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Part III

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34 CFR Parts 367, 369, 370, et al.

Workforce Innovation and Opportunity Act, Miscellaneous Program  
Changes; Final Rule

**DEPARTMENT OF EDUCATION**

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

[Docket No. 2015–ED–OSERS–0002]

RIN 1820–AB71

**Workforce Innovation and Opportunity Act, Miscellaneous Program Changes**

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

**ACTION:** Final Regulations.

**SUMMARY:** The Secretary amends 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, signed on July 22, 2014.

The Secretary also implements changes to the Act made by the Workforce Investment Act of 1998, signed on August 7, 1998, that have not previously been implemented in regulations, and otherwise updates, clarifies, and improves RSA's current regulations.

**DATES:** This final rule is effective September 19, 2016, except the removal of part 388, amendatory instruction 13, is effective on October 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ed Anthony, U.S. Department of Education, 400 Maryland Avenue SW., Room 5086 PCP, Washington, DC 20202–2800. Telephone: (202) 245–7488, or by email: [Edward.Anthony@ed.gov](mailto:Edward.Anthony@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:**

**Background**

The Secretary amends 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), signed 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 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, removes 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 implements changes to the Act made by the Workforce Investment Act of 1998 (WIA), signed into law August 7, 1998 (Pub. L. 105–220). These changes were not previously implemented in the OIB, CAP, AIVRS, and PAIR program regulations, and the Secretary now makes these changes in the applicable regulations.

Separate and apart from amendments to the Act made by WIOA and WIA, the Secretary updates and clarifies 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 removes regulations that are superseded or obsolete and consolidates regulations, where appropriate. In addition to removing portions of 34 CFR part 369 pertaining to specific programs whose statutory authority was repealed under WIOA (*i.e.*, Migrant Workers program, the Recreational Programs, and the Projects With Industry program), the Secretary is removing the remaining portions of the Part 369 regulations. The Secretary is also removing parts 376, 377, and 389.

**Public Comment**

On April 16, 2015, the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the **Federal Register** (80 FR 20988). In response to our invitation in the NPRM, more than 100 parties submitted comments on the proposed regulations. Because the amendments described in these final regulations are so many and varied, we first discuss those programs whose regulations we amend and do not remove. We discuss these programs in the order in which their parts appear in the Code of Federal Regulations (CFR). For each part, we provide a summary of the changes we proposed, a summary of the differences between the proposed regulations and these final regulations, and a detailed discussion of the public comment we received on the proposed regulations. We then discuss those programs whose regulations we remove. Generally, we do not address technical and other minor changes.

**Independent Living Services for Older Individuals who are Blind (OIB), 34 CFR Part 367**

**Summary of Changes**

In the preamble of the NPRM, we discussed on pages 20989 through 20991 the major changes proposed to part 367 implementing the amendments to the OIB program made by WIOA. These included a requirement 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 designated State agencies (DSA) or other providers of independent living services for older individuals who are blind.

In addition, we proposed 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.

There are five differences between the NPRM and these final regulations. As a result of our further review, we add the

entities eligible to apply for awards under the training and technical assistance funding in § 367.21; we revise § 367.24 to give the Secretary the discretion to conduct the application process and make the subsequent award in accordance with 34 CFR part 75, but not require it; we clarify in §§ 367.65 and 367.66 requirements for the use of program income; we address in a new § 367.67 the financial participation by consumers served by the OIB program; and we revise § 367.69 by requiring that designated State agencies and other service providers enter into written agreements when sharing personal information with entities and organizations for the purpose of evaluations, audits, research, and other program purposes. We also make other, minor technical changes.

### Public Comment

In response to our invitation in the NPRM, eight parties submitted comments on the proposed regulations amending the OIB program. One commenter agreed with all of the proposed regulations as written. Another expressed specific support for incorporating into part 367 the independent living (IL) services from section 7(17) of the Act, including the requisite supports and services that facilitate the transition of individuals from nursing homes and other institutions to home- and community-based residences and services to assist older individuals who are blind and who are at risk of entering institutions to remain in their communities. We address those commenters that requested clarifications or proposed additions to the regulations. Because we made a number of structural and numbering revisions to part 367, we provide an analysis of public comment by subpart and, within each subpart, by subject or section. We do not address areas about which we did not receive public comments, *i.e.* Subpart D—How Does the Secretary Award Discretionary Grants? and Subpart E—How Does the Secretary Award Formula Grants?

### Subpart A—General

*Comment:* An organization representing State agencies for the blind and that supports the concept of “employment first” recommended that part 367 refer all consumers presumed eligible for the OIB program based upon age to the State VR services program to be assessed for employment potential prior to being served under the OIB program. The commenter stated that this would relieve the “underfunded” OIB program of the costs of eligibility and

assessment and allow for these costs to be met by the VR program.

*Discussion:* We appreciate the commenter’s support for “employment first,” which regards employment as the preferred option for individuals of working age. However, we understand that many older individuals with vision loss may not believe that employment is an option for them. The purpose of the OIB program is to provide IL services to individuals age 55 or older whose significant visual impairment makes competitive employment extremely difficult but for whom IL goals are feasible. Individuals served by the OIB program who subsequently express an interest in employment during or after receiving OIB services may be referred at any time to the VR program; however, there is no statutory authority to require that all potential OIB consumers be referred to the VR program before receiving OIB services.

We acknowledge the commenter’s concerns about relieving the OIB program of the costs of eligibility and assessments; however, to require that all individuals presumed eligible for the OIB program be referred first to the VR program for assessment of employment potential is not appropriate, as it shifts those costs to the VR program for individuals for whom competitive employment may not be likely.

*What activities may the Secretary fund? (§ 367.3(b))*

*Comments:* Some commenters asked for clarification about whether it is mandatory to provide all independent living (IL) services that may be funded under this part. Commenters were concerned about their capacity to provide all IL services, particularly those defined in proposed § 367.5(b)(10). The commenters noted that some of the services are duplicative of those provided by Centers for Independent Living (CILs), while others may not usually apply to the OIB program (*e.g.* shelter, supported living, physical rehabilitation, therapeutic treatment, and prostheses).

Additionally, commenters stated that vision rehabilitation specialists would require extensive training to gain the qualifications needed to provide all services and that providing the full array of services would affect the quality of vision services provided to clients by an already overstretched staff.

*Discussion:* We acknowledge the concerns expressed by some commenters about whether providing all IL services identified in § 367.3(b)—particularly the catchall in § 367.3(b)(8), “Other IL services as defined in § 367.5”—is required. While § 367.3(a)

specifies that the DSA may use funds under part 367 for activities described in § 367.1 and § 367.5(b), it does not require the DSA to provide the full array of services and activities that the Secretary may fund. In fact, many of these IL services and activities may also be provided under title VII, chapter 1 of the Act, and older individuals who are blind may be referred to these programs, which include CILs, for services that may not be specific to the vision-related services traditionally provided by the OIB program. However, the broad scope of IL services that an OIB program may provide allows the program to determine what array of services and activities it will provide and to individualize services according to need.

*Changes:* None.

### Transfer of Title VII, Chapter 1 IL Programs

*Comment:* One commenter requested further clarification about how the Department intends to work with the Department of Health and Human Services (HHS) throughout the IL program transition process to assure that older individuals who are blind continue to receive the necessary services that provide the greatest opportunity for complete and full independence.

*Discussion:* The Department has worked collaboratively with HHS to ensure the efficient and effective transfer of the Title VII, Chapter 1 programs from the Department of Education to HHS. The OIB program, which continues to be administered by the Department, was transferred within RSA to staff in the Technical Assistance Unit who have the knowledge and expertise necessary to administer the OIB program.

*Change:* None.

### Subpart B—Training and Technical Assistance

*Comment:* One commenter strongly recommended that a portion of the technical assistance and training funds be required to be used to train service providers on techniques and best practices for serving older individuals who are deaf-blind, including those who are blind or visually impaired and hard of hearing. This specialized training would increase understanding of the needs of deaf-blind individuals, assist service providers who routinely work with individuals who are blind to recognize those who also have hearing loss, and provide techniques designed to maximize independence.

*Discussion:* We appreciate the commenter’s recommendation.

Individuals who are deaf-blind, including those who are blind or visually impaired and hard of hearing, encompass a growing population within those who may be served under the OIB program. As such, we anticipate that training and technical assistance for DSAs and other service providers will address the needs of this dual sensory loss group, as well as of other individuals who are blind or visually impaired and have multiple disabilities.

*Change:* None.

*Eligible Entities for Grants, Contracts, or Cooperative Agreements (§ 367.21(a))*

*Comment:* None.

*Discussion:* In proposed § 367.21(a), we did not describe the entities eligible to compete for funds reserved under § 367.20 to carry out training and technical assistance through grants, contracts, or cooperative agreements. This was an oversight.

*Change:* We added eligible entities to final § 367.21(a): State and public or non-profit agencies and organizations and institutions of higher education.

**How does the Secretary evaluate an application? (§ 367.24)**

*Comments:* None.

*Discussion:* When WIOA added a training and technical assistance authority to the OIB program it gave the Secretary the ability to make awards by grant, cooperative agreement or contract. Since the Department generally makes these awards by grants using the procedures in part 75, which uses the peer review process identified in the statute, we added a subsection in the NPRM that provided that the Secretary would use the procedures in part 75, even when awarding a contract. However, upon further reflection, we have determined that there may be circumstances when the Department has an amount of funds that is too small to compete but could be used to support a contract consistent with the training and technical assistance authority, in the form of a task order or modification under an existing Department contract for example, in which case, the Department would not want to use the grant processes in part 75. Therefore, we have determined that it is more appropriate to change the language in this subsection to give the Secretary the authority to use part 75 if awarding a contract, where the Secretary determines it is appropriate but not require its use.

*Changes:* We have revised final § 367.24(b) to give the Secretary the discretion to conduct the application process and make the subsequent award

in accordance with 34 CFR part 75, but not require it.

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

*Removal of State Plan for Independent Living OIB Requirements*

*Comments:* Two commenters, an organization representing agencies for the blind and an individual, acknowledged that WIOA eliminated the requirement for including a reference to the OIB program in the State Plan for Independent Living (SPIL) and expressed concern that this would disenfranchise and remove the “voice” of older individuals with vision loss. These commenters recommended that an OIB section be added to the Vocational Rehabilitation (VR) portion of the Unified or Combined State Plans submitted by States, with the requirement that plans require coordination with VR, CILs, aging, and other entities that would further the independence of older persons with visual impairments.

*Discussion:* We appreciate the commenters’ concerns surrounding the potential elimination of the “voice” of older individuals who are blind or visually impaired that resulted from the transfer of the IL programs to HHS. However, the previous SPIL requirements for IL coordination with the OIB program and for including any new methods or approaches for providing OIB services were minimal.

In addition, nothing prohibits older individuals who are blind or visually impaired from participating in the development of the SPIL. In fact, for the periodic review and revision of the SPIL, section 704(a)(3)(C)(ii)(II) of the Act requires collaboration and working relationships with, among others, entities carrying out programs that provide independent living services and that serve older individuals. Furthermore, some State OIB programs have developed advisory committees to provide input into determining the needs of the older blind population and developing the services required to meet those needs.

While we appreciate the recommendation to add an OIB section to the VR services portion of the Unified or Combined State Plan, section 101(a) of the Act dictates its required components, which do not include the OIB program. We encourage OIB consumers to make their views known to the DSA and other service providers, and we encourage State OIB programs to develop strategies to coordinate and link OIB programs with other disability and aging-related activities and programs

within each State to maximize collaboration and availability of services.

*Change:* None.

**Subpart F—What conditions must be met after an award?**

*Use of Program Income (§ 367.65(a)(2) and (b)(2))*

*Comment:* None.

*Discussion:* After further review, we have revised § 367.65 to clarify that payments received by the State agency, subrecipients, or contractors for IL services provided under the OIB program to individual consumers will be treated as program income. We have also revised final § 367.65(b)(2) to require OIB grantees to use program income only to supplement the OIB grant. Grantees will not be permitted to deduct program income from the grant.

Upon closer examination of the grant formula set forth in the statute, we have concluded that the use of the deduction method would, in effect, result in a reduction of an OIB program grantee’s allotment. Absent specific statutory authority, these reductions would be inconsistent with the statute and general appropriations law principles. In reviewing the grantees’ financial reports, we have found that very few, if any, OIB programs elect to use the deduction method. Instead, most, if not all, grantees elect to use the addition method, which is still permissible and, in fact, will be the only permissible use of program income under the OIB final regulations. We do not believe this change will negatively affect any grantee.

*Changes:* We have added § 367.65(a)(2), stating that payments received by the State agency, subrecipients, or contractors from insurers, consumers, or others for IL services provided under the OIB program to defray part or all of the costs of services provided to individual consumers will be treated as program income. We have revised final § 367.65(b)(2) to permit grantees to use program income only to supplement their OIB grant and have removed all references to the deduction method.

*The Requirements That Apply to the Obligation of Federal Funds and Program Income (§ 367.66)*

*Comment:* None.

There has been a long-standing, government-wide requirement under the common rule implementing former OMB Circular A–102 and the former OMB guidance in Circular A–110, as codified by the Department of Education at former 34 CFR 80.21(f)(2) and

74.22(g), respectively, that non-Federal grantees must expend program income prior to drawing down Federal grant funds. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), codified at 2 CFR part 200, were adopted by the Department at 2 CFR 3474 on December 19, 2014 (79 FR 76091), and apply to all new and continuing awards made after December 26, 2014.

The new 2 CFR 200.305(a) specifies the payment procedures that States must use to draw down Federal funds; however, these procedures appear, on the surface, to apply only to funds included in a Treasury-State Agreement (TSA), and not all Federal program funds made available to States are subject to TSAs. For this reason, 2 CFR 200.305(a) has created an ambiguity about how States should draw Federal funds under non-TSA programs.

Moreover, TSAs do not cover program income earned by State grantees, and 2 CFR 200.305(a) does not address whether States should expend available program income funds before requesting additional Federal cash, which had been the long-standing government-wide requirement in OMB Circular A-102 and codified for Department grantees at 34 CFR 80.21(f)(2). This silence creates concern because, for all other non-Federal entities, 2 CFR 200.305(b)(5) requires them to expend available program income funds before requesting payments of Federal funds.

While the silence in 2 CFR 200.305(a) creates an unintended ambiguity, we do not believe that it should be construed to change the prior rule and remove the requirement that States must expend program income funds before requesting additional Federal cash. No such policy change was discussed in the preambles to either the final guidance in 2 CFR part 200, which was published on December 26, 2013 (78 FR 78589), or in the Interim Final Guidance published on December 19, 2014 (79 FR 75867).

Further, § 361.63(c)(2) permits the transfer of VR Social Security reimbursement program income to carry out programs under title VII, Chapter 2 of the Act (Independent Living Services for Older Individuals Who Are Blind). For this reason, we believe it is essential that we resolve this unintended ambiguity for the OIB program.

We proposed in the NPRM to incorporate the requirement to expend program income before requesting payment of funds by referencing 2 CFR 200.305(a). Given the ambiguity in that section, however, the proposed rule did not clearly state the requirement. We resolve the ambiguity by revising

§ 367.66(c) to explicitly require States to expend available program income funds before requesting additional cash payments, as was the long-standing requirement under former 34 CFR 80.21(f)(2).

We believe this change is essential to protect the Federal interest by using program income to increase the funds devoted to this program, to which VR Social Security reimbursement program income may also be transferred, keeping to a minimum the interest costs to the Federal government of making grant funds available to the States. This change should not negatively affect States because it merely maintains the status quo that existed under 34 CFR 80.21(f)(2).

*Changes:* We have revised final § 367.66(c) to make clear that all designated agencies must disburse program income prior to drawing down Federal funds or, as stated in 2 CFR 200.305(b)(5), “requesting additional cash payments.” Finally, we have made other technical and conforming edits.

#### Financial Participation

*Comment:* One commenter pointed out that the proposed regulations did not address how a grantee should consider a consumer’s ability to pay.

*Discussion:* We agree that the proposed regulations did not address the subject of financial participation by consumers of the OIB program. Since there is neither a Federal requirement for, nor prohibition of, consumers of the OIB program to participate in the cost of IL services, we believe it is beneficial to address the commenter’s suggestion by including regulatory language to provide guidance to States that might want to consider this as an option.

*Change:* We added new § 367.67—*May an individual’s ability to pay be considered in determining his or her participation in the costs of OIB services?* A State is neither required to charge, nor is it prohibited from charging, consumers for the cost of IL services provided under the OIB program. Also, a State is neither required to, nor prohibited from, considering the ability of individual consumers to pay for the cost of OIB services in determining how much a particular consumer must contribute to the costs of a particular service. However, specific requirements apply if the State does choose to charge consumers or allow providers of services to charge consumers for services provided under the OIB program. Specific requirements also apply if the State considers, or allows providers of services to consider, the ability of individual consumers to pay

for the cost of OIB services. These requirements are outlined in the new § 367.67. Because this is a new section added to the regulations, the sections after it are renumbered accordingly.

#### CAP (§ 367.68)

*Comment:* One commenter, noting the inclusion of the notice of the availability of CAP in this subpart, remarked that the OIB regulations should, but do not, address appeals procedures.

*Discussion:* The Act does not include an appeals procedure for the OIB program; therefore, there is no statutory authority to include any regulations beyond those relating to the availability of CAP to the OIB program.

*Change:* None.

*What are the special requirements pertaining to the protection, use, and release of personal information?* (§ 367.69)

*Comments:* None.

*Discussion:* We anticipate that other Federal and State agencies, and researchers will have an increased interest in using the data required to be collected by programs established under the Act, including the OIB program. Therefore, after further departmental review, we have strengthened the protection of the confidentiality of personal information collected by the OIB program by requiring in final § 367.69 that designated State agencies and service providers enter into written agreements with any entity seeking access to this information for the purpose of audits, evaluations, research, or for other program purposes. This change is consistent with revisions to final 34 CFR 361.38 governing the protection of confidentiality of personal information collected by the VR program.

*Changes:* We have revised final § 367.69(a), (d), and (e)(1) by requiring that designated State agencies and service providers enter into written agreements with other organizations and entities receiving personal OIB program information during the conduct of audits, evaluations, research, and for other program purposes.

#### Client Assistance Program (CAP), 34 CFR Part 370

##### Summary of Changes

In the preamble of the NPRM, we discussed on pages 20991 through 20994 the major changes proposed to part 370 that would implement the amendments to the CAP made by WIOA and WIA. To implement those changes made by WIA, the Secretary proposed amending 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 also proposed making three substantive changes to incorporate statutory changes made to section 112 by WIOA. First, we proposed adding the protection and advocacy system serving the American Indian Consortium as an entity eligible to receive a CAP grant. Second, we proposed requiring 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 proposed clarifying 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 proposed making 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), reflects current CAP grantee practice (*i.e.*, with regard to contracts with centers for independent living), and conforms to the new Uniform Guidance at 2 CFR part 200.

There are no differences between the NPRM and these final regulations, except that, as a result of our further review, we clarify in final § 370.47 requirements related to the use of program income and make other minor technical changes.

**Public Comment:** In response to our invitation in the NPRM, 41 parties submitted comments on the proposed regulations amending the CAP (part 370). In general, these comments supported the proposed regulations. We provide an analysis of public comments by subject and section only for those regulations about which we received opposing comments or requests for clarification. In addition, we provide an explanation of the clarification in § 370.47 regarding requirements related to the use of program income.

#### *Clients and Client-Applicants (§ 370.1)*

**Comments:** A few commenters supported the revision to § 370.1 clarifying that CAP services are available to assist individuals seeking or receiving services under sections 113 and 511 of the Act. Yet, a few other commenters believe the same proposed regulations were confusing in that the terms “clients” and “client-applicants”

would not include those individuals who are potentially eligible to receive pre-employment transition services. These commenters recommended that we incorporate the definitions of “student with a disability” and “youth with a disability” within this part to clarify that these individuals are clients and client-applicants. These commenters also recommended that we amend this section to prohibit the provision of CAP services to youth with disabilities seeking subminimum wage employment in sheltered settings.

**Discussion:** We appreciate the commenters’ support for this regulation. We disagree that there is a need to clarify in the regulation that students and youth with a disability, including those students with disabilities seeking or receiving pre-employment transition services, are clients and client-applicants for the purposes of this part. As defined in § 370.6, “client or client-applicant” means an individual receiving or seeking services under the Act, respectively. Moreover, section 112(a) makes clear that CAPs may serve clients and client-applicants who are receiving services under section 113—*e.g.*, students with disabilities. In fact, students and youth with disabilities may be eligible to receive a wide range of services under the Act, such as transition services, training, transportation, supported employment, and independent living. Therefore, students and youth with disabilities who are receiving services under the Act are clients and client-applicants for purposes of part 370 and are, therefore, eligible to receive CAP services.

We also appreciate the commenter’s concerns about the payment of subminimum wages to youth with disabilities. However, we disagree that we should prohibit the provision of CAP services to youth with disabilities seeking subminimum wage employment. Section 112(a) of the Act, as amended by WIOA, specifically establishes CAPs to assist clients and client-applicants with all benefits and services available under the Act, including those required by section 511. Given this mandate, there is no authority under the Act for the Secretary to prohibit the provision of CAP services to youth with disabilities seeking subminimum wage employment, regardless of the setting. We believe that the final regulation is consistent with the statute.

**Change:** None.

#### *Requirements for Redesignation (§ 370.10)*

**Comments:** One commenter supported the proposed changes in this

section. However, another commenter suggested that redesignation should ultimately be based on criteria, such as the efficiency and effectiveness of the grantee as assessed by RSA through its monitoring activities, in addition to the determination of “good cause” by the governor.

**Discussion:** We appreciate the comment supporting this regulation, as well as the recommendation from the commenter regarding criteria on which to base the redesignation of a CAP grantee. However, other than a determination of good cause by the governor, the Act does not provide the Secretary with authority to specify criteria that would require the redesignation of a designated CAP agency. We believe that the final regulation is consistent with the statute.

**Change:** None.

#### *Access to Records and Monitoring*

**Comments:** Several commenters were concerned that the proposed regulations did not provide CAPs with the authority to access records and conduct monitoring to help carry out the mandate to assist individuals seeking or receiving services under sections 113 and 511 of the Act. These commenters recommended that CAPs be given the same authority to access records as do other component programs, including the PAIR program, of the protection and advocacy system established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, believing this general authority would enable CAP grantees to access records and documentation developed under both sections 113 and 511 of the Act.

**Discussion:** We disagree with the commenters’ recommendation. Although many CAPs are housed within a State’s protection and advocacy system, section 112 of the Act neither establishes the CAP as a mandatory component of the protection and advocacy system nor requires that the CAP have the same general authorities as those established in part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

Rather, section 112(a) of the Act establishes CAPs to: (1) Advise and inform clients and client-applicants of all services and benefits available to them under the Act; (2) upon the request of these clients and client-applicants, assist and advocate for these individuals in their relationships with projects, programs, and services provided under the Act; and (3) inform individuals with disabilities of the services and benefits available to them under the Act and under Title I of the Americans with Disabilities Act.

In assisting and advocating for clients and client-applicants upon their request, section 112(a) of the Act authorizes the CAP to pursue legal, administrative, or other appropriate remedies to ensure the protection of their rights under the Act and to facilitate access to, and services funded under, the Act through individual and systemic advocacy, as defined at § 370.6(b). This advocacy, whether individual or systemic, must be at the request of the client or client-applicant and must be solely for the purpose of protecting the rights of clients and client-applicants under the Act or to facilitate their access to services under the Act. In this situation alone, the CAPs could access relevant records so long as they follow the requirements of the holder of those records, which typically would require the informed written consent of the client or client-applicant. There is no authority under section 112 for the CAP to engage in advocacy for the sole purpose of gaining general access to records or conducting monitoring.

For these reasons, section 112 of the Act does not provide a basis on which to amend these regulations, as recommended by commenters, to include the same general authorities as those established in part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 for mandatory components of the protection and advocacy system, which the CAP is not.

*Change:* None.

#### *Program Income (§ 370.47)*

*Comments:* None.

*Discussion:* In further reviewing the interplay between § 370.47 and 2 CFR 200.305, the Department has determined additional clarification is necessary in final § 370.47, particularly with regard to the use of available program income.

There has been a long-standing government-wide requirement under the common rule implementing former OMB Circular A-102 and the former OMB guidance in Circular A-110, as codified by the Department at former 34 CFR 80.21(f)(2) and 74.22(g), respectively, that non-Federal grantees must expend program income prior to drawing down Federal grant funds. The Uniform Guidance, codified at 2 CFR part 200, was adopted by the Department at 2 CFR part 3474 on December 19, 2014 (79 FR 76091) and applies to all new and continuing awards made after December 26, 2014.

The new 2 CFR 200.305 specifies the payment procedures that non-Federal entities must use to draw down Federal funds; however, 2 CFR 200.305(a),

which applies to State agencies, does not address whether designated agencies that are State agencies should expend available program income funds before drawing down Federal funds, as had been the long-standing government-wide requirement under OMB Circulars A-102 and A-110.

This silence creates concern because 2 CFR 200.305(b)(5), which appears to apply to non-Federal entities other than States, requires that those entities expend available program income funds before requesting payments of Federal funds. While the silence in 2 CFR 200.305(a) creates an unintended ambiguity, we do not believe that this ambiguity should be construed to change the prior rule and remove the requirement that State agencies must expend program income funds before requesting additional Federal cash. No such policy change was discussed in the preambles to either the OMB final guidance in 2 CFR part 200, which was published on December 26, 2013 (78 FR 78589), or in the Interim Final Guidance published on December 19, 2014 (79 FR 75867).

Therefore, we believe it is essential that we resolve this unintended ambiguity here. To that end, we have amended § 370.47 in these final regulations to make clear that all designated CAP agencies, regardless of their organizational structure, must expend program income before drawing down Federal funds. In so doing, we have revised final § 370.47(b)(2)(ii) to explicitly require CAP grantees to expend available program income funds before requesting additional cash payments, as was the long-standing requirement under former 34 CFR 74.22(g) and 80.21(f)(2).

We believe the change is essential to protect the Federal interest by using program income to increase the funds devoted to the CAP program and keeping to a minimum the interest costs to the Federal government of making grant funds available to the designated agencies. This change should not negatively affect designated CAP agencies that are State agencies because it merely maintains the status quo that existed under 34 CFR 80.21(f)(2).

We also have revised final § 370.47(b)(2) by requiring CAP grantees to use program income only to supplement the CAP grant. Upon closer examination of the grant formula set forth in the statute, we have concluded that the use of the deduction method would, in effect, result in a reduction of a CAP's grant allotment. Absent specific statutory authority, such reductions would be inconsistent with the statute and general appropriations law

principles. In reviewing the grantees' financial reports, we have found that very few, if any, designated CAP agencies elect to use the deduction method. Instead, most, if not all, grantees elect to use the addition method, which is still permissible and, in fact, will be the only permissible use of program income under these CAP final regulations. We do not believe this change will negatively affect any grantee.

*Changes:* We have revised final § 370.47(b)(2) to permit grantees to use program income only to supplement their CAP grant and to remove all references to the deduction method. We have also added a new § 370.47(b)(2)(ii) to make clear that all designated CAP agencies must disburse program income prior to drawing down Federal funds or, as stated in 2 CFR 200.305(b)(5), "requesting additional cash payments." Finally, we have made other technical and conforming edits.

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

##### *Tribal Consultation*

Consistent with Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments," in addition to seeking input from Indian tribal governments through the public comment process, the Department conducted tribal consultations to obtain input on the proposed changes in the AIVRS program. We hosted a webinar on June 9, 2015, and invited written comments from tribal officials, tribal governments, tribal organizations, and affected tribal members. We provided an overview of the AIVRS NPRM and the proposed changes to the regulations governing the program as a result of WIOA and WIA, and we asked for tribal input regarding those proposed changes.

When announcing the tribal consultation, the Department acknowledged that it was somewhat unusual to ask for tribal input after an NPRM was published, but WIOA's requirement to publish an NPRM within six months for all the programs contained in the Rehabilitation Act, including regulations with the Department of Labor implementing the requirements for a joint state plan for the State Vocational Rehabilitation program, precluded the Department from engaging in a tribal consultation process before it needed to publish the NPRM. The consultation process also had to proceed quickly so that the Department could receive the comments before the public comment period for the NPRM ended in order for those

comments to be considered. Despite these constraints, the Indian community responded thoughtfully during the consultation process and provided 42 comments, many of them unique. Those comments were considered and are addressed along with the other public comments here.

### Summary of Changes

In the preamble of the NPRM, we discussed on pages 20994 through 20998 the major changes proposed to part 371 implementing the amendments to the AIVRS program made by WIOA. These included (1) the expansion of the definition of “Indian” to include natives and descendants of natives under the Alaska Native Claims Settlement Act, (2) the amendment of the definition of “Indian tribe” to include a “tribal organization,” and (3) amendments to subpart B to require the reservation of not less than 1.8 percent and not more than 2 percent of the funds for the AIVRS program for the provision of 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 amendments to part 371 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 incorporate relevant sections of part 369, which the Department proposed in the NPRM to repeal, and relevant sections of part 361, particularly definitions found in each of those parts.

There are a few differences between the NPRM and these final regulations. Section 371.2(a)(2) now explicitly requires approval of the tribal government before a tribal organization may apply for an AIVRS grant and provide services to tribal members. We made a minor change in § 371.2(a)(3) to make the language consistent with § 371.2(a)(1). We modified the definition of “supported employment” in § 371.6 to reflect changes we made to the definition in 34 CFR 361.5(c)(53) so that the term is used identically in both the State VR program and the AIVRS program. We revised § 371.14 to give the Secretary the discretion to conduct the application process and make the subsequent award in accordance with 34 CFR part 75, but not require it. As a means of implementing the statutory requirement that the Secretary give priority consideration to applications for the continuation of programs that have been funded under section 121, we

added paragraph (b) to § 371.32 to authorize the Secretary to provide a competitive preference to applicants who previously received an AIVRS grant. Finally, after further departmental review, we revised § 371.44 by requiring that Tribal Vocational Rehabilitation units enter into written agreements with organizations and entities when sharing personal information for the purposes of evaluations, audits, research and other program purposes.

*Public Comment:* In response to our invitation in the NPRM, 65 parties submitted comments on the proposed regulations amending the AIVRS program (part 371). We received comments in support of most of the proposed regulations, and we received comments questioning or opposing some. We thank the commenters for their support. We discuss only those comments that questioned or opposed particular regulations, and we organize our discussion by subject.

### Funding for the AIVRS Program

*Comments:* Under Section 100(c)(1)–(2) of the Act, the AIVRS program is funded annually through a set-aside of not less than 1 percent and not more than 1.5 percent of the funds appropriated for the State Vocational Rehabilitation (VR) program. A number of commenters requested that the Department increase the funds available for AIVRS projects by setting aside the maximum allowable level of 1.5 percent. Most of these commenters argued that an increase in the set-aside was needed to offset the effect of the new training and technical assistance requirement on the funding available to operate AIVRS projects and asked the Department to take this into consideration in determining the annual set-aside.

*Discussion:* The level of funding set aside for the AIVRS program under Section 100(c)(1)–(2) of the Act is outside of the scope of the proposed rules. However, the Department is aware that the new reservation of funds for training and technical assistance, coupled with the sequester of mandatory funds under the Budget Control Act of 2011 (Pub. L. 112–25), has in recent years reduced the funds available to operate AIVRS projects and provide services to American Indians with disabilities. The Department will take these and other factors into account when determining the annual level of the AIVRS set-aside.

*Changes:* None.

*Comments:* One commenter objected generally to the amount provided for the AIVRS program, stating that the government funds minority groups

inequitably and gives too much to American Indians “just for being Indian.”

*Discussion:* The commenter’s statement is outside the scope of this rulemaking. The Department is implementing a program funded by Congress based on a recognized need for vocational rehabilitation services for American Indians with disabilities.

*Changes:* None.

### 60-Month Project Period—§ 371.4

*Comments:* Some commenters proposed that, instead of limiting funding for AIVRS projects to five years, AIVRS projects ought to be funded permanently. These commenters stated that to compete for funds every five years, not knowing if the project will be re-funded, makes it difficult to ensure continuity of services and operate an efficient and effective program. Many of these commenters recommended that AIVRS projects, once funded, continue to be funded based on decisions from monitoring and technical assistance rather than competing for new awards every five years, much like the Centers for Independent Living program under Title VII of the Act, and some also recommended that each project receive an annual cost-of-living increase.

*Discussion:* Section 121(b)(3) provides that grants can be effective for up to 60 months. Because the AIVRS program is a discretionary grant program, there is no statutory authority for the Commissioner to provide permanent funding. Section 121 does not provide authority similar to that for the Centers for Independent Living program under Part C of Title VII of the Act, which permits continued funding without competition. The Department can only continue to provide funds to a grant beyond 60 months if, given exceptional circumstances, the Secretary publishes a rule that waives the requirements of 34 CFR 75.250 and 75.261(c)(2), which limit project periods to 60 months and restrict project period extensions that involve the obligation of additional Federal funds.

As for annual cost-of-living increases, there are no provisions in the statute that permit the Commissioner to provide automatic cost-of-living increases to all grantees. A grantee may request a cost-of-living increase when filing its annual performance report and budget, and the request must provide a justification for the increase. The Commissioner will review and approve or disapprove requests for a cost-of-living increase case-by-case.

*Changes:* None.

### *Consolidation of AIVRS With Other Employment and Training Programs*

*Comments:* Two commenters requested that tribes that consolidate their employment and training programs under Public Law 102–477 (25 U.S.C. 3401, *et seq.*) be able to add the AIVRS program to the programs they are able to consolidate under that statute.

*Discussion:* This request is outside the scope of this rulemaking. In any event, the Department would be unable to grant it because the AIVRS program is not eligible for consolidation under Public Law 102–477 (25 U.S.C. 3401, *et seq.*). The Indian Employment, Training and Related Services Demonstration Act of 1992 (Pub. L. 102–477) is a statute under which the Secretary of the Interior, in cooperation with the appropriate Secretary of Labor, Health and Human Services, or Education, upon the receipt of a plan submitted by an Indian tribal government, may authorize it to coordinate and integrate its federally funded employment, training, and related services programs into a single, coordinated, comprehensive program, which reduces administrative costs. Section 5 of that Act (25 U.S.C. 3404), however, makes clear that the only programs that may be integrated in a plan submitted by a tribe are those under which an Indian tribe is eligible for receipt of funds under a statutory or administrative formula. Because the AIVRS program is a discretionary grant program, not a formula grant program, it is not eligible for consolidation under Public Law 102–477.

*Changes:* None.

### *Training and Technical Assistance Funding (§§ 371.10–371.14)*

*Comments:* A number of commenters recognized the value of training and technical assistance and expressed support for these activities. However, most of these commenters did not believe that these activities should be provided at the expense of services for tribal VR consumers. While some commenters stated that tribal consumers would be better served by continuing to fund direct services rather than training for tribal vocational rehabilitation programs, others expressed the need for more balance in the funding of these activities.

*Discussion:* New provisions in section 121(c) of the Act, implemented in subpart B of the AIVRS regulations, require the Commissioner to reserve not less than 1.8 percent and not more than 2 percent of the funds set aside for the AIVRS program for training and technical assistance to the governing

bodies of Indian tribes, and consortia of those governing bodies, eligible for a grant under this program. While the Act provides the Department with the authority to determine the amount of the reservation within the statutory parameters, taking into consideration the needs of the AIVRS program, it must reserve at least 1.8 percent of the funds set aside for the AIVRS program. The Department believes that the rules in §§ 371.11 through 371.14 implementing section 121(c), as well as the rigorous requirements for training and technical assistance grantees contained in the regulatory priorities applicants must meet, will help to ensure that the training and technical assistance provided is designed to help improve the operation of AIVRS projects and the quality of services provided to their consumers.

*Changes:* None.

*Comment:* Two commenters recommended that the Department consider and explore alternate funding sources for training and technical assistance for the AIVRS program. One of these commenters suggested that these activities should be funded as a set-aside under the training and technical assistance component of the Act.

*Discussion:* While we appreciate the commenters' suggestions, the Department is required to reserve funds for this purpose from the AIVRS set-aside, consistent with section 121(c) of the Act.

*Change:* None.

### *Culturally Appropriate Services (§ 371.1)*

*Comments:* A number of commenters expressed support for AIVRS providing culturally appropriate vocational rehabilitation services to American Indians with disabilities and for recognizing subsistence as a permissible employment outcome. Some commenters, however, criticized our illustration of culturally appropriate services in the NPRM preamble—“(i.e. services traditionally used by Indian tribes)”—as incomplete and requested that we include examples of culturally appropriate services that match the broad diversity of Indian country.

*Discussion:* We thank these commenters for their support. Given, however, the large number of American Indian tribes, including Alaskan Native villages and regional corporations, and their widely varying cultural practices, any list of further examples of culturally appropriate practices would also be incomplete and may exclude cultural practices that are unique to some tribes.

*Changes:* None.

### **Eligibility**

#### *Providing Services “On or Near” the Reservation (§ 371.3)*

*Comments:* In response to the proposed language that AIVRS projects provide services to American Indians with disabilities who live on “or near” the reservation, some commenters requested guidance on how to define “near.” Other commenters stated that as a matter of tribal sovereignty, it should be left to the tribes, not the Federal government, to define “near” and to define their service areas, which they do in other contexts such as working with the U.S. Census Bureau or in other Federal programs.

*Discussion:* We agree with the commenters that it should be the tribes who define “near” the reservation. The change allowing AIVRS projects to serve American Indians with disabilities who live “near” a reservation, as well as “on” a reservation, was made by the Workforce Investment Act (WIA), Public Law 105–120, in August 1998. We proposed adding “or near” to § 371.3 because, although we had implemented the statutory change in 1998, the regulations had not yet been updated to reflect the change. Consistent with our current practice under the statutory requirements, applicants for AIVRS grants will, as part of their applications, continue to define the service areas in which, and the populations to whom, they will provide services. RSA staff is always available to assist grantees or potential grantees in determining appropriate service areas for AIVRS grants that meet the criteria of “on or near” the applicant’s reservation.

*Changes:* None.

#### *Tribal Organizations (§ 371.2, § 371.6—definitions)*

*Comment:* Some commenters objected to proposed § 371.2(a)(1)(ii), which makes tribal organizations eligible applicants under AIVRS. These commenters pointed out that tribal organizations, like some “urban” Indian organizations, need not be tribal governmental entities or even affiliated with tribes. As such, tribal organizations may not be sufficiently responsible to tribal governments, they may temporarily create programs just to establish eligibility, and they may take funding away from established AIVRS programs and from consumers in need of VR services.

Many other commenters requested that, while tribal organizations may be eligible for AIVRS grants, we should require an application from any tribal organization to have the approval of the tribe or tribes it plans to serve. A few

commenters asked who or what office must issue this approval; a few others noted that securing the necessary approvals may be difficult because an AIVRS project may provide services to members of several different tribes. Finally, some commenters suggested that there be a single tribal entity within the tribal government to conduct all AIVRS activities.

*Discussion:* The amendments to WIOA added “tribal organizations” to the definition of “Indian tribe” in section 7(19)(B) of the Act. Because Indian tribes are eligible for grants under the AIVRS program, in § 371.2, the Department is implementing a statutory requirement: Tribal organizations are eligible for AIVRS grants. Specifically, Section 7(19)(B) includes in the definition of “Indian tribe,” “a tribal organization (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)).” Section 371.6 of the regulations adopts that definition. Under § 371.6, a tribal organization is:

1. The recognized governing body of any Indian tribe; or
2. Any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body of an Indian tribe; or
3. Any legally established organization of Indians that is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities.

As such, if the organization is not the actual governing body of the tribe, it nevertheless has close ties to the governing body because the body has created it, authorized it, or is actually controlling it, or the organization has close ties to the tribal members because they have elected the membership of the tribal organization. Therefore, we do not believe that the concern expressed about “urban” tribal organizations that are unaffiliated with tribes competing with existing AIVRS projects, perhaps by creating pretextual vocational rehabilitation programs, is a likely outcome of this regulatory change. We also note that the tribal organization must also meet the other eligibility requirements under § 371.2(a), including that they be located on Federal or State reservations. If the tribal organization is not a tribal governing body, then the tribes that make up the tribal organization have to meet the reservation requirement, again creating a close connection with the tribes themselves.

Although we believe that the definition of “tribal organization” already requires a close connection with an Indian tribe, we agree with the commenters that applications from tribal organizations should have the approval of the tribal governments the organizations seek to serve. In part, the proposed regulations already required this.

If a tribal organization serves more than one tribe, § 371.2(a)(3) requires the organization to obtain the approval of each of the tribes it seeks to serve. This requirement already applies to a consortium and a tribal government seeking to serve more tribes than its own. However, the proposed regulations did not explicitly require a tribal organization that is not a tribal government and seeks to serve only one tribe, to obtain approval to apply for an AIVRS grant from that tribal government.

We are, therefore, adding this requirement as § 371.2(a)(2)(ii). This will ensure that it is the tribal governments that ultimately have the authority to determine the services provided to their members and the entity authorized to provide those services.

Approval must be a formal action taken by the tribal government. It will often come in the form of a resolution from the tribal council. However, as the forms of government among the tribes are so many and varied, we cannot make an exhaustive list of the entity that must issue the approval or specify what form the approval must take. It may be sufficient for the tribal council to authorize a tribal organization to apply for any health or social service grant on its behalf and provide those services to its members. The council may not have to pass resolutions for each grant application. However, these are matters dictated by tribal law, as is the decision regarding the entity that will provide tribal vocational rehabilitation services to its members.

As for the difficulty of securing approvals when multiple tribes are to be served, this change merely applies the existing approval requirement for consortia and inter-tribal agreements to tribal organizations, and our experience suggests that there is no great difficulty in securing the necessary approvals. The number of approvals may, in fact, be smaller than commenters suggested. The tribal organization needs approvals only from those tribes on (or near) whose reservations the tribal organization plans to provide services. The tribal organization is under no obligation to identify the tribal affiliation of all residents of those service areas who the

AIVRS project may serve and who may have a different tribal affiliation, nor must it seek approval from those tribes.

*Changes:* We have amended § 371.2(a)(2) and added new § 371.2(a)(2)(ii) to require that, in order to receive a grant under this section, a tribal organization that is not a governing body of an Indian tribe must have the approval of the tribe to be served by the organization.

*Who may make an application under the AIVRS Program? (§ 371.2)*

*Comments:* None.

*Discussion:* Section 371.2(a) implements the statutory authorization that permits applications for the AIVRS program to be made by the governing bodies of Indian tribes or consortia of those governing bodies. Section 371.2(a)(1) implements the Education Department General Administrative Requirement at 34 CFR 75.128 that groups of applicants can only apply either by designating one member of the group—one of the governing bodies—to apply on behalf of the group or by establishing a separate eligible legal entity to apply for the group. In the proposed regulations, § 371.2(a)(3) discussed grants being made to “the governing body of an Indian tribe, a consortium of those governing bodies, or a tribal organization.” However, in order to be consistent with 34 CFR 75.128 and § 371.2(a)(1), § 371.2(a)(3) must recognize that grants cannot go to a consortium itself but must go to a tribal governing body or a tribal organization on behalf of the consortium.

*Changes:* We have revised final § 371.2(a)(3) to reflect that grants are made to “the governing body of an Indian tribe, either on its own behalf or on behalf of a consortium, or to a tribal organization. . . .”

*Who Is Eligible To Receive Services (§ 371.3)*

*Comment:* A few commenters expressed concern about providing services to descendants of Alaska Natives. They asked about who determines their tribal membership and how those services would be funded.

*Discussion:* Section 371.3 implements the statutory authorization in section 121(a) of the Act that makes American Indians with disabilities who reside on or near reservations eligible for services under AIVRS. WIOA amended Section 7(19)(A) to include within the definition of “American Indian” 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 (ANCSA), 43 U.S.C. 1602.”

“Native” is defined in subsection (b) of section 3 of ANCSA as a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Alaska native villages and regional village corporations are included in the Rehabilitation Act’s definition of “Indian tribe,” and Alaska Natives are their members.

“Descendant of a Native” is defined in subsection (r) in section 3 of ANCSA as—

(1) A lineal descendant of a Native or of an individual who would have been a Native if such individual were alive on December 18, 1971, or

(2) An adoptee of a Native or of a descendant of a Native, whose adoption—

(A) Occurred prior to his or her majority, and

(B) Is recognized at law or in equity.

We understand the essence of the commenters’ concern to be that the Act makes descendants of natives eligible for services under AIVRS, but not all descendants of natives are members of their parents’ native corporations or tribes, potentially resulting in AIVRS projects providing services to non-tribal members. However, the Act does not require tribes to make any determination about the membership status of those eligible; it merely prescribes the pool of individuals eligible for services funded by Federal money. While this change in the American Indians with disabilities eligible for services may increase the number of consumers seeking services, we do not believe it will be such a substantial increase that the affected AIVRS projects cannot absorb it.

*Changes:* None.

*Definitions of “Competitive Integrated Employment,” “Employment Outcome,” and “Subsistence” (§ 371.6)*

*Comments:* Some commenters expressed strong support for the definitions of “competitive integrated employment,” “employment outcome,”

and “subsistence” in § 371.6. Several commenters recommended that the Secretary continue to recognize homemaker and unpaid family worker outcomes as appropriate vocational outcomes for purposes of the AIVRS program.

Alternatively, a few commenters suggested that we include homemaker and unpaid family worker outcomes within the definition of “subsistence.” One commenter recommended that we include a note in the definition of “employment outcome” that subsistence occupations are approved employment outcomes. Another commenter asked if we intend that the definition of “subsistence” apply only to individuals served through the AIVRS program or if it applies to all individuals served through the VR program, including those individuals who live in rural areas where few opportunities for competitive integrated employment exist. This commenter also asked if we propose any limits on hobby-type activities as self-employment outcomes.

One commenter requested that we clarify the meaning of “culturally appropriate” as used in the definition of “subsistence” and the preamble to the NPRM covering the VR program regulations by providing examples.

Finally, one commenter recommended that we standardize the definition of “competitive integrated employment” in § 371.6 with the definition of that term in 34 CFR 361.5(c)(9) for the State Vocational Rehabilitation (VR) Services program, noting that the two definitions vary in some technical respects.

In light of the interrelationship between the terms “competitive integrated employment,” “employment outcome,” and “subsistence,” we address the comments on these definitions together.

*Discussion:* We appreciate the support expressed by the commenters. We believe that consistency in interpretation and implementation of the regulations governing the AIVRS and VR programs is essential given the large number of American Indians and Alaskan Natives with disabilities who are eligible for services from both programs, some of whom may be served by the programs sequentially or even simultaneously.

This is imperative for the definition of “employment outcome,” which is the basis for services provided by both programs. As explained in more detail in the final regulations governing the VR program published elsewhere in this issue of the **Federal Register**, we have eliminated uncompensated outcomes,

including homemaker and unpaid family worker outcomes, from the scope of the definition of “employment outcome” in 34 CFR 361.5(c)(15). Although section 7(5) of the Act, as amended by WIOA, permits the Secretary to include within this definition other appropriate vocational outcomes, the Secretary must exercise this discretion in a manner consistent with the Act.

Because of the extensive emphasis on competitive integrated employment throughout the Act, as amended by WIOA, it is no longer consistent with the Act to include uncompensated outcomes within the scope of the definition of “employment outcome.” Because we believe it is necessary to implement the term consistently under both the VR and AIVRS programs, we cannot include homemaker and unpaid family worker outcomes within the scope of the definition of “employment outcome” solely for the purposes of the AIVRS program as the commenters requested. For these reasons also, we disagree with the recommendation to include homemaker and unpaid family worker outcomes within the definition of “subsistence” in § 371.6, which is defined as a form of self-employment and, thus, considered an allowable employment outcome under both the AIVRS and VR programs.

We define “subsistence” in § 371.6 for purposes of the AIVRS program to mean a form of self-employment in which individuals use culturally relevant or traditional methods to produce goods or services for household consumption or non-commercial barter and trade that constitute an important basis for the individual’s livelihood. The definition of “employment outcome” in 34 CFR 361.5(c)(15) encompasses all forms of competitive integrated employment and specifically mentions self-employment. Because we consider subsistence occupations to be a form of self-employment, these occupations are already within the scope of the definition of “employment outcome,” and it is not necessary to revise the definition to refer specifically to subsistence as recommended by the commenters.

To ensure consistency in the interpretation of “competitive integrated employment” under both the VR and the AIVRS programs, we stated in the preamble to the NPRM for the VR program that we understand subsistence employment as a form of self-employment common to cultures of many American Indian tribes (see NPRM, State Vocational Rehabilitation Services Program, Supported Employment Services Program, and

Limitations on the Use of Subminimum Wage, 80 FR 21059, April 16, 2015). We do not intend that statement, or the inclusion of the definition of “subsistence” only in § 371.6, to limit services designed to assist individuals to achieve subsistence occupations to those served through the AIVRS program.

In addition, while we believe that subsistence occupations are most culturally relevant to American Indian and Alaskan Native tribes, we recognize that individuals may engage in traditional occupations in other native cultures. Thus, DSUs may find it appropriate to assist individuals from cultures other than American Indian and Alaskan Native tribes, such as individuals living in the Territories, to achieve self-employment in subsistence occupations. However, because the definition of “subsistence” in § 371.6 requires that the subsistence occupation be culturally relevant to the individual, we decline to extend the applicability of subsistence occupations to other individuals solely on the basis of their location in rural areas, even though there may be few opportunities for competitive integrated employment in those areas. Examples of subsistence occupations that are culturally relevant to American Indian or Alaskan Native tribes can include the exchange of fish caught, or grain raised, by the individual with the disability for other goods produced by other members of the tribe that are needed by the individual to live and maintain his or her home. Given, however, the large number of American Indian tribes, including Alaskan Native villages and regional corporations, and their widely varying cultural practices, any list of further examples of culturally relevant practices would also be incomplete and may exclude cultural practices that are unique to some tribes.

Since the definition of “subsistence” in § 371.6 requires that the activity be important to the individual’s livelihood, AIVRS grantees cannot provide services to enable individuals to engage in mere hobbies, as hobbies do not meet the criteria for self-employment as an employment outcome.

Finally, to avoid any misperception that the definitions of “competitive integrated employment” in 34 CFR 361.5(c)(9) pertaining to the VR program and that in § 371.6 applicable to the AIVRS program differ based on the lack of technical consistency, we have made the definitions identical.

*Changes:* We have made the definition of “competitive integrated employment” in final § 371.6 consistent with the definition of that term in 34

CFR 361.5(c)(9) by making technical changes.

*Definition of “Supported Employment” (§ 371.6)*

*Comment:* One commenter noted that the definition of “supported employment” in the Act no longer includes “transitional employment for individuals with mental illness” and recommended that we remove reference to this type of employment from the definition of “supported employment.”

*Discussion:* Many other organizations and individuals submitted comments, in addition to the one comment discussed here submitted in connection with the AIVRS regulations, on the definition of “supported employment” in the proposed State VR regulation, 34 CFR 361.5(c)(53). We discuss all of these comments in detail in the final rule amending 34 CFR 363, published elsewhere in this issue of the **Federal Register**. As a result of those comments, we have removed the reference to “transitional employment” from the definition of “supported employment” in § 361.5(c)(53) and have made other conforming changes to the definition of “supported employment” in § 371.6 so that it is consistent with the definition in § 361.5(c)(53).

*Changes:* We have revised the definition of “supported employment” in final § 371.6 so that it is substantively identical to the definition of that term in § 361.5(c)(53). The only difference between the two definitions is that where § 361.5(c)(53) refers to a “Designated State Unit,” the service provider under the State VR program, the definition in § 371.6 refers to the “Tribal Vocational Rehabilitation Unit,” the appropriate term for the service provider under AIVRS.

*Pre-Employment Transition Services and Coordination With AIVRS Projects (34 CFR 361.48(a), 34 CFR 361.24(d), and 34 CFR 361.65)*

*Comment:* Some commenters recommended that State VR agencies be required to include in their formal interagency agreements with AIVRS projects and to address in agreements with Tribal Education Agencies in the State how the State VR agency plans to provide equitable pre-employment transition services to American Indian students and American Indian youth with disabilities and how services to American Indian students with disabilities will be incorporated into the budgeting and spending plans for the State’s 15% set aside for transition of students with disabilities.

*Discussion:* We note at the outset that only American Indian students with

disabilities, rather than American Indian youth with disabilities, are eligible for pre-employment transition services, as explained in more detail in the discussion of comments on 34 CFR 361.48(a) in the final rule amending part 361 published elsewhere in this issue of the **Federal Register**. While we understand the commenters’ concerns regarding the need to ensure that coordination among the DSU, AIVRS program, and educational agencies is taking place and that transition services, including pre-employment transition services, are provided to American Indian students with disabilities, the Department believes that the final regulations in part 361 accomplish this. The final regulation at 34 CFR 361.24 addresses the need for coordination among these entities and for providing transition services to American Indians living on or near a reservation. Section 361.24(d)(1) requires the VR services portion of the Unified or Combined State Plan to include a formal cooperative agreement with AIVRS programs. Section 361.24(d)(2) sets out requirements for that cooperative agreement, and those include strategies for providing transition planning under § 361.24(d)(2)(iii). Furthermore, the Federal funds reserved in accordance with 34 CFR 361.65, and any funds made available from State, local, or private funding sources, are to be used to provide pre-employment transition services to all students with disabilities, including American Indian students with disabilities, in need of such services. We also discuss comments on these sections in more detail in the final rule amending 34 CFR part 361 published elsewhere in this issue of the **Federal Register**.

*Changes:* None.

*Definition of “Transition Services” (34 CFR 361.5(c)(55) and 371.6)*

*Comments:* None.

*Discussion:* We have made changes to the definition of “transition services” in final § 371.6 to make it consistent with the definition of that term in final 34 CFR 361.5(c)(55) for purposes of the AIVRS program. Specifically, we revised the definition to clarify that it applies to students and youth with disabilities and includes outreach to parents, or, if appropriate, representatives of the student or youth.

*Changes:* We have revised the final § 371.6 so that the definition of “transition services” is consistent with the definition of the term in final 34 CFR 361.5(c)(55).

*Evaluation of an Application for a Training and Technical Assistance Award (§ 371.14(b))*

*Comment:* A number of commenters recommended that, for a training and technical assistance award, the Secretary make mandatory a 10-point competitive preference priority for applications that include as project personnel in a substantive role individuals who have been employed by a tribal VR unit as a project director or VR counselor.

*Discussion:* While we believe that this competitive preference priority in final § 371.14(b) should be available to the Secretary to implement the training and technical assistance requirement of section 121(c)(2) of the Act, we disagree with the commenters that the priority should be mandatory and that it should always be worth 10 points. When appropriate to an AIVRS training and technical assistance competition, we will publish this competitive preference priority, and its point value, in the notice inviting applications for the competition.

*Changes:* None.

*How does the Secretary evaluate an application? (§ 371.14(c))*

*Comments:* None.

*Discussion:* When WIOA added a training and technical assistance authority to the AIVRS program, it gave the Secretary the ability to make awards by grant, cooperative agreement or contract. Since the Department generally makes these awards by grants using the procedures in part 75, which uses the peer review process identified in the statute, we added a subsection to the NPRM that provided that the Secretary would use the procedures in part 75, even when awarding a contract. However, upon further reflection, we have determined that there may be circumstances when the Department has an amount of funds that is too small to compete but could be used to support a contract consistent with the training and technical assistance authority, in the form of a task order or modification under an existing Department contract for example, in which case, the Department would not want to use the grant processes in part 75. Therefore, we have determined that it is more appropriate to change the language in this subsection to give the Secretary the authority to use part 75 if awarding a contract, where the Secretary determines it is appropriate but not require its use.

*Changes:* We have revised final § 371.14(c) to give the Secretary the discretion to conduct the application

process and make the subsequent award in accordance with 34 CFR part 75, but not require it.

*What other factors does the Secretary consider in reviewing an application? (§ 371.32)*

*Comment:* A number of commenters recommended that, in addition to the competitive preference priority for the training and technical assistance award in § 371.14(b), the Secretary also make mandatory a 10-point competitive preference priority for applications for the AIVRS program that include as project personnel in a substantive role individuals who have been employed by a tribal VR unit as a project director or VR counselor.

*Discussion:* We do not believe that this competitive preference is appropriate for the AIVRS program, whereas it is appropriate for the training and technical assistance program. While the quality of the project personnel is part of the selection criteria for both projects, the training and technical assistance applicants generally have a primary background in providing training, not necessarily VR services or VR services to American Indians. The competitive preference for training and technical assistance is a way to encourage applicants to consider personnel who have a background in the appropriate training and familiarity with the community that will be receiving the technical assistance. By contrast, the AIVRS projects require personnel with experience in tribal VR services.

We do think, however, that this regulatory section should include a provision implementing the statutory requirement to give priority consideration to applications for the continuation of programs that have been funded under section 121. Although the Department has implemented this statutory requirement through its notices inviting applications, we believe it is appropriate to have a corresponding regulatory provision for the statutory requirement.

*Changes:* We have added final § 371.32(b), which provides that the Secretary may award a competitive preference to applications for the continuation of programs that have previously been funded under this program.

*Stipends*

*Comment:* One commenter stated that tribal vocational rehabilitation programs should be able to pay a stipend for on-the-job training and work experiences as is done under the State VR program.

*Discussion:* On-the-job training (OJT) and other work experiences (e.g. internships) are allowable vocational rehabilitation services for individuals under the State VR program (34 CFR 361.48(b)(6)) and the definition section of the AIVRS program regulations (final § 371.6(b)). A VR agency or AIVRS project may provide paid work experiences, such as OJT and internships, as a VR service so long as the agency determines that it is necessary for the individual to achieve an employment outcome. In all instances, the VR agency purchases goods or a service that benefit the consumer. Since the work experience is considered the goods or service, the VR agency “purchases” it from the employer and reimbursement is provided to employers for these paid work experiences. This is typically done through a contract between the vocational rehabilitation program and an employer under which funds may be included that would assist the employer in providing compensation to the trainee.

*Changes:* None.

*What are the special requirements pertaining to the protection, use, and release of personal information? (§ 371.44)*

*Comments:* None.

*Discussion:* We anticipate that other Federal and State agencies, and researchers will have an increased interest in using the data required to be collected by programs established under the Act, including the AIVRS program. Therefore, after further departmental review, we have strengthened the protection of the confidentiality of personal information collected by the AIVRS program by requiring in final § 371.44 that Tribal Vocational Rehabilitation units enter into written agreements with any entity seeking access to this information for the purpose of audits, evaluations, research, or for other program purposes. This change is consistent with revisions to final 34 CFR 361.38 governing the protection of confidentiality of personal information collected by the VR program.

*Changes:* We have revised final § 371.44(a), (d), and (e)(1) by requiring that Tribal Vocational Rehabilitation units enter into written agreements with other organizations and entities receiving personal AIVRS program information during the conduct of audits, evaluations, research, and for other program purposes.

## Rehabilitation National Activities Program, 34 CFR Part 373

### Summary of Changes

In the preamble of the NPRM, we discussed on pages 20998 through 20999 the major changes proposed to part 373 implementing the amendments to the Rehabilitation National Activities Program made by WIOA. These include: (1) 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; (2) as appropriate, the addition of a definition of “vocational rehabilitation services” and the replacement of the term “rehabilitation services” with “vocational rehabilitation services;” (3) the addition of two new statutory priorities pertaining to transition from education to employment and competitive integrated employment; and (4) the addition of four priorities to address the technical assistance and training needs of State vocational rehabilitation agencies and their personnel.

In addition to minor editorial and technical revisions, there is one difference between the NPRM and these final regulations. In final § 373.4, we added a paragraph (3) to the definition of “early intervention” that lists individuals receiving disability benefits from an employer’s disability insurance policy.

*Public Comment:* In response to our invitation in the NPRM, four parties submitted comments on the proposed regulations amending the Rehabilitation National Activities Program (part 373). We set out our analysis by section.

#### § 373.4 Definitions, Early Intervention

*Comment:* One commenter noted that people with emerging disabilities or disabilities that have increased in severity are among those most at risk for loss of employment. For these people, entering onto an employer’s disability insurance plan is often the first step to public disability benefits. The commenter therefore recommended that we add this population to the list of example populations in the definition of “early intervention” in proposed § 373.4 that may receive early intervention services.

*Discussion:* We agree with the commenter. As the populations listed in the definition are illustrative and not exclusive, we believe it is appropriate to call attention to this at-risk population.

*Change:* We add a new paragraph (3) to the definition of “early intervention” that lists individuals receiving disability

benefits from an employer’s disability insurance policy.

#### § 373.4 Definitions, “Individual With a Disability”

*Comment:* One commenter suggested updating the definition of “Individual with a Disability” to follow 2008 statutory changes in the Americans With Disabilities Act.

*Discussion:* This definition is based upon the definition in section 7 of the Act and thus cannot be changed to conform to a definition in another statute.

*Changes:* None.

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

### Summary of Changes

In the preamble of the NPRM, we discussed on pages 20999 through 21001 the major changes proposed to part 381 that would implement the amendments to the PAIR program made by WIOA and WIA. With regard to the statutory changes made to section 509 by WIA, we proposed adding 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 proposed: (1) Clarifying 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; and (2) clarifying that the Secretary may award funds for the provision of training and technical assistance for PAIR grantees through a grant, contract, or cooperative agreement.

There are no differences between the NPRM and these final regulations, except that, as a result of further Departmental review, we clarify in final § 381.33(e) requirements governing the use of program income.

*Public Comment:* In response to our invitation in the NPRM, three parties submitted comments on the proposed regulations amending the PAIR program (part 381). In general, these commenters support the proposed regulations. We provide an analysis of public comments by subject and section only for the regulation about which we received a request for clarification. In addition, we provide an explanation of the clarification in final § 381.33(e) about the use of program income.

#### Access to Records (§ 381.10)

*Comments:* A few commenters supported the proposed changes to this

section that PAIR grantees have the same authority to access records as the protection and advocacy system established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000. However, one commenter recommended further clarifying when PAIR grantees can exercise this access authority by including specific examples. The commenter noted that, while this access authority has been challenged in the States, PAIR grantees ultimately have been successful in exercising this authority.

*Discussion:* We appreciate the comments supporting this regulation. We disagree with the comment requesting that we further clarify the circumstances in which PAIR grantees can exercise their authority to access records by including examples in the regulation. As stated in the NPRM, the change is technical in nature as this long-standing authority existed prior to enactment of WIA or WIOA.

Therefore, we believe the proposed regulation was clear that PAIR grantees, as part of the protection and advocacy system, have the same authority to access records provided for under the Developmental Disabilities Assistance and Bill of Rights Act of 2000. For this reason, we believe these final regulations are consistent with the statute and no further change is warranted.

*Change:* None.

#### Program Income (§ 381.33(e))

*Comments:* None.

*Discussion:* In further reviewing the interplay between § 381.33(e) and 2 CFR 200.305, the Department has determined additional clarification is necessary in final § 381.33(e), particularly with regard to the use of available program income.

There has been a long-standing government-wide requirement under the common rule implementing former OMB Circular A–102, and the former OMB guidance in Circular A–110, as codified by the Department at former 34 CFR 80.21(f)(2) and 74.22(g), respectively, that non-Federal grantees must expend program income prior to drawing down Federal grant funds. The Uniform Guidance, codified at 2 CFR part 200, was adopted by the Department at 2 CFR part 3474 on December 19, 2014 (79 FR 76091) and applies to all new and continuing awards made after December 26, 2014.

The new 2 CFR 200.305 specifies the payment procedures that non-Federal entities must use to draw down Federal funds; however, 2 CFR 200.305(a), which applies to State agencies, does not address whether designated

agencies that are State agencies should expend available program income funds before drawing down Federal funds, as had been the long-standing government-wide requirement under OMB Circulars A-102 and A-110.

This silence creates concern because 2 CFR 200.305(b)(5), which appears to apply to non-Federal entities other than States, requires that those entities expend available program income funds before requesting payments of Federal funds. While the silence in 2 CFR 200.305(a) creates an unintended ambiguity, we do not believe that this ambiguity should be construed to change the prior rule and remove the requirement that State agencies must expend program income funds before requesting additional Federal cash. No such policy change was discussed in the preambles to either the OMB final guidance in 2 CFR part 200, which was published on December 26, 2013 (78 FR 78589), or in the Interim Final Guidance published on December 19, 2014 (79 FR 75867).

Therefore, we believe it is essential that we resolve this unintended ambiguity here. To that end, we have amended § 381.33(e) in these final regulations to make clear that all designated agencies, regardless of their organizational structure, must expend program income before drawing down Federal funds. In so doing, we have revised final § 381.33(e)(2)(ii) to explicitly require PAIR grantees to expend available program income funds before requesting additional cash payments, as was the long-standing requirement under former 34 CFR 74.22(g) and 80.21(f)(2).

We believe this change is essential to protect the Federal interest by using program income to increase the funds devoted to the PAIR program and keeping to a minimum the interest costs to the Federal government of making grant funds available to the designated agencies. This change should not negatively affect designated agencies that are State agencies because this change merely maintains the status quo that existed under 34 CFR 80.21(f)(2).

We also have revised final § 381.33(e)(2) by requiring PAIR grantees to use program income only to supplement the PAIR grant. Upon closer examination of the grant formula set forth in the statute, we have concluded that the use of the deduction method would, in effect, result in a reduction of a PAIR's grant allotment. Absent specific statutory authority, such reductions would be inconsistent with the statute and general appropriations law principles. In reviewing the grantees' financial reports, we have

found that very few, if any, designated agencies elect to use the deduction method. Instead, most, if not all, grantees elect to use the addition method, which is still permissible and, in fact, will be the only permissible use of program income under the PAIR program final regulations. We do not believe this change will negatively affect any grantee.

*Changes:* We have revised final § 381.33(e)(2) to permit grantees to use program income only to supplement their PAIR grant and removed all references to the deduction method. We have also added a new § 381.33(e)(2)(ii) to make clear that all designated agencies must disburse program income prior to drawing down Federal funds or, as stated in 2 CFR 200.305(b)(5), before "requesting additional cash payments." Finally, we have made other technical and conforming edits in final § 381.33.

#### **Rehabilitation Training Program, 34 CFR Part 385**

##### **Summary of Changes**

In the preamble of the NPRM, we discussed on pages 21001 through 21002 the major changes proposed to part 385 implementing the amendments to the Rehabilitation Training Program made by WIOA. These include: (1) Adding supported employment and economic and business development programs to the list of programs that may benefit individuals with disabilities; (2) emphasizing 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; (3) adding a definition of "vocational rehabilitation services" and replacing the term "rehabilitation services" with "vocational rehabilitation services" as appropriate; and (4) adding definitions of "supported employment" and "assistive technology" consistent with definitions in title I of the Act.

Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

*Public Comment:* In response to our invitation in the NPRM, four parties submitted comments on the proposed regulations amending the Rehabilitation Training Program (part 385). We provide our analysis by subject.

##### *General*

*Comment:* One commenter recommended a requirement that training program personnel consult with small business development centers. This commenter also recommended a requirement that training programs consult with workforce board business representatives about effective telecommuting and entrepreneurship practices in their area.

*Discussion:* We agree that training personnel should consult with other professionals knowledgeable about small business development, since self-employment is an excellent employment option for some individuals with disabilities. For the same reason, we agree that consultation about telecommuting and entrepreneurship is appropriate. Nothing in the proposed regulations would preclude training programs or their personnel from consulting as the commenter recommends, but requiring this consultation is potentially burdensome and unnecessary.

*Changes:* None.

#### *§ 385.4 Definitions, "Individual with a Disability"*

*Comment:* One commenter suggested updating the definition of "Individual with a Disability" to align it with 2008 statutory changes in the Americans With Disabilities Act.

*Discussion:* This definition is based upon the definition in section 7 of the Act and thus cannot be changed to conform to a definition in another statute.

*Changes:* None.

#### **Rehabilitation Long-Term Training Program, 34 CFR Part 386**

##### **Summary of Changes**

In the preamble of the NPRM, we discussed on pages 21002 through 21006 the major changes proposed to part 386 implementing the amendments to the Rehabilitation Long-Term Training program made by WIOA, as well as those changes needed to update and improve the regulations. We proposed: (1) adding two areas to the training areas supported by this program (assisting and supporting individuals with disabilities pursuing self-employment, business ownership, and telecommuting; and supported employment services and customized employment services to individuals with the most significant disabilities); (2) reducing from 75 percent to 65 percent the required percentage of the total award that grantees must spend on financial assistance to scholars; (3) prohibiting scholars from concurrently

receiving financial assistance from multiple grants; and (4) requiring the grantee to 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 also proposed a number of changes to the exit processes that will help scholars be more aware of the requirements of their service obligation, including: (1) setting 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; (2) allowing 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; and (3) disallowing internships, practicums, or any other work-related requirement necessary to complete the educational program as qualifying employment for the service obligation.

Finally, we proposed 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. The documentation of disability must be less than three months old. With regard to deferrals, the proposed changes included: (1) allowing for up to four years deferral for a member on active duty in the Armed Forces, an increase from the three years in prior regulations; and (2) restricting a deferral based on a scholar's pursuing higher education only to advanced education that is in the rehabilitation field.

There are four differences between the NPRM and these final regulations.

- We clarify in final § 386.20(b)(2)(iii) that the selection criterion applies only to those programs that require practica and field experiences as part of their curricula.

- To clarify allowable travel costs, we conform the language about student travel in final § 386.32(d) to the language of student travel in the definition of "scholarship" in final § 386.4.

- In final § 386.31(c), we clarify the prohibition on concurrent scholarships by setting out the grantee's obligation to make a good-faith effort to avoid awarding a scholarship to any scholar who is currently receiving another scholarship under this program.

- We further clarify the prohibition on concurrent scholarships by adding a

new § 386.40(a)(4) stating that scholars are prohibited from receiving concurrent scholarships under this program.

*Public Comment:* In response to our invitation in the NPRM, four parties submitted comments on the proposed regulations amending the Rehabilitation Long-Term Training program (part 386). We organize our discussion by section number.

#### § 386.20 Selection Criteria

*Comment:* One commenter stated that the selection criterion in proposed § 386.20(b)(2)(iii), evidence of focused practical and other field experiences, could not by its terms apply to short-term certificate programs that do not require practica or field experiences.

*Discussion:* We agree that the language in § 386.20(b)(2)(iii) is potentially unclear in this way.

*Change:* We have revised final § 386.20(b)(2)(iii) to state that evidence of focused practical and other field experiences is not required when those experiences are not part of the curricula of a short-term certificate program.

#### § 386.31 Grant Funds

*Comment:* One commenter raised concerns about the provision in proposed § 386.31(c) that prohibits a scholar from receiving concurrent scholarships from multiple projects, noting that this could inadvertently bar students from certificate areas that could increase their employability. The prohibition could, for example, bar a scholar on summer break from a program leading to a master's degree from receiving a scholarship to participate in a certificate program.

*Discussion:* The prohibition in § 386.31(c) was intended to prevent the practice of funding scholars from multiple grants for the same academic term. This practice leads to complications in reporting and in accurately tracking whether the scholar is meeting the service obligation.

The provision at final 386.31(c) does not prohibit a scholar from receiving a scholarship for a summer certificate program while that scholar is in a master's degree supported by a scholarship under this program, so long as the scholar is not also enrolled in the master's degree program during the summer.

*Changes:* Because final § 386.31(c) describes grantee responsibilities, we have reworded the provision to better reflect the intent behind it—that the grantee must make good faith efforts to ensure that concurrent scholarships under this program are not awarded to a scholar. In addition, in order to ensure

that scholars understand their responsibilities, we have added a provision under final § 386.40(a)(4) that sets out the scholar's responsibility not to accept concurrent scholarships under this program and clarified that this prohibition applies to scholarships for the same academic term.

#### § 386.32 Allowable Costs

*Comment:* One commenter requested that limited travel to professional conferences be explicitly listed in § 386.32 as an allowable cost. The commenter pointed out that, in the past, grantees have been able to support scholars in this way.

*Discussion:* We agree that limited travel to professional conferences has been, and should continue to be, an allowable cost. Section 386.4 defines "scholarship," in part, as an award of financial assistance to a scholar for training and includes student travel in conjunction with training assignments. Limited travel to professional conferences would generally be allowable under this description.

*Change:* We modified final § 386.32(d) to use this language and make clear that limited travel to professional conferences is an allowable cost.

#### § 386.33 Requirements for Grantees

*Comment:* One commenter stated that the requirement in proposed § 386.33(c)(2), that a scholar's job functions be "directly relevant" to the field of study in which his or her training was received, is potentially ambiguous and difficult to apply. The commenter noted, for example, that many States do not have a job category of Rehabilitation Counselor for the Deaf. A person might graduate from a deafness training program but get a job as a generalist and still see deaf, hard of hearing, and general caseload customers. It is unclear if this job is "directly relevant" to the scholar's field of study.

*Discussion:* We agree with the commenter that decisions about the relationship between a scholar's training and eventual employment are complex and that decisions about whether the employment qualifies to repay the service obligation need to be made case-by-case. The proposed § 386.33 was our effort to address this issue. We believe this language provides the necessary flexibility for sometimes difficult case-by-case analyses. For example, an individual graduating from a program focused on rehabilitation of individuals who are deaf but who ultimately finds employment as a general VR counselor has job functions "directly relevant" to his or her field of study. The individual

is providing services for which he or she was specifically trained, and, as a practical matter, it is unrealistic in this case to expect all consumers served to be deaf.

*Changes:* None.

#### **§ 386.43 Failure To Meet Terms and Conditions of the Scholarship Agreement**

*Comment:* One commenter sought clarification about calculating the date in which repayment status begins under proposed § 386.43(e)(2). The commenter referred to a situation in which the grace period has ended but a scholar finds qualifying employment only several months later, asking specifically whether the scholar enters repayment immediately upon expiration or whether it is possible to be granted an extension in order to complete the service obligation.

*Discussion:* According to final § 386.43(e)(2), a scholar enters into repayment status when the failure to enter into employment makes it impossible for that scholar to complete the employment obligation within the number of years required in final § 386.40(a)(8). Given that a scholar who has not entered into qualifying employment at the time the grace period has ended cannot satisfy the requirements in final § 386.40(a)(8), the scholar referenced above by the commenter would immediately be placed in repayment status once the grace period has ended. The Secretary has no explicit authority to grant an extension of time to this scholar based solely upon the failure to complete the service obligation by the time the grace period has ended. Section 386.41(c), however, allows the Secretary to grant a deferral of the repayment requirement under limited circumstances and based upon credible evidence submitted on behalf of the scholar. There is nothing in this provision that would prohibit the Secretary from considering the granting of a deferral of the repayment requirement for scholars that need only a limited amount of extra time to satisfy the service obligation.

*Changes:* None.

#### **Innovative Rehabilitation Training Program, 34 CFR Part 387**

##### **Summary of Changes**

In the preamble of the NPRM, we discussed on pages 21006 through 21007 the major changes proposed to part 387 implementing the amendments to the Innovative Rehabilitation Training program made by WIOA. These include: (1) Adopting a new name for the program—Innovative Rehabilitation

Training—that better describes the nature of activities to be funded under this authority; (2) clarifying 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; and (3) addressing 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.

There are no differences between the NPRM and these final regulations.

*Public Comment:* In response to our invitation in the NPRM, no parties submitted comments on the proposed regulations amending the Innovative Rehabilitation Training program (part 387).

#### **Rehabilitation Short-Term Training Program, 34 CFR Part 390**

##### **Summary of Changes**

In the preamble of the NPRM, we discussed on page 21007 the major change proposed to part 390 needed to improve the Rehabilitation Short-Term Training program. In the NPRM, we proposed to add an additional selection criterion for grant competitions under this program—evidence of training needs as identified through training needs assessment.

There are no differences between the NPRM and these final regulations.

*Public Comment:* In response to our invitation in the NPRM, four parties submitted comments on the proposed regulation amending the Rehabilitation Short-Term Training program (part 390).

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

##### **Summary of Proposed Changes**

In the preamble of the NPRM, we discussed on pages 21007 through 21009 the major changes proposed in part 396 implementing the amendments to the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program, as well as changes needed to improve the program. These included: (1) Adding individuals who are hard of hearing to the individuals served by this program; (2) amending the regulations 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; (3) amending the definition of a qualified professional in order to ensure that the highest level of competency is incorporated into the training of interpreters; (4) adding selection criteria for the program to encourage evidence-based and promising practices; and (5) adding 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.

There are a number of changes between the NPRM and these final regulations:

- In final § 396.1(a), we modified the description of the interpreter training program to more accurately describe what interpreters for the deaf, hard of hearing, and deaf-blind do.
- In final § 396.4(c), we modified the definitions of *individual who is hard of hearing* and *individual who is deaf* to remove phrases offensive to some.
- In § 396.4(c), we added a definition of *novice interpreter*.
- In final § 396.31(c), we clarified that the selection criterion applies to any curricula submitted by an applicant.
- In final § 396.33(b), and with a conforming change in final § 396.20(b), we added a priority for serving unserved or underserved deaf, hard of hearing, and deaf-blind populations that are not defined by geographic area.

*Public Comment:* In response to our invitation in the NPRM, four parties submitted comments on the proposed regulations amending the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program (part 396). We organize our discussion by section and subject.

##### **§ 396.1 Description of the Program**

*Comment:* One commenter stated that the description of the program in proposed § 396.1(a) was not accurate. The commenter stated that the description of interpretation and transliteration is too narrow, involving only spoken language and limiting training activities to interpreters who can hear spoken language. Deaf interpreters, the commenter stated, are precluded from training described in this way.

The commenter also stated that the term “transliterate” is not always the correct term when describing the

activity of conveying spoken language messages into tactile mode (or vice versa); rather, this is often interpretation.

*Discussion:* We agree with the commenter that our proposed description was inadequate.

*Changes:* We have changed the description of the program in final § 396.1(a) to be more inclusive and to use the terms “transliterate” and “interpret” more accurately.

### § 396.2 Eligibility

*Comment:* One commenter stated that the types of institutions that can apply for grant funds to train interpreters under this program should be limited to bachelor’s degree granting institutions, because an individual must have a bachelor’s degree in order to sit for the national performance examination for sign language interpreters.

*Discussion:* Entities eligible for grants under this program are set by the Act and reflected in § 396.2.

*Changes:* None.

### § 396.4 Definitions

#### Individual Who is Hard of Hearing

*Comment:* One commenter recommended replacing the term “hearing impairment” in the definition of “individual who is hard of hearing” because it is offensive to some. The commenter proposed using “deaf, hard of hearing and DeafBlind individual” instead, because this language more accurately reflects language used by the deaf, hard of hearing, and DeafBlind communities.

*Discussion:* We agree that we should try to avoid the use of language that some may find offensive.

*Changes:* We have removed “hearing impairment” from the definition of “individual who is hard of hearing” in final § 396.4(c). Rather than inserting the language the commenter proposed, however, we have streamlined the definition. We made similar changes in the definition of “individual who is deaf” in this section.

However, the definition of “individual who is deaf-blind,” which also contains the phrase “hearing impairment,” is, in our experience, one that is more widely accepted. Therefore, we have not made changes to this definition.

#### Novice Interpreter

*Comment:* One commenter noted that the NPRM contained no definition of “novice interpreter,” yet the term was defined in the August 3, 2005, notice of final priority (70 FR 44834). The commenter expressed uncertainty

whether the absence of the term in the NPRM meant that we were removing the 2005 definition and recommended that we include an updated definition of “novice interpreter” in the final rule. The commenter suggested an updated definition.

*Discussion:* The omission of the definition of “novice interpreter” in the NPRM was an oversight. In this final rule, we have built upon the 2005 definition of “novice interpreter,” taking into consideration the comment we received on the NPRM. There, we proposed an amendment to the definition of “qualified professional” to be consistent with the final priority published in the **Federal Register** on September 1, 1999 (64 FR 48068), and 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.

We proposed this change 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 proposed to change the definition to reflect this reality.

The updated definition of “novice interpreter” complements the update to the definition of “qualified professional,” and we are making the update to the definition of “novice interpreter” for the same reasons. This definition of “novice interpreter” is also consistent with the update suggested in the comment we received.

*Change:* We have revised final § 396.4(c) to include an updated definition of “novice interpreter.”

### § 396.31 Selection Criteria

*Comment:* One commenter pointed out that the selection criterion proposed in § 396.31(c) says only that the Secretary will evaluate a proposed “curriculum” for the training of interpreters based upon evidence-based or promising practices when many curricula, in fact, could be and have been proposed.

*Discussion:* We had no intention to suggest that only a single, universal curriculum existed or that applicants

may propose only one curriculum in future competitions under this program.

*Change:* We have modified the selection criterion to apply to “any curricula.”

### § 396.33 Priorities

#### Unserved and Underserved Populations

*Comment:* One commenter supported the priority in proposed § 396.33(b)(1) for increasing the skills of interpreters for the deaf, hard of hearing, or the deaf-blind in unserved or underserved geographic areas. The commenter expressed concern, however, that this section does not include a priority for these individuals in unserved and underserved populations, who may not be located in easily defined geographic areas. The commenter observed that there are growing segments of deaf, hard of hearing, and deaf-blind communities that will increasingly challenge the interpreting workforce, including but not limited to individuals considered “Deaf+,” individuals from minority and immigrant communities, individuals with cochlear implants, individuals pursuing high-level professional training and careers, and individuals who lose their hearing later in life and have limited communication skills.

*Discussion:* We agree with the commenter that we should have a priority for training interpreters to serve individuals who are deaf, hard of hearing, or deaf-blind in both unserved and underserved populations and in unserved and underserved geographic areas.

*Changes:* We have amended final § 396.33(b)(1) to add a priority for serving unserved or underserved deaf, hard of hearing, or deaf-blind populations that may not be limited to specific geographic areas. We have made a conforming change in final § 396.20(b).

#### Bachelors’ Degree, Accredited, Existing Programs

*Comment:* One commenter urged RSA to include a priority for applications from postsecondary institutions that offer at least a bachelor’s degree in interpreter education. The commenter also recommended an additional priority giving preference to programs that have achieved Commission on Collegiate Interpreter Education (CCIE) accreditation.

*Discussion:* We created the priority for postsecondary institutions that offer at least a bachelor’s degree in the August 3, 2005, notice of final priorities for the Interpreter Training Program (70 FR 44834). It is not necessary to recreate the priority here because the 2005 priority

still exists and can be used in future competitions.

Further, § 396.33(b)(2) already encompasses the accreditation priority the commenter described. The phrase “existing programs” refers to any program, including those at postsecondary institutions that offer and have awarded at least a bachelor’s degree in interpreter education. While we will not give preference to CCIE or other certifying organizations, the phrase “highest standards approved by certifying associations” already includes them.

*Changes:* None.

*Comment:* One commenter asked whether the term “programs” in proposed § 396.33(b)(2) means either a pre-service or an in-service program.

*Discussion:* The term “programs” in final § 396.33(b)(2) refers both to pre-service and in-service programs.

*Changes:* None.

#### Consumer Education

*Comment:* One commenter expressed concern about the lack of mention of consumer education in proposed § 396.33(b). The commenter indicated that this was a new area in the competitions for this program in 2005 and again in 2010, and the resulting deaf advocacy training has been important.

*Discussion:* As the commenter indicated, interpreter training centers funded under this program have addressed consumer education over the past 10 years. We believe that promising practices and resources developed for consumer education, specifically those developed under final § 396.33(b)(3)—specialized topical training based on the needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind—have been particularly effective. We agree that deaf advocacy training has been an important focus area for the training of interpreters for individuals who are deaf, hard of hearing, and individuals who are deaf-blind, and we can continue the training without adding a priority here.

*Changes:* None.

#### § 396.34—Cost Matching

*Comment:* One commenter suggested that the requirement in proposed § 396.34 that the grantee contribute to the cost of a project under this program in an amount satisfactory to the Secretary may conflict with 2 CFR 200.306. The commenter also indicated that having the Secretary determine the amount of the match at the time of the grant award may delay grant activity.

*Discussion:* The matching amount will be specified in the notice inviting

applications for the program competition published in the **Federal Register** and will occur prior to the submittal of the grant application and prior to the grant award. This provision, therefore, does not conflict with 2 CFR 200.306.

*Changes:* None.

#### General Comments

*Comment:* One commenter indicated that replacing the term “skilled interpreter” with “qualified interpreter” does not accomplish much since neither term is particularly precise.

*Discussion:* We use “qualified interpreter” simply to conform part 396 to section 302(f) of the Act.

*Changes:* None.

*Comment:* One commenter suggested changing the number of centers that receive funding under this program. Currently, five regional centers and one national center receive funding. The commenter suggested one national center, with three regional centers that focus on three areas: educating those individuals who are preparing interpreters, ensuring a strong language foundation in both American Sign Language and English for sign language interpreters, and developing a national interpreter education curriculum.

*Discussion:* The proposed regulations do not address the structure of this program. When we run a competition to meet new and emerging needs of deaf consumers and the training of interpreters, we will publish a notice of proposed priority in the **Federal Register** and seek public comment about how to structure the program.

*Changes:* None.

#### Regulations To Be Removed

In the preamble of the NPRM, we discussed on page 21009 those regulations that we proposed to remove as required by WIOA, which deauthorized the Projects with Industry program (part 379), the State Vocational Rehabilitation Unit In-Service Training program (part 388), the Migrants and Seasonal Farmworkers program (§ 369.1(b)(3) and § 369.2(c)), and the Recreation Programs for Individuals with Disabilities program (§ 369.1(b)(5) and § 369.2(d)).

We also proposed to remove, as duplicative or superseded, the balance of part 369 pertaining to 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 proposed to remove as outdated part 376 governing the Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth with Disabilities program and part 377 governing the Demonstration Projects to Increase Client Choice program.

We proposed to remove as duplicative and outdated part 389 governing the Rehabilitation Continuing Education programs.

Because the Department’s administration of grants under the State Vocational Rehabilitation Unit In-Service Training program and the Migrants and Seasonal Farmworkers Program will be complete on September 30, 2016, we proposed to make the removal of part 369 and part 388 effective on September 30, 2016.

*Comment:* In response to our invitation in the NPRM, no parties submitted comments on the removal of any of these regulations.

*Discussion:* Upon further review, the Department has determined that the remaining grant for the Migrants and Seasonal Farmworkers program can incorporate the pertinent provisions of Part 369 into its terms and conditions. Therefore, there is no need to delay the effective date for which part 369 will be removed because the terms and conditions will still apply to the one remaining grant after part 369 is removed. We have also determined that it makes more sense to make the removal of the part 388 regulations coincide with the start of the new fiscal year, rather than the end of the old fiscal year. Therefore, we have moved the removal date for part 388 forward one day to October 1, 2016.

*Changes:* Part 369 will be removed when the final regulations take effect. Part 388 will be removed on October 1, 2016.

#### 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 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 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 amendment requiring the Department to reserve from 1.8 to 2 percent of appropriated funds for training and technical assistance to grantees. While this reservation 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 the older individuals who are blind that they serve.

To ensure that grantees receive the maximum amount of funds available for the provision of services to individuals, we will initially provide funding for training and technical assistance at the minimum allowable level of 1.8 percent. Prior to this 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 will 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 2016 authorized appropriation of \$33,317,000 for the OIB program under WIOA, the estimated set-aside is \$599,706, calculated from 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, the 56 grantees would experience a collective 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 will 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 whether funds will be available for reallocation. 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 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. Section 112(e)(1)(F) of the Act, as amended by WIOA, requires the Secretary to reserve not less than 1.8 percent and not more than 2.2 percent of the CAP appropriation for this purpose. In FY 2016, the appropriation for CAP is \$13,000,000, and so the set-aside for training and technical assistance would not take effect. An increase of 7.7 percent in the program’s appropriation would be required before the set-aside would become effective. Thus, the set-aside will not have a substantial impact on the activities of grantees for some time. Assuming the Department sets aside a minimum of 1.8 percent to ensure that grantees receive the maximum amount of funds available for

the provision of services to individuals when the appropriation reaches \$14,000,000, the Department would be required to reserve \$252,000 to provide training and technical assistance 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 amendment requiring the Department to reserve from 1.8 to 2 percent of appropriated funds for training and technical assistance to grantees. While this reservation 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 American Indians with disabilities.

Based on the FY 2016 amount set aside by the Department from the State VR program for the AIVRS program (approximately \$43,000,000), the estimated reservation of funds for training and technical assistance is \$774,000. 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**

As it had in prior regulations, § 381.20(a)(1) requires the Secretary, when the PAIR appropriation equals or exceeds \$5,500,000, to set aside between 1.8 and 2.2 percent of these funds for training and technical assistance. The amendments made by WIOA simply clarify that the funding mechanism for the training and technical assistance may include a grant, contract, or cooperative agreement, all of which had been available to the Secretary previously. We amended § 381.20(a)(1) to clarify explicitly the availability of these funding mechanisms for training and technical assistance. Since the

requirement to provide training and technical assistance was triggered in FY 1994, the Department has historically funded the training and technical assistance at the 1.8 percent level to ensure that grantees receive the maximum amount of funds available for the provision of services to individuals. Therefore, the revision to § 381.20(a)(1) in these final regulations will have no impact on PAIR grantees since the amendment was primarily technical in nature.

#### **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.

##### *§ 386.31 (Funding Requirement)*

Section 386.31 requires that program grantees dedicate 65 percent to scholarships rather than 75 percent as required by prior regulations. This requirement will 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 changes in § 386.31 balances some of the increased costs created by 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 percent of the project cost, the reduction in the scholarship requirement will 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.

##### *§ 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 will 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 will cost \$4,030.37.

##### *§ 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 will be additional costs. Of all scholars reported in qualifying employment in FY 2014, 88.4 percent 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.

##### *§ 386.40 (Requirements for Scholars)*

In § 386.40(a)(7), we clarify 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) establishes a new policy addressing when scholars may begin qualifying employment while § 386.40(c) affirms the longstanding RSA practice 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 percent 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 the changes in § 386.40(b). However, because the changes in § 386.40(b) do not change the length of a scholar's service obligation and § 386.40(c) simply codifies existing RSA practice, we do not estimate that these provisions will result in any net costs or savings. Finally, changes in § 386.40(d) make scholars in repayment status responsible for any collection costs if they do not provide appropriate information to the grantee in a timely manner but provide that information after being placed in repayment status. In FY 2014, the Department referred 44 scholars for repayment totaling \$486,471. Assuming that collection costs total 3 percent of the balance of the repayment, we estimate total collection costs of \$14,594. However, we note that collection costs, if the debts are referred to third-party collection agencies, can range as high as 30 percent. Nonetheless, if 5 percent of this repayment amount involved scholars who were referred to repayment based upon failing to provide the information in paragraph (a)(10) of this section and these scholars became eligible for a refund of any debts paid based upon the scholars subsequently providing the correct information, this additional requirement could save the Department \$729.70 (using the assumption of a 3 percent collection cost) by making these scholars responsible for the collection costs. If we assume a higher rate of collection costs, the savings would be higher.

*§ 386.41 (Granting Deferrals and Exceptions) and § 386.42 (Applying for Deferrals and Exceptions)*

Sections 386.41 and 386.42 contain 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 will 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.

*Paperwork Reduction Act of 1995*

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

*Intergovernmental Review*

These programs, except for the American Indian Vocational Rehabilitation Services Program, 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 the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. We received no comments, and we do not believe that these final regulations would require transmission of this sort of information.

*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. In the NPRM, we stated that the proposed regulations may have federalism implications and encouraged State and local elected officials to review and provide comments on the proposed regulations. We received no comments on this subject.

*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](http://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](http://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: June 30, 2016.

**John B. King, Jr.,**

*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 amends 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?
- 367.31 What assurances must a DSA include in its application?

#### **Subpart D—How does the Secretary award discretionary grants?**

- 367.40 Under what circumstances does the Secretary award discretionary grants to States?
- 367.41 How does the Secretary evaluate an application for a discretionary grant?

#### **Subpart E—How does the Secretary award formula grants?**

- 367.50 Under what circumstances does the Secretary award formula grants to States?
- 367.51 How are allotments made?
- 367.52 How does the Secretary reallocate funds under this program?

#### **Subpart F—What conditions must be met after an award?**

- 367.60 When may a DSA make subawards or contracts?
- 367.61 What matching requirements apply?
- 367.62 What requirements apply if the State's non-Federal share is in cash?
- 367.63 What requirements apply if the State's non-Federal share is in kind?
- 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?
- 367.65 What is program income and how may it be used?
- 367.66 What requirements apply to the obligation of Federal funds and program income?
- 367.67 May an individual's ability to pay be considered in determining his or her participation in the costs of OIB services?
- 367.68 What notice must be given about the Client Assistance Program (CAP)?
- 367.69 What are the special requirements pertaining to the protection, use, and release of personal information?
- 367.70 What access to records must be provided?
- 367.71 What records must be maintained?

**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 challenges 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 and administer the OIB grant.

(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 Alaska Natives, American Indians, Asians, Blacks (African Americans), Hispanics (Latinos), 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 services;

(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, and the Commonwealth of the Northern Mariana Islands.

(17) *Subaward* means 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* means a non-Federal entity that receives a subaward from the DSA to carry out 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 State and public or non-profit agencies and organizations and institutions of higher education 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 using a contract to award funds under this subpart, the Secretary may conduct the application process and make the subsequent award 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 reallocation 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 reallocation 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 demographics 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 reallocate funds under this program?

(a) From the amounts specified in paragraph (b) of this section, the Secretary may make reallocation 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 reallocation 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 reallocation.

(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) Payments received by the State agency, subrecipients, or contractors from insurers, consumers, or other for IL services provided under the Independent Living Services for Older Individuals Who Are Blind program to defray part or all of the costs of services provided to individual consumers will be treated as program income received under this part.

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

(2) Program income must be added to the Federal Award 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: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

**§ 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 reallocated 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.

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

**§ 367.67 May an individual's ability to pay be considered in determining his or her participation in the costs of OIB services?**

(a) *Participation of individuals in cost of services.* (1) A State is neither required to charge nor prohibited from charging consumers for the cost of IL services provided under the Independent Living Services for Older Individuals Who Are Blind program;

(2) If a State charges consumers or allows other service providers to charge for the cost of IL services provided under the Independent Living Services for Older Individuals Who Are Blind program, a State is neither required to nor prohibited from considering the ability of individual consumers to pay for the cost of these services in determining how much a particular consumer must contribute to the costs of a particular service.

(b) *State policies on cost of services.* If a State chooses to charge or allow other service providers to charge consumers for the cost of IL services provided under the Independent Living Services for Older Individuals Who Are Blind program and if a State chooses to consider and allow other service providers to consider the ability of individual consumers to pay for the cost of IL services provided under the Independent Living Services for Older Individual Who Are Blind program, the State must maintain policies that—

(1) Specify the type of IL services for which costs may be charged and the type of IL services for which a financial need test may be applied;

(2) Explain the method for determining the amount charged for the IL services and how any financial need test will be applied;

(3) Ensure costs are charged uniformly so that all individuals are treated equally;

(4) Ensure that if costs are charged or financial need is considered, the consumer's required participation is not so high that it effectively denies the individual a necessary service;

(5) Require documentation of an individual's participation in the cost of any IL services provided, including the determination of an individual's financial need; and

(6) Provide that individuals who have been determined eligible for Social Security benefits under Titles II and XVI of the Social Security Act may not be charged any cost to receive IL services under this program.

(c) *Policies on consumer financial participation.* If a State permits other service providers to charge the costs of IL services provided under the Independent Living Services for Older Individuals Who Are Blind program, or chooses to allow other service providers to consider the ability of individual consumers to contribute to the cost of IL services provided through the Independent Living Services for Older Individuals Who Are Blind program, the State must require that such service providers comply with the State's written policies regarding consumer financial participation in the cost of IL services.

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

**§ 367.68 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)

**§ 367.69 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, including a requirement that data only

be released when governed by a written agreement between the DSA and other service providers and the receiving entity under paragraphs (d) and (e)(1) of this section, which addresses the requirements in this section;

(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 do not speak, listen, read, or write English proficiently 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 meaningfully 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 (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, in accordance with a written agreement, 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, in accordance with a written agreement, 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: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

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

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

**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?

370.5 What regulations apply?

370.6 What definitions apply?

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**Subpart B—What Requirements Apply to Redesignation?**

370.10 When do the requirements for redesignation apply?

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370.15 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?

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**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?

370.31 How does the Secretary reallocate funds?

**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 are 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, does 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 reallocation 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) *Definition.* (1) Consistent with 2 CFR 200.80 and for purposes of this part, *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)(i) The designated agency must use program income to supplement Federal funds that support program activities that are subject to this part. See, for example 2 CFR 200.307(e)(2).

(ii) Notwithstanding 2 CFR 200.305(a) and consistent with 2 CFR 200.305(b)(5), and to the extent that program income funds are available, a designated agency, regardless of whether it is a State agency, must disburse those funds (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional funds from the Department.

(Authority: Sections 12(c) and 108 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 728; and 20 U.S.C. 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.

(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:

(i) Have as one of its functions the vocational rehabilitation of American Indians with disabilities; and

(ii) Have the approval of the tribe to be served by such organization.

(3) If a grant is made to the governing body of an Indian tribe, either on its

own behalf or on behalf of a consortium, or to 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—

(i)(A) A review of existing data—

(1) To determine if an individual is eligible for vocational rehabilitation services; and

(2) To assign priority for an order of selection described in an approved plan or the approved grant application; and

(B) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment;

(ii) To the extent additional data are 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, this comprehensive assessment—

(A) 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;

(B) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements—

(1) 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

(2) Information that can be provided by the individual and, if appropriate, by the family of the individual;

(C) 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;

(D) 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

(E) To the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community, and other integrated community settings;

(iii) 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

(iv) 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 the provision of, one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement—

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

(ii) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(iii) Recreational therapy;

(iv) Physical and occupational therapy;

(v) Speech, language, and hearing therapy;

(vi) Psychiatric, psychological, and social services, including positive behavior management;

(vii) Assessment for determining eligibility and vocational rehabilitation needs;

(viii) Rehabilitation technology;

(ix) Job development, placement, and retention services;

(x) Evaluation or control of specific disabilities;

(xi) Orientation and mobility services for individuals who are blind;

(xii) Extended employment;

(xiii) Psychosocial rehabilitation services;

(xiv) Supported employment services and extended services;

(xv) Customized employment;

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

(xvii) Personal assistance services; or

(xviii) Services similar to the services described in paragraphs (i) through (xvii) 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—

(i) Services and benefits, including accommodations and auxiliary aids and services, that are—

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

(B) 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

(C) Commensurate to the services that the individual would otherwise receive from the Tribal Vocational Rehabilitation unit.

(ii) 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 that—

(i) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that—

(A) Is not 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 required under the applicable State or local minimum wage law;

(B) 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; and

(C) 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

(D) Is eligible for the level of benefits provided to other employees; and

(ii) Is at a location—

(A) Typically found in the community; and

(B) 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 and 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

(C) Presents, as appropriate, 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:

(i) Designating one governing body to apply for the grant; or

(ii) 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—

(i) Job exploration by the individual;

(ii) Working with an employer to facilitate placement, including—

(A) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs; and

(B) 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;

(iii) Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and

(iv) 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 in or retaining full-time or, if appropriate, part-time competitive integrated employment (including customized employment, self-employment, telecommuting or 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 purposes of receiving vocational rehabilitation services means an individual—

(i) Who either—

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

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

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

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

(Authority: 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—

(i) *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).

(ii) *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(l) 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—

(i) Who has a physical or mental impairment;

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

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

(Authority: 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—

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

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

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, 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—

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

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

(iii) Dentistry;

(iv) Nursing services;

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

(vi) Drugs and supplies;

(vii) Prosthetic and orthotic devices;

(viii) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by

personnel that are qualified in accordance with State licensure laws;

- (ix) Podiatry;
- (x) Physical therapy;
- (xi) Occupational therapy;
- (xii) Speech or hearing therapy;
- (xiii) Mental health services;
- (xiv) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;
- (xv) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and
- (xvi) Other medical or medically related rehabilitation services.
- (xvii) 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—

- (i) 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
- (ii) 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—(i)* *Supported employment* means competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, 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—

(A) 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

(B) 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.

(ii) 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:

(A) Within six months of achieving a supported employment outcome; or

(B) Within a period not to exceed 12 months from the achievement of the supported employment outcome, if a longer period is necessary based on the needs of the individual, and the individual has demonstrated progress toward competitive earnings based on information contained in the service record.

(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, including a youth with a most significant disability, in supported employment that are:

(i) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment;

(ii) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment;

(iii) Provided by the Tribal Vocational Rehabilitation Unit 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

(iv) 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 a student or youth with a disability—

(i) Designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;

(ii) Based upon the individual student's or youth's needs, taking into account the student's or youth's preferences and interests;

(iii) That includes 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;

(iv) That promotes or facilitates the achievement of the employment outcome identified in the student's or youth's individualized plan for employment; and

(v) That includes outreach to and engagement of the parents, or, as appropriate, the representative of such a student or youth with a disability.

(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—

(i) An assessment for determining eligibility, priority for services, and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology.

(ii) Vocational rehabilitation counseling and guidance, including

information and support services to assist an individual in exercising informed choice.

(iii) 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.

(iv) 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).

(v) Vocational and other training services, including personal and vocational adjustment training, advanced training (particularly advanced training in a field of science, technology, engineering, or mathematics (including computer science), 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 or any other postsecondary education institution) 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.

(vi) Maintenance.

(vii) Transportation in connection with the provision of any vocational rehabilitation service.

(viii) 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.

(ix) 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.

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

(xi) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(xii) Supported employment services.

(xiii) Personal assistance services.

(xiv) Post-employment services.

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

(xvi) Rehabilitation technology, including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(xvii) Transition services for students and youth with disabilities that facilitate the transition from school to postsecondary life, such as achievement of an employment outcome in competitive integrated employment.

(xviii) 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.

(xix) Customized employment.

(x) 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—*

(i) May be provided by the Tribal Vocational Rehabilitation Unit and may include the following:

(A) In the case of any small business enterprise 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:

(1) 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.

(2) 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.

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

(4) 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.

(5) 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.

(B) The establishment, development, or improvement of a community rehabilitation program that is used to provide vocational rehabilitation services that promote integration into the community and prepare individuals with disabilities for competitive integrated employment, including supported employment and customized employment, and under special circumstances, the construction of a community rehabilitation facility. 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.

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

(D) 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.

(E) Technical assistance to businesses that are seeking to employ individuals with disabilities.

(F) Consultation and technical assistance services to assist State educational agencies and local educational agencies, and, where appropriate, Tribal Educational

agencies, in planning for the transition of students with disabilities from school to postsecondary life, including employment.

(G) 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 a goal in an individualized plan for employment (IPE). 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.

(H) 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.

(I) Support (including, as appropriate, tuition) for advanced training in a field of science, technology, engineering, or mathematics (including computer science), medicine, law, or business, provided after an individual eligible to receive services under this title, demonstrates:

(1) Such eligibility;

(2) 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

(3) Acceptance by a program at an institution of higher education in the United States that confers a master's degree in a field of science, technology, engineering, or mathematics (including computer science), a juris doctor degree,

a master of business administration degree, or a doctor of medicine degree, except that—

(i) 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; and

(ii) Nothing in this paragraph prevents 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.

(i) If the Tribal Vocational Rehabilitation Unit provides for vocational rehabilitation services for groups of individuals it must —

(A) Develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services it provides and the criteria under which each service is provided; and

(B) Maintain information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and to the extent feasible, estimates of the numbers of individuals benefiting from those services.

(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 subpart?

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 using a contract to award funds under this subpart, the Secretary may conduct the application process and make the subsequent award 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 facility and 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 proficiency, 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?**

(a) 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.

(b) The Secretary may award a competitive preference consistent with 34 CFR 75.102(c)(2) to applications for the continuation of programs which have been funded under this program.

(Authority: Sections 12(c), 121(b)(1)(A), and 121(b)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 741(b)(1)(A)), and 741(b)(4).

#### **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 on- or near-reservation 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 Tribal Vocational Rehabilitation 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 Tribal Vocational Rehabilitation 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) The 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, including a requirement that data only be released when governed by a written agreement between the Tribal Vocational Rehabilitation unit and receiving entity under paragraphs (d) and (e)(1) of this section, which addresses the requirements in this section;

(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 (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, in accordance with a written agreement, 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, in accordance with a written agreement, 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—REHABILITATION NATIONAL ACTIVITIES PROGRAM

#### Subpart A—General

Sec.

373.1 What is the purpose of the Rehabilitation National Activities program?

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 under this part?

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 Rehabilitation National Activities program?

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: 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.

(3) Individuals receiving an employer's short-term or long-term disability insurance benefits.

(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 (2) 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 abilities and capabilities.

(Authority: Section 7(20)(A) and 12(c) of the Act 29; U.S.C. 705(20)(A) and 709(c))

*Supported employment* is defined in 34 CFR 361.5(c)(53).

(Authority: Section 7(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 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: Section 7(40) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(40))

*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 7(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 under this part?

(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 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 under this part?

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—

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

(ii) More than one individual or a group or class of individuals, in which case it is systems (or systemic) advocacy; or

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

*Eligible individual with a disability* means an individual who—

(i) 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

(ii) Is ineligible for—

(A) Protection and advocacy programs under part C of the DD Act; and

(B) 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 under this part?

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, 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, including reallocation funds, 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 sections 19 and 509(g) of the Act.

(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) Consistent with 2 CFR 200.80 and for purposes of this part, *program income* means gross income earned by the designated agency that is directly generated by an activity supported under this part.

(2)(i) The designated agency must use program income to supplement Federal funds that support program activities that are subject to this part. See, for example 2 CFR 200.307(e)(2).

(ii) Notwithstanding 2 CFR 200.305(a) and consistent with 2 CFR 200.305(b)(5), and to the extent that program income funds are available, all designated agencies, regardless of whether they are a State agency, must disburse those funds (including

repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional funds from the Department.

(3) 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) [Reserved]

(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, as amended (29 U.S.C. 701 *et seq.*).

*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—

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

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

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

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

(v) Training or technical assistance for an individual with disabilities, or, if appropriate, the family of an individual with disabilities;

(vi) 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

(vii) 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—

- (i) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;
- (ii) Testing, fitting, or training in the use of prosthetic and orthotic devices;
- (iii) Recreational therapy;
- (iv) Physical and occupational therapy;
- (v) Speech, language, and hearing therapy;
- (vi) Psychiatric, psychological, and social services, including positive behavior management;
- (vii) Assessment for determining eligibility and vocational rehabilitation needs;
- (viii) Rehabilitation technology;
- (ix) Job development, placement, and retention services;
- (x) Evaluation or control of specific disabilities;
- (xi) Orientation and mobility services for individuals who are blind;
- (xii) Extended employment;
- (xiii) Psychosocial rehabilitation services;
- (xiv) Supported employment services and extended services;
- (xv) Services to family members when necessary to the vocational rehabilitation of the individual;
- (xvi) Personal assistance services; or
- (xvii) Services similar to the services described in paragraphs (i) through (xvi) 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

- (i) Any State agency unit required under section 7(8) and 101(a)(2)(B) of the Act, or
- (ii) 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—

- (i) Information and referral services;
- (ii) Independent living skills training;
- (iii) Peer counseling, including cross-disability peer counseling; and
- (iv) Individual and systems advocacy.

*Independent living services* includes—

- (i) Independent living core services; and
- (ii)(A) Counseling services, including psychological, psychotherapeutic, and related services;
- (B) 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);
- (C) Rehabilitation technology;
- (D) Mobility training;
- (E) Services and training for individuals with cognitive and sensory disabilities, including life skills training, and interpreter and reader services;
- (F) Personal assistance services, including attendant care and the training of personnel providing these services;
- (G) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;
- (H) 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;
- (I) Education and training necessary for living in the community and participating in community activities;
- (J) Supported living;
- (K) Transportation, including referral and assistance for transportation;
- (L) Physical rehabilitation;
- (M) Therapeutic treatment;
- (N) Provision of needed prostheses and other appliances and devices;
- (O) Individual and group social and recreational services;
- (P) 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;
- (Q) Services for children;
- (R) 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;
- (S) Appropriate preventive services to decrease the need of individuals

assisted under this Act for similar services in the future;

(T) Community awareness programs to enhance the understanding and integration of individuals with disabilities; and

(U) Such other services as may be necessary and not inconsistent with the provisions of this Act.

*Individual with a disability* means any individual who—

- (i) Has a physical or mental impairment, which for that individual constitutes or results in a substantial impediment to employment;
- (ii) 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
- (iii) Has a disability as defined in section 7(20)(B) of the Act.

*Individual with a significant disability* means an individual with a disability—

- (i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- (ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- (iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, 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.** (i) 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.

(ii) 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—

(i)(A) For whom competitive integrated employment has not traditionally occurred; or

(B) For whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(ii) Who, because of the nature and severity of their disability, need intensive supported employment services from the designated State unit and extended services after transition in order to perform 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—

(i) 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;

(ii) Based on a determination of the needs of an eligible individual, as specified in an individualized written rehabilitation program; and

(iii) 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—

(i) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(ii) Counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(iii) Referral and other services to secure needed services from other agencies;

(iv) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(v) Vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;

(vi) Diagnosis and treatment of physical and mental impairments;

(vii) Maintenance for additional costs incurred while the individual is receiving services;

(viii) Transportation;

(ix) On-the-job or other related personal assistance services;

(x) Interpreter and reader services;

(xi) Rehabilitation teaching services, and orientation and mobility services;

(xii) Occupational licenses, tools, equipment, and initial stocks and supplies;

(xiii) 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;

(xiv) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

(xv) Transition services for individuals with disabilities that facilitate the achievement of employment outcomes;

(xvi) Supported employment services;

(xvii) Services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome;

(xviii) Post-employment services necessary to assist an individual with a disability to retain, regain, or advance in employment; and

(xix) Expansion of employment opportunities for individuals with disabilities, which includes, but is not limited to—

(A) Self-employment, business ownership, and entrepreneurship;

(B) Non-traditional jobs, professional employment, and work settings;

(C) 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

(D) 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 through 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, and 390, as appropriate.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

- (1) Selection criteria in 34 CFR 75.210;
- (2) Selection criteria established under 34 CFR 75.209; or
- (3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: 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, and 390, the Secretary, in making awards under this program, considers such factors as—

(a) The geographical distribution of projects in each Rehabilitation Training Program category throughout the country; and

(b) The past performance of the applicant in carrying out similar training activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(Authority: 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 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 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 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 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 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, 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—

(i) Taken for a period totaling at least nine months; or

(ii) 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—

(i) 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

(ii) The corporation or practice and its members are subject to the same supervision by appropriate State regulatory agencies as individual practitioners.

*Related agency* means—

(i) An American Indian rehabilitation program; or

(ii) 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:

(A) A Federal, State, or local agency.

(B) A nonprofit organization.

(C) 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) For programs whose curricula require them, 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, 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) Before providing a scholarship to a scholar, a grantee must make good faith efforts to determine that the scholar is not concurrently receiving more than one scholarship under this program for the same academic term.

(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 training assignments.

(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)(7), 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)(7).

(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)(7)(i).

(iv) The number of years the scholar needs to work to satisfy the work requirements in § 386.40(a)(7)(ii).

(v) The time period during which the scholar must satisfy the work requirements in § 386.40(a)(8).

(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)(7); 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(d) 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) Not receive concurrent scholarships for the same academic term from more than one project under this program;
  - (5) Enter into a signed written agreement with the grantee, prior to the receipt of scholarship funds, as required in § 386.34(c);
  - (6) Maintain satisfactory progress toward the certificate or degree as determined by the grantee;
  - (7) 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;

(8) 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)(7)(ii) of this section and two additional years;

(9) 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

(10) 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)(7) 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)(10) 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)(7) 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 § 386.40(a)(8).

(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. Effective October 1, 2016, 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), sections—

- (1) 385.3(a) and (d);
- (2) 385.40 through 385.46; 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—

(i) A record of training qualified interpreters who are serving the deaf, hard of hearing, and deaf-blind communities; and

(ii) 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, in order to

communicate, depends primarily upon visual modes, such as sign language, speech reading, and gestures, or reading and writing.

*Individual who is deaf-blind* means an individual—

(i)(A) 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;

(B) 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

(C) For whom the combination of impairments described in paragraphs (i)(A) and (B) of this definition causes extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation;

(ii) 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

(iii) Who meets any other requirements that the Secretary may prescribe.

*Individual who is hard of hearing* means an individual who, in order to communicate, needs to supplement auditory information by depending primarily upon visual modes, such as sign language, speech reading, and gestures, or reading and writing.

*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.

*Novice Interpreter* means an interpreter who has graduated from an

interpreter education program or enters the field through an alternate pathway, is at the start of his or her professional career with some level of proficiency in American Sign Language, and is working toward becoming a qualified professional.

*Qualified professional* means an individual who has—

(i) Met existing certification or evaluation requirements equivalent to the highest standards approved by certifying associations; and

(ii) Successfully demonstrated interpreting skills that reflect the highest standards approved by certifying associations through prior work experience.

*Related agency* means—

(i) An American Indian rehabilitation program; or

(ii) 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:

(A) A Federal, State, or local agency.

(B) A nonprofit organization.

(C) 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 education, 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 for the population(s) or in the geographical area(s) 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) Any curricula 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 unserved or underserved populations or 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.

(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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