimate, as this change simply conforms the regulations to current practice.

Section 386.40 (Requirements for Scholars)

In § 386.40(a)(6), we are proposing language that clarifies the type of employment a scholar must obtain to complete the service obligation in order to ensure that the funds used for scholarships will benefit individuals with disabilities served through the state vocational rehabilitation program and related agencies. This change largely reflects current policy and should not result in an increased burden on grantees or scholars. Changes to § 386.40(b) provides clarification around when scholars may begin qualifying employment while § 386.40(c) clarifies that scholars who pursued coursework on a part-time basis should have their service obligations calculated on a full-

time equivalent basis. As noted above, 88.4% of the scholars completing their service obligations in FY 2014 received support for more than one year and would have been, therefore, eligible to benefit from these changes. We estimate that this provision, had it been in effect when those scholars received support, would have reduced the net service obligations by 9,049 years. Given the average annual scholarship value for this group of $4,287, we estimate a potential savings of $38,792,902. Finally, changes in § 386.40(d) make a scholar in repayment status responsible for any collection costs if they do not provide appropriate information to the grantee in a timely manner. In FY 2014, the Department referred 44 scholars for repayment totaling $486,471. Assuming that collection costs total 3% of the balance of the repayment, we estimate total collection costs of $14,594. If 5% of these scholars were inappropriately referred to repayment, this additional requirement could save scholars $24,324 by avoiding such inappropriate referrals.

Sections 386.41 (Granting Deferrals and Exceptions) and 386.42 (Applying for Deferrals and Exceptions)

In 386.41 and 386.42, we are proposing stricter regulations around exceptions and deferrals, particularly for individuals with disabilities, in order to assure that individuals who benefit from scholarships funded by this program are more likely to complete their service obligation. While these changes may have impacts on the specific decisions made by scholars, they will not have a financial impact on the costs or benefits for grantees, and will likely increase the benefits to individuals with disabilities served by State VR agencies and related agencies by ensuring that training is aligned with practice and that a greater percentage of scholars complete their service obligations rather than just repaying the cost of their scholarships.

Part 387—Innovative Rehabilitation Training Program

We do not anticipate any changes to this section resulting in increased burden or costs for grantees.

Part 390—Rehabilitation Short-Term Training Program

Changes to § 390.30 adds a selection criterion that the Secretary would review each application for evidence of training needs as identified through training needs assessments. While conducting a training needs assessment prior to application may result in increased costs for applicants, because the regulation simply adds this as one selection criterion among several and allows applicants to use needs assessments conducted by other entities, we do not anticipate that applicants will realize any actual increased costs associated with this provision.

Part 396—Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind

Changes to § 396.34 require grantees to provide matching funds to support projects in an amount determined by the Secretary at the time of the grant award. While this matching requirement did not previously exist in the regulations, it was a statutory requirement and, while the Department did not require grantees to document the match, we do not believe that any prior grantees did not contribute any funds to the project, either in cash or in kind. As such, we do not believe this provision will result in any increased costs for grantees.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 370.1 What is the Client Assistance Program (CAP)?
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the ADDRESSES section.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Independent Living for Older Individuals Who Are Blind

There are 56 OIB grantees funded under section 752 of the Act, all of which are State agencies. States and State agencies are not defined as ''small entities'' in the Regulatory Flexibility Act. Furthermore, the proposed regulations would not have a significant economic impact on these State or State agencies because the proposed regulations would not impose any additional substantive regulatory burdens or require additional Federal supervision.

Client Assistance Program

Due to the revisions to the Act pursuant to WIOA, there are 57 designated CAP agencies funded under section 112 of the Act, of which 19 are configured within a State agency and all but one remaining designated CAP agencies are predominantly private, nonprofit organizations. States and State agencies are not defined as ''small entities'' in the Regulatory Flexibility Act. The remaining designated CAP agencies are ''small entities'' that would be affected by these proposed regulations. The proposed regulations would not have a significant economic impact on the small entities affected because the proposed regulations would not impose any new substantive regulatory burdens or require more Federal supervision than is required under current regulations.

Protection and Advocacy of Individual Rights Program

Due to the revisions to the Act pursuant to WIA, there are 57 PAIR grantees funded under section 509 of the Act, of which a majority are private, nonprofit organizations that are considered ''small entities'' under the Regulatory Flexibility Act. The proposed regulations would not have a significant economic impact on these small entities because the proposed regulations would not impose any new substantive regulatory burdens or require more Federal supervision than is required under current regulations.

American Indian Vocational Rehabilitation Services Program

Eligible applicants under this program are the governing bodies of Indian tribes, consortia of such governing bodies, or tribal organizations established and controlled by the

governing bodies of Indian tribes, all located on Federal and State reservations. These entities are not considered ''small entities'' under the Regulatory Flexibility Act.

Special Demonstration Programs

Eligible entities are State vocational rehabilitation agencies, community rehabilitation programs, Indian tribes or tribal organizations, public or non-profit agencies and organizations, institutions of higher education, and certain for-profit organizations. States, State agencies, Indian tribes, and tribal organizations are not ''small entities'' under the Regulatory Flexibility Act. The community rehabilitation programs, public or non-profit agencies and organizations, institutions of higher education, and certain for-profit organizations are considered ''small entities.'' The proposed regulations would not have a significant economic impact on a significant number of these small entities because the proposed regulations would not impose any new substantive regulatory burdens or require more Federal supervision than is required under the current regulations.

Vocational Rehabilitation Training Programs

For all rehabilitation programs other than training of interpreters for individuals who are deaf, hard of hearing, and deaf-blind, eligible entities are States, public or nonprofit agencies, Indian tribes, and institutions of higher education. For this latter program, eligible entities are public and private non-profit agencies and organizations and institutions of higher education.

States and Indian tribes are not ''small entities'' under the Regulatory Flexibility Act. The public or nonprofit agencies and institutions of higher education are considered ''small entities.'' The proposed regulations would not have a significant economic impact on a significant number of these small entities because the proposed regulations would not impose any new substantive regulatory burdens or require more Federal supervision than is required under the current regulations.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The following sections contain information collection requirements:

- Sections 367.23, 367.30, and 367.31 of the Independent Living Services for Older Individuals Who Are Blind (OIB) program;
- Sections 370.20 and 370.44 of the Client Assistance Program (CAP);
- Section 373.21 of the Rehabilitation National Activities program;
- Sections 381.10 and 381.32 of the Protection and Advocacy of Individual Rights (PAIR) program;
- Sections 385.20 and 385.45 of the Rehabilitation Training program;
- Sections 386.21 and 386.36 of the Rehabilitation Long-Term Training program;
- Section 387.3 of the Innovative Rehabilitation Training program;
- Section 390.3 of the Rehabilitation Short-Term Training program; and
- Section 396.20 of the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program.

These sections do not cause substantive changes to the information collection requirements listed below. Under the PRA the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations we will display the OMB control numbers (1820–0608 and 1820–0660 (OIB), 1820–0520 and 1820–0528 (CAP), 1820–0625 and 1820–0627 (PAIR), 1820–0018 (all other programs) and 1820–0617 (Rehabilitation Long-Term Training)) assigned by OMB to any information collection requirement in this NPRM and adopted in the final regulations.

Sections 367.23, 367.30 and 367.31, OIB

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collection under 1820–0608. These proposed requirements do not change the current OMB-approved annual burden of 336 annual burden hours with 56 respondents and annual costs of $4,256.00.

Sections 370.20 and 370.44, CAP

Regulations proposed under these sections do not cause substantive changes to the active and OMB-approved data collections under 1820–0520 and 1820–0528. These proposed requirements minimally change the current OMB-approved annual burden of 9 hours to 9.16 hours due to the addition of one respondent to the current 56 respondents. The current annual costs of $441.00 would increase to an estimated $449.00 under 1820–0520. For the OMB-approved data collection under 1820–0528, these proposed requirements minimally change the annual burden hours from 896 hours with 56 respondents and annual costs of $4,616.00 to 912 burden hours with 57 respondents and annual costs of approximately $4,698.00.

Section 373.21 of the Rehabilitation National Activities Program

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0018. These proposed requirements do not change the current OMB-approved annual burden of 4,000 annual burden hours with 100 respondents and annual costs of $1,120.00.

Sections 381.10 and 381.32, PAIR

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0625 and 1820–0627. These proposed requirements do not change the current OMB-approved annual burden of 9 hours with 57 respondents and annual costs of $228.00 under 1820–0625. These proposed requirements do not change the current OMB-approved annual burden of 912 hours with 57 respondents and annual costs of $4,240.00 under 1820–0627.

Sections 385.20 and 385.45 of the Rehabilitation Training Program

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0018. These proposed requirements do not change the current OMB-approved annual burden of 4,000 annual burden hours with 100 respondents and annual costs of $1,120.00.

Sections 386.21 and 386.36 of the Rehabilitation Long-Term Training Program

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0018 and 1820–0617. These proposed requirements do not change the current OMB-approved annual burden of 4,000 annual burden hours with 100 respondents and annual costs of $1,120.00 under 1820–0018. These proposed requirements do not change the current OMB-approved annual burden of 350 hours with 350 respondents and annual costs of $17,500.00 under 1820–0617.

Section 387.3 of the Innovative Rehabilitation Training Program

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0018. These proposed requirements do not change the current OMB-approved annual burden of 4,000 annual burden hours with 100 respondents and annual costs of $1,120.00.

Section 390.3 of the Rehabilitation Short-Term Training Program

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0018. These proposed requirements do not change the current OMB-approved annual burden of 4,000 annual burden hours with 100 respondents and annual costs of $1,120.00.

Section 396.20 of the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind Program

Regulations proposed under this section do not cause substantive changes to the active and OMB-approved data collections under 1820–0018. These proposed requirements do not change the current OMB-approved annual burden of 4,000 annual burden hours with 100 respondents and annual costs of $1,120.00.

Section 371.13 of the American Indian Vocational Rehabilitation Services Program

Finally, for the American Indian Vocational Rehabilitation Services program, section 423(c) of WIOA requires that between 1.8–2 percent of funds appropriated for this program be reserved to provide training and technical assistance to AIVRS grantees and that the Commissioner conduct a survey of the governing bodies of Indian Tribes currently receiving grants under the AIVRS program regarding their training and technical assistance needs in order to determine priorities for the training and technical assistance provider.

The Department has amended the current information collection package (OMB 1820–0655) that was approved by OMB through September 30, 2017. This amendment requires governing bodies of existing 121 AIVRS projects to respond to a questionnaire that lists 41 potential topics. Grantees are required to identify up to 10 topics they consider to be essential to improving their overall performance. These responses are analyzed by RSA Project Officers and shared with the provider for use in developing its training and technical assistance program. We estimate that it will take each program less than 10 minutes to complete this questionnaire. We believe these amendments to the previous information data collection package places a negligible burden on the AIVRS grantees, and such burden is offset by the anticipated benefit of having properly targeted training and technical assistance made available to the projects.

Intergovernmental Review

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

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in this document may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Numbers: 84.240A Protection and Advocacy of Individual Rights; 84.161A Client Assistance Program; 84.177B Independent Living Services for Older Individuals Who Are Blind; 84.250J American Indian Vocational Rehabilitation Services; 84.128G Vocational Rehabilitation Service Projects for Migratory Agricultural Workers and Seasonal Farmworkers with Disabilities Program; 84.234 Projects With Industry; 84.128J Recreational Programs; and 84.265 State Vocational Rehabilitation Services Unit In Service Training)

List of Subjects

34 CFR Part 367

Aged, Blind, Grant programs-education, Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 369

Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 370

Administrative practice and procedure, Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 371

Grant programs-Indians, Grant programs-social programs, Indians, Vocational rehabilitation.

34 CFR Part 373

Grant programs-education, Vocational rehabilitation.

34 CFR Part 376

Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation, Youth.

34 CFR Part 377

Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 379

Business and industry, Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 381

Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 385

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 386

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 387

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 388

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 389

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 390

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 396

Education of individuals with disabilities, Grant programs-education, Individuals with disabilities, Reporting and recordkeeping requirements.

Dated: March 6, 2015.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, under the authority of section 503(f) of the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128) and section 12(c) of the Rehabilitation Act of 1973, as amended by WIOA (29 U.S.C. 709(c)), the Secretary of Education proposes to amend chapter III of title 34 of the Code of Federal Regulations as follows:

■ 1. Part 367 is revised to read as follows:

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

Subpart A—General

Sec.
367.1 What is the Independent Living Services for Older Individuals Who Are Blind program?
367.2 Who is eligible for an award?
367.3 What activities may the Secretary fund?
367.4 What regulations apply?
367.5 What definitions apply?

Subpart B—Training and Technical Assistance

367.20 What are the requirements for funding training and technical assistance under this chapter?
367.21 How does the Secretary use these funds to provide training and technical assistance?
367.22 How does the Secretary make an award?
367.23 How does the Secretary determine funding priorities?
367.24 How does the Secretary evaluate an application?

Subpart C—What Are the Application Requirements Under this Part?

367.30 How does a designated State agency (DSA) apply for an award?
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Subpart D—How Does the Secretary Award Discretionary Grants?

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Authority: Sections 751–753 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–796l, 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: Section 752 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(a) and (d))

§ 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(h) of the Act and §§ 367.30–367.31.

(Authority: Section 752(a)(2) and 752(h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(a)(2) and (h))

§ 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, individual advocacy training, facilitating the transition from nursing homes and other institutions to home and community-based residences with the requisite supports and services, and providing assistance to older individuals who are blind who are at risk of entering institutions so that the individuals may remain in the community; and

(8) Other IL services, as defined in § 367.5.

(Authority: Section 752(d) and (e) of the Rehabilitation Act of 1973, as amended; 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 75 (Direct Grant Programs), with respect to grants under subpart B and D.

(2) 34 CFR part 76 (State-Administered Programs), with respect to grants under subpart E.

(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 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

(8) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(b) The regulations in this part 367.

(Authority: Sections 12(c) and 752 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 796k)

§ 367.5 What definitions apply?

(a) The definitions of terms used in this part that are included in the regulations identified in § 367.4 as applying to this program.

(b) In addition, the following definitions also apply to this part:

(1) *Act* means the Rehabilitation Act, as amended by WIOA.

(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—

(i) Involve representing an individual—

(A) Before private entities or organizations, government agencies (whether State, local, or Federal), or in a court of law (whether State or Federal); or

(B) 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

(ii) Be on behalf of—

(A) A single individual, in which case it is individual advocacy;

(B) A group or class of individuals, in which case it is systems (or systemic) advocacy; or

(C) Oneself, in which case it is self advocacy.

(3) *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.

(4) *Contract* means a legal instrument by which RSA in subpart B or the DSA receiving a grant under this part purchases property or services needed to carry out the program under this Part. The term as used in this part does not include a legal instrument, even if RSA or the DSA considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward.

(Authority: 20 U.S.C. 1221e–3)

(5) *Designated State Agency* means the agency described in section 101(a)(2)(A)(i) of the Rehabilitation Act as the sole State agency authorized to provide rehabilitation services to individuals who are blind.

(6) *Independent living services for older individuals who are blind* means those services listed in § 367.3(b).

(7) *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.

(8) *Minority group* means Alaskan Natives, American Indians, Asian Americans, Blacks (African Americans), Hispanic Americans, Native Hawaiians, and Pacific Islanders.

(9) *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.

(10) *Other IL services* include:

(i) Counseling services, including psychological, psychotherapeutic, and related services;

(ii) 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, older individuals who are blind;

(iii) Rehabilitation technology;

(iv) Services and training for older individuals who are blind who also have cognitive and sensory disabilities, including life skills training and interpreter;

(v) Personal assistance services, including attendant care and the training of personnel providing these services;

(vi) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(vii) Consumer information programs on rehabilitation and IL services available under the Act, especially for minorities and other older individuals who are blind who have traditionally been unserved or underserved by programs under the Act;

(viii) Education and training necessary for living in a community and participating in community activities;

(ix) Supported living;

(x) Transportation, including referral and assistance for transportation;

(xi) Physical rehabilitation;

(xii) Therapeutic treatment;

(xiii) Provision of needed prostheses and other appliances and devices;

(xiv) Individual and group social and recreational services;

(xv) 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 older individuals who are blind;

(xvi) Appropriate preventive services to decrease the need of older individuals who are blind who are assisted under the Act for similar services in the future;

(xvii) Community awareness programs to enhance the understanding and integration into society of older individuals who are blind; and

(xviii) Any other services that may be necessary to improve the ability of an older individual who is blind 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.

(11) *Peer relationships* mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.

(12) *Peer role models* means individuals with significant disabilities whose achievements can serve as a positive example for other older individuals who are blind.

(13) *Personal assistance services* means a range of IL services, provided by one or more persons, designed to assist an older individual who is blind to perform daily living activities on or off the job that the individual would typically perform if the individual was not blind. 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.

(14) *Service provider* means—

(i) the DSA that directly provides services authorized under § 367.3; or

(ii) any other entity that receives a subaward or contract from the DSA to provide services authorized under § 367.3.

(15) *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.

(16) *State* means, except 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.

(17) *Subaward* a grant or a cooperative agreement provided by the DSA to a subrecipient for the subrecipient to carry out part of the Federal award received by the DSA under this part. It does not include payments to a contractor or payments to an individual that is a beneficiary of a program funded under this part. A subaward may be provided through any form of legal agreement, including an agreement that the DSA considers a contract.

(Authority: 20 U.S.C. 1221e–3)

(18) *Subrecipient* a non-Federal entity that receives a subaward from the DSA to carry out all or part of the program funded under this part; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

(Authority: 20 U.S.C. 1221e–3)

(19) *Transportation* means travel and related expenses that are necessary to enable an older individual who is blind 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 older individual who is blind to benefit from that IL service.

(20) *Unserved and underserved groups or populations,* with respect to groups or populations of older individuals who are blind in a State, include, but are not limited to, groups or populations of older individuals who are blind who—

(i) Have cognitive and sensory impairments;

(ii) Are members of racial and ethnic minority groups;

(iii) Live in rural areas; or

(iv) Have been identified by the DSA as unserved or underserved.

(Authority: Unless otherwise noted, Section 7 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705)

Subpart B—Training and Technical Assistance

§ 367.20 What are the requirements for funding training and technical assistance under this chapter?

For any fiscal year, beginning with fiscal year 2015, the Secretary shall first reserve not less than 1.8 percent and not more than 2 percent of funds appropriated and made available to carry out this chapter to provide training and technical assistance to DSAs, or other providers of independent living services for older individuals who are blind, that are funded under this chapter for such fiscal year.

(Authority: Section 751A(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(a))

§ 367.21 How does the Secretary use these funds to provide training and technical assistance?

(a) The Secretary uses these funds to provide training and technical assistance, either directly or through grants, contracts, or cooperative agreements with entities that have the capacity to provide technical assistance and training in the provision of independent living services for older individuals who are blind.

(b) An entity receiving assistance in accordance with paragraph (a) of this section shall provide training and technical assistance to DSAs or other service providers to assist them in improving the operation and performance of programs and services for older individuals who are blind resulting in their enhanced independence and self-sufficiency.

(Authority: Section 751A(a) and (c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(a) and (c))

§ 367.22 How does the Secretary make an award?

(a) To be eligible to receive a grant or enter into a contract or cooperative agreement under section 751A 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 DSAs or other service providers of IL services to older individuals who are blind and any additional information at the time and in the manner that the Secretary may require.

(b) The Secretary shall provide for peer review of applications by panels that include persons who are not Federal or State government employees and who have experience in the provision of services to older individuals who are blind.

(Authority: Section 751A(a) and (c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(a) and (c))

§ 367.23 How does the Secretary determine funding priorities?

The Secretary shall conduct a survey of DSAs that receive grants under section 752 regarding training and technical assistance needs in order to inform funding priorities for such training and technical assistance.

(Authority: Section 751A(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(b))

§ 367.24 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant, cooperative agreement or contract under this subpart on the basis of the selection criteria chosen from the general selection criteria found in EDGAR regulations at 34 CFR 75.210.

(b) If the Secretary uses a contract to award funds under this subpart, the application process will be conducted and the subsequent award will be made in accordance with 34 CFR part 75.

(Authority: Section 751A of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(b), 20 U.S.C. 1221e–3, and 3474)

Subpart C—What Are the Application Requirements Under This Part?

§ 367.30 How does a designated State agency (DSA) apply for an award?

To receive a grant under section 752(h) or a reallotment grant under section 752(i)(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 1820–0660)

(Authority: Sections 752(h) and (i)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(h) and (i))

§ 367.31 What assurances must a DSA include in its application?

An application for a grant under section 752(h) or a reallotment grant under section 752(i)(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) 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; and

(ii) Older individuals with significant disabilities who are blind;

(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;

(d) 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; and

(e) 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 numbers 1820–0660 and 1820–0608)

(Authority: Section 752(h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(h))

Subpart D—How Does the Secretary Award Discretionary Grants?

§ 367.40 Under what circumstances does the Secretary award discretionary grants 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 in accordance with section 752(b) of the Act and EDGAR regulations at 34 CFR part 75 (Direct Grant Programs).

(b) The Secretary awards noncompetitive continuation grants for a multi-year project to pay for the costs of activities for which a grant was awarded under this part—as long as the grantee satisfies the applicable requirements in this part, the terms of the grant, and 34 CFR 75.250 through 75.253 (Approval of Multi-year Projects).

(c) Subparts A, C, D, and F of this part govern the award of competitive grants under this part.

(Authority: Section 752(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(b); 20 U.S.C. 1221e–3 and 3474)

§ 367.41 How does the Secretary evaluate an application for a discretionary grant?

(a) The Secretary evaluates an application for a discretionary grant based on the selection criteria chosen from the general selection criteria found in EDGAR regulations at 34 CFR 75.210.

(b) In addition to the selection criteria, the Secretary considers the geographic distribution of projects in making an award.

(Authority: Section 752(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(b); 20 U.S.C. 1221e–3 and 3474)

Subpart E—How Does the Secretary Award Formula Grants?

§ 367.50 Under what circumstances does the Secretary award 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, C, E, and F of this part govern the award of formula grants under this part.

(Authority: Section 752(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(c))

§ 367.51 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(i) of the Act.

(b) The Secretary makes a grant to a DSA in the amount of the allotment to the State under section 752(i) 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(h) of the Act and §§ 367.30 and 367.31.

(Approved by the Office of Management and Budget under control number 1820–0660)

(Authority: Section 752(c)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(c)(2))

§ 367.52 How does the Secretary reallot funds under this program?

(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 § 367.51 as a result of—

(1) The failure of a DSA to prepare, submit, and receive approval of an application under section 752(h) of the Act and in accordance with §§ 367.30 and 367.31; 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 § 367.51 for that fiscal year only.

(e) A state that does not intend to expend the full amount of its allotment must notify RSA at least 45 days prior to the end of the fiscal year that its grant, or a portion of it, is available for reallotment.

(Approved by the Office of Management and Budget under control number 1820–0660)

(Authority: Section 752(i)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(i)(4))

Subpart F—What Conditions Must Be Met After an Award?

§ 367.60 When may a DSA make subawards or contracts?

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—

(a) Subawards to public or private nonprofit agencies or organizations; or

(b) Contracts with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations.

(Authority: Sections 752(g) and (h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(g) and (h)(2)(A))

§ 367.61 What matching requirements apply?

Non-Federal contributions required by § 367.31(b) must meet the requirements in 2 CFR 200.306 (Cost sharing or matching).

(Authority: Section 752(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f))

§ 367.62 What requirements apply if the State's non-Federal share is in cash?

(a) Expenditures that meet the non-Federal share requirements of 2 CFR 200.306 may be used to meet the non-Federal share matching requirement. Expenditures used as non-Federal share must also meet the following requirements:

(1) The expenditures are made with funds made available by appropriation directly to the DSA 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 DSA in accordance with State law for expenditure by, and at the sole discretion of, the DSA for activities authorized by § 367.3; or

(3) The expenditures are made with cash contributions from a donor that are earmarked for meeting the State's share for activities listed in § 367.3;

(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 subaward or contract under section 752(g) of the Act from the DSA is not considered a benefit to the donor of a cash contribution for purposes of paragraph (b) of this section if the subaward or contract was awarded under the State's regular competitive procedures. The State may not exempt the awarding of the subaward or contract from its 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: Section 752(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f))

§ 367.63 What requirements apply if the State's non-Federal share is in kind?

In-kind contributions may be—

(a) Used to meet the matching requirement under section 752(f) of the Act if the in-kind contributions meet the requirements and are allowable under 2 CFR 200.306; 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 subrecipient or contractor that is receiving or will receive assistance under section 752(g) of the Rehabilitation Act.

(Authority: Section 752(f) and (g) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f) and (g))

§ 367.64 What is the prohibition against a State's condition of an award of a subaward or contract based on cash or in-kind contributions?

(a) A State may not condition the making of a subaward or contract under section 752(g) of the Act on the requirement that the applicant for the subaward or contract 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 subrecipient or contractor of the State, may not condition the award of a subcontract on the requirement that the applicant for the subcontract make a cash or in-kind contribution of any particular amount or value to the State or to the subrecipient or contractor of the State.

(Authority: Section 752(f) and (g) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f) and (g))

§ 367.65 What is program income and how may it be used?

(a) *Definition. Program income* means gross income earned by the grantee, subrecipient, or contractor that is directly generated by a supported activity or earned as a result of the grant, subaward, or contract.

(1) Program income received through the transfer of Social Security Administration program income from the State Vocational Rehabilitation Services program (Title I) in accordance with 34 CFR 361.63(c)(2) will be treated as program income received under this part.

(2) [Reserved]

(b) *Use of program income.* (1) Program income, whenever earned, must be used for the provision of services authorized under § 367.3.

(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 2 CFR 200.307(e)(1); or

(ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 2 CFR 200.307(e)(2).

(3) Program income may not be used to meet the non-Federal share requirement under § 367.31(b).

(Authority: 20 U.S.C. 3474)

§ 367.66 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 this part that are not obligated or expended by the DSA 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 DSA prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the DSA during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year under this part remain available for obligation in the succeeding fiscal year only to the extent that the DSA complied with its 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.

(c) Program income is considered earned in the fiscal year in which it is received. Program income earned during the fiscal year must be disbursed during the time in which new obligations may be incurred to carry out the work authorized under the award, and prior to requesting additional cash payments in accordance with 2 CFR 200.305(b)(5).

(Authority: 20 U.S.C. 3474)

§ 367.67 What notice must be given about the Client Assistance Program (CAP)?

The DSA and all other service providers under this part shall use formats that are accessible to notify individuals seeking or receiving services under this part about—

(a) The availability of 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.

(Authority: Section 20 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 717)

§ 367.68 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) *General provisions.* The DSA and all other service providers under this part shall 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, services under this part 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 served under this part 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 services under this part and the administration of the program under which services are provided under this part. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for the provision of services under this part or the administration of the program under which services are provided under this part. In the provision of services under this part or the administration of the program under which services are provided under this part, 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 services under this part.

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by a recipient of services under this part, 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 a program under this part, or for purposes that would significantly improve the quality of life for individuals served under this part 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: 20 U.S.C. 3474)

§ 367.69 What access to records must be provided?

For the purpose of conducting audits, examinations, and compliance reviews, the DSA and all other service providers shall provide access to the Secretary and the Comptroller General, or any of their duly authorized representatives, to—

(a) The records maintained under this part

(b) Any other books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under this part; and

(c) All individual case records or files or consumer service records of individuals served under this part, including names, addresses, photographs, and records of evaluation included in those individual case records or files or consumer service records.

(Authority: 20 U.S.C. 1221e–3)

§ 367.70 What records must be maintained?

The DSA and all other service providers shall 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 this part; and

(b) Other records that the Secretary determines to be appropriate to facilitate an effective audit.

(Authority: 20 U.S.C. 1221e–3)

PART 369 [Removed and Reserved]

■ 2. Part 369 is removed and reserved.

■ 3. Part 370 is revised to read as follows:

PART 370—CLIENT ASSISTANCE PROGRAM

Subpart A—General

Sec.

370.1 What is the Client Assistance Program (CAP)?
370.2 Who is eligible for an award?
370.3 Who is eligible for services and information under the CAP?
370.4 What kinds of activities may the Secretary fund?
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Subpart B—What Requirements Apply to Redesignation?

370.10 When do the requirements for redesignation apply?
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370.12 How does a designated agency preserve its right to appeal a redesignation?
370.13 What are the requirements for a decision to redesignate?
370.14 How does a designated agency appeal a written decision to redesignate?
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?
370.16 How does the Secretary review an appeal of a redesignation?
370.17 When does a redesignation become effective?

Subpart C—What are the Requirements for Requesting a Grant?

370.20 What must be included in a request for a grant?

Subpart D—How Does the Secretary Allocate and Reallocate Funds to a State?

370.30 How does the Secretary allocate funds?
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Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

370.40 What are allowable costs?
370.41 What conflict of interest provision applies to employees of a designated agency?
370.42 What access must the CAP be afforded to policymaking and administrative personnel?
370.43 What requirement applies to the use of mediation procedures?
370.44 What reporting requirement applies to each designated agency?
370.45 What limitation applies to the pursuit of legal remedies?
370.46 What consultation requirement applies to a Governor of a State?
370.47 What is program income and how may it be used?
370.48 When must grant funds and program income be obligated?
370.49 What are the special requirements pertaining to the protection, use, and release of personal information?

Authority: Section 112 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732, 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, as amended (Act), including activities carried out under sections 113 and 511;

(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. 12111 *et seq.*).

(Authority: Section 112(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(a))

§ 370.2 Who is eligible for an award?

(a)(1) Any State, through its Governor, and the protection and advocacy system serving the American Indian Consortium, is eligible for an award under this part if the State or eligible protection and advocacy system submits, and receives approval of, an application in accordance with § 370.20.

(2) For purposes of this part, the terms--

(i) ''American Indian Consortium'' has the meaning given the term in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act) (42 U.S.C. 15002); and

(ii) ''Protection and advocacy system'' means a protection and advocacy system established under subtitle C of title I of the DD Act (42 U.S.C. 15041 *et seq.*).

(b) Notwithstanding the protection and advocacy system serving the American Indian Consortium, 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) An agency designated by the Governor of a State to conduct the State's CAP or the protection and advocacy system serving the American Indian Consortium under this part may not make a subaward 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) A designated agency, including the protection and advocacy system serving the American Indian Consortium, that contracts to provide CAP services with another entity or individual remains responsible for—

(1) The conduct of a CAP that meets all of the requirements of this part;

(2) Ensuring that the entity or individual expends CAP funds in accordance with—

(i) The regulations in this part; and

(ii) The regulations at 2 CFR part 200 applicable to the designated agency identified in paragraph (b) or the protection and advocacy system serving the American Indian Consortium, as described in paragraph (a) of this section; 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: Sections 12(c) and 112(a), (c)(1)(A), and (e)(1)(E) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(a), (c)(1)(A), and (e)(1)(E))

§ 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: Section 112(a) of the Rehabilitation Act of 1973, as amended; 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 the client or client applicant, assisting and advocating on behalf of the client or 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 the client or 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, including students and youth with disabilities who are making the transition from 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 title I of the Act that the individual is receiving or seeking.

(Authority: Sections 12(c) and 112(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(a))

§ 370.5 What regulations apply?

The following regulations apply to the expenditure of funds and the administration of the program under this part:

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

(1) 34 CFR part 75 (Direct Grant Programs) for purposes of an award made under § 370.30(d)(1) when the CAP appropriation equals or exceeds $14,000,000.

(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) Section 76.103;

(ii) Sections 76.125 through 76.137;

(iii) Sections 76.300 through 76.401;

(iv) Section 76.708;

(v) Section 76.734; and

(vi) Section 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 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.

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(b) Other regulations as follows:

(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(c) The regulations in this part 370.

Note to § 370.5: Any funds made available to a State under this program that are transferred by a State to a designated agency do not make a subaward as that term is defined in 2 CFR 200.330. The designated agency is not, therefore, in these circumstances a subrecipient, as that term is defined in 2 CFR 200.330.

(Authority: Sections 12(c) and 112 of the Rehabilitation Act, as amended; 29 U.S.C. 709(c) and 732)

§ 370.6 What definitions apply?

(a) Definitions in EDGAR at 34 CFR part 77.

(b) Definitions in 2 CFR part 200, subpart A.

(c) 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 tribal, 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 tribal, 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 tribal, 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 of individuals, in which case it is systems (or systemic) advocacy, but systems or systemic advocacy, for the purposes of this part, may not include class actions, or

(3) Oneself, in which case it is self advocacy.

American Indian Consortium means that entity described in § 370.2(a).

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 or the protection and advocacy system serving the American Indian Consortium that is conducting a CAP 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.

Protection and Advocacy System has the meaning set forth at § 370.2(a).

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, and the Commonwealth of the Northern Mariana Islands, except for purposes of the allotments under § 370.30, in which case ''State'' does not mean or include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: Sections 7(34), 12(c), and 112 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(34), 709(c), and 732)

§ 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: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

Subpart B—What Requirements Apply to Redesignation?

§ 370.10 When do the requirements for redesignation apply?

(a) The Governor shall redesignate the designated agency for carrying out the CAP to an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals under the Act if, after August 7, 1998—

(1) The designated State agency undergoes any change in the organizational structure of the agency that results in one or more new State agencies or departments, or results in the merger with one or more other State agencies or departments, and

(2) The designated State agency contains an office or unit conducting the CAP.

(3) For purposes of paragraph (a) of this section, the designated State agency has the meaning given to that term at 34 CFR 361.5(c)(12) and described at 34 CFR 361.13.

(b) 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.

(c) 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.

(d) For purposes of paragraph (b) 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.

(e) 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: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(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 Council (SRC), 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 SRC, 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 SRC, 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.

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(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: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(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: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 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: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(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: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(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: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(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: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

Subpart C—What are the Requirements for Requesting a Grant?

§ 370.20 What must be included in a request for a grant?

(a) Each State and the protection and advocacy system serving the American Indian Consortium seeking assistance under this part shall submit to the Secretary, in writing, at the time and in the manner determined by the Secretary to be appropriate, 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 and the protection and advocacy system serving the American Indian Consortium 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 or American Indian Consortium.

(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 and the protection and advocacy system serving the American Indian Consortium 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 or the protection and advocacy system serving the American Indian Consortium 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 or tribal law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(b) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 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) After reserving funds required under paragraphs (c) and (d) of this section, the Secretary shall allot the remainder of the sums appropriated for each fiscal year under this section among the States on the basis of relative population of each State, except that no such entity shall receive less than $50,000.

(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, and the Commonwealth of Northern Mariana Islands.

(c) The Secretary shall reserve funds, from the amount appropriated to carry out this part, to make a grant to the protection and advocacy system serving the American Indian Consortium to provide services in accordance with this part. The amount of the grant to the protection and advocacy system serving the American Indian Consortium shall be the same amount as is provided to a territory under paragraph (b) of this section.

(d)(1) For any fiscal year for which the amount appropriated equals or exceeds $14,000,000, the Secretary may reserve not less than 1.8 percent and not more

than 2.2 percent of such amount to provide a grant for training and technical assistance for the programs established under this part.

(2) All training and technical assistance shall be coordinated with activities provided under 34 CFR 381.22.

(3) The Secretary shall make a grant pursuant to paragraph (d)(1) of this section to an entity that has experience in or knowledge related to the provision of services authorized under this part.

(4) An entity receiving a grant under paragraph (d)(1) of this section shall provide training and technical assistance to the designated agencies or entities carrying out the CAP to assist them in improving the provision of services authorized under this part and the administration of the program.

(e)(1) Unless prohibited or otherwise provided by State or tribal law, regulation, or policy, the Secretary pays to the designated agency, from the State allotment under paragraph (a), (b), or (c) of this section, the amount specified in the State's or the eligible protection and advocacy system's approved request. Because the designated agency, including the protection and advocacy system serving the American Indian Consortium, is the eventual, if not the direct, recipient of the CAP funds, 34 CFR part 81 and 2 CFR part 200 apply to the designated agency, whether or not the designated agency is the actual recipient of the CAP grant.

(2) Notwithstanding the grant made to the protection and advocacy system serving the American Indian Consortium under paragraph (c) of this section, the State remains the grantee for purposes of 34 CFR part 76 and 2 CFR part 200 because it is the State that submits an application for and receives the CAP grant. In addition, both the State and the designated agency are considered recipients for purposes of 34 CFR part 81.

(Authority: Sections 12(c) and 112(b) and (e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(b) and (e))

§ 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 45 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 or the succeeding fiscal year.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c), 19, and 112(e)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 716, and 732(e)(2))

Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

§ 370.40 What are allowable costs?

(a) The designated agency, including the eligible protection and advocacy system serving the American Indian Consortium, shall apply the regulations at 2 CFR part 200.

(b) 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, in accordance with 2 CFR part 200. The cost of travel includes the cost of travel for an attendant if the attendant must accompany the client or client applicant.

(c)(1) 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.

(2) For purposes of the grant made under this part to the protection and advocacy system serving the American Indian Consortium, such entity will be solely accountable to the Secretary for the proper use of funds made available under this part. If the Secretary determines it necessary, the Secretary may recover funds from the protection and advocacy system serving the American Indian Consortium pursuant to the procedures in 34 CFR part 81.

(Authority: Sections 12(c) and 112(c)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(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, 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 under contract with a designated agency, 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 SRC) 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: Sections 12(c) and 112(g)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 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 section 101(a)(16) of the Act.

(Authority: Sections 12(c), 101(a)(16), and 112(g)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(16), 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: Section 112(g)(3) of the Rehabilitation Act of 1973, as amended; 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 *34 CFR 76.720 and 2 CFR 200.327* 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 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: Sections 12(c) and 112(g)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(g)(4))

§ 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: Section 112(d) of the Rehabilitation Act of 1973, as amended; 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, 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: Section 112(c)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(c)(2))

§ 370.47 What is program income and how may it be used?

(a)(1) *Definition. Program income* means gross income earned by the designated agency that is directly generated by an activity supported under this part.

(2) Funds received through the transfer of Social Security Administration payments from the designated State unit, as defined in 34 CFR 361.5(c)(13), in accordance with 34 CFR 361.63(c)(2) will be treated as program income received under this part.

(b) *Use of program income.* (1) Program income, whenever earned or received, must be used for the provision of services authorized under § 370.4.

(2) Designated Agencies are authorized to treat program income as—

(i) A deduction from total allowable costs charged to a Federal grant, in accordance with 2 CFR 200.307(e)(1); or

(ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 2 CFR 200.307(e)(2).

(Authority: Sections 12(c) and 108 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 728, and 3474)

§ 370.48 When must grant funds and program income be obligated?

Any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out the activities under this part that are not obligated or expended by the designated agency 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 designated agency prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the designated agency during that succeeding fiscal year in accordance with section 19 of the Act and 34 CFR 76.709.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: sections 12(c) and 19 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 716)

§ 370.49 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: Sections 12(c) and 112(g)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(g)(4))

■ 4. Part 371 is revised to read as follows:

PART 371—AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES

Subpart A—General

Sec.
371.1 What is the American Indian Vocational Rehabilitation Services program?
371.2 Who is eligible for assistance under this program?
371.3 What types of projects are authorized under this program?
371.4 What is the length of the project period under this program?
371.5 What regulations apply to this program?
371.6 What definitions apply to this program?

Subpart B—Training and Technical Assistance

371.10 What are the requirements for funding training and technical assistance under this subpart?
371.11 How does the Secretary use these funds to provide training and technical assistance?
371.12 How does the Secretary make an award?
371.13 How does the Secretary determine funding priorities?
371.14 How does the Secretary evaluate an application?

Subpart C—How Does One Apply for a Grant?

371.20 What are the application procedures for this program?
371.21 What are the special application requirements related to the projects funded under this part?

Subpart D—How Does the Secretary Make a Grant?

371.31 How are grants awarded?
371.32 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Apply to a Grantee Under this Program?

371.40 What are the matching requirements?
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?
371.44 What are the special requirements pertaining to the protection, use, and release of personal information?
371.45 What notice must be given about the Client Assistance Program (CAP)?

Authority: Sections 12(c) and 121 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741, unless otherwise noted.

Subpart A—General

§ 371.1 What is the American Indian Vocational Rehabilitation Services program?

This program is designed to provide vocational rehabilitation services, including culturally appropriate services, to American Indians with disabilities who reside on or near Federal or State reservations, consistent with such eligible individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individual may prepare for, and engage in, high-quality employment that will increase opportunities for economic self-sufficiency.

(Authority: Section 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 741(a))

§ 371.2 Who is eligible for assistance under this program?

(a) Applications may be made only by Indian tribes and consortia of those Indian tribes located on Federal and State reservations.

(1) The applicant for the grant must be

(i) The governing body of an Indian tribe, either on behalf the Indian tribe or on behalf of a consortium of Indian tribes; or

(ii) A tribal organization that is a separate legal organization from an Indian tribe.

(2) In order to receive a grant under this section, a tribal organization that is not a governing body of an Indian tribe must have as one of its functions the vocational rehabilitation of American Indians with disabilities.

(3) If a grant is made to the governing body of an Indian tribe, a consortium of those governing bodies or a tribal organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the making of such a grant.

(b) Applications for awards under Subpart B may be made by State, local or tribal governments, non-profit organizations, or institutions of higher education.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

§ 371.3 What types of projects are authorized under this program?

The American Indian Vocational Rehabilitation Services program provides financial assistance for the establishment and operation of tribal vocational rehabilitation services programs for American Indians with disabilities who reside on or near Federal or State reservations.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended Act, 29 U.S.C. 709(c) and 741(a)

§ 371.4 What is the length of the project period under this program?

The Secretary approves a project period of up to sixty months.

(Authority: Sections 12(c) and 121(b)(3) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 121(b)(3))

§ 371.5 What regulations apply to this program?

The following regulations apply to this program—

(a) The regulations in this part 371.

(b) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485;

(c) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

(d) 34 CFR part 75 Direct Grant Programs

(e) 34 CFR part 77 Definitions that Apply to Department Regulations

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

(g) 34 CFR part 82 New Restrictions on Lobbying

(h) 34 CFR part 84 Governmentwide Requirements for Drug-Free Workplace

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 371.6 What definitions apply to this program?

(a) The definitions of terms included in the applicable regulations listed in § 371.5;

(b) The following definitions also apply to this program—

Act means the Rehabilitation Act of 1973, as amended.

Assessment for determining eligibility and vocational rehabilitation needs means as appropriate in each case—

(1)(i) A review of existing data—

(A) To determine whether an individual is eligible for vocational rehabilitation services; and

(B) To assign priority for an order of selection described in an approved plan or the approved grant application; and

(ii) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make such determination and assignment;

(2) To the extent additional data is necessary to make a determination of the employment outcomes, and the nature and scope of vocational rehabilitation services, to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual, which comprehensive assessment—

(i) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;

(ii) Uses, as a primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements—

(A) Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in an approved plan or the approved grant application for the individual; and

(B) Information that can be provided by the individual and, if appropriate, by the family of the individual;

(iii) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual;

(iv) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and

(v) To the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community, and other integrated community settings;

(3) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(4) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(Authority: Sections 7(2) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(2) and 709(c))

Community rehabilitation program means a program that provides directly, or facilitates providing, one or more of the following vocational rehabilitation services to individuals with disabilities to enable them to maximize their 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) Customized employment;

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

(17) Personal assistance services; or

(18) Services similar to the services described in paragraphs (1) through (17) of this definition.

(Authority: Sections 7(4) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(4) and 709(c))

Comparable services and benefits means—

(1) Services and benefits, including auxiliary aids and services, 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 ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment; and

(iii) Commensurate to the services that the individual would otherwise receive from the Tribal Vocational Rehabilitation unit.

(2) For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

(Authority: Sections 12(c) and 101(a)(8)(A) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 721(a)(8)(A))

Competitive integrated employment means work—

(1) That is performed on a full-time or part-time basis (including self-employment); and for which an individual is compensated at a rate that—

(i) Shall not be less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)), or the rate specified in the applicable State or local minimum wage law; and

(ii) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(iii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who

have similar training, experience, and skills; and

(iv) Is eligible for the level of benefits provided to other employees; and

(2) That is at a location typically found in the community and where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit, employees within the entire work site, and, as appropriate to the work performed, other persons (*e.g.,* customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and

(3) That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(Authority: Sections 7(5) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(5) and 709(c))

Consortium means two or more eligible governing bodies of Indian tribes that apply for an award under this program by either:

(1) Designating one governing body to apply for the grant; or

(2) Establishing and designating a tribal organization to apply for a grant.

(Authority: Sections 12(c) and 121 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

Customized employment means competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability, is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer, and is carried out through flexible strategies, such as—

(1) Job exploration by the individual;

(2) Working with an employer to facilitate placement, including—

(i) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs; and

(ii) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(3) Representation by a professional chosen by the individual, or self-representation of the individual, in working with an employer to facilitate placement; and

(4) Providing services and supports at the job location.

(Authority: Sections 7(7) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(7) and 709(c))

Eligible individual means an applicant for vocational rehabilitation services who meets the eligibility requirements of Section 102(a)(1) of the Act.

(Authority: Sections 7(20)(A), 12(c), and 102(a)(1) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(20)(A), 709(c), and 722)

Employment outcome means, with respect to an individual, entering, advancing or retaining full-time or, if appropriate, part-time competitive integrated employment, including customized employment, self-employment, telecommuting, business ownership, or supported employment, that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 7(11) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(11), and 709(c))

Family member for the purposes of receiving vocational rehabilitation services means an individual—

(1) Who either—

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

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

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

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

(Authority: Sections 12(c) and 103(a)(19) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(19))

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: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

Indian; American Indian; Indian American; Indian tribe means—

(1) *Indian, American Indian,* and *Indian American* mean an individual who is a member of an Indian tribe and includes a Native and a descendant of a Native, as such terms are defined in subsections (b) and (r) of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(2) *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) and a tribal organization (as defined in section 4(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(1)) and this section.

(Authority: Section 7(19) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(19))

Individual with a disability means—

In general any individual who—

(1) Who has a physical or mental impairment;

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

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

(Authority: Section 7(20)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A))

Individual with a significant disability means—

In general 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, intellectual disability, 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: Section 7(21) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(21))

Maintenance means monetary support provided to an individual for 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 an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(Authority: Sections 12(c) and 103(a)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(7))

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

Example 1: The cost of a uniform or other suitable clothing that is required for an individual's job placement or job-seeking activities.

Example 2: The cost of short-term shelter that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual's home.

Example 3: 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.

Physical and mental restoration services means—

(1) 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;

(2) Diagnosis of 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) Drugs and supplies;

(7) Prosthetic and orthotic devices;

(8) 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;

(9) Podiatry;

(10) Physical therapy;

(11) Occupational therapy;

(12) Speech or hearing therapy;

(13) Mental health services;

(14) 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;

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

(16) Other medical or medically related rehabilitation services.

(17) Services reflecting the cultural background of the American Indian being served, including treatment provided by native healing practitioners in accordance with 34 CFR 371.41(a)(2).

(Authority: Sections 12(c), 103(a)(6), and 121(b)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 723(a)(6), and 741(b)(1)(B))

Physical or mental impairment means—

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder such as intellectual or developmental disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 709(c))

Post-employment services means one or more of the services 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 unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 12(c) and 103(a)(18) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c)) and 723(a)(18))

Note to definition of post-employment services: Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. 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 plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, *e.g.,* the individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment; or the individual requires assistive technology 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 unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Representatives of the Tribal Vocational Rehabilitation program means, consistent with 34 CFR 371.21(b), those individuals specifically responsible for determining eligibility, the nature and scope of vocational rehabilitation services, and the provision of those services.

(Authority: Sections 12(c) and 121(b)(1)(D) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 741(b)(1)(D))

Reservation means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act; or a defined area of land recognized by a State or the Federal Government where there is a concentration of tribal members and on which the tribal government is providing structured activities and services.

(Authority: Sections 12(c) and 121(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(e))

Subsistence means a form of self-employment in which individuals produce, using culturally relevant and traditional methods, goods or services that are predominantly consumed by their own household or used for noncommercial customary trade or barter and that constitute an important basis for the worker's livelihood.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

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

(Authority: Sections 7(20)(A) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 709(c))

Supported employment means

(1) Competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability is working on a short-term basis toward competitive integrated employment that is individualized and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities—

(i) For whom competitive integrated employment has not historically occurred, or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(ii) Who, because of the nature and severity of their disability, need intensive supported employment services and extended services after the transition from support provided by the Tribal Vocational Rehabilitation Unit, in order to perform this work; or

(2) Transitional employment for individuals with the most significant disabilities due to mental illness.

(3) *Short-term basis.* For purposes of this part, an individual with the most significant disabilities, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment within six months of achieving an employment outcome of supported employment.

(Authority: Sections 7(38) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38) and 709(c))

Supported employment services means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the Tribal Vocational Rehabilitation Unit—

(1) Singly or in combination and are organized and made available in such a way as to assist an eligible individual to achieve competitive integrated employment;

(2) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment;

(3) For a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(4) 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: Sections 7(39) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(39) and 709(c))

Transition services means a coordinated set of activities for an individual with a disability 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 achievement of the employment outcome identified in the student's individualized plan for employment.

(Authority: Sections 12(c), 103(a)(15), and (b)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 723(a)(15), and (b)(7))

Transportation means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

(Authority: Sections 12(c) and 103(a)(8) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 723(a)(8))

Tribal organization means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

(Authority: Sections 7(19) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(19) and 709(c); Section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450(b))

Tribal Vocational Rehabilitation program means the unit designated by the governing bodies of an Indian Tribe, or consortia of governing bodies, to implement and administer the grant under this program in accordance with the purpose of the grant and all applicable programmatic and fiscal requirements.

(Authority: Sections 12(c) and 121(b)(1) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 741(b)(1))

Vocational Rehabilitation Services for Individuals means any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, advancing in or regaining an employment outcome that is consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, including, but not limited to—

(1) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology.

(2) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice.

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

(4) Physical and mental restoration services, to the extent that financial support is not readily available from a

source other than the Tribal Vocational Rehabilitation unit (such as through health insurance or a comparable service or benefit.

(5) Vocational and other training services, including personal and vocational adjustment training, advanced training in science, technology, engineering, or mathematics (including computer science) field, medicine, law or business; 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 Tribal Vocational Rehabilitation unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

(6) Maintenance.

(7) Transportation in connection with the rendering of any vocational rehabilitation service.

(8) 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.

(9) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.

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

(11) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(12) Supported employment services.

(13) Personal assistance services.

(14) Post-employment services.

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

(16) Rehabilitation technology, including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(17) Transition services for students with disabilities that facilitate the transition from school to postsecondary life, such as achievement of an employment outcome in competitive integrated employment.

(18) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

(19) Customized employment.

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

Vocational Rehabilitation Services for Groups of Individuals provided for the benefit of groups of individuals with disabilities may also include the following:

(1) In the case of any type of small business operated by individuals with significant disabilities under the supervision of the Tribal Vocational Rehabilitation unit, management services and supervision provided by the Tribal Vocational Rehabilitation unit, along with the acquisition by the Tribal Vocational Rehabilitation unit of vending facilities or other equipment and initial stocks and supplies 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 significant disabilities. Management services and supervision may be provided throughout the operation of the small business enterprise.

(ii) Initial stocks and supplies include those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed 6 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 Tribal Vocational Rehabilitation unit provides for these services, it must ensure that only individuals with significant disabilities will be selected to participate in this supervised program.

(v) If the Tribal Vocational Rehabilitation unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the Tribal Vocational Rehabilitation unit must maintain 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.

(2) The establishment, development, or improvement of community rehabilitation programs, including, under special circumstances, the construction of a facility. Such programs shall be used to provide services described in this section that promote integration into the community and that prepare individuals with disabilities for competitive integrated employment, including supported employment and customized employment. Examples of ''special circumstances'' include the destruction by natural disaster of the only available center serving an area or a Tribal Vocational Rehabilitation unit determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

(3) The use of telecommunications systems (including telephone, television, video description services, satellite, radio, tactile-vibratory devices, and other similar 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.

(4)(i) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

(5) Technical assistance to businesses that are seeking to employ individuals with disabilities.

(6) Consultation and technical assistance services to assist State educational agencies and local educational agencies in planning for the transition of students with disabilities from school to postsecondary life, including employment.

(7) Transition services to youth with disabilities and students with disabilities, for which a vocational rehabilitation counselor works in concert with educational agencies, providers of job training programs, providers of services under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), entities designated by the Tribal Vocational Rehabilitation unit to provide services for individuals with developmental disabilities, centers for independent living (as defined in

section 702 of the Act), housing and transportation authorities, workforce development systems, and businesses and employers. These specific transition services are to benefit a group of students with disabilities or youth with disabilities and are not individualized services directly related to an IPE goal. Services may include, but are not limited to group tours of universities and vocational training programs, employer or business site visits to learn about career opportunities, career fairs coordinated with workforce development and employers to facilitate mock interviews and resume writing, and other general services applicable to groups of students with disabilities and youth with disabilities.

(8) The establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998 (29 U.S.C. 3001 *et seq.*) to promote access to assistive technology for individuals with disabilities and employers.

(9) Support (including, as appropriate, tuition) for advanced training in a science, technology, engineering, or mathematics (including computer science) field, medicine, law, or business, provided after an individual eligible to receive services under this title, demonstrates

(i) Such eligibility;

(ii) Previous completion of a bachelor's degree program at an institution of higher education or scheduled completion of such degree program prior to matriculating in the program for which the individual proposes to use the support; and

(iii) Acceptance by a program at an institution of higher education in the United States that confers a master's degree in a science, technology, engineering, or mathematics (including computer science) field, a juris doctor degree, a master of business administration degree, or a doctor of medicine degree, except that no training provided at an institution of higher education shall be paid for with funds under this program unless maximum efforts have been made by the Tribal Vocational Rehabilitation unit and the individual to secure grant assistance, in whole or in part, from other sources to pay for such training. Nothing in this paragraph shall prevent any Tribal Vocational Rehabilitation unit from providing similar support to individuals with disabilities pursuant to their approved IPEs who are eligible to receive support under this program and who are not served under this paragraph.

(Authority: Sections 12(c) and 103(a) and (b) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 723(a) and (b))

Subpart B—Training and Technical Assistance

§ 371.10 What are the requirements for funding training and technical assistance under this chapter?

The Secretary shall first reserve not less than 1.8 percent and not more than 2 percent of funds appropriated and made available to carry out this program to provide training and technical assistance to the governing bodies of Indian tribes and consortia of those governing bodies awarded a grant under this program.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

§ 371.11 How does the Secretary use these funds to provide training and technical assistance?

(a) The Secretary uses these funds to make grants to, or enter into contracts or other cooperative agreements with, entities that have staff with experience in the operation of vocational rehabilitation services programs under this part.

(b) An entity receiving assistance in accordance with paragraph (a) of this section shall provide training and technical assistance with respect to developing, conducting, administering, and evaluating tribal vocational rehabilitation programs funded under this part.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

§ 371.12 How does the Secretary make an award?

(a) To be eligible to receive a grant or enter into a contract or cooperative agreement under section 121(c) of the Act and this subpart, an applicant shall submit an application to the Secretary at such time, in such manner, and containing a proposal to provide such training and technical assistance, and any additional information as the Secretary may require.

(b) The Secretary shall provide for peer review of applications by panels that include persons who are not Federal or State government employees and who have experience in the operation of vocational rehabilitation services programs under this part.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

§ 371.13 How does the Secretary determine funding priorities?

The Secretary shall conduct a survey of the governing bodies of Indian tribes funded under this part regarding training and technical assistance needs in order to determine funding priorities for such training and technical assistance.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

§ 371.14 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant, cooperative agreement or contract under this subpart on the basis of the selection criteria chosen from the general selection criteria found in EDGAR regulations at 34 CFR 75.210.

(b) The Secretary may award a competitive preference consistent with 34 CFR 75.102(c)(2) to applications that include as project personnel in a substantive role, individuals that have been employed as a project director or VR counselor by a Tribal Vocational Rehabilitation unit funded under this part.

(c) If the Secretary uses a contract to award funds under this subpart, the application process will be conducted and the subsequent award will be made in accordance with 34 CFR part 75.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

Subpart C—How Does One Apply for a Grant?

§ 371.20 What are the application procedures for this program?

(a) In the development of an application, the applicant is required to consult with the designated State unit (DSU) for the state vocational rehabilitation program in the State or States in which vocational rehabilitation services are to be provided.

(b) The procedures for the review and comment by the DSU or the DSUs of the State or States in which vocational rehabilitation services are to be provided on applications submitted from within the State that the DSU or DSUs serve are in 34 CFR 75.155–75.159.

(Authority: Sections 12(c) and 121(b)(1)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(C))

§ 371.21 What are the special application requirements related to the projects funded under this part?

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.

(Authority: Sections 12(c) and 121(b)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(B))

(b) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available vocational rehabilitation services and the provision of such services will be made by a representative of the tribal vocational rehabilitation program funded through this grant and such decisions will not be delegated to another agency or individual.

(Authority: Sections 12(c) and 121(b)(1)(D) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(D))

(c) Priority in the delivery of vocational rehabilitation services will be given to those American Indians with disabilities who are the most significantly disabled.

(Authority: Sections 12(c) and 101(a)(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(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: Sections 12(c) and 101(a)(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709 (c) and 721(a)(5))

(e) All vocational rehabilitation services will be provided according to an individualized plan for employment which has been developed jointly by the representative of the tribal vocational rehabilitation program and each American Indian with disabilities being served.

(Authority: Sections 12(c) and 101(a)(9) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721 (a)(9))

(f) American Indians with disabilities living on or near Federal or State reservations where tribal vocational rehabilitation 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 by the tribal vocational rehabilitation program.

(Authority: Sections 12(c) and 101(a)(16) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(16))

(g) Cooperative working arrangements will be developed with the DSU, or DSUs, as appropriate, which are providing vocational rehabilitation services to other individuals with disabilities who reside in the State or States being served.

(Authority: Sections 12(c) and 101(a)(11)(F) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(11)(F))

(h) Any comparable services and 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.

(Authority: Sections 12(c) and 101(a)(8) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(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 representative of the tribal vocational rehabilitation 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(c)(1)–(5) and (7) of the Act.

(Authority: Sections 12(c) and 102(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(1)–(5) and (7))

(j) The tribal vocational rehabilitation program funded under this part must assure that any facility used in connection with the delivery of vocational rehabilitation services meets program accessibility requirements consistent with the requirements, as applicable, of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, section 504 of the Act, and the regulations implementing these laws.

(Authority: Sections 12(c) and 101(a)(6)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(C))

(k) The tribal vocational rehabilitation program funded under this part must ensure that providers of vocational rehabilitation services are able to communicate in the native language of, or by using an appropriate mode of communication with, applicants and eligible individuals who have limited English speaking ability, unless it is clearly not feasible to do so.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(A))

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: Sections 12(c) and 121(b)(1)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(A))

§ 371.32 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 an award under this program, considers 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: Sections 12(c) and 121(b)(1)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(A))

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 pursuant to match requirements in 2 CFR 200.306.

(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: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

§ 371.41 What are allowable costs?

(a) In addition to those allowable cost established in 2 CFR 200.400–200.475, 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 or near Federal or State reservations.

(Authority: Sections 12(c) and 121(a) and (b)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a) and (b)(1))

§ 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 DSU, a community rehabilitation program, or another agency to assist in the implementation of the tribal vocational rehabilitation program.

(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 services.* To the maximum extent feasible, services provided by a grantee under this part must be comparable to vocational rehabilitation services provided under the State vocational rehabilitation program to other individuals with disabilities residing in the State.

(Authority: Sections 12(c) and 121(b)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(B))

§ 371.43 What other special conditions apply to this program?

(a) Any American Indian with disabilities who is eligible for services under this program but who wishes to be provided services by the DSU must be referred to the DSU for such services.

(Authority: Sec. 12(c) and 121(b)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(3))

(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.

(Authority: Sections 12(c) and 121(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(2))

(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 (25 U.S.C. 450c, 450d, 450e, and 450f(a)). 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: Sec. 12(c) and 121(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(2))

(d) The Tribal Vocational Rehabilitation unit must develop and maintain written policies regarding the provision of vocational rehabilitation services that ensure that the provision of services is based on the vocational rehabilitation needs of each individual as identified in that individual's IPE 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:

(1) *Off-reservation services.* (i) The Tribal Vocational Rehabilitation unit may establish a preference for on- or near-reservation services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an equivalent off-reservation service at a higher cost than an available in-State service, the Tribal Vocational Rehabilitation unit is not responsible for those costs in excess of the cost of the on- or near-reservation service, if either service would meet the individual's rehabilitation needs.

(ii) The Tribal Vocational Rehabilitation unit may not establish policies that effectively prohibit the provision of off-reservation services.

(2) *Payment for services* (i) The Tribal Vocational Rehabilitation unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(ii) The Tribal Vocational Rehabilitation unit may establish a fee schedule designed to ensure the program pays a reasonable cost for each service, as long as the fee schedule—

(A) Is not so low as effectively to deny an individual a necessary service; and

(B) permits exceptions so that individual needs can be addressed.

(C) The Tribal Vocational Rehabilitation unit may not place absolute dollar limits on the amount it will pay for specific service categories or on the total services provided to an individual.

(3) *Duration of services* (i) The Tribal Vocational Rehabilitation unit may establish reasonable time periods for the provision of services provided that the time periods—

(A) Are not so short as effectively to deny an individual a necessary service; and

(B) Permit exceptions so that individual needs can be addressed.

(ii) The Tribal Vocational Rehabilitation unit may not place 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 the basis of that individual's needs and reflected in that individual's individualized plan for employment.

(4) *Authorization of services.* The Tribal Vocational Rehabilitation unit must establish policies related to the timely authorization of services.

(Authority: Sections 12(c) and 121(b) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 741(b))

(e) *Informed choice.* Each individual who is an applicant for or eligible to receive vocational rehabilitation services must be afforded the opportunity to exercise informed choice throughout the vocational rehabilitation process carried out under programs funded under this part. The Tribal Vocational Rehabilitation unit must develop and maintain written policies and procedures that require it—

(1) To inform each applicant and eligible individual, through appropriate modes of communication, about the availability of, and opportunities to exercise, informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice, throughout the vocational rehabilitation process;

(2) To assist applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) To develop and implement flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services, and that afford eligible individuals meaningful choices among the methods used to procure vocational rehabilitation services;

(4) To provide or assist eligible individuals in acquiring information that enables them to exercise informed choice in the development of their IPEs and selection of—

(i) The employment outcome;

(ii) The specific vocational rehabilitation services needed to achieve the employment outcome;

(iii) The entity that will provide the services;

(iv) The employment setting and the settings in which the services will be provided; and

(v) The methods available for procuring the services; and

(5) To ensure that the availability and scope of informed choice is consistent with the obligations of the Tribal Vocational Rehabilitation unit.

(6) *Information and assistance in the selection of vocational rehabilitation services and service providers.* In assisting an applicant and eligible individual in exercising informed choice during the assessment for determining eligibility and vocational rehabilitation needs and during development of the IPE, the designated State unit must provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the—

(i) Cost, accessibility, and duration of potential services;

(ii) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;

(iii) Qualifications of potential service providers;

(iv) Types of services offered by the potential providers;

(v) Degree to which services are provided in integrated settings; and

(vi) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

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

(i) Lists of services and service providers.

(ii) Periodic consumer satisfaction surveys and reports.

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

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

(v) Opportunities for individuals to visit or experience various work and service provider settings.

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

(Authority: Sections 12(c), 102(b)(2)(B), and 102(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 722(b)(2)(B), and 722(d))

§ 371.44 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) *General provisions.* (1) Tribal Vocational Rehabilitation unit must adopt and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that—

(i) Specific safeguards are established to 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 Tribal Vocational Rehabilitation unit's 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 Tribal Vocational Rehabilitation unit intends to use or release the information;

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

(D) Identification of those situations in which the Tribal Vocational Rehabilitation 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 the Tribal Vocational Rehabilitation unit's 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 Tribal Vocational Rehabilitation unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and must establish policies and procedures governing access to records.

(b) Tribal Vocational Rehabilitation Program Use. All personal information in the possession of the Tribal Vocational Rehabilitation unit must be used only for the purposes directly connected with the administration of the Tribal Vocational Rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies or other tribal agencies that do not have official responsibility for administration of the program. In the administration of the program, the Tribal Vocational Rehabilitation 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 Tribal Vocational Rehabilitation unit must make all requested information in that individual's record of services accessible to and must release the information to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the Tribal Vocational Rehabilitation 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 Tribal Vocational Rehabilitation 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 tribal 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 Tribal Vocational Rehabilitation 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 Tribal Vocational Rehabilitation unit determines may be harmful to the individual may be released if the other agency or organization assures the Tribal Vocational Rehabilitation 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 Tribal Vocational Rehabilitation unit must release personal information if required by Federal law or regulations.

(4) The Tribal Vocational Rehabilitation unit must 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 Tribal Vocational Rehabilitation 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: Sections 12(c) and 121(b)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1))

§ 371.45 What notice must be given about the Client Assistance Program (CAP)?

The Tribal Vocational Rehabilitation unit shall use formats that are accessible to notify individuals seeking or receiving services under this part, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, about—

(a) The availability of 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.

(Authority: Section 20 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 717)

■ 5. Part 373 is revised to read as follows:

PART 373—SPECIAL DEMONSTRATION PROGRAMS

Subpart A—General

Sec.

373.1 What is the purpose of the Special Demonstration Programs?
373.2 Who is eligible for assistance?
373.3 What regulations apply?
373.4 What definitions apply?
373.5 Who is eligible to receive services and to benefit from activities conducted by eligible entities?
373.6 What types of projects may be funded?
373.7 What are the priorities and other factors and requirements for competitions?

Subpart B—How Does the Secretary Make a Grant?

373.10 What selection criteria does the Secretary use?
373.11 What other factors does the Secretary consider when making a grant?

Subpart C—What Conditions Must Be Met By a Grantee?

373.20 What are the matching requirements?
373.21 What are the reporting requirements?
373.22 What are the limitations on indirect costs?
373.23 What additional requirements must be met?
373.24 What are the special requirements pertaining to the protection, use, and release of personal information?

Authority: Section 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 773(b), unless otherwise noted.

Subpart A—General

§ 373.1 What is the purpose of the Special Demonstration Programs?

The purpose of this program is to provide competitive grants, including cooperative agreements, to, or enter into contracts with, eligible entities to expand and improve the provision of vocational rehabilitation and other services authorized under the Rehabilitation Act of 1973, as amended (Act), or to further the purposes and policies in sections 2(b) and (c) of the Act by supporting activities that increase the provision, extent, availability, scope, and quality of rehabilitation services under the Act, including related research and evaluation activities.

(Authority: Sections 2(b) and (c), 7(40), 12(c), and 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 701(b) and (c), 705(40), 709(c), and 773(b))

§ 373.2 Who is eligible for assistance?

(a) The following types of organizations are eligible for assistance under this program:

(1) State vocational rehabilitation agencies.

(2) Community rehabilitation programs.

(3) Indian tribes or tribal organizations.

(4) Other public or nonprofit agencies or organizations, including institutions of higher education.

(5) For-profit organizations, if the Secretary considers them to be appropriate.

(6) Consortia that meet the requirements of 34 CFR 75.128 and 75.129.

(7) Other organizations identified by the Secretary and published in the **Federal Register**.

(b) In competitions held under this program, the Secretary may limit competitions to one or more types of these organizations.

(Authority: Sections 12(c) and 303(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(2))

§ 373.3 What regulations apply?

The following regulations apply to this program:

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

(1) 34 CFR part 75 (Direct Grant 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 81 (General Education Provisions Act—Enforcement).

(5) 35 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(7) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(8) 34 CFR part 97 (Protection of Human Subjects).

(9) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing.

(10) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 373.

(c) The regulations in 48 CFR part 31 (Contracts Cost Principles and Procedures).

(d)(1) 2 CFR part 180 (Nonprocurement Debarment and Suspension), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

(Authority: Sections 12(c) and 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c)) and 773(b)

§ 373.4 What definitions apply?

The following definitions apply to this part:

Act means the Rehabilitation Act of 1973, as amended.

(Authority: Section 2 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 701 *et seq.*)

Competitive integrated employment is defined in 34 CFR 361.5(c)(9).

(Authority: Section 7(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(5))

Early intervention means a service delivery or model demonstration program for adults with disabilities designed to begin the rehabilitation services as soon as possible after the onset or identification of actually or potentially disabling conditions. The populations served may include, but are not limited to, the following:

(1) Individuals with chronic and progressive diseases that may become more disabling, such as multiple sclerosis, progressive visual disabilities, or HIV.

(2) Individuals in the acute stages of injury or illness, including, but not limited to, diabetes, traumatic brain injury, stroke, burns, or amputation.

(Authority: Sections 12(c) and 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b))

Employment outcome is defined in 34 CFR 361.5.

(Authority: Section 7(11) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(11))

Individual with a disability is defined as follows:

(1) For an individual who will receive rehabilitation services under this part, an individual with a disability means an individual—

(i) Who has a physical or mental impairment which, for that individual, constitutes or results in a substantial impediment to employment; and

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

(2) For all other purposes of this part, an individual with a disability 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.

(3) For purposes of paragraph (b) of this definition, projects that carry out services or activities pertaining to Title V of the Act must also meet the requirements for ''an individual with a disability'' in section 7(20)(c) through (e) of the Act, as applicable.

(Authority: Section 7(20) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20))

Individual with a significant disability means an individual—

(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, intellectual disability, respiratory or pulmonary dysfunction, 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 to cause comparable substantial functional limitation.

(Authority: Section 7(21)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(21)(A))

Informed choice means the provision of activities whereby individuals with disabilities served by projects under this part have the opportunity to be active, full partners in the rehabilitation process, making meaningful and informed choices as follows:

(1) During assessments of eligibility and vocational rehabilitation needs.

(2) In the selection of employment outcomes, services needed to achieve the outcomes, entities providing these services, and the methods used to secure these services.

(Authority: Sections 2(c) and 12(c) of the Act 29 U.S.C. 701(c) and 709(c))

Rehabilitation services means services, including vocational, medical, social, and psychological rehabilitation services and other services under the Rehabilitation Act, provided to individuals with disabilities in performing functions necessary in preparing for, securing, retaining, or regaining an employment or independent living outcome.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

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 capacities and abilities.

(Authority: Section 5(20)(A) of the Act 29; U.S.C. 705(20)(A))

Supported employment is defined in 34 CFR 361.5(c)(53).

(Authority: Section 5(38) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38))

Vocational Rehabilitation Services means services provided to an individual with a disability in preparing

for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. Vocational Rehabilitation Services for an individual with a disability may include—

(1) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(3) Referral and other services to secure needed services from other agencies;

(4) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(5) Vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;

(6) Diagnosis and treatment of physical and mental impairments;

(7) Maintenance for additional costs incurred while the individual is receiving services;

(8) Transportation;

(9) On-the-job or other related personal assistance services;

(10) Interpreter and reader services;

(11) Rehabilitation teaching services, and orientation and mobility services;

(12) Occupational licenses, tools, equipment, and initial stocks and supplies;

(13) Technical assistance and other consultation services to conduct market analysis, develop business plans, and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(14) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

(15) Transition services for individuals with disabilities that facilitate the achievement of employment outcomes;

(16) Supported employment services;

(17) Services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome;

(18) Post-employment services necessary to assist an individual with a disability to retain, regain, or advance in employment; and

(19) Expansion of employment opportunities for individuals with disabilities, which includes, but is not limited to—

(i) Self-employment, business ownership, and entreprenuership;

(ii) Non-traditional jobs, professional employment, and work settings;

(iii) Collaborating with employers, Economic Development Councils, and others in creating new jobs and career advancement options in local job markets through the use of job restructuring and other methods; and

(iv) Other services as identified by the Secretary and published in the **Federal Register**.

Youth or Young adults with disabilities means individuals with disabilities who are between the ages of 14 and 24 inclusive when entering the program.

(Authority: Section 5(42) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(42)

(Authority: Sections 7(40), 12(c), and 103(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(40), 709(c) and 723(a))

§ 373.5 Who is eligible to receive services and to benefit from activities conducted by eligible entities?

(a)(1) For projects that provide rehabilitation services or activities to expand and improve the provision of rehabilitation services and other services authorized under Titles I, III, and VI of the Act, individuals are eligible who meet the definition in paragraph (a) of an ''individual with a disability'' as stated in § 373.4.

(2) For projects that provide independent living services or activities, individuals are eligible who meet the definition in paragraph (b) of an ''individual with a disability'' as stated in § 373.4.

(3) For projects that provide other services or activities that further the purposes of the Act, individuals are eligible who meet the definition in paragraph (b) of an ''individual with a disability'' as stated in § 373.4.

(b) By publishing a notice in the **Federal Register**, the Secretary may identify individuals determined to be eligible under one or more of the provisions in paragraph (a) of this section.

(Authority: Sections 12(c), 103(a), and 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 723(a), and 773(b))

§ 373.6 What types of projects may be funded?

The Secretary may fund the following types of projects under this program:

(a) Special projects of service delivery.

(b) Model demonstration.

(c) Technical assistance.

(d) Systems change.

(e) Special studies, research, or evaluations.

(f) Dissemination and utilization.

(Authority: Sections 12(c) and 303(b)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(4))

§ 373.7 What are the priorities and other factors and requirements for competitions?

(a) In announcing competitions for grants and contracts, the Secretary gives priority consideration to—

(1) Initiatives focused on improving transition from education, including postsecondary education, to employment, particularly in competitive integrated employment, for youth who are individuals with significant disabilities.

(2) Supported employment, including community-based supported employment programs to meet the needs of individuals with the most significant disabilities or to provide technical assistance to States and community organizations to improve and expand the provision of supported employment services.

(3) Increasing competitive integrated employment for individuals with significant disabilities.

(b) In announcing competitions for grants and contracts, the Secretary may also identify one or more of the following as priorities—

(1) Expansion of employment opportunities for individuals with disabilities, as authorized in paragraph(s) of the definition of ''vocational rehabilitation services'' as stated in § 373.4.

(2) System change projects to promote meaningful access of individuals with disabilities to employment-related services under subtitle B of title I of the Workforce Innovation and Opportunity Act and under other Federal laws.

(3) Innovative methods of promoting achievement of high-quality employment outcomes.

(4) The demonstration of the effectiveness of early intervention activities in improving employment outcomes.

(5) Projects to find alternative methods of providing affordable transportation services to individuals with disabilities.

(6) Technical assistance to designated State units and their personnel in working with employers to identify competitive integrated employment opportunities and career exploration opportunities in order to facilitate the

provision of vocational rehabilitation services and transition services for youth with disabilities and students with disabilities.

(7) Consultation, training and technical assistance to businesses that have hired or are interested in hiring individuals with disabilities.

(8) Technical assistance and training to designated State units and their personnel on establishment and maintenance of education and experience requirements, to ensure that the personnel have a 21st century understanding of the evolving labor force and the needs of individuals with disabilities.

(9) Technical assistance to State vocational rehabilitation agencies or State vocational rehabilitation units to improve management practices that will improve the provision of vocational rehabilitation services and increase competitive employment outcomes for individuals with disabilities.

(10) Other projects that will expand and improve the provision, extent, availability, scope, and quality of rehabilitation and other services under the Act or that further the purpose and policy of the Act as stated in sections 2(b) and (c) of the Act.

(c) In announcing competitions of grants and contract the Secretary may limit the priorities listed in paragraphs (a) and (b) of this section to address one or more of the following factors:

(1) Age ranges.

(2) Types of disabilities.

(3) Types of services.

(4) Models of service delivery.

(5) Stages of the vocational rehabilitation process;

(6) Unserved and underserved populations.

(7) Unserved and underserved geographical areas.

(8) Individuals with significant disabilities.

(9) Low-incidence disability populations.

(10) Individuals residing in federally designated Empowerment Zones and Enterprise Communities.

(d) The Secretary may require that an applicant certify that the project does not include building upon or expanding activities that have previously been conducted or funded, for that applicant or in that service area.

(e) The Secretary may require that the project widely disseminate the methods of vocational rehabilitation service delivery or model proven to be effective, so that they may be adapted, replicated, or purchased under fee-for-service arrangements by State vocational rehabilitation agencies and other disability organizations in the project's targeted service area or other locations.

(Authority: Sections 12(c), 101(a)(7)(B)(ii) and (11)(E), 103(b)(5), 108a, and 303(b)(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(7)(B)(ii) and (11)(E), 723(b)(5), 728a, and 773(b)(5))

Subpart B—How Does the Secretary Make a Grant?

§ 373.10 What selection criteria does the Secretary use?

The Secretary publishes in the **Federal Register** or includes in the application package the selection criteria for each competition under this program. To evaluate the applications for new grants under this program, the Secretary may use the following:

(a) Selection criteria established under 34 CFR 75.209.

(b) Selection criteria in 34 CFR 75.210.

(c) Any combination of selection criteria from paragraphs (a) and (b) of this section.

(Authority: Sections 12(c) and 103(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a))

§ 373.11 What other factors does the Secretary consider when making a grant?

(a) The Secretary funds only those applications submitted in response to competitions announced in the **Federal Register**.

(b) The Secretary may consider the past performance of the applicant in carrying out activities under previously awarded grants.

(c) The Secretary awards bonus points if identified and published in the **Federal Register** for specific competitions.

(Authority: Sections 12(c) and 103(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a))

Subpart C—What Conditions Must Be Met By a Grantee?

§ 373.20 What are the matching requirements?

The Secretary may make grants to pay all or part of the cost of activities covered under this program. If the Secretary determines that the grantee is required to pay part of the costs, the amount of grantee participation is specified in the application notice, and the Secretary will not require grantee participation to be more than 10 percent of the total cost of the project.

(Authority: Sections 12(c) and 303(b)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(1))

§ 373.21 What are the reporting requirements?

(a) In addition to the program and fiscal reporting requirements in 34 CFR *75.720 and 2 CFR 200.327* that are applicable to projects funded under this program, the Secretary may require that recipients of grants under this part submit information determined by the Secretary to be necessary to measure project outcomes and performance, including any data needed to comply with the Government Performance and Results Act.

(b) Specific reporting requirements for competitions will be identified by the Secretary and published in the **Federal Register**.

(Authority: Sections 12(c), 303(b)(2)(B), and 306 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 773(b)(2)(B), and 776)

§ 373.22 What are the limitations on indirect costs?

(a) Indirect cost reimbursement for grants under this program is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or 10 percent of the total direct cost base, whichever amount is less.

(b) Indirect costs in excess of the 10 percent limit may be used to satisfy matching or cost-sharing requirements.

(c) The 10 percent limit does not apply to federally recognized Indian tribal governments and their tribal representatives.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 373.23 What additional requirements must be met?

(a) Each grantee must do the following:

(1) Ensure equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disabilities.

(2) Encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disabilities.

(3) Advise individuals with disabilities who are applicants for or recipients of the services, or the applicants' representatives or the individuals' representatives, of the availability and purposes of the Client Assistance Program, including information on means of seeking assistance under that program.

(4) Provide, through a careful appraisal and study, an assessment and evaluation of the project that indicates the significance or worth of processes, methodologies, and practices implemented by the project.

(b) A grantee may not make a subgrant under this part. However, a grantee may contract for supplies, equipment, and other services, in accordance with 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

(Authority: Sections 12(c) and 303(b)(2)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(2)(B))

§ 373.24 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 confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project reporting and 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, has been obtained in writing. The Secretary or other Federal officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final products of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

(Authority: Sections 12(c) and 303(b)(2)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), and 773(b)(2)(B))

PART 376—[REMOVED AND RESERVED]

■ 6. Part 376 is removed and reserved.

PART 377—[REMOVED AND RESERVED]

■ 7. Part 377 is removed and reserved.

PART 379—[REMOVED AND RESERVED]

■ 8. Part 379 is removed and reserved.

■ 9. Part 381 is revised to read as follows:

Part 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

Subpart A—General

Sec.

381.1 What is the Protection and Advocacy of Individual Rights program?
381.2 Who is eligible for an award?
381.3 What activities may the Secretary fund?
381.4 What regulations apply?
381.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

381.10 What are the application requirements?

Subpart C—How Does the Secretary Make an Award?

381.20 How does the Secretary evaluate an application?
381.22 How does the Secretary allocate funds under this program?

Subpart D—What Conditions Must Be Met After an Award?

381.30 How are services to be administered?
381.31 What are the requirements pertaining to the protection, use, and release of personal information?
381.32 What are the reporting requirements?
381.33 What are the requirements related to the use of funds provided under this part?

Authority: Section 509 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794e, 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: Section 509(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794e(a))

§ 381.2 Who is eligible for an award?

(a)(1) A protection and advocacy system that is established under part C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), 42 U.S.C. 15041 *et seq.,* and that meets the requirements of § 381.10 is eligible to apply for a grant award under this part.

(2)(i) For any fiscal year in which the appropriation to carry out the activities of this part equals or exceeds $10,500,000, the eligible system serving the American Indian Consortium is eligible to apply for a grant award under this part.

(ii) For purposes of this part, an eligible system is defined at § 381.5(c).

(iii) For purposes of this part, the American Indian Consortium means a consortium established as described in section 102 of the DD Act (42 U.S.C. 15002).

(b) In any fiscal year in which the amount appropriated to carry out this part is less than $5,500,000, a protection and advocacy system from any State or from Guam, American Samoa, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands, 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.

(c) In any fiscal year in which the amount appropriated to carry out this part 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.

(Authority: Section 509(b), (c), and (m) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794e(b), (c), and (m))

§ 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 or the American Indian Consortium.

(3) Providing information on and making referrals to programs and services addressing the needs of individuals with disabilities in the State or American Indian Consortium, including individuals with disabilities who are exiting from 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) (42 U.S.C. 3001 *et seq.*);

(iii) Part C of the DD Act; and

(iv) The Protection and Advocacy for Individuals with Mental Illness Act of 2000 (PAIMI) (42 U.S.C. 10801–10807).

(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(a)(6).

(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: Sections 12(c) and 509(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(f)).

§ 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 75 (Direct Grant Programs) for purposes of an award made under § § 381.20 or 381.22(a)(1).

(2) 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.

(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 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(b) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

(c) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(d) The regulations in this part 381.

(Authority: Sections 12(c) and 509 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e)

§ 381.5 What definitions apply?

(a) Definitions in EDGAR at 34 CFR part 77.

(b) Definitions in 2 CFR part 200 subpart A.

(c) *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 tribal, 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 tribal, 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 tribal, 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 DD Act; 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 DD Act and that meets the requirements of § 381.10.

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, and the Commonwealth of the Northern Mariana Islands, except for purposes of sections 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, and the Commonwealth of the Northern Mariana Islands.

(Authority: Sections 7(34), 12(c), and 509 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(34), 709(c) and 794e)

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 the authority to access records and program income, as in part C of title I of the DD Act;

(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 and the American Indian Consortium;

(4) Provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State and the American Indian Consortium, including individuals with disabilities who are exiting from 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 the PAIR program 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 DD Act; 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 tribal or State law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 509(f) and (g)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(f) and (g)(1))

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: Sections 12(c) and 509(b) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(b) and (f))

§ 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 a grant, contract, or cooperative agreement for training and technical assistance to eligible systems carrying out activities under this part.

(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)–(d) 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.

(c) For any fiscal year in which the amount appropriated to carry out this program equals or exceeds $10,500,000, the Secretary shall reserve a portion, and use the portion to make a grant for the eligible system serving the American Indian Consortium. The Secretary shall make the grant in an amount of not less than $50,000 for the fiscal year.

(d) *Reallotment.* (1) For any fiscal year in which the amount appropriated to carry out this program equals or exceeds $5,500,000 and if the Secretary determines that any amount of an allotment to an eligible system within a State will not be expended by such system in carrying out the provisions of this part, the Secretary shall make such amount available to one or more of the eligible systems that the Secretary determines will be able to use additional amounts during such year for carrying out this part.

(2) Any reallotment amount made available to an eligible system for any fiscal year shall, for the purposes of this section, be regarded as an increase in the eligible system's allotment under this part for that fiscal year.

(Authority: Sections 12(c) and 509(c)–(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 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 make a subaward 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 DD Act and the PAIMI, or any other protection and advocacy services.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 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: Sections 12(c) and 509(h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(h))

§ 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(a)(6).

(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: Sections 12(c), 13, and 509(k) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 710, and 794e(k))

§ 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 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 eligible system within a State for obligation during the succeeding fiscal year in accordance with section 509(g) of the Act and 34 CFR 76.709.

(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.

(e) *Program income.* (1) *Program income* means gross income earned by the designated agency that is directly generated by an activity supported under this part.

(2) Grantees are authorized to treat program income as—

(i) A deduction from total allowable costs charged to a Federal grant, in accordance with 2 CFR 200.307(e)(1); or

(ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 2 CFR 200.307(e)(2).

(3) 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 or expended prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the grantee during that succeeding fiscal year.

(Authority: Sections 12(c), 19, and 509(f)(7), (g), and (i) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 716, and 794e(f)(7), (g), and (i); and 20 U.S.C. 3474)

■ 10. Part 385 is revised to read as follows:

PART 385—REHABILITATION TRAINING

Subpart A—General

Sec.
385.1 What is the Rehabilitation Training program?
385.2 Who is eligible for assistance under these programs?
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]
385.31 How does the Secretary evaluate an application?
385.33 What other factors does the Secretary consider in reviewing an application?

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?
385.41 What are the requirements affecting the collection of data from designated State agencies?
385.42 What are the requirements affecting the dissemination of training materials?
385.43 What requirements apply to the training of rehabilitation counselors and other rehabilitation personnel?
385.44 What requirement applies to the training of individuals with disabilities?
385.45 What additional application requirements apply to the training of individuals for rehabilitation careers?
385.46 What limitations apply to the rate of pay for experts or consultants appointed or serving under contract under the Rehabilitation Training program?

Authority: Sections 12(c), 301, and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 771 and 772, unless otherwise noted.

Subpart A—General

§ 385.1 What is the Rehabilitation Training program?

(a) *Purpose.* 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 (including supported employment programs), through economic and business development programs, through independent living services programs, and through client assistance programs;

(2) Maintain and upgrade basic skills and knowledge of personnel employed, including personnel specifically trained to deliver rehabilitation services, including supported employment services and customized employment services, to individuals with the most significant disabilities, and personnel specifically trained to deliver services to individuals with disabilities whose employment outcome is self-employment, business ownership, or telecommuting, to provide state-of-the-art service delivery 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 decision makers in the vocational rehabilitation process.

(b) The Secretary awards grants and contracts on a competitive basis to pay part of the costs of projects for training, traineeships or scholarships, and related activities, including the provision of technical assistance, to assist in increasing the numbers of qualified personnel trained in providing vocational rehabilitation services and other services provided under the Act, to individuals with disabilities. Financial assistance is provided through multiple training programs, including:

(1) Rehabilitation Long-Term Training (34 CFR part 386).

(2) Innovative Rehabilitation Training (34 CFR part 387).

(3) Rehabilitation Short-Term Training (34 CFR part 390).

(4) Training of Interpreters for Individuals Who Are Deaf and Hard of Hearing and Individuals Who Are Deaf-Blind (34 CFR part 396).

(Authority: Sections 12(c), 301 and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 771 and 772)

§ 385.2 Who is eligible for assistance under these programs?

States and public or private nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Training program.

(Authority: Sections 7(19), 301, and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(19), 771 and 772)

§ 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 75 (Direct Grant 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 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(8) 34 CFR part 97 (Protection of Human Subjects).

(9) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing.

(10) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 385.

(c) The regulations in 34 CFR parts 386, 387, 390, and 396, as appropriate.

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 711(c) and 772)

§ 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
Grantee
Nonprofit
Private
Project
Project Period
Public
Secretary

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(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 means technology designed to be utilized in an assistive technology device or assistive technology service.

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;

(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; and

(7) A service consisting of expanding the availability of access to technology, including electronic and information

technology, to 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 7(8) and 101(a)(2)(A) of the Act.

Designated State unit means

(1) Any State agency unit required under section 7(8) and 101(a)(2)(B) 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)(ii) 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;

(2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to title I, III, or VI of the Rehabilitation Act of 1973, as amended; and

(3) Has a disability as defined in section 7(20)(B) of the Act.

Individual with a significant 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, intellectual disability, respiratory or pulmonary dysfunction, 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 101(a) of the Higher Education Act (20 U.S.C. 1001(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 services means services, including vocational, medical, social, and psychological rehabilitation services and other services under the Rehabilitation Act, provided to individuals with disabilities in performing functions necessary in preparing for, securing, retaining, or regaining an employment or independent living outcome.

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, and the Commonwealth of the Northern Mariana Islands.

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 competitive integrated employment, including customized employment, or employment in an integrated work setting in which individuals are working on a short-term basis toward competitive integrated employment, that is individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individuals involved, for individuals with the most severe disabilities—

(1)(i) For whom competitive integrated employment has not traditionally occurred; or

(ii) For whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(2) 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 the work involved.

Supported employment services means ongoing support services, including customized employment, 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 more than 24 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 plan for employment.

Vocational rehabilitation services means services provided to an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, and services provided for the benefit of groups of individuals with disabilities. Vocational Rehabilitation Services for an individual with a disability may include—

(1) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(3) Referral and other services to secure needed services from other agencies;

(4) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(5) Vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;

(6) Diagnosis and treatment of physical and mental impairments;

(7) Maintenance for additional costs incurred while the individual is receiving services;

(8) Transportation;

(9) On-the-job or other related personal assistance services;

(10) Interpreter and reader services;

(11) Rehabilitation teaching services, and orientation and mobility services;

(12) Occupational licenses, tools, equipment, and initial stocks and supplies;

(13) Technical assistance and other consultation services to conduct market analysis, develop business plans, and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(14) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

(15) Transition services for individuals with disabilities that facilitate the achievement of employment outcomes;

(16) Supported employment services;

(17) Services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome;

(18) Post-employment services necessary to assist an individual with a disability to retain, regain, or advance in employment; and

(19) Expansion of employment opportunities for individuals with disabilities, which includes, but is not limited to—

(i) Self-employment, business ownership, and entrepreneurship;

(ii) Non-traditional jobs, professional employment, and work settings;

(iii) Collaborating with employers, Economic Development Councils, and others in creating new jobs and career advancement options in local job markets through the use of job restructuring and other methods; and

(iv) Other services as identified by the Secretary and published in the **Federal Register**.

(Authority: Sections 7(40), 12(c), and 101(a)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(40), 709(c), and 721(a)(7))

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 34 CFR 75.155–75.159.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

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, 390, and 396, 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: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 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, 387, 390, and 396 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: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

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, 387, 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: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 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: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 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: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(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, 387, 390, and 396 must train those counselors and personnel on the services provided under this Act, and, in particular, services provided in accordance with amendments made to the Rehabilitation Act by the Workforce Innovation and Opportunity Act of 2014. The grantee must also furnish training to these counselors and personnel regarding applications of rehabilitation technology in vocational rehabilitation services, 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: Sections 12(c), 101(a), and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a) and 772)

§ 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: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c)

§ 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: Sections 21(a) and (b) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 718(a) and (b) and 772)

§ 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: Section 302(b)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(b)(3))

■ 11. Part 386 is revised to read as follows:

Part 386—Rehabilitation Training: Rehabilitation Long-Term Training

Subpart A—General

Sec.
386.1 What is the Rehabilitation Long-Term Training program?

386.2 Who is eligible for an award?

386.3 What regulations apply?

386.4 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

386.20 What additional selection criteria are used under this program?

386.21 What are the application procedures for these programs?

Subpart D—What Conditions Must Be Met After an Award?

386.30 What are the matching requirements?
386.31 What are the requirements for directing grant funds?
386.32 What are allowable costs?
386.33 What are the requirements for grantees in disbursing scholarships?
386.34 What assurances must be provided by a grantee that intends to provide scholarships?
386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?
386.36 What is a grantee's liability for failing to provide accurate and complete scholar information to the Department?

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?
386.42 What must a scholar do to obtain an exception or a deferral to performance or repayment under a scholarship agreement?
386.43 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772, 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 that leads to an academic degree or academic certificate in areas of personnel shortages identified by the Secretary and published in a notice in the **Federal Register**. These areas may include—

(1) Assisting and supporting individuals with disabilities pursuing self-employment, business ownership, and telecommuting;

(2) Vocational rehabilitation counseling;

(3) Rehabilitation technology, including training on its use, applications, and benefits;

(4) Rehabilitation medicine;

(5) Rehabilitation nursing;

(6) Rehabilitation social work;

(7) Rehabilitation psychiatry;

(8) Rehabilitation psychology;

(9) Rehabilitation dentistry;

(10) Physical therapy;

(11) Occupational therapy;

(12) Speech pathology and audiology;

(13) Physical education;

(14) Therapeutic recreation;

(15) Community rehabilitation program personnel;

(16) Prosthetics and orthotics;

(17) Rehabilitation of individuals who are blind or visually impaired, including rehabilitation teaching and orientation and mobility;

(18) Rehabilitation of individuals who are deaf or hard of hearing;

(19) Rehabilitation of individuals who are mentally ill;

(20) Undergraduate education in the rehabilitation services;

(21) Independent living;

(22) Client assistance;

(23) Administration of community rehabilitation programs;

(24) Rehabilitation administration;

(25) Vocational evaluation and work adjustment;

(26) 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;

(27) Job development and job placement services to individuals with disabilities;

(28) Supported employment services and customized employment services for individuals with the most significant disabilities;

(29) Specialized services for individuals with significant disabilities;

(30) Other fields contributing to the rehabilitation of individuals with disabilities.

(Authority: Sections 12 and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709 and 772)

§ 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: Section 302(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(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: Section 302(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(a))

§ 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 or other arrangement 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, books and supplies, and student travel in conjunction with training assignments.

State vocational rehabilitation agency means the designated State agency as defined in 34 CFR 361.5(c)(13).

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(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 vocational 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 vocational 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 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, customized employment, pre-employment transition services, transition services, or independent living rehabilitation services to individuals with disabilities, especially individuals with significant disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, customized employment, employer engagement, and 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: Section 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 386.21 What are the application procedures for these programs?

(a) *Application.* No grant shall be awarded or contract entered into under the Rehabilitation Long-Term Training program unless the applicant has submitted to the Secretary an application at such time, in such form, in accordance with such procedures identified by the Secretary and, and including such information as the Secretary may require, including—

(1) A description of how the designated State unit or units will participate in the project to be funded under the grant or contract, including, as appropriate, participation on advisory committees, as practicum sites, in curriculum development, and in other ways so as to build closer relationships between the applicant and the designated State unit and to encourage students to pursue careers in public vocational rehabilitation programs;

(2) The identification of potential employers that provide employment that meets the requirements in § 386.33(c); and

(3) An assurance that data on the employment of graduates or trainees who participate in the project is accurate.

(b) 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 34 CFR 75.155–75.159.

(Authority: Sections 12(c) and 302(b)(2) and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b)(2) and (d))

Subpart D—What Conditions Must Be Met After an Award?

§ 386.30 What are the matching requirements?

The grantee is required to contribute at least ten percent of the total cost of a project under this program. However, if the grantee can demonstrate that it has insufficient resources to contribute the entire match but that it can fulfill all other requirements for receiving an award, the Secretary may waive part of the non-Federal share of the cost of the project after negotiations with Department staff.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 386.31 What are the requirements for directing grant funds?

(a) A grantee must use at least 65 percent of the total cost of a project under this program for scholarships as defined in § 386.4.

(b) The Secretary may waive the requirement in (a) and award grants that use less than 65 percent of the total cost of the project 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) A scholar may not receive concurrent scholarships from more than one project under this program.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 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) Books and supplies.

(d) Student travel in conjunction with required practicum or internship.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 386.33 What are the requirements for grantees in disbursing scholarships?

Before disbursement of scholarship assistance to an individual, a grantee—

(a)(1) Must obtain documentation that the individual is—

(i) A U.S. citizen or national; or

(ii) A permanent resident of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(2) Must confirm from documentation issued to the individual by the U.S. Department of Homeland Security that he or she—

(i) Is a lawful 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; and

(b) Must 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 significant disabilities;

(c) Must obtain documentation, as described in § 386.40(a)(6), that the individual expects to seek and maintain employment in a designated State agency or in a related agency as defined in § 386.4 where

(1) The employment is in the field of study in which the training was received or

(2) Where the job functions are directly relevant to the field of study in which the training was received.

(d) Must ensure that the scholarship, when added to the amount of financial aid the scholar receives for the same academic year under title IV of the Higher Education Act, does not exceed the scholar's cost of attendance;

(e) Must limit scholarship assistance to no more than four academic years, unless the grantee provides an extension consistent with the institution's accommodations under section 504 of the Act; and

(f) Must 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: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(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 must 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. An agreement must be executed between the grantee and scholar for each subsequent year that scholarship funds are disbursed and must contain the terms and conditions required by this section.

(b) *Disclosure to applicants.* The terms and conditions of the agreement between the grantee and a scholar will be fully disclosed in the application for scholarship.

(c) *Form and terms of agreement.* Prior to granting each year of a scholarship, the grantee will require each scholar to enter into a signed written agreement in which the scholar agrees to the terms and conditions set forth in § 386.40. This agreement must be in the form and contain any additional terms and conditions that the Secretary may require.

(d) *Executed agreement.* The grantee will provide an original signed executed payback 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 must 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.* (1) At the time of exit from the program, the grantee will provide the following information to the scholar:

(i) The name of the institution and the number of the Federal grant that provided the scholarship.

(ii) the total amount of scholarship assistance received subject to § 386.40(a)(6).

(iii) The scholar's field of study and the obligation of the scholar to perform the service obligation with employment that meets the requirements in § 386.40(a)(6)(i).

(iv) The number of years the scholar needs to work to satisfy the work requirements in § 386.40(a)(6)(ii).

(v) The time period during which the scholar must satisfy the work requirements in § 386.40(a)(7).

(vi) As applicable, all other obligations of the scholar in § 386.40.

(2) Upon receipt of this information from the grantee, the scholar must provide written and signed certification to the grantee that the information is correct.

(g) *Tracking system.* The grantee has established policies and procedures to determine compliance of the scholar with the terms of the signed payback agreement. In order to determine whether a scholar has met the terms and conditions set forth in § 386.40, 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, name of supervisor, position title, a description of the duties the scholar performed, and whether the employment is full- or part-time;

(2) Documentation of how the employment meets the requirements in § 386.40(a)(6); and

(3) In the event a grantee is experiencing difficulty locating a scholar, documentation that the grantee has checked with existing tracking systems operated by alumni organizations.

(h) *Reports.* The grantee will make annual reports to the Secretary, unless more frequent reporting is required by the Secretary, that are necessary to carry

out the Secretary's functions under this part.

(i) *Repayment status.* The grantee will immediately report to the Secretary whenever a scholar has entered repayment status under § 386.43(e) and provide all necessary documentation in support thereof.

(j) *Records.* The grantee will maintain accurate and complete records as outlined in paragraphs (g) and (h) of this section for a period of time not less than one year beyond the date that all scholars provided financial assistance under the grant—

(1) Have completed their service obligation or

(2) Have entered into repayment status pursuant to § 386.43(e).

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(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 must 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 vocational rehabilitation program.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 386.36 What is a grantee's liability for failing to provide accurate and complete scholar information to the Department?

The Department may recover, in whole or in part, from the grantee the debt amount and any collection costs described in §§ 386.40 and 386.43, if the Department:

(a) Is unable to collect, or improperly collected, some or all of these amounts or costs from a scholar and

(b) Determines that the grantee failed to provide to the Department accurate and complete documentation described in § 386.34.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

Subpart E—What Conditions Must Be Met by a Scholar?

§ 386.40 What are the requirements for scholars?

(a) A scholar must—

(1) Be enrolled in a course of study leading to a certificate or degree in one of the fields designated in § 386.1(b);

(2) Receive the training at the educational institution or agency designated in the scholarship;

(3) Not accept payment of educational allowances from any other entity if that allowance conflicts with the scholar's obligation under section 302 of the Act and this part;

(4) Enter into a signed written agreement with the grantee, prior to the receipt of scholarship funds, as required in § 386.34(c);

(5) Maintain satisfactory progress toward the certificate or degree as determined by the grantee;

(6) Upon exiting the training program under paragraph (a)(1) of this section, subsequently maintain employment on a full- or part-time basis subject to the provisions in paragraph (b) of this section—

(i)(A) In a State vocational rehabilitation agency or related agency as defined in § 386.4; and

(B)(*1*) In the field of study for which training was received, or

(*2*) Where the field of study is directly relevant to the job functions performed; and

(ii) For a period of at least the full-time equivalent of two years for every academic year for which assistance under this section was received subject to the provisions in paragraph (c) of this section for part-time coursework;

(7) Complete the service obligation within a period, beginning after the recipient exits the training program for which the scholarship was awarded, of not more than the sum of the number of years in the period described in paragraph (a)(6)(ii) of this section and two additional years;

(8) Repay all or part of any scholarship received, plus interest, if the individual does not fulfill the requirements of this section, except as provided for in § 386.41 for exceptions and deferrals; and

(9) Provide the grantee all requested information necessary for the grantee to meet the exit certification requirements in § 386.34(f) and, as necessary, thereafter for any changes necessary for the grantee to monitor the scholar's service obligation under this section.

(b)(1) The period of qualifying employment that meets the requirements of paragraph (a)(6) of this section may begin—

(i) For courses of study of at least one year, only subsequent to the completion of one academic year of the training for which the scholarship assistance was received.

(ii) For courses of study of less than one year, only upon completion of the training for which the scholarship assistance was received.

(2) The work completed as part of an internship, practicum, or any other work-related requirement necessary to complete the educational program is not considered qualifying employment.

(c) If the scholar is pursuing coursework on a part-time basis, the service obligation for these part-time courses is based on the equivalent total of actual academic years of training received.

(d) If a scholar fails to provide the information in paragraph (a)(9) of this section or otherwise maintain contact with the grantee pursuant to the terms of the signed payback agreement and enters into repayment status pursuant to § 386.43, the scholar will be held responsible for any costs assessed in the collection process under that section even if that information is subsequently provided.

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

§ 386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?

Based upon sufficient evidence to substantiate the grounds as detailed in § 386.42, a repayment exception to or deferral of the requirements of § 386.40(a)(6) may be granted, in whole or in 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 permanent disability that meets one of the following conditions:

(i) The disability had not been diagnosed at the time the scholar signed the agreement in § 386.34(c); or

(ii) The disability did not prevent the scholar from performing the

requirements of the course of study or the work obligation at the time the scholar signed the agreement in § 386.34(c) but subsequently worsened; 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 in the field of rehabilitation at an institution of higher education;

(2) Serving on active duty as a member of the armed services of the United States for a period not in excess of four years;

(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) Experiencing a temporary disability that affects the scholar's ability to continue the course of study or perform the work obligation, for a period not to exceed three years; or

(c) Under limited circumstances as determined by the Secretary and based upon credible evidence submitted on behalf of the scholar, the Secretary may grant an exception to, or deferral of, the requirement to repay a scholarship in instances not specified in this section. These instances could include, but are not limited to, the care of a disabled spouse, partner, or child or the need to accompany a spouse or partner on active duty in the Armed Forces.

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

§ 386.42 What must a scholar do to obtain an exception or a deferral to performance or repayment under a scholarship agreement?

To obtain an exception or a deferral to performance or repayment under a scholarship agreement under § 386.41, a scholar must 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.* Sufficient documentation must be provided to substantiate the grounds for all deferrals or exceptions, including the following, as appropriate.

(1) Documentation necessary to substantiate an exception under § 386.41(a)(1) or a deferral under § 386.41(b)(5) must include a letter from a qualified physician or other medical professional, on official stationery, attesting how the disability affects the scholar in completing the course of study or performing the work obligation. The documentation must be less than three months old and include the scholar's diagnosis and prognosis and ability to complete the course of study or work with accommodations.

(2) Documentation to substantiate an exception under § 386.41(a)(2) must include a death certificate or other evidence conclusive under State law.

(3) Documentation necessary to substantiate a deferral or exception under 386.41(c) based upon the disability of a spouse, partner, or child must meet the criteria, as relevant, in paragraph (b)(1) of this section.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 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 must 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: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

■ 12. Part 387 is revised to read as follows:

PART 387—INNOVATIVE REHABILITATION TRAINING

Subpart A—General

Sec.
387.1 What is the Innovative Rehabilitation 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?
387.5 What types of projects are authorized under this program?

Subpart B—[Reserved]

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 allowable costs?

Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), and 772, unless otherwise noted.

Subpart A—General

§ 387.1 What is the Innovative Rehabilitation 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;

(b) To develop new and improved methods of training rehabilitation personnel so that there may be a more effective delivery of rehabilitation services to individuals with disabilities by designated State rehabilitation agencies and designated State rehabilitation units or other public or non-profit rehabilitation service agencies or organizations; and

(c) To develop new innovative training programs for vocational rehabilitation professionals and paraprofessionals to have a 21st century understanding of the evolving labor force and the needs of individuals with

disabilities so they can more effectively provide vocational rehabilitation services to individuals with disabilities.

(Authority: Sections 12(c), 121(a)(7), and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(7), and 772)

§ 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: Section 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 387.3 What regulations apply to this program?

(a) 34 CFR part 385 (Rehabilitation Training); and

(b) The regulations in this part 387.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 387.4 What definitions apply to this program?

The definitions in 34 CFR part 385 apply to this program.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772))

§ 387.5 What types of projects are authorized under this program?

The Innovative Rehabilitation 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 personnel may be demonstrated.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772))

Subpart B—[Reserved]

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 personnel.

(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 significant disabilities; and

(iv) The didactic coursework includes student exposure to vocational rehabilitation processes, concepts, programs, and services.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

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: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 387.41 What are allowable costs?

In addition to those allowable costs established under 34 CFR 75.530–75.562, the following items are allowable under Innovative Rehabilitation training projects—

(a) Student stipends;

(b) Tuition and fees; and

(c) Student travel in conjunction with training assignments.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

PART 388—[REMOVED AND RESERVED]

■ 13. Part 388 is removed and reserved.

PART 389—[REMOVED AND RESERVED]

■ 14. Part 389 is removed and reserved.

■ 15. Part 390 is revised to read as follows:

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?

Subpart E—What Conditions Must Be Met by a Grantee?

390.40 What are the matching requirements?
390.41 What are allowable costs?

Authority: Sections 12(a) and (c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(a) and (c) and 772, 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: Sections 12(a)(2) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(a)(2) and 772)

§ 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: Section 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772)

§ 390.3 What regulations apply to this program?

(a) 34 CFR part 385 (Rehabilitation Training); and

(b) The regulations in this part 390.

(Authority: Section 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772)

§ 390.4 What definitions apply to this program?

The definitions in 34 CFR part 385 apply to this program.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(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: Section 12(a)(2) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(a)(2) and 772)

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) *Evidence of training needs.* The Secretary reviews each application for evidence of training needs as identified through training needs assessment conducted by the applicant or by designated State agencies or designated State units or any other public and private nonprofit rehabilitation service agencies or organizations that provide rehabilitation services and other services authorized under the Act, whose personnel will receive the training.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

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: Section 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 390.41 What are allowable costs?

(a) In addition to those allowable costs established in 34 CFR 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: Section 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

▪ 16. Part 396 is revised to read as follows:

PART 396—TRAINING OF INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING AND INDIVIDUALS WHO ARE DEAF-BLIND

Subpart A—General

Sec.
396.1 What is the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program?
396.2 Who is eligible for an award?
396.3 What regulations apply?
396.4 What definitions apply?
396.5 What activities may the Secretary fund?

Subpart B—[Reserved]

Subpart C—How Does One Apply for an Award?

396.20 What must be included in an application?

Subpart D—How Does the Secretary Make an Award?

396.30 How does the Secretary evaluate an application?
396.31 What additional selection criteria are used under this program?
396.32 What additional factors does the Secretary consider in making awards?
396.33 What priorities does the Secretary apply in making awards?
396.34 What are the matching requirements?

Authority: Sections 12(c) and 302(a) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(a) and (f), unless otherwise noted.

Subpart A—General

§ 396.1 What is the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program?

The Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program is designed to establish interpreter training programs or to provide financial assistance for ongoing interpreter programs to train a sufficient number of qualified interpreters throughout the country in order to meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind by—

(a) Training interpreters to effectively interpret and transliterate between spoken language and sign language, and to transliterate between spoken language and oral or tactile modes of communication;

(b) Ensuring the maintenance of the interpreting skills of qualified interpreters; and

(c) Providing opportunities for interpreters to raise their skill level competence in order to meet the highest standards approved by certifying associations.

(Authority: Sections 12(c) and 302(a) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(a) and (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: Section 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(f))

§ 396.3 What regulations apply?

The following regulations apply to the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program:

(a) 34 CFR part 385 (Rehabilitation Training); and

(b) The regulations under this part 396.

(Authority: Sections 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(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 qualified interpreters who are serving the deaf, hard of hearing, and deaf-blind communities; and

(2) An established curriculum that uses evidence-based practices in the training of interpreters and promising practices when evidence-based practices are not available.

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, speech 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.

Individual who is hard of hearing means an individual who has a hearing impairment such that, in order to facilitate communication, the individual depends upon visual modes, such as sign language, speech reading, and gestures, or reading and writing, in addition to any other auditory information.

Interpreter for individuals who are deaf or hard of hearing 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 or hard of hearing, to facilitate communication between individuals who are deaf or hard of hearing 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—

(1) Met existing certification or evaluation requirements equivalent to the highest standards approved by certifying associations; and

(2) Successfully demonstrated interpreting skills that reflect the highest standards approved by certifying associations through prior work experience.

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 or other arrangement 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.

(Authority: Sections 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended and Section 206 of Pub. L. 98–221; 29 U.S.C. 709(c) and 772(f) and 29 U.S.C 1905)

§ 396.5 What activities may the Secretary fund?

The Secretary may award grants to public or private nonprofit agencies or organizations, including institutions of higher educations, to provide assistance for establishment of interpreter training programs or 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 or hard of hearing, and as interpreters for individuals who are deaf-blind in public and private agencies, schools, and other service-providing institutions.

(Authority: Section 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(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 communication needs for training interpreters in the geographical area to be served by the project;

(c) A description of the applicant's capacity or potential for providing training of interpreters for individuals who are deaf or hard of hearing and interpreters for individuals who are deaf-blind that is evidence-based, and based on promising practices when evidence-based practices are not available;

(d) An assurance that any interpreter trained or retrained under this program shall meet those standards of competency for a qualified professional, 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;

(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; and

(g) Such other information as the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c), 21(c), and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 718(c), and 772(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: Section 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(f))

§ 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. The Secretary reviews each application to determine the extent to which—

(a) The proposed interpreter training project was developed in consultation with State Vocational Rehabilitation agencies and their related agencies and consumers;

(b) The training is appropriate to the needs of both individuals who are deaf or hard of hearing 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 hard of hearing or individuals who are deaf-blind in the geographical area to be served by the training project;

(c) The curriculum for the training of interpreters includes evidence-based practices, and promising practices when evidence-based practices are not available;

(d) There is a working relationship between the interpreter training project and State Vocational Rehabilitation agencies and their related agencies, and consumers; and

(e) There are opportunities for individuals who are deaf or hard of hearing and individuals who are deaf-blind to provide input regarding the design and management of the training project.

(Authority: Sections 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f))

§ 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: Sections 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f))

§ 396.33 What priorities does the Secretary apply in making awards?

(a) The Secretary, in making awards under this part, gives priority to public or private nonprofit agencies or organizations, including institutions of higher education, with existing programs that have demonstrated their capacity for providing interpreter training.

(b) In announcing competitions for grants and contracts, the Secretary may give priority consideration to—

(1) Increasing the skill level of interpreters for individuals who are deaf or hard of hearing and individuals who are deaf-blind in the unserved or underserved geographic areas;

(2) Existing programs that have demonstrated their capacity for providing interpreter training services that raise the skill level of interpreters in order to meet the highest standards approved by certifying associations; and

(3) Specialized topical training based on the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

(Authority: Sections 12(c) and 302(f)(1)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f)(1)(C))

§ 396.34 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: Section 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f))

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