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DEPARTMENT OF EDUCATION

34 CFR Parts 361, 363, and 397

RIN 1820-AB70

[Docket ID ED-2015-OSERS-OOO1]

State Vocational Rehabilitation Services program; State Supported Employment Services program; Limitations on Use of Subminimum Wage

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the State Vocational Rehabilitation Services program and the State Supported Employment Services program in order to implement changes to the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA) enacted on July 22, 2014. The Secretary also proposes to update, clarify, and improve the current regulations.

Finally, the Secretary proposes to issue new regulations regarding limitations on the use of subminimum wages that are added by WIOA and under the purview of the Department.

DATES: We must receive your comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about these proposed regulations, address them to Janet LaBreck, U.S. Department

of Education, 400 Maryland Avenue SW., room 5086, Potomac Center Plaza (PCP), Washington, DC 20202-2800.

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

FOR FURTHER INFORMATION CONTACT: Janet LaBreck, U.S. Department of Education, 400 Maryland Avenue SW., room 5086, PCP, Washington, DC 20202-2800. Telephone: (202) 245-7488 or by email: Janet.LaBreck@ed.gov.

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

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: The Secretary proposes to amend the regulations governing the State Vocational Rehabilitation Services program (VR program) (34 CFR part 361) and State Supported Employment Services program) (Supported Employment program) (34 CFR part 363),

administered by the Rehabilitation Services Administration (RSA), to implement changes to the Act made by WIOA (P.L. 113-128), enacted on July 22, 2014. In so doing, the Secretary also proposes to update and clarify current regulations to improve program function. Finally, the Secretary proposes to promulgate regulations in 34 CFR part 397 that implement the limitations on the payment of subminimum wages to individuals with disabilities in section 511 of the Act that fall under the purview of the Secretary.

For a more detailed description of the purpose of these proposed regulatory actions, see the Background section in this notice of proposed rulemaking (NPRM).

Summary of the Major Provisions of This Regulatory Action: We summarize here those proposed regulatory changes needed to implement the amendments to the Act made by WIOA. Under the Proposed Changes section of this NPRM, we provide a more complete summary of these changes and a detailed description of the substantive proposed regulations for each part in the order it appears in the Code of Federal Regulations (CFR). We also describe in detail under the Proposed Changes section the amendments to each part to update, clarify, and improve the regulations.

The Secretary proposes to implement the following changes to the VR program and Supported Employment program made by WIOA.

State Vocational Rehabilitation Services Program

People with disabilities represent a vital and integral part of our society, and we are committed to ensuring that individuals with disabilities have opportunities to compete for and enjoy high quality employment in the 21st century global economy. Some individuals with disabilities face particular barriers to high quality employment. Giving workers with disabilities the supports and the opportunity to acquire the skills that they need to pursue in-demand jobs and careers is critical to growing our economy, ensuring that everyone who works hard is rewarded, and building a strong middle class. To help achieve this priority for individuals with disabilities, the Rehabilitation Act of 1973, as amended by WIOA, seeks to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society.

The VR program is authorized by title I of the Act, as amended by WIOA (29 U.S.C. 720 et seq.), to provide support to each State to assist in operating a statewide

comprehensive, coordinated, effective, efficient, and accountable State program as an integral part of a statewide workforce development system; and to assess, plan, and provide vocational rehabilitation (VR) services to individuals with disabilities so that those individuals may prepare for and engage in competitive integrated employment consistent with their unique strengths, priorities, concerns, abilities, capabilities, interests, and informed choice. The Department last published regulations for this program in part 361 on January 17, 2001 (66 FR 4382), to implement amendments made by the Workforce Investment Act of 1998.

WIOA makes significant changes to title I of the Act that affect the VR program. First, WIOA strengthens the alignment of the VR program with other components of the workforce development system by imposing unified strategic planning requirements, common performance accountability measures, and requirements governing the one-stop delivery system. This alignment brings together entities responsible for administering separate workforce and employment, educational, and other human resource programs and funding streams to collaborate in the creation of a seamless custom-focused service delivery network that

integrates service delivery across programs, enhances access to the program's services, and improves long-term employment outcomes for individuals receiving assistance. In so doing, WIOA places heightened emphasis on coordination and collaboration at the Federal, State, and local levels to ensure a streamlined and coordinated service delivery system for job-seekers, including those with disabilities, and employers. Therefore, the Departments of Education and Labor propose to issue a joint NPRM to implement jointly administered activities under title I of WIOA (e.g., those related to Unified or Combined State Plans, performance accountability, and the one-stop delivery system), applicable to the workforce development system's core programs (Adult, Dislocated Worker and Youth programs; Adult Education and Literacy programs; Wagner-Peyser Employment Service program and the Vocational Rehabilitation program). These joint proposed regulations are set forth in a separate NPRM published elsewhere in this issue of the Federal Register.

WIOA also makes corresponding changes to title I of the Act. Consequently, we propose to make conforming changes throughout part 361 and align the VR program-

specific regulations with the joint proposed regulations to ensure consistency among all core programs.

Second, WIOA places heightened emphasis throughout the Act on the achievement of competitive integrated employment. The foundation of the VR program is the principle that individuals with disabilities, including those with the most significant disabilities, are capable of achieving high quality, competitive integrated employment when provided the necessary skills and supports. To increase the employment of individuals with disabilities in the competitive labor market, the workforce system must provide the opportunity for such individuals to participate in job-driven training and pursue high-quality employment outcomes. The amendments to the Act--from the stated purpose of the Act, to the expansion of services designed to maximize the potential of individuals with disabilities, including those with the most significant disabilities, to achieve competitive integrated employment, and, finally, to the inclusion of limitations on the payment of subminimum wages to individuals with disabilities--reinforce the congressional intent that individuals with disabilities, with appropriate supports and services, are able to achieve

the same kinds of competitive integrated employment as non-disabled individuals.

As a result, we propose to amend part 361 throughout to emphasize the key role that the VR program plays in employment outcomes and preparing individuals with disabilities to achieve competitive integrated employment in the community. We propose, among other things, to amend the definition of "employment outcome" to include only those outcomes in competitive integrated employment or supported employment, thereby eliminating uncompensated employment from the scope of employment outcomes for purposes of the VR program. We also propose to amend numerous other provisions throughout part 361 to address the expansion of available services, requirements related to the development of the individualized plan for employment, and order of selection for services, all of which are intended to maximize the potential for individuals with disabilities to prepare for, obtain, retain, and advance in the same high-quality jobs, and high demand careers as persons without disabilities.

Third, WIOA places heightened emphasis on the provision of services to students and youth with disabilities to ensure that they have meaningful

opportunities to receive the training and other services they need to achieve employment outcomes in competitive integrated employment. The Act, as amended by WIOA, expands not only the population of students with disabilities who may receive services but also the kinds of services that the VR agencies may provide to youth and students with disabilities who are transitioning from school to postsecondary education and employment.

Most notably, the Act, as amended by WIOA, requires States to reserve 15 percent of their VR allotment to provide pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services. These pre-employment transition services are designed to provide job exploration and other services, such as counseling and self-advocacy training, in the early stages of the transition process.

With the addition of these early pre-employment transition services, the VR program can be characterized as providing a continuum of VR services, especially for students and youth with disabilities. To that end, we propose to amend numerous sections of part 361 to implement new definitions for the terms “student with a disability” and “youth with a disability” and new requirements related

to pre-employment transition services and the provision of transition services to students and youth with disabilities. All of the proposed changes demonstrate the continuum of services available to students and youth with disabilities under the VR program to maximize their potential to transition from school to postsecondary education and employment.

Supported Employment Program

WIOA makes several significant changes to title VI of the Act, which governs the Supported Employment program. All of the amendments to title VI are consistent with those made throughout the Act, namely to maximize the potential of individuals with disabilities, especially those with the most significant disabilities, to achieve competitive integrated employment and to expand services for youth with the most significant disabilities.

First, WIOA amends the definition of "supported employment" to make clear that supported employment outcomes must be in competitive integrated employment or, if in an integrated setting that is not competitive integrated employment, then in an integrated setting in which the individual is working on a short-term basis toward competitive integrated employment. By adding a

timeframe to this definition, Congress reinforces its intention that individuals with disabilities should not be allowed to languish in subminimum wage jobs under the Supported Employment program. Thus, the Secretary proposes to amend part 363 to implement the revised definition of "supported employment." The Secretary proposes to define "short-term basis" in this context to mean no longer than six months. We believe this proposed change is consistent with the Act, as amended by WIOA, in its entirety as well as the stated congressional intent.

Second, WIOA requires States to reserve at least 50 percent of their supported employment program allotment for the provision of supported employment services to youth with the most significant disabilities. With these reserved funds, States may provide extended services, for a period up to four years, to youth with the most significant disabilities. Prior to the enactment of WIOA, extended services were not permitted under either the VR program or the Supported Employment program. In addition, States must provide a non-Federal share of 10 percent of the funds reserved for the provision of supported employment services to youth with the most significant disabilities. By requiring that States use half of their supported

employment program funds and provide a match for these reserved funds, Congress reinforces the heightened emphasis on the provision of services to youth with disabilities. Congress makes clear that youth with significant disabilities must be given every opportunity to receive the services necessary to ensure the maximum potential to achieve competitive integrated employment. Accordingly, the Secretary proposes to amend part 363 to implement new requirements regarding the reservation of funds, and the services to be provided with those funds, to youth with the most significant disabilities.

Limitations on the Payment of Subminimum Wages

Section 511 of the Act, as added by WIOA, imposes requirements on employers who hold special wage certificates under the Fair Labor Standards Act (FLSA) that must be satisfied before the employers may hire youth with disabilities at subminimum wage or continue to employ individuals with disabilities of any age at the subminimum wage level. Section 511 also establishes the roles and responsibilities of the designated State units (DSU) for the VR program and State and local educational agencies in assisting individuals with disabilities, including youth with disabilities, to maximize opportunities to achieve

competitive integrated employment through services provided by VR and the local educational agencies.

The addition of section 511 to the Act is consistent with all other amendments to the Act made by WIOA. Throughout the Act, Congress makes clear that individuals with disabilities, including those with the most significant disabilities, can achieve competitive integrated employment if provided the necessary supports and services. The limitations imposed by section 511 reinforce this belief by requiring individuals with disabilities, including youth with disabilities, to satisfy certain service-related requirements in order to start or maintain, as applicable, subminimum wage employment. To that end, the Secretary proposes to develop new regulations at part 397 that would implement requirements of section 511 that fall under the purview of the Department.

Costs and Benefits: 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. Further information related to costs and benefits may be found in the Regulatory Impact Analysis section later in this NPRM.

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

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

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

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

Background

The Workforce Innovation and Opportunity Act (WIOA) (P.L. 113-128), enacted July 22, 2014, made significant changes to the Rehabilitation Act of 1973 (hereafter referred to as the Act). As a result, the Secretary proposes to amend parts 361 and 363 of title 34 of the CFR. These parts, respectively, implement the:

- State Vocational Rehabilitation (VR) Services program; and
- State Supported Employment Services program.

In addition, WIOA added section 511 to title V of the Act. Section 511 limits the payment of subminimum wages to individuals with disabilities by employers holding special wage certificates under the FLSA. Although the Department

of Labor administers the FLSA, some requirements of section 511 fall under the purview of the Secretary. Therefore, the Secretary proposes to add a new part 397 to title 34 of the CFR to implement those particular provisions.

These proposed changes are further described under the Summary of Proposed Changes and Significant Proposed Regulations sections of this NPRM. WIOA also makes changes to other programs authorized under title I of the Act, including the Client Assistance Program and the American Indian Vocational Rehabilitation Services (AIVRS) program, as well as discretionary grant programs authorized under title III, the Protection and Advocacy of Individual Rights program under title V, and the Independent Living Services for Older Individuals Who are Blind program under title VII. The Secretary proposes regulatory changes to implement the amendments to these programs and projects made by WIOA through a separate, but related, NPRM published elsewhere in this issue of the Federal Register.

Summary of Proposed Changes

The Secretary proposes to implement the following changes to the VR program and Supported Employment program made by WIOA.

State Vocational Rehabilitation Services Program

The VR program is authorized by title I of the Act, as amended by WIOA (29 U.S.C. 720 through 731, and 733), to provide support to each State to assist in operating a statewide comprehensive, coordinated, effective, efficient, and accountable State VR program as an integral part of a statewide workforce development system; and to assess, plan, and provide VR services to individuals with disabilities so that those individuals may prepare for and engage in competitive integrated employment consistent with their unique strengths, priorities, concerns, abilities, capabilities, interests, and informed choice.

The Department last published regulations for this program in part 361 on January 17, 2001 (66 FR 4382), to implement amendments made by the Workforce Investment Act of 1998 (WIA).

In implementing the amendments to the VR program made by WIOA, the numerous proposed regulatory changes to part 361 improve employment outcomes for individuals with disabilities by: (1) strengthening the alignment of the VR program with other components of the workforce development system through unified strategic planning requirements, common performance accountability measures, and requirements governing the one-stop delivery system; (2)

emphasizing the achievement of competitive integrated employment by individuals with disabilities, including individuals with the most significant disabilities; and (3) expanding services to support the transition of students and youth with disabilities to postsecondary education and employment.

To implement jointly administered activities under title I of WIOA (e.g., those related to Unified or Combined State Plans, performance accountability and the one-stop delivery system), the U.S. Departments of Labor and Education are proposing a set of joint regulations applicable to the workforce development system's core programs, including the VR program. Through these proposed joint regulations, we lay the foundation for establishing a comprehensive, accessible, and high quality workforce development system that serves all individuals in need of employment services, including individuals with disabilities, and employers in a manner that is customer-focused and that supports an integrated service design and delivery model. These joint proposed regulations are in a separate NPRM published elsewhere in this issue of the Federal Register.

WIOA makes corresponding changes to title I of the Act

regarding the submission, approval, and disapproval of the VR services portion of the Unified or Combined State Plan; the standards and indicators used to assess VR program performance; and the involvement of the VR program in the one-stop delivery system. Consequently, we propose to amend current §361.10 to require that all assurance and descriptive information previously submitted through the VR State plan and supported employment supplement be submitted through the VR services portion of the Unified or Combined State Plan under sections 102 and 103 of the Act, respectively, of WIOA. We also propose to implement changes specific to the content of the VR services portion of the Unified or Combined State Plan by amending current §361.29(a) to require that the comprehensive statewide needs assessment include the results of the needs of students and youth with disabilities for VR services, including pre-employment transition services. Additionally, we propose to clarify in current §361.29 that States will report to the Secretary updates to the statewide needs assessment and goals and priorities, estimates of the numbers of individuals with disabilities served through the VR program and the costs of serving them, and reports of progress on goals and priorities at

such time and in such manner determined by the Secretary, thereby resolving inconsistencies in reporting requirements within section 101(a) of the Act. Finally, we clarify in proposed §361.20 when designated State agencies must conduct public hearings to obtain comment on substantive changes to policies and procedures governing the VR program.

We propose to implement the changes to section 106 of the Act made by WIOA through proposed §361.40, by replacing the current standards and indicators used to assess the performance of the VR program under current §361.80 through §361.89 with a cross-reference to the joint regulations for the common performance accountability measures for the core programs of the workforce development system. Similarly, we propose to provide a cross-reference in current §361.23, regarding the roles and responsibilities of the VR program in the one-stop delivery system, to the joint regulations implementing requirements for the one-stop delivery system.

WIOA makes extensive changes to title I of the Act to improve the VR services provided to, and the employment outcomes achieved by, individuals with disabilities, including those with the most significant disabilities. Embedded throughout the provisions of WIOA and the

amendments to the Act is the principle that individuals with disabilities, including those with the most significant disabilities, are capable of achieving competitive integrated employment when provided the necessary skills and supports. As a result, we propose to adopt a definition of "competitive integrated employment" in §361.5(c)(9) that combines, clarifies, and enhances the two separate definitions of "competitive employment" and "integrated setting" for the purpose of employment in current §361.5(b)(11) and (b)(33)(ii).

We propose to incorporate this principle throughout part 361, from the statement of program purpose in proposed §361.1, to a requirement in proposed §361.46(a) that the individualized plan for employment include a specific employment goal consistent with the general goal of competitive integrated employment. This principle is most evident in the definition of "employment outcome" in proposed §361.5(c)(15), which specifically identifies customized employment as an employment outcome under the VR program, and requires that all employment outcomes achieved through the VR program be in competitive integrated employment or supported employment, thereby eliminating uncompensated outcomes, such as homemakers and unpaid

family workers, from the scope of the definition for purposes of the VR program. We will provide guidance and technical assistance to VR agencies to assist them in implementing this proposed change.

We propose additional regulatory changes to ensure that individuals with disabilities are provided a full opportunity through the VR program to participate in job-driven training and pursue high-quality employment outcomes. Proposed §361.42(a)(1)(iii) would clarify that an applicant meeting all other eligibility criteria may be determined eligible if he or she requires services to advance in employment, not just obtain or maintain employment. We also propose to clarify in proposed §§361.48(b)(6)and 361.49, that VR services are available to assist individuals with disabilities to obtain graduate level education needed for this purpose. We clarify in proposed §361.42(c)(1) the prohibition against a duration of residency requirement and in §361.42(c)(2) those factors that cannot be considered when determining the eligibility of VR program applicants. We propose removing the option to use extended evaluations, as a limited exception to trial work experiences, to explore an individual's abilities, capabilities, and capacity to perform in work

situations by deleting paragraph (f) from current §361.42. To enable individuals with disabilities, including students and youth with disabilities, to receive VR services in a timely manner, proposed §361.45(e) would require the individualized plan for employment of each individual to be developed within 90 days following the determination of eligibility. Finally, if a State VR agency is operating under an order of selection for services, it would have the option under proposed §361.36 to indicate in its portion of the Unified or Combined State Plan that it will serve eligible individuals with disabilities outside that order who have an immediate need for equipment or services to maintain employment.

WIOA enhances the VR agency's focus on coordination and collaboration with other entities by emphasizing coordination with employers, non-educational agencies working with youth, AIVRS programs, and other agencies and programs providing services to individuals with disabilities to support the achievement of competitive integrated employment. Proposed §361.24 reflects the enhancements. The collaboration with employers is essential to the success of VR program participants and proposed §361.32 would describe the training and technical

assistance services that can be provided to employers hiring, or interested in hiring, individuals with disabilities.

We propose to implement the emphasis on serving students and youth with disabilities contained in the amendments to the Act made by WIOA in many regulatory changes to part 361. We propose new definitions of "student with a disability" and "youth with a disability" in §361.5(c)(51) and (c)(59), respectively. These definitions would assist VR agencies to determine the appropriate transition and other services that may be provided to each group. We propose in §361.48(a) to implement the requirements of new sections 110(d) and 113 of the Act requiring VR agencies to reserve at least 15 percent of the Federal allotment, to provide and arrange, in coordination with local educational agencies, for the provision of pre-employment transition services to students with disabilities. We propose in §361.49 to clarify the technical assistance VR agencies can provide to educational agencies and to permit the provision of transition services for the benefit of groups of students and youth with disabilities. To enable VR agencies and local educational agencies to better determine their respective

responsibilities for the provision of transition services, including pre-employment transition services, through greater interagency collaboration, we propose in §361.22(c) to clarify that nothing in this part is to be construed as reducing the responsibility of the local educational agencies or any other agencies under the Individuals with Disabilities Education Act to provide or pay for transition services that are also considered to be special education or related services necessary for the provision of a free appropriate public education to students with disabilities.

So that VR agencies can recruit the qualified personnel needed to provide the services and engage in the activities summarized here, we propose in §361.18 changes to the requirements for a comprehensive system of personnel development. The proposed regulations would establish minimum educational requirements and experience and eliminate the requirement to retrain staff not meeting the VR agency's personnel standard for qualified staff.

Finally, we propose changes to part 361 to improve the fiscal administration of the VR program. Proposed §361.5(b) would make applicable to the VR program the definitions contained in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit

Requirements. We also propose to make numerous conforming changes to align with 2 CFR 200 to ensure consistency.

We propose three changes to current §361.65 regarding the allotment of VR program funds. First, we propose adding a new paragraph (a)(3) to §361.65 that would require the State to reserve not less than 15 percent of its allotment for the provision of pre-employment transition services described in proposed §361.48(a). Second, we propose to amend current §361.65(b)(2) to clarify that reallotment occurs in the fiscal year the funds were appropriated; however, the funds may be obligated or expended during the period of performance, provided that matching requirements are met. Finally, we propose to add a new paragraph (b)(3) to §361.65 that would describe the Secretary's authority to determine the criteria to be used to reallot funds when the amount requested exceeds the amount of funds relinquished. We provide a full discussion of these and other changes to part 361 in the Significant Proposed Regulations section of this notice.

State Supported Employment Services Program

Under the Supported Employment program authorized under title VI of the Act (29 U.S.C. 795g et seq.), the Secretary provides grants to assist States in developing

and implementing collaborative programs with appropriate entities to provide supported employment services for individuals with the most significant disabilities, including youth with the most significant disabilities, to enable them to achieve supported employment outcomes in competitive integrated employment. Grants made under the Supported Employment program supplement grants issued to States under the VR program (34 CFR part 361).

The regulations in 34 CFR part 363, governing the Supported Employment program, were last updated February 18, 1993 (59 FR 8331). Therefore, the changes proposed in part 363 would incorporate statutory changes made by WIOA, as well as update the regulations to improve the program and ensure consistency with changes proposed for part 361 governing the VR program.

The changes made to the Supported Employment program by WIOA are intended to ensure that individuals with the most significant disabilities, especially youth with the most significant disabilities, are afforded a full opportunity to prepare for, obtain, maintain, advance in, or re-enter competitive integrated employment, including supported or customized employment. Proposed §363.1 would require that supported employment be in competitive

integrated employment or, if not, in an integrated setting in which the individual is working toward competitive integrated employment on a short-term basis not to exceed six months. Proposed §363.50(b)(1) would extend the time from 18 months to 24 months for the provision of supported employment services. Proposed §363.22 would require a reservation of 50 percent of a State's allotment under this part for the provision of supported employment services, including extended services, to youth with the most significant disabilities. Proposed §363.23 would require not less than a 10 percent match for the amount of funds reserved to serve youth with the most significant disabilities. Proposed §363.51 would reduce the amount of funds that may be spent on administrative costs.

Limitation on Use of Subminimum Wages

The Secretary proposes to promulgate new regulations in part 397 to implement new requirements for designated State units (DSUs) and educational agencies under the purview of the Department that are imposed by section 511 of the Act, which was added by WIOA. Section 511 imposes limitations on employers who hold special wage certificates, commonly known as 14(c) certificates, under the FLSA (29 U.S.C. 214(c)) that must be satisfied before

the employers may hire youth with disabilities at subminimum wage or continue to employ individuals with disabilities of any age at the subminimum wage level. The proposed regulations in part 397 focus exclusively on the related roles and responsibilities of educational agencies and DSUs for the VR program. The proposed regulations in part 397 are consistent with the changes proposed for parts 361 and 363, which govern the VR program and Supported Employment program, respectively.

Through amendments to the Act, WIOA prioritizes, and places heightened emphasis upon, the provision of services that maximize opportunities for competitive integrated employment for individuals with disabilities, including those with the most significant disabilities, consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. WIOA also places heightened emphasis on the provision of services necessary to assist youth with disabilities to achieve competitive integrated employment in the community, including supported or customized employment. To that end, amendments to the Act require DSUs to reserve specified percentages of their VR or supported employment allotments for the provision of

services to students or youth with disabilities, as applicable. These amendments, along with the addition of section 511, demonstrate the intent that individuals with disabilities, especially youth with disabilities, must be afforded a full opportunity to prepare for, obtain, maintain, advance in, or re-enter competitive integrated employment.

Section 511 places limitations on the payment of subminimum wages by entities (e.g., employers) holding special wage certificates under the FLSA. In particular, such employers are prohibited from hiring youth with disabilities at a subminimum wage level unless the youth are afforded meaningful opportunities to access services, including transition services under the Act or IDEA, so they may achieve competitive integrated employment in the community. For the purposes of these requirements, a "youth with a disability" is anyone who is 24 years or younger. This age range is consistent with the definition of a "youth with a disability" in section 7(42) of the Act. Additionally, employers are prohibited from continuing to employ individuals with disabilities, regardless of age, at the subminimum wage level unless other requirements are satisfied. Specifically, the individual with a disability,

or the individual's parent or guardian if applicable, must receive certain information and career counseling-related services from the DSU every six months during the first year of such employment and annually thereafter for as long as the individual receives compensation at the subminimum wage level.

In addition to the requirements imposed on employers holding special wage certificates, section 511 of the Act requires DSUs to provide certain career counseling services. Further, educational agencies and the DSUs must develop a process, or use an existing process, for the timely provision of documentation necessary to demonstrate completion of required activities, as appropriate, to youth seeking employment, at a subminimum wage level. Finally, DSUs must provide documentation of the provision of career counseling and information and referral services to individuals with disabilities, regardless of age, who are currently employed at a subminimum wage level.

The proposed regulations in this part focus exclusively on those requirements under the purview of the Department of Education. To that end, we propose in part 397: (1) documentation requirements that local educational agencies and DSUs would be required to satisfy;

and (2) information and career counseling-related services DSUs would be required to provide. Requirements imposed on employers are under the purview of the Department of Labor, which administers the FLSA.

Significant Proposed Regulations

The Secretary proposes to amend the implementing regulations for the VR program (part 361) and the Supported Employment program (part 363). The Secretary also proposes to issue new regulations in part 397 to implement limitations on the payment of subminimum wages to individuals with disabilities. We discuss substantive issues within each subpart, by section or subject.

Generally, we do not address proposed changes that are technical or otherwise minor in effect, such as changes to the authority cited in the Act.

Part 361 State Vocational Rehabilitation Services Program

Organizational Changes

Although the proposed regulations maintain the current structure of subparts A, B, and C, we propose organizational changes to other subparts within this part. First, we propose to reserve subparts within part 361 where we plan to incorporate the three subparts we are proposing in a separate, but related, NPRM (the joint regulations

proposed by the Departments of Education and Labor implementing changes to title I of WIOA) published elsewhere in this issue of the Federal Register. Please see that NPRM for more information about how these subparts will be incorporated into part 361. Second, we propose to remove §§361.80 through 361.89, since the VR-specific standards and indicators are no longer applicable given amendments made by WIOA. Finally, we propose to eliminate Appendix A to current part 361 – Questions and Responses. We will consider issuing guidance after the publication of the final regulations.

Purpose (§361.1)

Statute: Section 100(a)(1)(C) of the Act, as amended by WIOA (29 U.S.C. 720(a)(1)(C)), highlights competitive integrated employment as the type of employment that individuals with disabilities, including individuals with the most significant disabilities, are capable of achieving if appropriate supports and services are provided. This section, as revised, also incorporates economic self-sufficiency as a criterion to consider when providing VR services to an individual. The focus on competitive integrated employment is also reflected in changes made to section 100(a)(3)(B) of the Act.

Current Regulations: Current §361.1(b) refers only to gainful employment, not competitive integrated employment. It also does not include economic self-sufficiency as a criterion to consider when providing VR services.

Proposed Regulations: We propose to amend current §361.1(b) by: (1) replacing the term "gainful employment" with "competitive integrated employment"; and (2) incorporating "economic self-sufficiency" as a new criterion that must be considered to ensure that the VR services provided are consistent with the individual's unique circumstances.

Reasons: The regulatory changes are necessary to implement statutory amendments to section 100 of the Act that emphasize the ability of individuals with disabilities, including individuals with the most significant disabilities, to achieve competitive integrated employment, not "gainful employment," the term previously used under the Act, as amended by WIA. We believe this change is significant given that section 7(5) of the Act, as amended by WIOA, includes a new term, "competitive integrated employment," that includes mandatory criteria related to, among other things, compensation, advancement, and the integrated nature of the workplace. We also believe it is

significant that Congress added economic self-sufficiency to the list of areas that must be considered when providing VR services to an individual because it reinforces a key element of "competitive integrated employment," namely requirements related to compensation and benefits.

See the discussion of the term "competitive integrated employment" in this Significant Proposed Regulations section of the notice for a full explanation of this term for purposes of the VR program.

Applicable Definitions (§361.5)

Definitions in 34 CFR 77.1

Statute: None.

Current Regulations: Current regulations highlight only a few terms contained in 34 CFR 77.1.

Proposed Regulations: In paragraph (a) of §361.5, we propose to incorporate by reference all definitions contained in 34 CFR 77.1.

Reasons: This change is necessary to clarify that all definitions in 34 CFR 77.1 are applicable to part 361.

Adoption of 2 CFR part 200

Statute: None.

Current Regulations: Current §361.5, which contains definitions relevant to the VR program and was last updated

in 2001, does not include definitions from 2 CFR part 200 since those regulations were promulgated in 2014.

Proposed Regulations: We propose redesignating current paragraph (b) as paragraph (c) and adding a new paragraph (b) that incorporates by reference all definitions in 2 CFR part 200, Subpart A (Uniform Administrative Requirements, Cost Principles, and Audit Requirements). Proposed substantive changes to paragraph (c) will be discussed throughout this NPRM in conjunction with the relevant topical discussion.

Reasons: OMB issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards on January 1, 2014. The new regulations supersede and streamline requirements from OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133, as well as the guidance in Circular A-50 on Single Audit Act follow-up. These regulations, codified in 2 CFR part 200, have been adopted by the Secretary in 2 CFR part 3474, which took effect on December 26, 2014. Consequently, terms and definitions that previously were not used in the VR program, such as "subaward" (2 CFR 200.92), will be applicable given the Department's adoption of 2 CFR part 200.

Administrative Cost

Statute: Section 7(1) of the Act, which defines "administrative costs," remains unchanged by WIOA.

Current Regulations: The current definition in §361.5(b)(2) mirrors the statute and defines "administrative costs" as including, among other things, the costs of operating and maintaining DSU facilities, equipment, and grounds.

Proposed Regulations: We propose to amend §361.5(c)(2)(viii), as redesignated by other changes made in this part, by clarifying that operating and maintenance expenses, for purposes of the definition of "administrative costs" for the VR program, do not include capital expenditures, as defined in 2 CFR 200.13.

Reasons: The proposed change is necessary to clarify the scope of administrative costs, with regard to operating and maintenance expenditures, thereby ensuring consistency with 2 CFR part 200. There has been confusion among VR grantees as to whether operating or maintenance expenses, in the context of administrative costs, include capital expenditures. Operating or maintenance expenses in the context of administrative costs under the VR program are those costs incurred to maintain facilities, equipment, and

grounds in good working order; whereas, capital expenditures, as defined in 2 CFR 200.13, are those expenditures that "materially increase their value or useful life." We want to make clear that capital expenditures are permitted under the VR program in accordance with 2 CFR 200.439, but not as an administrative cost.

Assessment for Determining Eligibility and Vocational Rehabilitation Needs

Statute: Section 7(2)(B)(v) of the Act, as amended by WIOA (29 U.S.C. 705(2)), adds a new requirement that VR agencies must, to the maximum extent possible, rely on information from the individual's experiences obtained in an integrated employment setting in the community or in other integrated community settings when using existing information or conducting a comprehensive assessment for determining eligibility and the need for VR services for an individual with a disability.

Current Regulations: Current §361.5(b)(6) defines "assessment for determining eligibility and vocational rehabilitation needs," but does not include the requirement related to reliance on information about the individual's

experiences in integrated settings because this is a new statutory requirement.

Proposed Regulations: We propose to amend the current regulations to conform to the statute in section 7(2)(B) of the Act by adding language to the definition of "assessment for determining eligibility and vocational rehabilitation needs" in proposed §361.5(c)(5)(ii)(E) that would make clear that a comprehensive assessment, to the maximum extent possible, relies on information obtained from the eligible individual's experiences in integrated employment settings in the community and other integrated settings in the community.

Reasons: WIOA places a heightened emphasis on the achievement of competitive integrated employment by individuals with disabilities. To that end, amendments made by WIOA require that assessments for determining eligibility and VR needs of individuals with disabilities must rely on information about the individual's experiences in integrated employment and in other integrated community settings. The Act clearly places an emphasis on integrated settings by requiring that VR agencies rely on information learned from the individual's experiences in these settings, to the maximum extent possible, when conducting

an assessment. Nonetheless a DSU is not precluded from determining an individual's eligibility for VR services based on other information obtained through the assessment process when the individual cannot participate in integrated community-based work experiences.

Assistive Technology Terms

Statute: Section 7(3) of the Act, as amended by WIOA (29 U.S.C. 705(3)), adds a new definition of "assistive technology" and combines the previous definitions of "assistive technology device" and "assistive technology service" under the heading "assistive technology terms."

Current Regulations: Current §361.5(b)(7) defines "assistive technology device" and current §361.5(b)(8) defines "assistive technology service." There is no definition for "assistive technology" since this is a new statutory term.

Proposed Regulations: We propose to add the heading "assistive technology terms" in proposed §361.5(c)(6), under which we would incorporate definitions for the new term "assistive technology" and for the existing terms "assistive technology device" and "assistive technology service." We also propose to delete current §361.5(b)(7)

and (b)(8), as these separate definitions would no longer be necessary.

Reasons: The proposed changes are necessary to implement the new statutory definition in section 7(3) of the Act, as amended by WIOA. The proposed definition streamlines the definitions of the various terms by referencing the Assistive Technology Act of 1998.

Competitive Integrated Employment

Statute: WIOA adds a new term, "competitive integrated employment," in section 7(5) of the Act (29 U.S.C. 705(5)). Although this is a new statutory term, the term and its definition generally represent a consolidation of two separate definitions and their terms in current regulations—"competitive employment" and "integrated setting." In addition, the new statutory definition incorporates a criterion related to advancement in employment that is not included in either of the two current regulatory definitions.

Current Regulations: Current §361.5(b)(11) defines "competitive employment" and current §361.5(b)(33) defines "integrated setting." Current regulations do not define "competitive integrated employment" since this is a new statutory term.

Proposed Regulations: We propose to replace the term "competitive employment" in current §361.5(b)(11) with the new term "competitive integrated employment" in proposed §361.5(c)(9). The proposed definition of "competitive integrated employment" would mirror the statutory definition in section 7(5) of the Act, as amended by WIOA, as well as provide two clarifications with respect to the criteria for integrated work locations.

First, proposed §361.5(c)(9)(ii)(A) would clarify that the employment location must be in "a setting typically found in the community." Second, proposed §361.5(c)(9)(ii)(B) would clarify that the employee with a disability's interaction with other employees and others, as appropriate (e.g., customers and vendors), who are not persons with disabilities (other than supervisors and service providers) must be to the same extent that employees without disabilities in similar positions interact with these same persons. This interaction must occur as part of the individual's performance of work duties and must occur both in the particular work unit and the entire work site, as applicable. We further propose to amend the definition of "integrated setting" in proposed §361.5(c)(32)(ii) to conform to the clarifications provided

in the proposed definition of "competitive integrated employment" in proposed §361.5(c)(9)(ii) to ensure consistency between the two terms.

Finally, we propose to replace the terms "competitive employment" and "employment in an integrated setting," as appropriate, with "competitive integrated employment" throughout this part.

Reasons: These proposed changes are necessary to implement and to clarify statutory amendments made by WIOA. Because the proposed definition of "competitive integrated employment" reflects, for the most part, a consolidation of two existing regulatory definitions, the substance of this proposed definition is familiar to DSUs and does not represent a divergence from current regulations, long-standing Department policy, practice, and the heightened emphasis on competitive integrated employment throughout the Act, as amended by WIOA.

In implementing these proposed regulations and determining whether an individual with a disability has achieved an employment outcome in "competitive integrated employment," a DSU must consider, on a case-by case-basis, each of the criteria described in the proposed definition of "competitive integrated employment." While most of the

criteria are familiar and self-explanatory, we believe additional guidance is warranted here to explain those few new criteria contained in the statutory and proposed regulatory definitions, especially with regard to the criteria for an integrated employment setting. As a result, we further explain these criteria, highlighting those aspects that historically have raised the most questions from DSUs.

Competitive Earnings: The compensation criteria of the proposed definition of "competitive integrated employment," which mirror the statutory definition, are consistent with those found in the current regulatory definition of "competitive employment" in §361.5(b)(11). Proposed §361.5(c)(9)(i)(A) would continue to require that, to be considered "competitive integrated employment," the individual must perform full- or part-time work in which he or she earns at least the higher of the minimum wage rate established by Federal or applicable State law. Because several jurisdictions have established minimum wage rates substantially higher than those provided for under Federal or State law, the statutory definition and proposed §361.5(c)(9)(i)(A) would require that the individual's earnings be at least equal to the legally established local

minimum wage rate if that rate is higher than both the Federal and State rates. Also, as has been the case under the current definition of "competitive employment," section 7(5) of the Act requires and proposed §361.5(c)(9)(i)(D) would require that the individual with the disability must be eligible for the same level of benefits provided to employees without disabilities in similar positions. In implementing the statute, the proposed definition would establish additional criteria with respect to competitive earnings. First, proposed §361.5(c)(9)(i)(B) would require that the DSU take into account the training, experience, and level of skills possessed by the employees without disabilities in similar positions. Second, the proposed definition recognizes that individuals, with or without disabilities, in self-employment may not receive an income from the business equal to or exceeding applicable minimum wage rates, particularly in the early stages of operation. Hence, proposed §361.5(c)(9)(i)(C) would clarify that self-employed individuals with disabilities can be considered to be receiving competitive compensation if their income is comparable to that of individuals without disabilities in similar occupations or performing similar tasks who possess the same level of training, experience, and skills.

Finally, to ensure consistency with the American Indian Vocational Rehabilitation Services program under part 371, we interpret subsistence employment as a form of self-employment common to cultures of many American Indian tribes.

Integrated Location: While the integrated setting criteria of the proposed definition of "competitive integrated employment" are consistent with the statutory definition in section 7(5)(B) of the Act, as amended by WIOA, and the current definition of "integrated setting" in §361.5(b)(33)(ii), the proposed definition would provide important clarifications that are necessary to ensure consistency with expressed congressional intent and current Departmental guidance.

First, we propose to require that the work location be in "a setting typically found in the community" as required by current §361.5(b)(33)(ii), meaning that an integrated setting must be one that is typically found in the competitive labor market. This particular criterion is included in the current definition of "integrated setting" and, thus, its incorporation in the proposed definition of "competitive integrated employment" would ensure consistency between the two terms. Furthermore, this long-

standing Department interpretation is consistent with the expressed congressional intent throughout the Act, as well as with past legislative history. Specifically, integrated setting "…is intended to mean a work setting in a typical labor market site where people with disabilities engage in typical daily work patterns with co-workers who do not have disabilities; and where workers with disabilities are not congregated…" (Senate Report 105-166, page 10, March 2, 1998). Therefore, we continue to maintain the long-standing Department policy that settings established by community rehabilitation programs specifically for the purpose of employing individuals with disabilities (e.g., sheltered workshops) do not constitute integrated settings because these settings are not typically found in the competitive labor market. We believe this criterion of the integrated setting component of the proposed definition of competitive integrated employment is the first of two thresholds that must be satisfied.

Second, once the first threshold is met, we believe it is essential, consistent with the current definition of "integrated setting," that individuals with disabilities have the opportunity to interact with non-disabled co-workers during the course of performing their work duties

to the same extent that their non-disabled co-workers have to interact with each other when performing the same work. To that end, proposed §361.5(c)(9)(ii)(B) would clarify that "other persons" as used in the statutory definition means other employees without disabilities with whom the employee with the disability works within the specific work unit and from across the entire work site. We want to make clear that this proposed clarification is contained, more generally, in the current definition of "integrated setting." Furthermore, we believe this clarification is consistent with congressional intent, past legislative history, current Departmental guidance, and current regulations.

Historically, this element regarding integrated settings has raised many questions; therefore, we provide specific clarity with regard to certain job settings in which employees primarily interact with persons from outside the work unit, such as vendors and customers, rather than each other, while performing their job duties. We believe the focus of whether the setting is integrated should be on the interaction between employees with and without disabilities, and not solely on the interaction of employees with disabilities with people outside of the work

unit. For example, the interaction of individuals with disabilities employed in a customer service center with other persons over the telephone, regardless of whether these persons have disabilities, would be insufficient by itself to satisfy the definition. Instead, the interaction of primary consideration should be that between the employee with the disability and his or her colleagues without disabilities in similar positions.

Nonetheless, we recognize that individuals who are self-employed or who telecommute may interact more frequently with persons such as vendors and customers than with other employees. Since these persons often work alone from their own homes rather than together in a single location, and may have little contact with fellow employees, we have long maintained that self-employment and telecommuting are considered to meet the criteria for an integrated location, so long as the employee with the disability interacts with employees in similar positions and other persons without disabilities to the same extent that these persons without disabilities interact with others, though this interaction need not be face-to-face.

The proposed definition of "competitive integrated employment" would further clarify, consistent with the

general principles contained in the current definition of "integrated setting," that the DSU is to consider the interaction between employees with disabilities and those without disabilities that is specific to the performance of the employee's job duties, and not the casual, conversational, and social interaction that takes place in the workplace. As a result, it would not be pertinent to its determination of an integrated setting for a DSU to consider interactions in the lunchrooms and other common areas of the work site in which employees with disabilities and those without disabilities are not engaged in performing work responsibilities. This determination, particularly with regard to the level of interaction, would be applicable regardless of whether the individual with a disability is an employee of the work site or a community rehabilitation program hires the individual with a disability under a service contract for that work site. Specifically, individuals with disabilities hired by community rehabilitation programs to perform work under service contracts, either alone or in groups(e.g., landscaping or janitorial crews), whose interaction with persons without disabilities (other than their supervisors and service providers) is with persons working in or

visiting the work locations (and not with employees of the community rehabilitation programs without disabilities in similar positions) would not be performing work in an integrated setting. In summary, the DSU must determine, on a case-by-case basis, that a work location is in an integrated setting if it both is typically found in the community, and is one in which the employee with the disability interacts with employees and other persons, as appropriate to the position, who do not have disabilities to the same extent that employees without disabilities interact with these persons. Finally, the DSU is to consider the interaction between the employee with the disabilities and these other persons that takes place for the purpose of performing his or her job duties, not mere casual and social interaction.

Opportunities for Advancement: To ensure that the employment of persons with disabilities is equivalent in all respects to that of persons without disabilities, section 7(5) of the Act, as amended by WIOA, establishes a new criterion not contained in current regulations. Proposed §361.5(c)(9)(iii) mirrors the language in section 7(5) of the Act and would require that the employee with the disability have the same opportunities for advancement

as employees without disabilities in similar positions. We believe this new criterion is consistent with current definitions of "competitive employment" and "integrated settings" and should pose no hardship on DSUs to implement.

As explained here, the definition of "competitive integrated employment" in section 7(5) of the Act, as amended by WIOA, and as proposed in §361.5(c)(9) establishes three essential criteria of employment--income (earnings and benefits), integration, and advancement--thereby ensuring that individuals with disabilities are provided through the VR program the full opportunity to participate in the same jobs available to persons without disabilities in the public.

Again, we want to make clear that two of the criteria--those related to compensation and the integrated nature of the worksite--are similar, if not identical, to criteria contained in the current definitions of "competitive employment" and "integrated setting." Thus, the substance of this definition is familiar to the DSUs and should pose no hardship to implement.

Customized Employment

Statute: Section 7(7) of the Act, as amended by WIOA (29 U.S.C. 705 (7)), adds and defines the term "customized

employment," which means, in general, competitive integrated employment designed to meet both the specific abilities of the individual with a significant disability and the business needs of an employer.

Current Regulations: None.

Proposed Regulations: We propose to add §361.5(c)(11), to define "customized employment" to mirror the statute.

Reasons: The proposed regulation is necessary to implement the new statutory term and definition because the Act, as amended by WIOA, uses the term in a variety of contexts, including incorporating it into definitions of employment outcome and supported employment, and incorporating it into the list of individualized services permissible under the VR program. Customized employment provides flexibility in developing individualized and customized strategies that are specific to an individual with a significant disability's unique needs, interests, and capabilities, through the use of flexible strategies that meet the needs of both the individual and the employer.

Employment Outcome

Statute: Section 7(11) of the Act, as amended by WIOA, revises the definition of "employment outcome" to include customized employment within its scope.

Current Regulations: Current §361.5(b)(16) defines "employment outcome," but does not include customized employment since this is a new statutory requirement.

Proposed Regulations: We propose to amend the definition of "employment outcome" in §361.5(c)(15), as redesignated by other changes made in this part, to specifically identify customized employment as an employment outcome under the VR program. We also propose to amend the definition to require that all employment outcomes achieved through the VR program be in competitive integrated employment or supported employment, thereby eliminating uncompensated outcomes from the scope of the definition for purposes of the VR program.

Furthermore, we propose to amend current §361.37(b) to expand the scope of those circumstances when the DSU must provide referrals to other programs and service providers for individuals who choose not to pursue an employment outcome under the VR program. Similarly, we propose to amend current §361.43(d) to expand the requirement for the referral of individuals found ineligible for VR services or determined ineligible subsequent to the receipt of services to also include appropriate State, Federal, and local

programs, and community service providers better suited to meet their needs.

Reasons: The proposed changes are necessary, in part, to implement statutory changes to the definition of "employment outcome" that include reference to "customized employment." See the discussion of "customized employment" earlier in this preamble for further information regarding this type of employment outcome.

The proposed change that would limit the scope of employment outcomes under the VR program to competitive integrated employment or supported employment is necessary to implement the heightened emphasis of the Act on the achievement of competitive integrated employment. The Act, as amended by WIOA, makes clear--from the stated purpose of the Act, the addition of new requirements governing the development of individualized plans for employment and the transition of students and youth from school to post-school activities, and new limitations on the payment of subminimum wages--that individuals with disabilities, particularly those with significant disabilities, are able to achieve the same high-quality jobs in the competitive integrated labor market as persons without disabilities if they are provided appropriate services and supports. The

amendments made by WIOA are consistent with and further other changes made over the past four decades, with each reauthorization, that have placed increasing emphasis on the achievement of competitive employment in an integrated setting through the VR program. See the discussion regarding "competitive integrated employment" earlier in this preamble.

It is in this context that we propose to amend the definition of "employment outcome," for purposes of the VR program, to include only those outcomes that meet the requirements of competitive integrated employment (including customized employment, self-employment, telecommuting or business ownership), or supported employment, thereby eliminating from the scope of the definition, under the VR program, uncompensated outcomes, such as homemakers and unpaid family workers. We believe this proposed change is consistent with the statutory definition of "employment outcome" in section 7(11) of the Act, as well as the pervasive emphasis in the Act on the achievement of competitive integrated employment by individuals with disabilities, including those with the most significant disabilities. Given this emphasis, we believe the proposed change, not to include, within the

scope of employment outcomes, uncompensated outcomes, such as homemakers and unpaid family workers, is consistent with the provisions of the Act.

We believe the proposed changes to the definition, while essential to fulfilling the expectation in the Act that individuals with disabilities, particularly individuals with significant disabilities, are capable of pursuing competitive integrated employment, should not cause significant difficulty for most State VR units in their administration of the VR program. Nationally, only a relatively small number of individuals currently exit the VR program as homemakers or unpaid family workers. Over the past 35 years the percentage of such outcomes has steadily and significantly decreased. For example, in FY 1980 homemaker outcomes as a percentage of all employment outcomes reported nationally to the Department by VR agencies through the VR program Case Service Report for the years FY 1980 through FY 2013 approximated 15 percent. This percentage dropped to 5.2 percent in FY 1999, and to 3.4 percent in FY 2004. By FY 2013, the most recent year for which data is available, this percentage had declined to 1.9 percent. There has been a similar decline in reported unpaid family workers. According to data reported

by VR agencies through the VR program Case Service Report, in FY 2000, 642 individuals were reported in the category of unpaid family worker. By FY 2013, the most recent year for which we have data, only 135 individuals were reported to have obtained an unpaid family worker outcome. National data indicates that approximately 0.2 percent or less of all the outcomes reported annually by DSUs are unpaid family worker outcomes.

While we recognize that some VR agencies have a greater percentage of homemaker and unpaid family worker outcomes than others, particularly those agencies serving individuals who are blind and visually impaired, it is also evident that the majority of DSUs have been placing increased importance and emphasis on competitive employment outcomes, in their policies and procedures, as the optimal employment outcome and deemphasizing uncompensated outcomes. This shift in practice has been the product of the DSUs responding to the intent of the Act and translating that intent into their administration of the VR program. Nevertheless, we recognize that this proposed change could represent a significant shift in practice for a few VR agencies, particularly those with high percentages of individuals achieving employment outcomes as homemakers

or unpaid family workers. These agencies may be providing services to assist individuals to obtain homemaker and unpaid family worker outcomes at the time the final regulations become effective. To allow these agencies to complete the VR process for these individuals, we are considering a transition period of six months following the effective date of the final regulations for the implementation of this proposed change. We are interested in receiving comments about providing such a transition period.

Since FY 2004, through monitoring of the VR program, we have reviewed the attainment of homemaker outcomes and have found that VR agencies sometimes assist individuals to exit the program as homemakers to provide an alternate resource for the provision of independent living services that are otherwise available from the State Independent Living Services, Centers for Independent Living, and Independent Living Services for Older Individuals Who Are Blind programs. To ensure that individuals who choose to pursue homemaker and unpaid family worker outcomes, or who are determined ineligible for VR services either at the time of application or following the provision of services, are able to access independent living and other

rehabilitation services, we propose to expand the scope of §§361.37(b) and 361.43(d) so that these circumstances would be among those when DSUs must refer these individuals to public and private agencies better suited to meet their needs. These current regulatory provisions are limited to those individuals who choose to pursue extended employment, which does not constitute an employment outcome under the VR program. As proposed, §§361.37(b) and 361.43(d) would be more broad, thus encompassing those individuals who choose to pursue uncompensated employment, such as homemakers and unpaid family workers, as well as those who choose to pursue extended employment.

The resources available through the independent living programs have expanded exponentially since FY 1992. Specifically, the number of Part C-funded centers for independent living has tripled since FY 1993, from 120 to 356 presently, including 20 new centers for independent living established in FY 2010 through funding under the American Recovery and Reinvestment Act of 2009. In addition, funding for the Independent Living Services for Older Individuals Who Are Blind program has increased since FY 1992, from $6,500,000 to approximately $33,000,000 in FY 2014. While we recognize that this proposed change would

place the responsibility for making these referrals on DSUs, we believe that any burden associated with these requirements is outweighed by the benefit that individuals with disabilities would gain by having access to programs and services that can more appropriately meet their individualized needs.

Extended Services

Statute: Section 604(b) of the Act, as amended by WIOA, permits the expenditure of supported employment funds authorized under title VI, and the VR funds authorized under title I, on the provision of extended services to youth with the most significant disabilities for a period not to exceed four years.

Current Regulation: Current §361.5(b)(20) defines "extended services," but does not mention that these services may be provided to youth with the most significant disabilities since this is a new statutory requirement.

Proposed Regulations: We propose to amend the definition in §361.5(c)(19), as redesignated by other changes made in this part, to make clear that extended services may be provided to youth with the most significant disabilities for a period not to exceed four years. The changes proposed herein are consistent with those proposed for the

Supported Employment program in part 363.

Reasons: The revisions are necessary to implement statutory changes to the Supported Employment program made by WIOA that also relate to the VR program since VR funds may be used to pay for allowable supported employment services. These proposed changes are consistent with those proposed in part 363 and discussed in more detail later in this NPRM.

Indian; American Indian; Indian American and Indian Tribe

Statute: Section 7(19) of the Act, as amended by WIOA, revises the definition of "Indian," "American Indian," "Indian American," and "Indian tribe" to further clarify those terms.

Current Regulations: Current §361.5(b)(3) defines "American Indian" to mean an individual who is a member of an Indian tribe. Current §361.5(b)(26) defines "Indian tribe" to mean 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).

Proposed Regulations: We propose to combine the definitions of "American Indian" and "Indian tribe"

currently in §361.5(b)(3) and (b)(26), respectively, to be consistent with the definition in section 7(19) of the Act, as amended by WIOA. To that end, the proposed definition in §361.5(c)(25) would make clear that the term "American Indian" includes a Native and a descendant of a Native, as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602), and expands the term "Indian tribe" to include a tribal organization, as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(1)).

Reasons: These changes are necessary to implement the revised statutory definition in section 7(19) of the Act. These changes also are necessary to ensure consistency with changes proposed to part 371, implementing the American Indian Vocational Rehabilitation Services program, contained in a separate, but related, NPRM published elsewhere in this issue of the Federal Register.

Local Workforce Development Board and Other Workforce Development Terms

Statute: Sections 7(25), 7(35), and 7(36) of the Act, as amended by WIOA, define the terms "Local workforce development board," "State workforce development board," and "Statewide workforce development system," respectively.

Current Regulations: Current §§361.5(b)(34), (b)(49), and (b)(50) define "Local workforce investment board," "State workforce investment board," and "Statewide workforce investment system," respectively.

Proposed Regulations: We propose to amend part 361 throughout, including the definitions for "Local workforce development board" in §361.5(c)(33), "State workforce development board" in §361.5(c)(49), and "Statewide workforce development system" in §361.5(c)(50), to substitute the word "development" for "investment" wherever those terms appear.

Reasons: These changes are necessary to implement revised terms used throughout WIOA. The amendments are technical in nature and do not represent a substantive change to the definitions themselves.

Supported Employment

Statute: Section 7(38) of the Act, as amended by WIOA, revises the definition of supported employment to, among other things, reference competitive integrated employment and customized employment, and requires that an individual who is employed in an integrated setting, but not in competitive integrated employment, must be working toward such an outcome on a short-term basis for such work to

qualify as supported employment.

Current Regulation: Current §361.5(b)(53) defines "supported employment" as the term was defined prior to the enactment of WIOA. There is no reference to "competitive integrated employment" or "customized employment" since these are new statutory requirements.

Proposed Regulation: We propose to amend the definition in §361.5(c)(53), as redesignated by other changes made in this part, to require that supported employment means competitive integrated employment, including customized employment, or employment in an integrated setting in which the individual is working on a short-term basis toward competitive integrated employment. We also propose, in this context, that an individual be considered to be working on a "short-term basis" toward competitive integrated employment if the individual reasonably expects achieving a competitive integrated employment outcome within six months of achieving an employment outcome of supported employment. These proposed changes are consistent with those proposed in part 363 for the Supported Employment program, discussed later in this NPRM.

Reasons: The revisions are necessary to implement the new statutory definition in section 7(38) of the Act, as

amended by WIOA, which reflects the heightened emphasis on the achievement of competitive integrated employment.

We also propose to include a definition of "short-term basis," in the context of supported employment, to give meaning to the phrase and ensure congressional intent. By limiting the timeframe, we ensure that individuals do not remain in subminimum wage employment for the purpose of achieving supported employment outcomes. The proposed changes also ensure consistency with the amendments proposed in part 363, implementing the Supported Employment program, discussed later in this NPRM.

Supported Employment Services

Statute: Section 7(39) of the Act, as amended by WIOA, revises the definition of "supported employment services" to extend the allowable timeframe for the provision of these services from 18 months to 24 months. The statute also makes other technical changes to the definition.

Current Regulation: Current §361.5(b)(54) defines "supported employment services" to include a timeframe of 18 months.

Proposed Regulations: We propose to revise the definition in §361.5(c)(54), as redesignated due to other changes made in this part, to extend the allowable timeframe for the

delivery of these services from 18 months to 24 months. We also propose to make changes that clarify the individualized and customized nature of supported employment services.

Reasons: The revisions are necessary to implement the new definition of "supported employment services" in section 7(39) of the Act, as amended by WIOA. Most importantly, the proposed definition extends the allowable timeframe for the provision of supported employment services from 18 to 24 months. The proposed changes also ensure consistency with revisions proposed in part 363, implementing the Supported Employment program, discussed later in this NPRM.

Submission, Approval, and Disapproval of the State Plan (§361.10)

Statute: Section 101(a)(1) of the Act, as amended by WIOA, requires that, a "vocational rehabilitation services portion" be included in a State's Unified State Plan in accordance with section 102, or a Combined State Plan in accordance with section 103, of WIOA. The "vocational rehabilitation services portion" must contain all State plan requirements under section 101(a) of the Act.

Section 101(b) of the Act, as amended by WIOA, makes conforming changes with regard to the submission, approval,

and modification process for the VR services portion of the Unified or Combined State Plan.

Current Regulations: Current §361.10 includes requirements for the submission and approval process for the VR State plan. Although current §361.10(c) permits States to submit the VR State plan as part of the Unified State Plan, there is no requirement to do so.

Proposed Regulations: First, we propose to amend current §361.10(a) to require the State to submit a VR services portion of a Unified or Combined State Plan in accordance with sections 102 or 103, respectively, of WIOA to be eligible to receive its VR allotment.

Second, we propose to clarify that the VR services portion of the Unified or Combined State Plan includes all information required under section 101(a) of the Act.

Third, we propose to amend §361.10(d) by providing a cross-reference to subpart D of part 361, which is reserved for the joint regulations implementing requirements for the Unified and Combined State Plan proposed jointly by the Departments of Education and Labor. The proposed joint regulations that would implement jointly-administered activities under title I of WIOA are published elsewhere in this issue of the Federal Register. We also propose to

remove current paragraph (e) and redesignate current paragraph (f)(3) as paragraph (e), and we propose to remove the remainder of current paragraph (f) and current paragraph (g). We propose to redesignate current paragraph (h) as paragraph (f) and rename it "Due Process."

Finally, we propose to make other conforming changes throughout §361.10.

Reasons: The proposed revisions to §361.10 are necessary to: (1) implement the VR-specific amendments to sections 101(a)(1) and (b) of the Act made by WIOA; and (2) align VR-specific requirements with those contained in the joint regulations, developed by the Departments of Education and Labor, regarding the submission, approval, and modification of Unified or Combined State Plans. Taken together, these statutory amendments and proposed regulatory changes recognize that the VR services portion of the Unified or Combined State Plan is to be an integral part of the Unified or Combined State Plan, and provide the foundation for the seamless, effective, and efficient delivery of services through the collaboration and combined funding, to the extent allowable under relevant program requirements, of the workforce development system that will enable individuals with disabilities to obtain the skills

necessary to participate in the high-demand jobs of today's economy. To further the integrated nature of the VR services portion of the Unified or Combined State Plan, we request that comments to proposed revisions to §361.10 be limited to VR-specific requirements and that more general comments about the Unified or Combined State Plan be submitted in response to the proposed joint regulations published elsewhere in this issue of this Federal Register.

Requirements for a State Rehabilitation Council (§361.17)

Statute: Section 105(b)(1) of the Act, as amended by WIOA, makes a technical amendment to the composition requirement of the State Rehabilitation Council (SRC) related to section 121 projects. WIOA also amends section 105(b)(6) by requiring the SRC to include programs authorized under the Assistive Technology Act of 1998 among those agencies and organizations with which it must coordinate.

Current Regulations: Current §361.17(b)(1)(ix) requires that, in a State with projects carried out under section 121 of the Act, a representative of the directors of these projects must serve on the SRC, but it does not use the new statutory term "funded" in place of "carried out." Current §361.17(h)(6) requires the SRC to collaborate with various other entities, but does not include programs authorized

under the Assistive Technology Act of 1998 since this is a new statutory requirement. Current §361.17(h)(3) also requires the SRC to partner with the VR agency in establishing State goals and priorities and to assist in the preparation of the State plan.

Proposed Regulations: We propose to amend current §361.17(b)(1)(ix) to substitute "funded" for "carried out" in the State to mirror the statute. Additionally, we propose to amend current §361.17(h)(6) to include programs established under the Assistive Technology Act of 1998 in the list of entities with which the SRC must coordinate its activities. Finally, we propose to clarify in §361.17(h)(3) that the SRC is only required to assist in the preparation of the VR services portion of the Unified or Combined State Plan, not the entire Unified or Combined State Plan.

Reasons: The proposed changes are necessary to implement statutory amendments to section 105 of the Act made by WIOA. We believe the proposed change in §361.17(b)(1)(ix) is more technical than substantive in the context of the American Indian Vocational Rehabilitation Services program. Unlike most programs in which funds are awarded to a State or an entity in a State, the Department awards section 121

grant funds to tribes, whose reservations may cross State lines. In that context, the distinctions between "funded," as used in WIOA, and "carried out," as had been used previously, provides no substantive differences in practical meaning. For that reason, we believe this proposed change is primarily technical in nature.

The proposed inclusion in §361.17(h)(6) of the programs authorized under the Assistive Technology Act of 1998 among the entities with which the SRC must coordinate its activities would underscore the integral role that assistive technology plays in the ability of individuals with disabilities to obtain and maintain employment. Through the coordination of SRC and assistive technology program activities, SRC members would be better informed of the resources and services available in the State for the provision of assistive technology devices and training, enabling the members to more effectively advise the DSU in the State.

Finally, as discussed in proposed §361.10, title I of WIOA requires the VR program in each State to participate in a Unified or Combined State Plan with the other core programs or partner programs within the workforce development system. By replacing the term "State plan"

with the "vocational rehabilitation services portion of the Unified or Combined State Plan," we believe that members of the SRC would be responsible only for participating in the development of the goals and strategies contained in, and providing input on, the VR services portion of the Unified or Combined State Plan in accordance with the mandated activities of the SRC as set forth in proposed §361.17(h).

Comprehensive System of Personnel Development (§361.18)

Statute: Section 101(a)(7) of the Act, as amended by WIOA, makes several changes to the comprehensive system of personnel development (CSPD) that each DSU must establish to ensure its personnel are adequately trained. In particular, the amendments add specific educational and experiential criteria that must be met by VR personnel. The statute also makes other technical changes throughout this section.

Current Regulations: Current §361.18 requires a DSU to establish a CSPD that is based on either a national or State licensing or certification standard. Current regulations do not specify specific educational or experiential criteria since these are new statutory requirements.

Proposed Regulations: We propose to revise §361.18(c)(1)(ii) to mirror the statute with regard to education and experience requirements for VR personnel. Accordingly, we would ensure that personnel have a 21st-century understanding of the evolving labor force and needs of individuals with disabilities. In addition, we propose to add a new §361.18(c)(2)(ii) in which we would describe what we mean by personnel having a 21st-century understanding of the evolving labor force and needs of individuals with disabilities. We would provide examples of the skills that would demonstrate that personnel hired are appropriately qualified.

Further, we propose to amend §361.18(d)(1)(i) to require that the CSPD include training implemented in coordination with entities carrying out State programs under section 4 of the Assistive Technology Act of 1998. Finally, we propose to delete those provisions that are no longer applicable given statutory changes, such as those related to steps the State will take when personnel do not meet the highest standard in a State.

Reasons: The proposed changes are necessary to implement statutory changes made by WIOA. The changes we propose in §361.18(c)(1)(ii) would ensure that DSU staff are well-

qualified to assist individuals with disabilities to achieve competitive integrated employment in today's demanding labor market. The proposed regulations would describe education and experience, as applicable, requirements at the bachelor's, master's, and doctoral level, in fields related to rehabilitation that prepare the individual to work with individuals with disabilities and employers. For individuals hired at the bachelor's level, there also would be a requirement for at least one year of paid or unpaid experience. These proposed CSPD requirements would further the heightened emphasis throughout the Act on employer engagement and affording individuals with disabilities every opportunity to achieve competitive integrated employment.

In order to further clarify what types of skills we intend for personnel to demonstrate, we propose some illustrative examples in §361.18(c)(2)(ii), which are by no means all-inclusive but which are typically required of rehabilitation professionals hired by the DSU. Finally, in proposing to amend current §361.18(d)(1)(i) to require that the CSPD include training implemented in coordination with entities carrying out State programs under section 4 of the Assistive Technology Act of 1998, we are reflecting a new

statutory requirement that is consistent with the emphasis on coordination throughout the Act.

Public Participation Requirements (§361.20)

Statute: Section 101(a)(16)(A) of the Act requires that the State plan provide that the designated State agency, prior to the adoption or amendment of any policies or procedures governing the provision of VR services under the State plan, must conduct public meetings throughout the State to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures, and actively consult with agencies and organizations involved in the vocational rehabilitation of individuals with disabilities. This requirement remains unchanged by WIOA.

Current Regulations: Current §361.20 implements section 101(a)(16)(A) of the Act.

Proposed Regulations: We propose to clarify that the public participation requirements under current §361.20 pertain to the VR services portion of the Unified or Combined State Plan. We also propose to add paragraphs (a)(1) and (a)(2) to clarify through descriptive examples the distinction between substantive changes that would require the designated State agency to conduct a public

hearing, and administrative changes for which a public hearing need not be conducted. All other requirements for public participation as described in current §361.20(b) through (e), to the extent they are consistent with public participation requirements proposed in the joint regulations, remain unchanged in the proposed regulations, except for technical modifications to the language required by WIOA. Public participation requirements related to Unified or Combined State Plans generally are addressed through the NPRM jointly published by the Departments of Labor and Education elsewhere in this issue of the Federal Register.

Reasons: These proposed changes to current §361.20 are necessary to reflect statutory changes that require what previously was a stand-alone VR State plan to be submitted as a VR services portion of the Unified or Combined State Plan under WIOA. Additionally, by clarifying what is meant by a substantive change—that is, a change that would have a direct impact on the nature and scope of the VR services provided to individuals with disabilities or the manner in which these individuals interact with the State VR program, as opposed to a change that is purely administrative or technical in nature—State VR agencies would better

understand when they must conduct a public hearing, specific to the VR program. The ability to provide comments and input at public hearings is an important mechanism for strengthening the voice of community stakeholders and ensuring that any changes to the implementation of the VR services portion of the Unified or Combined State Plan reflect concerns and interests of those whom the program serves.

Requirements Related to the Statewide Workforce Development System (§361.23)

Statute: Section 121(b)(1)(B)(iv) of WIOA includes the VR program as a core partner of the workforce development system.

Current Regulations: Current §361.23 outlines a VR program's roles and responsibilities in the workforce investment system, as required under WIA.

Proposed Regulations: We propose to amend current §361.23(a) by cross-referencing to subpart F of part 361. We also propose to remove the remainder of this section because the substance of these requirements is contained in joint regulations developed by the Departments of Education and Labor.

Reasons: The changes are necessary to implement amendments to title I of WIOA and ensure consistency with joint regulations proposed by the Departments of Education and Labor, which are published elsewhere in this issue of the Federal Register. We ask that you submit any comments regarding the VR program's role in the one-stop delivery system in conjunction with related provisions contained in the joint proposed regulations, rather than in connection with this particular section of the proposed VR program-specific regulations.

Cooperation and Coordination with Other Entities (§361.24)

Statute: WIOA amends section 101(a)(11) of the Act by expanding the scope of entities with which the DSU must collaborate and coordinate its activities under the VR program. The new entities include, among others, employers, non-educational agencies serving out-of-school youth, programs authorized under the Assistive Technology Act of 1998, the State agency administering the State Medicaid plan, the agency responsible for serving individuals with intellectual and/or developmental disabilities, agencies responsible for providing mental health services, and other agencies serving as employment

networks under the Ticket to Work and Self-Sufficiency program.

Current Regulations: Current §361.24 requires that the State plan include assurances and descriptions, as applicable, of the DSU's interagency cooperation with various entities, but does not include the new entities required by the WIOA amendments since these are new statutory requirements.

Proposed Regulations: We propose to amend §361.24 to include the additional agencies and entities with which the DSU must coordinate its activities under the VR program, as required by section 101(a)(11) of the Act, as amended by WIOA.

Reasons: The proposed changes are necessary to implement new statutory requirements regarding the DSU's coordination with other entities. The changes are designed to ensure DSU collaboration and coordination with employers and State and Federal agencies to increase access by individuals with disabilities, especially youth and individuals with the most significant disabilities, to services and supports to assist them in achieving competitive integrated employment.

Third-party Cooperative Arrangement Requirements (§361.28)

Statute: None.

Current Regulations: Current §361.28 includes requirements related to third-party cooperative arrangements, a mechanism by which a DSU may work with another public agency to provide VR services.

Proposed Regulations: We propose to amend §361.28(a) by removing the words "administering" and "furnishing" and providing more accurate descriptions of the cooperating agency's responsibilities. Proposed §361.28(a) also would clarify that the non-Federal share provided by the cooperating agency must be consistent with the requirements in proposed §361.28(c). Proposed §361.28(a)(4) and 361.28(b) change references to "cooperative programs" and "cooperative agreements" to "cooperative arrangements" to make the language consistent throughout this section. We propose to insert a new paragraph (c) to clarify the manner in which other public agencies may contribute toward the non-Federal share under a third-party cooperative arrangement.

Reasons: With the exception of §361.28(c), the changes to this section are editorial and the minor clarifications would ensure consistent language and interpretation. Proposed §361.28(c) would list the manner in which a State agency or a local public agency could provide part or all

of the non-Federal share under a third-party cooperative arrangement. Under the proposed §361.28(c) the DSU could utilize cash transfers or certified personnel expenditures for the time cooperating agency staff spent providing direct VR services pursuant to a third-party cooperative arrangement to meet part or all of the non-Federal share. Given the prohibition in §361.60(b)(2) against using third-party in-kind contributions for match purposes under the VR program, we have not included certified expenditures for equipment and supplies as an allowable source of match under the VR program. In so doing, we avoid potential third-party in-kind contributions that could arise with such certified expenditures.

Statewide Assessment; Estimates; State Goals and Priorities; Strategies; and Progress Reports (§361.29)

Statute: Section 101(a)(15) of the Act, as amended by WIOA, makes several technical and conforming changes, as well as expands the scope of estimates that the DSUs must report and the areas of focus the States must consider in conducting their triennial needs assessment.

Section 101(a)(23) requires DSUs to assure that the State will submit to the Secretary reports required by section 101(a)(15) at such time and in such manner as the

Secretary may determine to be appropriate. This statutory requirement remains unchanged by WIOA.

Current Regulations: Current §361.29 implements the requirements of section 101(a)(15) of the Act, but does not include the new statutory requirements. The current regulations also require that the State submit reports regarding goals, strategies, and estimates annually.

Proposed Regulations: We propose to amend current §361.29 by requiring that reports and updates related to assessment, estimates, goals and priorities, and reports of progress, be submitted to the Secretary, in such time and such manner as determined by the Secretary, rather than annually. We also propose to amend the regulations to require DSUs to report estimates of the number of individuals not receiving services because of the implementation of an order of selection. We also propose to make several technical and conforming changes throughout. See related discussion of this section in the context of transition services later in this NPRM, for proposed changes related to students and youth in transition.

Reasons: The proposed changes are necessary, in part, to implement the statutory amendments to section 101(a)(15) of

the Act made by WIOA. The proposed changes also would ensure consistency in the reporting requirements imposed throughout section 101(a) of the Act, as well as in title I of WIOA since the VR State plan will be incorporated into the State's Unified or Combined State Plan as a portion of that plan.

To date, we have collected the required information through the annual submission of the VR State plan (now known as the VR services portion of the Unified or Combined State Plan), rather than through the submission of separate reports. Because the VR services portion will be submitted with all other components of the Unified or Combined State Plan every four years with modifications submitted every two years, there would be no vehicle for the submission of these annual reports without imposing additional reporting requirements on the State separate from the State plan.

By permitting the submission of the required information at a time and in a manner determined by the Secretary, rather than annually, the Secretary exercises the statutory flexibility to establish reporting requirements consistent with those for the VR services portion of the Unified or Combined State Plan under section 101(a)(1) of the Act, as amended by WIOA, and section

102(c) of WIOA, and avoid any additional burden that would be imposed on DSUs through the submission of separate reports.

Provision of Training and Services for Employers (§361.32)

Statute: Section 109 of the Act, as amended by WIOA, expands the types of training, technical assistance, and other services DSUs may provide under the VR program, to employers, who have hired or are interested in hiring individuals with disabilities. In addition, WIOA repealed the Projects with Industry program, previously authorized at title VI, part A of the Act.

Current Regulations: Current §361.32 implements requirements regarding coordination between the VR program and the Projects with Industry program. There are no current regulations that implement section 109 of the Act.

Proposed Regulations: We propose to amend §361.32 in its entirety by eliminating all requirements related to the Projects with Industry program since those requirements are no longer applicable. In its place, we propose to implement requirements regarding the types of activities DSUs may engage in with employers, pursuant to section 109 of the Act.

Reasons: The changes are necessary to implement new statutory requirements in section 109 of the Act, as amended by WIOA, as well as remove requirements that are no longer applicable to the VR program due to the repeal of the Projects with Industry program. Section 109 of the Act, as amended by WIOA, authorizes the DSU to expend VR funds for training and services for employers who are interested in hiring individuals with disabilities, thereby assisting those individuals in achieving competitive integrated employment. This training could assist employers in providing opportunities for work-based learning experiences; training employees who are individuals with disabilities; and promoting awareness of disability-related obstacles to continued employment.

The amendments made throughout WIOA place heightened emphasis on the collaboration between DSUs and employers to improve and maximize opportunities for individuals with disabilities, including those with the most significant disabilities, to achieve competitive integrated employment.

Innovation and Expansion Activities (§361.35)

Statute: Section 101(a)(18) of the Act sets forth requirements regarding innovation and expansion activities

for DSUs. This statutory provision remains unchanged by WIOA.

Current Regulations: Current §361.35 requires the State plan to assure that the State will reserve and use a portion of its VR funds to support, among other things, the resource plans for the State Rehabilitation Council and the Statewide Independent Living Council.

Proposed Regulations: Proposed §361.35 would clarify that the State must reserve a portion of its VR program funds to support the resource plan for the Statewide Independent Living Council, but it may choose not to use these funds if the Statewide Independent Living Council and the State decide to use other available resources to fund the resource plan for the Statewide Independent Living Council.

Reasons: This proposed change is consistent with the Department's longstanding interpretation of section 101(a)(18) of the Act and current §361.35. In the case of the State Rehabilitation Council, there is no other funding source available under the Act to support its resource plan. The funds for the State Rehabilitation Council must come from this section. On the other hand, the Statewide Independent Living Council has multiple funding sources that may be used to support the resource plan, including

independent living funds under title VII, part B, of the Act; State-appropriated independent living funds; and other public and private sources, to the extent allowable by those sources. Therefore, our interpretation of the requirement has been that the State and the Statewide Independent Living Council may decide in the resource plan of the Statewide Independent Living Council to use funds under this section, but do not have to use these funds. They can use other sources of available funding to fund the Statewide Independent Living Council resource plan. This interpretation would have minimal impact on States since not all States use innovation and expansion funds to support the resource plan of the Statewide Independent Living Council.

Ability to Serve all Eligible Individuals; Order of Selection for Services (§361.36)

Statute: Section 101(a)(5) of the Act, as amended by WIOA, permits DSUs to serve eligible individuals who require specific services or equipment to maintain employment, regardless of whether they are currently receiving VR services. The DSUs may serve these individuals regardless of any order of selection the State has established.

Current Regulations: Although current §361.36(a)(3) sets forth criteria a State must follow in establishing an order of selection, there is no mention of this particular discretionary exemption because this is a new statutory requirement.

Proposed Regulations: We propose to amend current §361.36(a)(3) by adding a new paragraph (v) that would require DSUs implementing an order of selection to indicate in the VR services portion of the Unified or Combined State Plan if they have elected to serve eligible individuals in need of specific services or equipment for the purpose of maintaining employment, regardless of their assignment to a priority category in the State's order of selection.

Reasons: This change is necessary to implement the amendments to the Act. Prior to the enactment of WIOA, DSUs who were on an order of selection were not permitted to serve eligible individuals who did not meet the criteria of that order, which was designed to ensure that individuals with the most significant disabilities received a priority for services when resources were limited. Section 101(a)(5) of the Act, as amended by WIOA, allows greater flexibility by permitting DSUs to serve eligible individuals, regardless of any order of selection that has

been established by the State, if those individuals require specific services or equipment to maintain employment (e.g., because the individual's disability has progressed or the individual's job duties have changed).

This statutory change, as well as the proposed regulatory change, is significant because, in effect, it creates an exemption from order of selection for eligible individuals who need a specific service or equipment in order to maintain employment. Prior to the passage of WIOA, these individuals would have been placed in the order, depending on the severity of their disability, which could have resulted in a placement on a waiting list. With the proposed regulatory change, DSUs may, at their discretion, elect to serve these individuals outside of the order of selection criteria that are otherwise in place in order to serve these individuals who could be at risk of losing employment if such services or equipment is not received. In this way, DSUs could assist these individuals, including those with significant disabilities, to maintain economic self-sufficiency, thereby reducing their potential need for publicly-funded services or benefits.

We want to make four points clear. First, proposed §361.36(a)(3)(v) is discretionary. DSUs would have the ability to serve these individuals outside of the established order and should consider doing so if financial and staff resources are sufficient. Second, if a DSU elects to do so, it must, in accordance with proposed §361.36(a)(3)(v), its plans in the VR services portion of the Unified or Combined State Plan before implementing this authority. Third, the services and equipment provided under this authority must be consistent with an individual's individualized plan for employment, in the same manner as any other service or equipment provided under the VR program. Finally, proposed §361.36(a)(3)(v) would apply to those specific services or equipment that the individual needs to maintain employment, not to other services the individual may need for other purposes.

Reports; Evaluation Standards and Performance Indicators (§361.40)

Statute: Section 101(a)(10)(C) of the Act, as amended by WIOA, expands the data that DSUs must report to include data about: students with disabilities who are receiving pre-employment transition services; individuals with open service records and the types of services they are

receiving; individuals referred to the VR program by one-stop operators; and individuals referred to these one-stop operators by DSUs. In addition, section 106 of the Act, as amended by WIOA, requires the VR program to be subject to the common performance accountability measures, established in section 116 of WIOA, applicable to core programs of the workforce development system.

Current Regulations: Current §361.40 addresses the data that a DSU must report, but does not include the new data elements since these are new statutory requirements. Current §§361.81 through 361.89 implement current evaluation standards and performance indicators applicable to the VR program. These standards and indicators do not incorporate the common performance measures since these are new statutory requirements.

Proposed Regulations: We propose to reorganize current §361.40 into two paragraphs. Proposed paragraph (a) would retain all existing provisions in current §361.40, as well as incorporate requirements regarding new VR-specific data related to individuals with open service records and the types of services they are receiving; students with disabilities receiving pre-employment transition services; and individuals referred to the State VR program by one-

stop operators and those referred to these one-stop operators by the State VR program.

In proposed paragraph (b), we provide a cross-reference to subpart E of this part, which will include the joint regulations implementing common performance measures. In so doing, we also propose to remove current §§361.80 through 361.89, as the current standards and indicators are no longer applicable to the VR program.

Reasons: The proposed changes to current §361.40 are necessary to implement amendments to the Act made by WIOA. Specifically, we include VR-specific data regarding, among others, individuals with open service records and the types of services they are receiving, as well as students with disabilities who are receiving pre-employment transition services, to ensure that the Secretary has the information needed to assess the performance of the VR program.

It is significant to note that the VR program will no longer be subject to its own set of performance standards and indicators established by the Department. Section 106 of the Act requires that the VR program comply with the common performance accountability measures established under section 116 of WIOA, which apply to all core programs of the workforce development system. To that end, the

Departments of Labor and Education have developed proposed joint regulations to implement these requirements. The proposed joint regulations regarding the performance accountability system, which will be incorporated in subpart E of this part, will be presented in a separate NPRM published elsewhere in this issue of the Federal Register. Given this significant statutory change in section 106 of the Act, we have determined that most of the provisions we had in current §§361.80 through 361.89 are no longer applicable and, therefore, we propose to remove them. We ask that you provide only comments specific to the VR program with respect to this section. Any comments regarding the common performance measures or data requirement, applicable to all core programs, should be provided in connection with the relevant provisions of the joint proposed regulations.

Assessment for Determining Eligibility and Priority for Services (§361.42)

Eligibility Criteria

Statute: Section 102(a)(1) of the Act, as amended by WIOA, makes clear that an individual with a disability, whose physical or mental impairment constitutes a substantial impediment to employment, may be determined eligible for VR

services if he or she requires services to advance in employment.

Current Regulations: Current §361.42(a)(1)(iii) specifies that the applicant may be determined eligible if he or she meets all other eligibility criteria and requires VR services to prepare for, secure, retain, or regain employment. Current regulations do not reference advancing in employment since this is a new statutory requirement.

Proposed Regulations: We propose to amend current §361.42(a)(1)(iii) to clarify that an applicant, who meets all other eligibility criteria, may be determined eligible if he or she requires VR services to advance in employment.

We also propose to clarify in current §361.42(c)(2) that a DSU must not consider an applicant's employment history, current employment status, level of education or educational credentials when determining eligibility for services.

Reasons: The proposed changes are necessary, in part, to implement statutory amendments to section 102(a)(1) of the Act made by WIOA. The proposed changes also would ensure that individuals with disabilities are able to obtain through the VR program the skills necessary to engage in the high demand jobs available in today's economy. It has

been the Department's long-standing policy that the VR program is not intended solely to place individuals with disabilities in entry-level jobs, but rather to assist them to obtain employment that is appropriate given their unique strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. The extent to which DSUs should assist eligible individuals to advance in their careers through the provision of VR services depends upon whether the individual has achieved employment that is consistent with this standard.

Furthermore, the proposed additional factors that a DSU must not consider when determining an applicant's eligibility for VR services in proposed §361.42(c)(2) would be consistent with longstanding policy. By specifically proposing the additional factors related to employment and education history in the regulation, we reinforce the requirement in section 102(a)(1)(iii) of the Act and proposed §361.42(a)(1)(iii).

Residency

Statute: Section 101(a)(12) of the Act requires that the State plan will include an assurance that the State will not impose a residence requirement that excludes from services provided under the plan any individual who is

present in the State. This provision remains unchanged by WIOA.

Current Regulations: Current §361.42(c)(1) requires that the State plan must assure that the State unit will not impose, as part of determining an applicant's eligibility for VR services, a duration of residence requirement that excludes from services any applicant who is present in the State.

Proposed Regulations: We propose to amend current §361.42(c)(1) to clarify that a DSU must not require the applicant to demonstrate a presence in the State by the production of documentation that would, under State or local law, or practical circumstances, result in a duration of residency.

Reasons: The proposed clarification in §361.42(c)(1) is consistent with our long-standing interpretation of this statutory requirement, as expressed in monitoring reports and other guidance. Many State VR agencies require individuals applying for VR services to provide documents that substantiate that the individual is present in the State and, hence, available to participate in the eligibility determination process and to receive VR services. Some forms of documentation, however, such as a

driver's license or voter registration card, may require a significant amount of time to obtain. Moreover, States or local jurisdictions may impose durational requirements prior to the issuance of some forms of documentation or identification. By proposing these changes, we would clarify that the requirement of such forms of documentation to demonstrate presence in the State constitutes a de facto duration requirement, which is prohibited by the Act. Although documents that take time to obtain may be accepted as proof of an applicant's presence in the State if available at the time of application, the DSU must permit the use of other documentation that includes sufficient information to demonstrate presence in the State, such as documentation that includes a residential address in the State.

Extended Evaluation

Statute: WIOA amends section 102(a)(2)(B) of the Act by removing the limited exception to trial work experiences, whereby VR agencies made extended evaluations available to applicants, prior to determining that an individual is unable to benefit from VR services due to the severity of the individual's disability and, thus, is ineligible for VR services. Although the term "extended evaluation" was not

referenced in the Act, this is the term used in current regulation to describe the process by which the DSUs assess an individual's ability to benefit from VR services due to the severity of disability, when the individual, under limited circumstances, is unable to participate in trial work experiences.

Current Regulations: Current §361.42(f) permits, in limited circumstances, the provision of extended evaluations to individuals with disabilities who cannot take advantage of trial work experiences, or for whom trial work experiences have been exhausted.

Current §361.41(b)(1)(ii) permits the exploration of an individual's abilities, capabilities, and capacity to perform in work situations in accordance with §361.42(e) or, if appropriate, an extended evaluation in accordance with §361.42(f).

Proposed Regulations: We propose to remove paragraph (f) from current §361.42 and redesignate (g) as (f).

Proposed §361.41(b)(1)(ii) would remove reference to extended evaluation and only permit an exploration of the individual's abilities, capabilities, and capacity to perform in work situations carried out in accordance with current §361.42(e).

Reasons: These changes are necessary to implement the amendments to section 102(a)(2)(B) of the Act made by WIOA. The proposed changes also would ensure that before a DSU make an ineligibility determination, it must conduct a full assessment of the capacity of the applicant to perform in realistic work settings, without the exception of extended evaluations.

Development of the Individualized Plan for Employment (§361.45)

Timeframe for Completing the Individualized Plan for Employment

Statute: Section 102(b)(3)(F) of the Act, as amended by WIOA, mandates that the individualized plan for employment be developed as soon as possible but no later than 90 days after the date of determination of eligibility, unless the DSU and the eligible individual agree to an extension of that timeframe.

Current Regulations: Current §361.45(e) requires the DSU to establish and implement standards for the prompt development of individualized plans for employment for eligible individuals; however, the 90-day timeframe is not included because this is a new statutory requirement.

Proposed Regulations: We propose to amend current §361.45(e) to require that the DSU develop the individualized plan for employment for each eligible individual as soon as possible, but no later than 90 days following determination of eligibility, unless the DSU and the individual agree to a specific extension of that timeframe.

Reasons: This change is necessary to implement the statutory requirement made by WIOA that VR agencies develop the individualized plan for employment within 90 days following determination of eligibility. The intent is to move all eligible individuals through the VR process with minimal delay in order to efficiently and effectively serve these individuals, resulting in the achievement of employment outcomes in competitive integrated employment. While the majority of DSUs have already adopted the 90-day timeframe, some DSUs have adopted extended timeframes that impede the efficient and effective movement of individuals through the VR process, therefore, resulting in the delay of services, and ultimately delaying the achievement of employment outcomes. Additionally, some DSUs have established interim steps or plans prior to the development of the individualized plan for employment or have adopted

longer timeframes for transition-age youth or other specific populations. The establishment of a 90-day timeframe by WIOA ensures consistency across the VR program nationally and sets the expectation that all eligible individuals receive timely services through an effective and efficient VR program with an outcome of improved VR agency performance and resulting in employment outcomes for individuals with disabilities.

Options for Developing the Individualized Plan for Employment

Statute: WIOA amends section 102(b)(1)(A) of the Act by clarifying that the DSU must provide eligible individuals with information regarding the availability of assistance in developing all or part of the individualized plan for employment from disability advocacy organizations. In addition, WIOA amends section 102(b) to require a DSU to provide to eligible individuals entitled to Social Security benefits under titles II or XVI of the Social Security Act, general information on additional supports, such as assistance with benefits planning.

Current Regulations: Current §361.45(c)(1) requires that the DSU provide eligible individuals information regarding the options for developing the individualized plan for

employment, but does not reference disability advocacy organizations since this is a new statutory requirement. Current §361.45(c)(2) requires the DSU to provide additional information to eligible individuals relevant to the development of the individualized plan for employment, but does not mention benefits planning or other information specific to Social Security beneficiaries with disabilities since this is a new statutory requirement.

Proposed Regulations: We propose to amend current §361.45(c)(1) by requiring a DSU to provide eligible individuals information about the option of requesting assistance from a disability advocacy organization when developing the individualized plan for employment. We also propose to amend current §361.45(c)(2) by adding a new paragraph (v) that would require a DSU to provide eligible individuals entitled to Social Security benefits under titles II or XVI of the Social Security Act information on assistance and supports available to individuals desiring to enter the workforce, including benefits planning.

Reasons: The proposed changes are necessary to implement the amendments to section 102(b) of the Act made by WIOA. The inclusion of disability advocacy groups as a specific source of assistance, as appropriate, for eligible

individuals in the development of the individualized plan for employment supports, and acknowledges the important role that these groups may play in mentoring an eligible individual through the VR process and in designing the plan of services that will successfully lead to an employment outcome. In coordination with the expertise of the qualified rehabilitation counselor, the experience of advocacy groups may lend a perspective and understanding of the disability-related needs, responsibilities, and services that are required to achieve the individual's employment goal. The inclusion of advocacy groups as a resource also recognizes and emphasizes the importance of self-determination, empowerment, and self-advocacy as cornerstones in rehabilitation.

By requiring that a DSU provide eligible individuals entitled to Social Security benefits under titles II or XVI of the Social Security Act with information on benefits planning, we intend that the individuals understand the implications of employment for continued receipt of their benefits so that they can make a fully informed choice of an employment goal.

Content of the Individualized Plan for Employment (§361.46)

Statute: WIOA amends section 102(b)(4) of the Act to require that the description of the specific employment goal chosen by the eligible individual, required as a mandatory component of the individualized plan for employment, be consistent with the general goal of competitive integrated employment.

Current Regulations: Current §361.46(a)(1) establishes the content requirements for the individualized plan for employment and requires that the plan include a specific employment goal based upon the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual. The regulation does not contain the new statutory requirement.

Proposed Regulations: We propose to amend current §361.46(a)(1) to require that the vocational goal selected by the individual in accordance with this section be consistent with the general goal of competitive integrated employment.

Reasons: The proposed revision to current §361.46(a)(1) is necessary to implement the statutory requirements under WIOA, and is consistent with the purpose of the VR program, which is to assist individuals with disabilities, including

those with significant disabilities, to prepare for and engage in competitive integrated employment.

Transition of Students and Youth with Disabilities

The Act, as amended by WIOA, places heightened emphasis on the provision of services to students and youth with disabilities to ensure that they have meaningful opportunities to receive the training and other services they need to achieve employment outcomes in competitive integrated employment. To that end, the Act expands not only the population of students with disabilities who may receive services but also the kinds of services that the VR agencies may provide to youth and students with disabilities who are transitioning from secondary school to postsecondary education and employment.

Most notably, section 110(d) of the Act, as amended by WIOA, requires States to reserve 15 percent of their VR allotment to provide pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services. Section 113 of the Act, as added by WIOA, outlines the services that must be provided with these reserved funds. These services are designed to be an early start at job exploration.

With the addition of these pre-employment transition services, and expansion of services to youth, the VR program can be characterized as providing a continuum of VR services, especially for students and youth with disabilities. Specifically, it can provide pre-employment transition services to any student with a disability who needs these services, regardless of whether the student has applied for or been determined eligible for VR services. In addition, section 103(b) of the Act permits the VR agency to provide transition services to groups of youth with disabilities, regardless of whether they have applied for or been determined eligible for services. If either a student or youth with a disability requires more intensive services, he or she would apply for VR services. Once determined eligible, an individualized plan for employment would be developed, which would outline the specific services that he or she may need in order to achieve an employment outcome. In sum, the VR program provides a range of services, from most basic to the most individualized and intensive service, thereby meeting the evolving needs of a student or a youth with a disability who is transitioning from school to post-school life.

This portion of the NPRM will describe the key regulatory changes we propose to implement statutory amendments related to transition services. The major substantive changes relate to certain key definitions and the provision of pre-employment transition services and transition services to groups of youth with disabilities. Throughout this section of the NPRM, we will provide additional guidance for those areas that we expect will generate significant comments. The proposed changes are presented by relevant section of the regulations.

Transition-Related Definitions (§361.5(c))

Statute: Section 7 of the Act includes several new definitions related to transition services. In particular, section 7 adds new definitions for the terms: "pre-employment transition services" in section 7(30); "student with a disability" in section 7(37); and "youth with a disability" in section 7(42). WIOA also deleted the term, "transition services," which had been defined previously in section 7(37).

Current Regulations: Current §361.5(b) contains definitions for terms relevant to the VR program, but does not define "pre-employment transition services," student

with a disability, or youth with a disability since these are new statutory terms.

Proposed Regulations: We propose to add new definitions to current §361.5(c), as redesignated elsewhere in this NPRM, for "pre-employment transition services" in proposed §361.5(c)(42); "student with a disability" in proposed §361.5(c)(51); and "youth with a disability" in proposed §361.5(c)(59). We also propose to retain the current definition for "transition services" in §361.5(c)(55), despite its removal from the statute as a defined term, since it is still used throughout the Act and the regulations in part 361. In retaining this definition, we propose to clarify that this particular service is available to both students and youth with disabilities.

Reasons: These changes are necessary to implement the amendments to the Act. Given the heightened emphasis throughout the Act on students and youth with disabilities, especially with regard to the provision of pre-employment transition services and other transition-related services, it is essential that stakeholders understand the definitions for these terms and how they can be distinguished from other terms commonly used.

For example, pre-employment transition services are those specific services specified in section 113 of the Act and implemented in proposed §361.48(a). These services, paid for with a percentage of funds reserved from the State's VR allotment, are available only to those individuals who meet the definition of a student with a disability. On the other hand, other transition-related services, including those that could be similar to pre-employment transition services, may be provided to students or youth with disabilities and do not require a specific reservation of funds (e.g., either as an individualized VR service pursuant to section 103(a) or as a service to groups pursuant to section 103(b) of the Act).

It also is important to distinguish between the terms "student with a disability" and "youth with a disability" because, as just described, different services are available for different populations. A student with a disability is an individual with a disability in school who is (1) 16 years old, or younger, if determined appropriate under the Individuals with Disabilities Education Act (IDEA), unless the State elects to provide pre-employment transition services at a younger age, and no older than 21, unless the State provides transition services under IDEA at

an older age; and (2) receiving transition services pursuant to IDEA, or is a student who is an individual with a disability for the purposes of section 504 of the Act (29 U.S.C. 794). However, it is important to note that we have interpreted a student with a disability, given the plain meaning of the statutory definition, as not including an individual with a disability in postsecondary education. A youth with a disability, on the other hand, is anyone who has a disability as defined in section 7(20) of the Act and is aged 14 to 24, regardless of whether they are in school. The terms "student with a disability" and "youth with a disability" do not affect coverage under section 504. All individuals with disabilities regardless of whether they meet the definition of "student with a disability" and "youth with a disability" continue to be covered under section 504.

Therefore, all students with disabilities would meet the definition of a youth with a disability, but not all youth with disabilities would satisfy the definition of a student with a disability. For example, an 18-year-old individual with a disability who is in secondary school and receiving services under IDEA meets both the definition of a student with a disability as well as the definition of a

youth with a disability. However, an 18-year-old with a disability who is not in school would meet only the definition of a youth with a disability.

The distinctions between these two terms are critical for purposes of the various authorities for providing transition-related services. For example, pre-employment transition services provided under proposed §361.48(a) are only available to students with disabilities; whereas transition services provided for the benefit of a group of individuals may be provided to both students and youth with disabilities under proposed §361.49(a).

Despite the removal of the definition of "transition services" from the Act, we believe it is important to retain this definition in part 361 given that the term continues to be used throughout the Act and these regulations. Therefore, we propose to retain the definition of "transition services." However, we propose to clarify that this service is available to both students and youth with disabilities in order to be consistent with proposed regulations in §§361.48(b) and 361.49(a) governing the provision of transition services.

Specific guidance about these terms and how they relate to various transition-related services will be

provided in this NPRM in conjunction with the relevant proposed regulation.

Coordination with Education Officials (§361.22)

Statute: Section 101(a)(11)(D) of the Act, as amended by WIOA, clarifies two points: 1) interagency coordination between the DSUs and educational agencies must include coordination regarding the provision of pre-employment transition services; and 2) DSUs may provide consultation and technical assistance to education officials through alternative means, such as conference calls and video conferences. This section also includes other technical changes.

In addition, WIOA adds a new section 101(c) to the Act that makes clear that nothing in the Act is to be construed as reducing the responsibility of the local educational agencies or any other agencies under IDEA to provide or pay for any transition services that are also considered to be special education or related services necessary for providing a free appropriate public education to students with disabilities.

Finally, section 511 of the Act, as amended by WIOA, imposes several requirements, particularly related to documentation of services for DSUs and State and local

educational agencies with regard to youth with disabilities seeking subminimum wage employment. Unlike the rest of the Act, which took effect upon enactment, section 511 does not take effect until July 22, 2016.

Current Regulations: Current §361.22 requires VR agencies to develop policies and procedures for coordinating with education officials to facilitate the transition of students with disabilities from education services to the provision of VR services. However, current regulations do not reference pre-employment transition services or the option of providing consultation services through alternative means since these are new statutory requirements. Current regulations also do not reference the statutory construction clause or the statutory requirements contained in section 511, as these are new statutory requirements.

Proposed Regulations: We propose to amend current §361.22(a) to incorporate reference to pre-employment transition services as an area that must be included during inter-agency coordination of transition services.

We propose to amend current §361.22(b)(1) to clarify that VR agencies may use alternative means, such as video conferences and conference calls, for providing

consultation and technical assistance to education officials. We also propose to amend current §361.22(b) by adding new clauses (5) and (6) to incorporate, by reference, certain requirements from section 511 into the formal interagency agreement between the DSU and the State educational agency.

Finally, we propose to add a new paragraph (c) under §361.22 to incorporate the construction clause in section 101(c) of the Act.

We also propose other technical or conforming changes throughout this section.

Reasons: The proposed changes to current §361.22 are necessary to implement the amendments to the Act made by WIOA. While most of the proposed changes are self-explanatory, we believe additional guidance is necessary to clarify a few of the proposed provisions.

First, section 511 of the Act, as added by WIOA, imposes certain requirements on DSUs and State and local educational agencies with regard to youth with disabilities seeking subminimum wage employment. Specifically, DSUs and local educational agencies must provide these youth with disabilities documentation demonstrating that the youth completed certain activities, such as receipt of transition

services under IDEA and pre-employment transition services under the VR program, as applicable. Section 511 also requires the DSU, in consultation with the State educational agency, to develop a process, or utilize an existing process, to document completion by youth with disabilities of the required activities, as applicable, under section 511. We believe the formal interagency agreement that is required by section 101(a)(11)(D) of the Act, and current §361.22(b) is the appropriate mechanism for ensuring the consultation necessary to develop and implement the documentation process required by section 511 and 34 CFR 397.10.

Second, section 511(b)(2) of the Act prohibits a State or local educational agency from entering into a contract or other arrangement with an entity for purposes of operating a program in which youth with disabilities are employed at subminimum wage. Again, we believe the formal interagency agreement, required by section 101(a)(11)(D) of the Act, and current §361.22(b), between the State educational agency and the DSU, is the appropriate mechanism whereby State and local educational agencies will assure that they will comply with the prohibition imposed by section 511(b)(2) of the Act and proposed 34 CFR 397.31.

We believe that incorporating both of these requirements from section 511, and proposed part 397, into an existing formal interagency agreement will reduce burden on the States so new mechanisms for requirements are unnecessary.

Third, we want to provide additional clarification regarding proposed §361.22(c) given questions that have arisen over the years as to which entity, the local educational agency or DSU, is responsible for providing transition services to students with disabilities (who are also VR consumers) when such services fall under the purview of both entities. The following examples illustrate the types of scenarios that have been at the heart of questions posed by DSUs in the past:

1. A VR-eligible student who is blind is participating in a work-experience placement after school hours as part of her individualized education program. Because that activity takes place in a location outside of school, the student needs travel training in order to travel independently from school to work and then home.

2. A VR-eligible student is enrolled in an apprenticeship program in construction trades as part of his individualized education program under IDEA. The

program requires the student to have special gloves, clothing, equipment, and footwear to attend the program.

3. A VR-eligible student is participating in a work experience activity during school hours as part of her individualized education program. The school has arranged for several IDEA-eligible students to participate in this same work activity and is providing a school bus to transport the IDEA-eligible students to and from the worksite. The VR-eligible student needs transportation to the worksite and a uniform.

While neither the Act nor IDEA is explicit as to which entity, the VR agency or the local education agency, is financially responsible for providing transition services, which are not considered solely special education or related services under IDEA, both proposed §361.22(c) and current 34 CFR 300.324(c)(2)) make clear that neither the local educational agency nor the VR agency may shift the burden for providing a service, for which it otherwise would be responsible, to the other entity. We want to make clear that the Act and IDEA, along with their implementing regulations in proposed §361.22(c) and 34 CFR 300.324(c)(2), are to be read in concert.

Therefore, we believe decisions related to which entity will be responsible for providing transition or pre-employment transition services that can be considered both a special education and a VR service must be made at the State and local level as part of the collaboration between the VR agencies, State educational agencies, and local educational agencies. This coordination and collaboration is crucial to successful transition planning and service delivery. Both the IDEA and the Rehabilitation Act require State educational agencies and VR agencies to plan and coordinate transition services for students with disabilities. This occurs through an interagency agreement or other mechanism for interagency coordination, such as described in section 612(a)(12) of IDEA (20 U.S.C. 1412(a)(12))). Coordination, including clearly articulated roles and responsibilities for the provision of transition services and for activities under section 511 of the Act, as well as mechanisms to resolve disputes between the State educational agencies and the VR agencies ensures a seamless delivery of transition services that enable eligible students with disabilities to make a smooth transition from school to post-school education and employment. Moreover, under IDEA, this interagency coordination may be necessary

to ensure the provision of transition services that are necessary for the provision of a free appropriate public education to students with disabilities (see section 612(a)(12) of IDEA and 34 CFR 300.154). States have the flexibility to include local educational agencies as parties to the State-level agreement.

Since the ultimate decisions related to financial responsibility for the provision of transition services must be established at the State and local level during the collaboration and coordination of transition and pre-employment transition services, a State's formal interagency agreement or other mechanism for interagency coordination can provide a foundation for addressing these issues by including criteria to be used by the VR agencies and local educational agencies when considering and assigning the financial responsibility of each agency for the provision of transition services to students with disabilities on an individualized basis. For example, the criteria could include:

1. The purpose of the service – Is it related more to an employment outcome or education (i.e., is it considered a special education or related service (e.g.,

rehabilitation counseling that is necessary for the provision of a free appropriate public education))?

2. Customary Services – Is the service one that the school customarily provides under IDEA part B? For example, if the school ordinarily provides job exploration counseling to its eligible students with disabilities, the mere fact that such a service is now authorized under the Rehabilitation Act as a pre-employment transition service does not mean the school should cease providing that service and refer those students to the VR program.

3. Eligibility – Is the student with a disability eligible for transition services under IDEA? As stated earlier, the definition of a "student with a disability," for purposes of the VR program, is broader than that under IDEA because the definition in the Rehabilitation Act includes those students who are individuals with a disability under section 504 of the Rehabilitation Act. It is possible that these students do not have an individualized education program under IDEA and, therefore, would not be eligible for or receiving special education and related services under IDEA. As a result, VR agencies are authorized to provide transition services under the VR

program to a broader population than local educational agencies are authorized to provide under IDEA.

We believe that criteria such as these could be beneficial as DSUs and local educational agencies and State educational agencies collaborate and coordinate the provision of transition services, including pre-employment transition services to students with disabilities, and resolve disputes related to the provision of these services.

Cooperation and coordination with other entities (§361.24)

Statute: Section 101(a)(11) of the Act makes several changes that highlight the importance of transition and other matters affecting students and youth with disabilities with regard to the coordination of services between the VR program and other non-educational programs.

Current Regulations: Current regulations in §361.24 address only the cooperation and coordination between the State VR agency and Federal, State and local agencies that are not carrying out activities through the workforce development system. Current regulations do not address the coordination that must occur with the section 121 projects in a State, if applicable, with regard to the provision of pre-employment transition services or non-educational

agencies serving out-of-school youth because these are new statutory requirements.

Proposed Regulations: Proposed §361.24(a) would incorporate non-educational agencies serving out-of-school youth as another entity with which the VR agency must coordinate.

We also propose to amend current §361.24(c) and (d), which govern coordination between the DSUs and employers and section 121 projects, respectively, to include transition services among the matters that must be included in coordination efforts.

Reasons: These changes are necessary to implement the amendments to the Act made by WIOA, all of which are designed to improve relationships and coordination between the VR agencies, employers, and all other agencies (e.g., workforce development, child welfare and juvenile justice agencies) serving individuals with disabilities, especially youth with disabilities, to ensure they have meaningful opportunities to achieve employment outcomes in competitive integrated employment. While DSUs have been required to coordinate with American Indian Vocational Rehabilitation Services projects in the State, if any, the coordination now must also include pre-employment transition services.

Statewide assessment; estimates; State goals and priorities; strategies; and progress reports (§361.29)

Statute: Section 101(a)(15) of the Act, as amended by WIOA, requires the comprehensive needs assessments to include: a review of the needs of youth and students, especially with regard to pre-employment transition services and the coordination of services with educational agencies; and the methods used to improve the provision of VR services, especially transition services.

Current Regulations: Current §361.29 requires that the State plan include the results of a statewide assessment, but does not contain new statutory requirements related to transition and pre-employment transition services.

Proposed Regulations: Proposed §361.29(a)(1)(i)(D) reflects the addition of the new statutory requirement for the statewide needs assessment to identify the vocational rehabilitation needs of youth and students with disabilities, including their need for pre-employment transition services as defined under proposed §361.5(c)(42) or other transition services. Proposed §361.29(a)(1)(i)(D)(2) would require that the State plan include an assessment of the needs for transition services and pre-employment transition services and the extent to

which VR services are coordinated with services provided under IDEA in order to meet the needs of individuals with disabilities. The proposed §361.29(d)(4) would require that the State plan include strategies to provide pre-employment transition services.

Reasons: These proposed changes are necessary to implement the amendments to the Act made by WIOA. These proposed changes reflect the Act's emphasis on transition-related issues affecting students and youth with disabilities.

Development of the individualized plan for employment (§361.45)

Statute: None.

Current Regulations: Current §361.45(d)(9) requires that an individualized plan for employment be developed in consideration of a student with a disability's individualized education program under IDEA. There is no reference to 504 services in this context.

Proposed Regulations: We propose to amend current §361.45(d)(9)(i) to incorporate consideration of a student's section 504 services.

Reasons: This proposed change is necessary to implement the amendments to the Act made by WIOA with regard to the addition of a definition of "student with a disability."

Because a student with a disability could be an individual who is receiving services under section 504 rather than under an individualized education program pursuant to IDEA, we believe this proposed change is essential to ensure consistent implementation of all requirements affecting students with disabilities.

Content of the Individualized Plan for Employment (§361.46)

Statute: As amended by WIOA, section 102(b)(4)(A) of the Act permits an individualized plan for employment to contain a specific post-school employment outcome or a more general, projected outcome. Section 102(b)(4)(B) requires the individualized plan for employment for a student with a disability to include the specific transition services needed by the student for the achievement of the employment goal.

Current Regulations: Current §361.46 outlines the components of an individualized plan for employment, but does not contain specific requirements related to transition since these are new statutory requirements.

Proposed Regulations: We propose to revise current §361.46(a)(1) to permit, in lieu of a specific employment goal, a description of an eligible student's or youth's projected post-school employment outcome.

Proposed §361.46(a)(2)(ii) would require that the description of the specific VR services under proposed §361.48 include the specific transition services and supports needed for an eligible student with a disability or youth with disability to achieve an employment outcome or projected post-school employment outcome.

Reasons: These changes are necessary to implement the amendments made to the Act by WIOA. By permitting the individualized plan for employment for a student or youth with a disability to include a projected, or generally described, rather than a specific employment goal, we recognize that some students and youth with disabilities, particularly those of a younger age, may not have formulated a specific employment goal when they begin the VR process. As a result, VR agencies may find it necessary to amend the individualized plan for employment to reflect career exploration consistent with vocational growth and development and the resulting evolution in the student's or youth's employment goal. However, VR agencies should continue to work with students and youth who have identified a specific employment goal, especially those who are older, to develop individualized plans for employment that contain a specific goal. For students and youth who

have yet to identify a specific employment goal, this change would remove the need for these frequent amendments. However, the inclusion of a projected employment goal in the individualized plan for employment would not eliminate the responsibility of the VR counselor and student to amend the individualized plan for employment and the VR services needed to achieve that goal as the employment goal changes.

Scope of vocational rehabilitation services for individuals with disabilities (§361.48)

Pre-employment transition services

Statute: WIOA amends the Act by including a new section 113 that requires VR agencies to coordinate with local educational agencies in providing, or arranging for the provision of, pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services and in need of such services. Section 110(d) requires States to reserve 15 percent of their VR allotment to provide these services.

Current Regulations: None.

Proposed Regulations: We propose to add regulations implementing the provision of pre-employment transition services in a new paragraph in proposed §361.48(a). The

current regulations will be moved to a new paragraph (b) in §361.48.

Proposed §361.48(a)(1) would permit pre-employment transition services to be provided to all students with disabilities regardless of whether they have applied for VR services and would clarify that similar transition services are available to youth with disabilities under proposed §361.48(b) when specified in an individualized plan for employment.

Proposed §361.48(a)(2) would specify the required pre-employment transition services that are provided directly to students with disabilities.

Proposed §361.48(a)(3) would describe the authorized activities that the State may provide, if sufficient funds are available, to improve the transition of students with disabilities from school to postsecondary education or an employment outcome.

Proposed §361.48(a)(4) would describe the responsibilities for pre-employment transition coordination to be carried out by VR agencies.

Finally, proposed §361.48(a)(5) would support DSUs in providing pre-employment transition services, consulting with other Federal agencies, and identifying best practices

of the States for the provision of transition services to students with a variety of disabilities.

Reasons: The proposed regulations in §361.48(a) would implement the requirements of section 113 of the Act, which were added by WIOA. This new section presents an innovative approach to providing pre-employment transition services to students with disabilities.

The services required by this section are those that would be most beneficial to an individual in the early stages of employment exploration. These services are designed to provide job exploration and other services, such as counseling and self-advocacy training, in the early stages of the transition process. To that end, we believe Congress intended these services be provided to the broadest population of students with disabilities to ensure that as many students with disabilities as possible are given the opportunity to receive the services necessary in order to achieve an employment outcome. Therefore, the proposed regulation clarifies that pre-employment transition services would be available to all students with disabilities. However, it is important to note that a student with a disability in this instance does not mean an individual with a disability in postsecondary education.

We believe this interpretation is consistent with the statutory language "all students with disabilities who are eligible or potentially eligible" for VR services and intent, as well as the definition of a "student with a disability." As an individual with a disability, every student with a disability satisfies at least one of the eligibility criteria for VR services in current §361.42(a)(1).

In so doing, we would ensure that the broadest possible group of students with disabilities is able to receive the services they need to better identify and prepare for post-school activities, including postsecondary education and competitive integrated employment. We do not believe that a student with a disability would have to apply for, or be determined eligible for, VR services prior to receiving pre-employment transition services under proposed §361.48(a). However, if the student does apply for VR services, he or she would be subject to all relevant requirements for eligibility and order of selection, as applicable, for purposes of receiving other VR services.

It is important to point out, in this context, that the definition in proposed §361.5(c)(51) of a "student with a disability," for purposes of the VR program, is broader

than the definition used under IDEA. For that reason, the VR agency may provide pre-employment transition services under this section to a broader group of students than could receive such services under IDEA since VR agencies may provide these services to students eligible for or receiving section 504 services, not all of whom may be eligible for or receiving special education or related services under IDEA.

We are particularly interested in receiving comments and alternative suggestions about the interpretation of "potentially eligible" as used in section 113(a) of the Act to mean all students with disabilities as defined under proposed §361.5(c)(51).

In providing pre-employment transition services, a DSU may consider providing these services to students with disabilities in group settings or on an individual basis. When provided in group settings, these services are general in nature and are not typically customized to an individual student's disability-related or vocational needs. For example, job exploration counseling provided in group settings may include the presentation of general local labor market composition and information, administration of vocational interest inventories, and instruction regarding

self-advocacy and self-determination. On the other hand, job exploration counseling provided on an individual basis might include discussion of the student's vocational interest inventory results and discussion of local labor market information that applies to those interests.

The manner in which pre-employment transition services are delivered (e.g., either in a group setting or on an individual basis) will most likely depend on the amount of information the DSU has available regarding the student with a disability at the time services are provided. As a student progresses through the VR process by applying, and being determined eligible, for VR services, the DSU would obtain the information necessary to provide individually tailored services that address the student's particular disability-related and vocational needs. This aspect of pre-employment transition services, the fact that they can be either generalized or individualized, further highlights the continuum of services available under the VR program.

We want to make clear that if a student with a disability requires services that are beyond the limited scope of pre-employment transition services, the student would have to apply for and be determined eligible for VR services and develop an individualized plan for employment

for the receipt of those services as would be true for any other applicant. To that end, we encourage DSUs to work with the local educational agencies and State educational agencies to develop a process whereby individuals expressing interest in VR services are able to access the program and apply for services in a timely manner. VR agencies are encouraged to develop a referral process that is simple and engaging, especially for students with disabilities and their families who could become discouraged or disinterested in VR services by needlessly complex and prolonged procedures. An individual may initiate the application process by requesting individualized pre-employment transition services and other VR services. Current §361.41(b)(2) permits a student or the student's representative, as appropriate, to apply for VR services through a variety of means, including a simple request for VR services, such as submitting a form consenting to the provision of VR services or even a telephone call, so long as the request contains the limited demographic and other information necessary to begin an assessment for the determination of eligibility and the student is available to participate in the assessment.

Services for individuals who have applied for or been determined eligible for VR services (§361.48(b))

Statute: Section 103(a)(15) of the Act, as amended by WIOA, adds pre-employment transition services among the scope of VR services that may be provided in accordance with an individual's individualized plan for employment.

Current Regulations: Current §361.48 includes transition services among the list of authorized activities. Pre-employment transition services are not specifically mentioned because this is a result of statutory changes.

Proposed Regulations: As discussed earlier, we propose to reorganize current §361.48 so that all current provisions are retained in proposed §361.48(b). We also propose to incorporate along with those transition services already provided for, pre-employment transition services among the authorized list of individualized services a VR agency may provide under proposed §361.48(b)(18).

Reasons: This change is necessary to implement the amendments to the Act made by WIOA. Under the VR program, any allowable service may be provided as a transition service to an individual transitioning from secondary school to postsecondary education or employment, who has been determined eligible and for whom an individualized

plan for employment has been developed and approved. Services most commonly provided as transition services to students with disabilities under an individualized plan for employment include, but are not limited to, assessments, counseling and guidance, assistive technology, job coaching, orientation and mobility training, vocational counseling and guidance, and vocational and other training services, such as personal and vocational adjustment training.

It is important to note that many of the services described as pre-employment transition services in proposed §361.48(a) were previously provided as transition services, as defined in proposed §361.5(c)(55), or other individualized services, including community-based work experiences and other career exploration services, even though no specific category of pre-employment transition services was mentioned in the Act or current §361.48.

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

Statute: Section 103(b)(7) of the Act expands the scope of allowable services for the benefit of groups of individuals with disabilities to include transition services for youth

and students with disabilities. Other technical changes were made in section 103(b)(6).

Current Regulations: Current §361.49(a) includes allowable services for the benefit of groups of individuals with disabilities, but does not include transition services since this is a new statutory requirement.

Proposed Regulations: We propose to amend current §361.49(a)(6) to clarify that educational agencies referenced in current regulations mean State or local educational agencies.

We also propose to add a new §361.49(a)(7) to incorporate transition services to students and youth with disabilities as a permissible service for the benefit of groups of individuals with disabilities. This service would be provided in coordination with other relevant agencies and providers.

Reasons: These changes are necessary to implement the amendments to the Act made by WIOA. Under this new provision, VR agencies would be able to engage in transition activities with some entities that have not typically been involved in transition planning. As a service to groups, these transition services would be provided in group settings in a manner that benefits a

group of students or youth with disabilities, rather than being customized for any one individual. Individualized transition services are provided under proposed §361.48(b).

Examples of group transition services may include, but are not limited to, class tours of universities and vocational training programs, employer or business site visits to learn about career opportunities, career fairs coordinated with workforce development systems and employers where students and youth participate in resume writing classes and mock interviews. Additionally, these services are not limited to those individuals who are still in school since section 103(b)(7) of the Act includes youth with disabilities between the ages of 14-24 who may or may not be enrolled in secondary education.

DSUs will need to be mindful of the authority they are using when providing these services since requirements differ for those transition services provided under services to groups (see proposed §361.49) or pursuant to an individualized plan for employment (see proposed §361.48(b)) or as a pre-employment transition service under proposed §361.48(a).

Services for Individuals who have Applied for and Been Determined Eligible for Vocational Rehabilitation Services

(§361.48(b))

Scope of vocational rehabilitation services for individuals with disabilities

Statute: WIOA amends section 103(a) of the Act by adding customized employment to the list of VR services that may be provided to eligible individuals under an individualized plan for employment. The amendments also encourage qualified individuals who are eligible for VR services to pursue advanced training in specified fields.

Current Regulations: Current §361.48 provides a non-exhaustive list of VR services available to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome. Neither customized employment nor advanced training is specified in this list because these are new statutory requirements.

Proposed Regulations: We propose to reorganize current §361.48. Proposed §361.48(a) incorporates new regulations governing pre-employment transition services to students with disabilities, which are required by section 113 of the Act. Proposed §361.48(b) contains all of the services that are listed in current §361.48 and that are available to an eligible individual under an individualized plan for employment.

Proposed §361.48(b)(6) would specify that advanced training in a field of science, technology, engineering, or mathematics (including computer science), medicine, law, or business may be provided to an eligible individual receiving vocational and other training services under an individualized plan for employment.

Finally, we propose to include customized employment as an available VR service in proposed §361.48(b)(20).

We also propose to make other conforming changes throughout this section.

Reasons: These changes are necessary to implement amendments to section 103(a) of the Act made by WIOA. It has been our long-standing policy that VR services are available to individuals with disabilities to enable them to advance in employment and that financial support for the graduate-level degrees specified in proposed §361.48(b)(6), may be provided to eligible individuals when necessary to achieve employment. The specific mention of this service in section 103(a) of the Act and the proposed regulation underscores the importance of advanced training when preparing individuals with disabilities for high demand careers in today's economy.

Prior to enactment of WIOA, customized employment was an available service under the VR program when necessary to assist the eligible individual to achieve an employment outcome. See the discussion of customized employment in the Applicable Definitions section for further information.

Scope of vocational rehabilitation services for groups of individuals with disabilities (§361.49(a))

Statute: Section 103(b) of the Act makes several changes with regard to the services to groups that VR agencies may provide, including those related to technical assistance to businesses, assistive technology, and advanced training in specific fields of study.

Current Regulations: Current §361.49(a) describes the services that VR agencies may provide for the benefit of groups, but they do not specifically address services related to assistive technology or advanced training, or other changes made by WIOA.

Proposed Regulations: We propose to amend current §361.49(a)(1), regarding the establishment, development, or improvement of a community rehabilitation program, to clarify that services provided under this authority must be used to promote competitive integrated employment, including customized and supported employment.

We propose to amend current §361.49(a)(4) to incorporate statutory changes that expand a VR agency's authority to provide technical assistance to all businesses who are considering hiring individuals with disabilities.

We propose to add new §361.49(a)(8) and (9) regarding services related to assistive technology and advanced training, respectively, to reflect new statutory authorities for these services.

We also propose to make other conforming changes throughout this section.

Reasons: These changes are necessary to implement statutory changes, which both expand the types of services that a VR agency may provide for the benefit of groups of individuals with disabilities and provide clarification as needed.

The proposed changes in §361.49(a)(1) regarding the establishment, development, or improvement of a community rehabilitation program are primarily for clarification purposes. Services provided under this authority have always been for the purpose of promoting integration into the community with respect to employment. However, the proposed changes highlight the statute's heightened

emphasis on competitive integrated employment, supported employment, and customized employment.

Proposed changes to current §361.49(a)(4) would permit VR agencies to provide technical assistance to all businesses who are considering hiring individuals with disabilities. This technical assistance could assist businesses with recruitment, hiring, employment, and retention, including resources and tools to help with accessing and use of assistive technology, workplace accessibility, and accommodations for individuals with disabilities. VR agencies can work with businesses to develop systems for the matching and training of qualified workers with job requirements. Previously, a VR agency could provide such services only to those businesses that are not subject to title I of the Americans with Disabilities Act of 1990. This proposed change is also consistent with the heightened emphasis throughout WIOA on employer engagement, especially with regard to assisting individuals with disabilities to enter competitive integrated employment.

Proposed new §361.49(a)(8) would incorporate a new statutory authority for VR agencies to provide assistive technology-related services for the benefit of groups of

individuals with disabilities. VR agencies may now establish, develop, or improve assistive technology programs. This new authority would expand access to assistive technology for individuals with disabilities and employers in recognition of the critical role it plays in the vocational rehabilitation and employment of individuals with disabilities. However, we believe that this authority should be implemented in a manner that is consistent with the authority to establish, develop, or improve a community rehabilitation program in proposed §361.49(a)(1) in that the services provided under this authority should be limited to applicants and eligible individuals receiving VR services. In so doing, this authority would be used in coordination with, rather than to supplant, the activities otherwise provided under the Assistive Technology Act.

We also want to make clear that the assistive technology services provided under this authority would be distinguished from those provided under proposed §361.48(b), which are individualized and provided pursuant to an individual's plan for employment. The assistive technology services provided under proposed §361.49(a)(8) are for the benefit of a group of individuals and are not tied to the individualized plan for employment of any one

individual. For example, a DSU may, in coordination with the State's assistive technology grant program, use VR funds to support an assistive technology lending library in proportion to the benefit received by applicants and eligible individuals. Once an eligible individual needs a specific assistive technology device to participate in VR services or the employment outcome, the DSU could provide the device as an individualized service under an individualized plan for employment pursuant to proposed §361.48(b).

Proposed §361.49(a)(9) would implement a new authority for VR agencies to provide support for advanced training in a manner that benefits groups of eligible individuals. Before WIOA was enacted, a DSU could provide this service only on an individualized basis, pursuant to an individual's individualized plan for employment, in accordance with proposed §361.48(b), which remains unchanged in this context. This new authority is in addition to that provided under proposed §361.48(b) and is not intended to replace such services as being provided on an individualized basis.

Under this new authority, VR agencies may provide support services to eligible individuals who meet specific

criteria and are pursuing advanced training in specific fields, as a service for the benefit of a group of individuals with disabilities. Examples of when a DSU may consider providing such support services, not directly related to an individualized plan for employment, could include the enrollment of multiple students determined eligible for VR services in the same training, or the development and implementation of specific programming for eligible individuals with an institution of higher education or community provider. Furthermore, VR agencies could consider establishing a scholarship fund for advanced training in science, technology, engineering or mathematics (STEM) or other fields as described in section 103(b)(9) of the Act. These funds may support the costs of graduate level training not covered by any other source for those services, including support provided by the VR program under proposed §361.48(b). If a DSU establishes such scholarships, it should consider establishing criteria governing the receipt of such support, including merit and other competitive criteria.

We want to make clear that DSUs should continue to provide any individualized advanced training support that an eligible individual requires in order to achieve an

employment outcome in competitive integrated employment, and that is consistent with the individual's plan for employment, under proposed §361.48(b), not under the services to groups authority discussed here. For that reason, we believe there would only be limited circumstances in which it would be appropriate for a DSU to provide support for advanced training under proposed §361.49(a)(9). Given that this service may be provided as either an individualized service under proposed §§361.48(b) or 361.49(a)(9), DSUs would have to keep in mind the distinctions between the two different authorities to ensure proper implementation and record-keeping for reporting purposes.

Comparable services and benefits (§361.53)

Statute: Section 101(a)(8) of the Act clarifies that accommodations and auxiliary aids and services are included in the requirement to determine whether comparable services and benefits are available prior to the DSU providing most VR services. In addition, section 101(a)(8)(B) is amended to clarify that interagency agreements for coordination of services between the DSU and other public entities in the State, including institutions of higher education, should

specifically address accommodations and auxiliary aids and services among the services to be coordinated.

Current Regulations: Current §361.53 sets forth the requirements related to comparable services and benefits, as well as requirements related to interagency agreements, without specifically identifying accommodations and auxiliary aids and services.

Proposed Regulations: We propose to add language to §§361.53(a) and 361.53(d)(1) and (3) that would include accommodations and auxiliary aids and services among the VR services that would require the determination of the availability of comparable services and benefits prior to the provision of such services to an eligible individual. The proposed changes also would address interagency coordination of the provision of these services.

Reasons: The proposed changes reflect the clarifications in section 101(a)(8) of the Act made by WIOA. WIOA reinforces the Department's longstanding position that accommodations and auxiliary aids and services are considered to be part of the determination of the availability of comparable services and benefits and the services to be coordinated through the required interagency agreements with public entities should include

accommodations and auxiliary aids and services. The changes to section 101(a)(8) of the Act and proposed §361.53 make this interpretation explicit.

The need for the DSU to coordinate the provision of accommodations and auxiliary aids and services often occurs when serving eligible individuals attending institutions of higher education for postsecondary training and education. Both DSUs and public institutions of higher education must adhere to the requirements of title II of the Americans with Disabilities Act and section 504 of the Rehabilitation Act to ensure access to their services for individuals with disabilities. Additionally, private institutions of higher education must adhere to requirements of section 504 of the Act to ensure access to their services for individuals with disabilities. Accordingly, the responsibilities of each entity for the provision of accommodations and auxiliary aids and services to individuals served by each must be determined at the State level. Therefore, the interagency agreement under proposed §361.53(d) would ensure interagency coordination and describe the responsibilities of the DSU and the institutions of higher education for the provision of VR services, including accommodations and auxiliary aids and services, and would provide a vehicle

for resolving interagency disputes. To that end, Governors could assist the DSUs and institutions of higher education, in accordance with section 101(a)(8)(B) of the Act, to develop these agreements to ensure they are sufficient for ensuring individuals with disabilities receive the services they need, including accommodations and auxiliary aids and services, to enable them to achieve competitive integrated employment. The Rehabilitation Act requires DSUs to enter into interagency agreements for coordination of services (including each agency's financial responsibilities) with institutions of higher education, as well as other public entities. DSUs have experienced difficulty engaging with institutions of higher education, and other public agencies, for the purpose of developing the required interagency agreements. In addition, DSUs and institutions of higher education have often executed interagency agreements that do not clearly describe the manner in which services will be coordinated, particularly the accommodations and auxiliary aids and services that each agency will be responsible to provide. The lack of specificity in these agreements, in turn, does not provide adequate guidance to higher education or VR personnel responsible for carrying out their responsibilities to

provide such aids and devices to assist individual students with disabilities. Such guidance is crucial when a particular service could be provided by either the DSU or institution of higher education in accordance with their mutual obligations under the Americans with Disabilities Act and section 504 of the Act to ensure the ability of individuals with disabilities to participate in educational programs and activities, and the timely delivery of VR services.

We believe that the terms of the interagency agreement should take into account State laws and the resources of each party. For example, an interagency agreement could include a term that could require institutions of higher education to provide auxiliary aids and services (e.g., interpreters) to VR eligible individuals in the classroom and the DSUs could provide these aids and services during educational activities outside the classroom. In States where students who are deaf or blind and attend a State university tuition-free, the interagency agreement could specify that the DSU provide auxiliary aids and services, such as reader and interpreter services, both in and out of the classroom, since the school is responsible for the full cost of tuition. Greater specificity in the terms of the

interagency agreements at the State level will promote consistency across the State in the coordination of services and in the provision of accommodations and auxiliary aids and services to eligible individuals attending institutions of higher education.

Finally, we want to make clear that accommodations and auxiliary aids and services, for purposes of implementing the requirements of section 101(a)(8) and these proposed regulations, do not include personally prescribed devices, such as eye glasses, hearing aids, wheelchairs, or other such individually-prescribed devices and services.

Semi-annual review of individuals in extended employment and other employment under special certificate provisions of the Fair Labor Standards Act (§361.55)

Statute: Section 101(a)(14)of the Act, as amended by WIOA, increases the frequency of reviews that the DSUs must conduct when individuals with disabilities, who have been served by the VR program, obtain subminimum wage employment or extended employment.

Current Regulations: Current §361.55 requires the DSU to conduct an annual review and re-evaluation annually for the first two years after an individual obtains subminimum wage employment or extended employment.

Proposed Regulations: We propose to amend §361.55 to incorporate the new statutory requirement that these reviews be conducted semi-annually for the first two years of the individual's employment and annually thereafter. We also propose to make other technical and conforming changes throughout.

Reasons: The proposed changes are necessary to implement new statutory requirements and ensure individuals with disabilities do not languish in subminimum wage employment or extended employment. Prior to the passage of WIOA, DSUs conducted these reviews annually for two years. With the amendments made by WIOA, DSUs must conduct these reviews twice a year for two years and then annually thereafter for as long as the individual remains employed at the subminimum wage level or in extended employment. These changes are consistent with the heightened emphasis throughout WIOA that individuals with disabilities, including those with the most significant disabilities, be given every opportunity to achieve competitive integrated employment.

Matching Requirements (§361.60)

Statute: Section 101(a)(3) of the Act requires the State to pay a non-Federal share in carrying out the VR program.

Section 7(14) of the Act defines "Federal share" as 78.7 percent. These statutory provisions remain unchanged by WIOA.

Current Regulations: Current regulations in §361.60(b) outline the requirements for satisfying the non-Federal share requirement under the VR program.

Proposed Regulations: We propose to amend current (b)(3) to clarify that non-Federal expenditures, for match purposes under the VR program, from private contributions must be made from cash contributions that have been deposited in the VR agency's account prior to their use for this purpose. We also propose to make conforming changes throughout current §361.60 to refer to 2 CFR part 200, as applicable and to new terms, such as the "vocational rehabilitation services portion of the Unified or Combined State Plan" and "subaward."

Reasons: Proposed §361.60(b)(3) makes no substantive changes but would clarify existing regulatory requirements pertaining to expenditures made from private contributions and used for match purposes under the VR program. Specifically, we would clarify that contributions by private entities must be in cash and that the funds must be deposited into the State agency's account before they are

used for match purposes under the VR program. In so doing, we make two points clear: (1) certified expenditures made by private entities or individuals may not be used by the VR agency for match purposes under the VR program; and (2) a contract, budgeted projection, or any other promise by a private entity or individual to make a contribution may not be used, on its face, by the VR agency for satisfying its match requirement. The VR agency must actually receive the cash contribution before it may be used for match purposes under the VR program. We believe these clarifications are necessary to ensure VR agencies have a better understanding of, and comply with these existing requirements. Finally, other revisions proposed throughout this section are necessary to conform to other changes proposed throughout part 361.

Maintenance of Effort Requirements (§361.62)

Statute: Section 111(a)(2)(B) of the Act, as amended by WIOA, requires the Secretary to reduce a grant in a fiscal year for any prior fiscal year's Maintenance of Effort (MOE) shortfall.

Current Regulations: Current §361.62(a) requires the Secretary to reduce the grant in the fiscal year immediately following the fiscal year with the MOE deficit.

In the event that the MOE deficit is discovered after the next fiscal year's grant was awarded, the Secretary is required to seek a remedy for the MOE violation pursuant to the disallowance process.

Proposed Regulations: We propose to amend current §361.62(a) in four ways: (1) by amending current §361.62(a)(1) to require the Secretary to reduce a grant in any fiscal year by the amount of any prior fiscal year's MOE shortfall; (2) by removing the example in current §361.62(a)(1) as it is no longer applicable, given statutory amendments; (3) by removing current §361.62(a)(2) since it is no longer necessary given new statutory requirements t; and (4) by redesignating current §361.62(a) to reflect the removal of current §361.62(a)(2).

We propose to amend current §361.62(b) by removing the requirement for the Secretary to recover the MOE deficit through an audit disallowance process.

We propose to amend the current §361.62(d)(3) to clarify that a request for a waiver or modification of the MOE requirement must be submitted as soon as the State has determined that it has failed to satisfy the requirement due to an exceptional or uncontrollable circumstance. Finally, we propose to make conforming changes throughout

current §361.62 to reflect the restructuring of paragraph (a).

Reasons: The proposed changes to current §361.62(a) are necessary to implement the amendments to the Act made by WIOA. Previously, the Secretary could reduce the State's VR award to satisfy a MOE deficit only in the fiscal year immediately following the fiscal year in which the MOE deficit occurred. In the event the MOE deficit was discovered after the next fiscal year's grant was awarded, the Secretary was required to seek recovery for the MOE deficit pursuant to a disallowance process, whereby, the State was required to make payment for that recovery action with non-Federal funds. Under the proposed regulations the Secretary would no longer be limited to reducing only the next fiscal year's grant, but rather could reduce any subsequent fiscal year's grant to satisfy the MOE deficit. Therefore, in the event that a MOE shortfall is revealed after the next fiscal year's grant has been awarded, the Secretary would reduce the Federal grant in another subsequent fiscal year. Consequently, it is no longer necessary for the Secretary to seek recovery through a disallowance process and for a State to use non-Federal funds to satisfy the deficit. The proposed change to

current §361.62(b) is necessary to ensure consistency with paragraph (a) for purposes of satisfying a MOE deficit.

The change in proposed §361.62(d)(3) is necessary for clarification purposes. The proposed change would not substantively revise the requirements related to submitting a request for a MOE waiver or modification, but rather would add clarifying language to existing requirements. Some States have interpreted the existing regulation as meaning that the request should be submitted as soon as they anticipate that they would be unable to satisfy the MOE requirement, even if that was years in advance. We have always interpreted paragraph (d)(3) as meaning that the request should be submitted as soon as the State has determined it has not satisfied the MOE requirement. The proposed change provides further clarification.

Program Income (§361.63)

Statute: None.

Current Regulations: Current §361.63 defines program income and lists potential sources of program income and uses for purposes of the VR program.

Proposed Regulations: We propose to amend current §361.63(a) to make the definition of program income consistent with 2 CFR 200.80.

We propose to amend current §361.63(b) by providing additional examples of common sources of program income generated by the VR program.

We propose to amend current §361.63(c)(1) to clarify that program income must be disbursed during the period of performance of the award to be consistent with 2 CFR 200.77, which defines the period of performance of the award as the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award.

We propose to amend current §361.63(c)(2) to reflect statutory restructuring of title VI of the Act.

Finally, we propose to amend current §361.63(c)(3) to be consistent with 2 CFR 200.307(e)(1) and (2).

Reasons: The proposed changes to current §361.63 are necessary for clarification purposes and to ensure consistency with other relevant requirements, especially those contained in 2 CFR part 200.

Allotment and Payment of Federal Funds for Vocational Rehabilitation Services (§361.65)

Statute: Section 110(d) of the Act, as amended by WIOA, requires VR agencies to reserve not less than 15 percent of the State's VR allotment for the provision of pre-

employment transition services, in accordance with section 113 of the Act. Section 110(d)(2) of the Act prohibits a State from using these reserved funds to pay for administrative costs or any other VR service.

Current Regulations: Current §361.65 specifies the process the Secretary uses to allot and reallot Federal funds, but does not address the reservation by States of funds for the provision of pre-employment transition services since this is a new statutory requirement.

Proposed Regulations: We propose to amend current §361.65(a) by adding a new paragraph (3) to implement the new statutory requirement for a State to reserve not less than 15 percent of its VR allotment for the provision of pre-employment transition services. The proposed provision would make clear that such reserved funds must be used only for services authorized in proposed §361.48(a), and must not be used to pay for administrative costs associated with the provision of such services or for any other VR service.

We propose to amend current §361.65(b)(2) by revising the language to clarify that reallotment would occur in the fiscal year the funds were appropriated; however, the funds may be obligated or expended during the period of performance, provided matching requirements are met. We

propose to add a new paragraph (b)(3) to current §361.65 that would give the Secretary the authority to determine the criteria to be used to reallot funds when the amount requested exceeds the amount of funds relinquished.

Finally, we propose other technical and conforming changes throughout this section.

Reasons: The proposed changes to current §361.65(a) are necessary to implement new statutory requirements related to the reservation of Federal funds for the provision of pre-employment transition services. We make clear that the funds to be reserved are those awarded to the State pursuant to section 110 of the Act and do not refer to an allotment of State funds awarded by the State.

None of the funds reserved for the provision of pre-employment transition services in accordance with section 110(d) may be used to pay for administrative costs or any other VR service. These funds must be used solely for the provision of services described in §361.48(a) of this part. We want to make clear that States must use the entire amount reserved solely for the provision of pre-employment transition services in accordance with section 113 of the Act and §361.48(a) of this part.

The proposed change to current §361.65(b)(2) is necessary to ensure consistency with 2 CFR 200.77.

The change in proposed §361.65(b) is necessary to inform grantees about the reallotment process in the event there are more requests for reallotment funds than are available to satisfy those requests.

Part 363 - The State Supported Employment Services program

Proposed substantive changes to part 363 are presented in a format that highlights topical areas in the order that the relevant sections appear in this part.

Competitive Integrated Employment (§363.1)

Statute: Section 7(38) of the Act, as amended by WIOA, revises the definition of "supported employment" to mean, in pertinent part, employment with supports in competitive integrated employment or, if not in competitive integrated employment, employment in an integrated setting in which the individual is working toward competitive integrated employment on a short-term basis, not to exceed six months. Other key relevant statutory provisions include section 7(5), which defines competitive integrated employment; section 602, which makes clear the purpose of the Supported Employment program is to enable individuals with the most significant disabilities, including youth with the most

significant disabilities, to achieve supported employment in competitive integrated employment; and section 604, which authorizes the services to be provided under the Supported Employment program to enable individuals to achieve supported employment in competitive integrated employment. Title VI contains references to this requirement throughout.

Current Regulations: Current §363.1 sets out the purpose of the Supported Employment program, which is to assist States in developing and implementing collaborative programs with entities to provide supported employment services for individuals with the most severe disabilities who require such services to enter or retain competitive employment. Current regulations do not reference competitive integrated employment or working towards competitive integrated employment since these are new statutory requirements.

Proposed Regulations: We propose to amend current §363.1 to reflect the revised statutory definition of "supported employment," namely that the employment be in competitive integrated employment or, if it is not, that the employment be in an integrated setting in which the individual with a

most significant disability is working toward competitive integrated employment on a short-term basis.

As proposed, the regulations would make clear that the purpose of the Supported Employment program is to enable individuals with the most significant disabilities, with on-going supports, to achieve competitive integrated employment (i.e., employment in an integrated setting that is compensated at or above the minimum wage).

The proposed definition of "supported employment" would take into account that under some circumstances an individual's employment, which must always be in an integrated setting, may not meet all of the criteria for competitive integrated employment initially. In those circumstances, an individual with a most significant disability would be considered to have achieved an employment outcome of supported employment if he or she is working in an integrated setting, on a short-term basis, toward competitive integrated employment. In the proposed definition, we would interpret "short-term basis" in this context to mean within six months of the individual entering supported employment.

We also propose to amend current §363.50(b)(3) and (b)(4) to state that the collaborative agreements developed

with other relevant entities for providing supported employment services and extended services may include efforts to increase opportunities for competitive integrated employment for individuals with the most significant disabilities, including youth with the most significant disabilities.

Finally, we propose to amend the balance of current §363.50 to reflect in the States' required collaborative agreements the new scope and purpose of supported employment, as well as the new time limits for providing services that are discussed in detail under the sections "Services to Youth with the Most Significant Disabilities" and "Extension of Time for the Provision of Supported Employment Services."

Reasons: The proposed revisions are necessary to implement in part 363 the statutory changes made by WIOA. We believe these proposed changes are consistent with the purpose of the Supported Employment program, as expressed throughout title VI of the Act. The proposed changes are also consistent with proposed changes to part 361, which governs the vocational rehabilitation (VR) program, since the supported employment program is supplemental to that program. In particular, we propose to establish a specific

time frame – e.g., six months – for "short term basis" in the context of "supported employment," because we believe it is necessary to limit the time allowed for individuals to work in non-competitive employment in order to be consistent with the clear intention of the Act, as amended by WIOA, which places heightened emphasis on competitive integrated employment throughout.

Services to Youth with the Most Significant Disabilities (§§363.6 and 363.54)

Statute: Section 603(d) of the Act, as amended by WIOA, requires each State to reserve and use 50 percent of its allotment under the Supported Employment program to provide supported employment services, including extended services, to youth with the most significant disabilities. Other relevant statutory provisions are found in section 602, which highlights services to youth with the most significant disabilities in the purpose section of title VI; section 604, which authorizes services specifically for youth with the most significant disabilities; section 605, which identifies youth with the most significant disabilities as eligible for supported employment services; and section 606, which establishes certain State plan

requirements specific for services to youth with the most significant disabilities.

Current Regulations: None.

Proposed Regulations: We propose to amend multiple sections in part 363 to incorporate these new requirements for providing supported employment services, including extended services, to youth with the most significant disabilities.

We propose to amend current §363.1 to state that a purpose of the Supported Employment program is to provide individualized supported employment services, including extended services in an integrated setting, to youth with the most significant disabilities in order to assist them in achieving supported employment in competitive integrated employment.

We propose to amend current §363.3 to clarify that youth with the most significant disabilities are eligible to receive supported employment services. It is important to note that youth have always been eligible to receive supported employment services; however, amendments made by WIOA emphasize this population in the context of the Supported Employment program.

In proposed §363.4(a) and (b), we would implement new statutory provisions permitting the expenditure of supported employment program funds, reserved for the provision of supported employment services to youth with the most significant disabilities on extended services to youth with the most significant disabilities for up to four years following the transition from support from the designated State unit (DSU). We propose to amend current §363.4(c) to clarify that nothing in this part is to be construed as prohibiting the VR program from providing extended services to youth with the most significant disabilities with funds allotted under part 361.

In proposed §363.4(d), we would set out the statutory requirement that a State must coordinate its supported employment services with its VR services provided under part 361 in order to avoid duplication.

We propose to amend current §363.11 to incorporate supported employment services, including extended services, for youth with the most significant disabilities into the existing requirements for the VR services portion of the Unified or Combined State Plan supplement.

We propose a new §363.22, which would implement the new statutory requirement that a State must reserve and use

half of its allotment under the supported employment program for the provision of supported employment services, including extended services, to youth with the most significant disabilities.

We propose changes throughout part 363 to conform to new statutory nomenclature, such as referring to "the vocational rehabilitation services portion of the Unified or Combined State Plans" in §§363.10 and 363.11, instead of just "the State plan," and "the most significant disabilities" instead of "severe disabilities."

Reasons: The proposed revisions are necessary to implement in part 363 statutory changes made by WIOA. The proposed changes are also consistent with proposed changes to part 361, which governs the VR program, since the Supported Employment program is supplemental to that program. Specifically, the proposed changes are consistent with the heightened emphasis throughout the Act, as amended by WIOA on the provision of services to youth with disabilities, especially those with the most significant disabilities, to ensure they receive the services and supports necessary to achieve competitive integrated employment. Accordingly, the proposed changes would implement the statutory requirement that States must reserve half of their

supported employment allotment for the provision of supported employment services, including extended services, to youth with the most significant disabilities. This new statutory requirement reflects the fact that this particular population may need more intensive services for a longer period of time in order to achieve competitive integrated employment. It is important to note that, prior to the passage of WIOA, States were not permitted to use supported employment and/or VR program funds to provide extended services under any circumstance. States still are prohibited from providing extended services to individuals who are not youth with the most significant disabilities.

Extension of Time for the Provision of Supported Employment Services (§§363.6 and 363.54)

Statute: Section 7(39) of the Act, as amended by WIOA, revises the definition of "supported employment services" to mean those on-going supports provided for a period of time not to exceed 24 months.

Current Regulations: Current §363.6 defines "supported employment services" as ongoing services provided by the DSU for a limited period of time to achieve job stabilization and assist an individual with the most severe disability before the transition to extended services. The

current regulations do not reference the 24-month time limit for the provision of services since this is a new statutory requirement.

Proposed Regulations: We propose to amend the definition of "supported employment services" in part 361, which will be incorporated by reference throughout part 363. The proposed definition would extend the time allowed for the provision of supported employment services from 18 months to 24 months.

We also propose to update and streamline current §363.6 by removing the current set of definitions and inserting, instead, cross-references to relevant definitions from other parts of the Department's regulations.

We propose to amend current §363.53 to require that an individual must transition to extended services within 24 months of starting to receive supported employment services unless a longer time period is agreed to in the individualized plan for employment. The proposed regulation would specify conditions that must be met before a DSU assists an individual in transitioning to extended services, such as ensuring the individual is engaged in supported employment that is in competitive integrated

employment, or in an integrated work setting in which the individual is working on a short-term basis toward competitive integrated employment, and the employment is customized for the individual consistent with his or her strengths, abilities, interests, and informed choice. Administratively, the State unit would also have to identify the source of extended services and meet all requirements for case closure.

Reasons: The proposed revisions are necessary to implement in part 363 statutory changes made by WIOA. The proposed changes are also consistent with proposed changes to part 361, which governs the VR program, since the Supported Employment program is supplemental to that program.

Match Requirements for Funds Reserved for Serving Youth with the Most Significant Disabilities (§363.23)

Statute: Section 606(b)(7)(I) of the Act, as amended by WIOA, requires that a State provide non-Federal contributions in an amount not less than 10 percent of the costs of providing supported employment services, including extended services, to youth with the most significant disabilities. States are also authorized to leverage public and private funds.

Current Regulations: None.

Proposed Regulations: We propose to add a new §363.23 to implement these new statutory requirements. In the event that a designated State agency uses more than 50 percent of its allotment to provide supported employment services to youth with the most significant disabilities as required by §363.22, there is no requirement that a designated State agency provide non-Federal expenditures to match the excess Federal funds spent for this purpose. In this proposed new section, we would clarify, to ensure consistency with part 361, that third-party in-kind contributions are not permitted, but contributions by private entities are permitted, for match purposes under the Supported Employment program.

We propose to amend §363.4(a)(3) to implement the new statutory provision authorizing States to use funds reserved for youth with the most significant disabilities to leverage other public and private funds to increase resources for extended services and expand supported employment opportunities for youth with the most significant disabilities.

We also propose to amend §363.11(g)(9) to incorporate both the new match requirement and the description of the activities surrounding how the State will leverage funds

reserved for youth with the most significant disabilities into the assurances that a State must submit as part of its supported employment State plan supplement.

Reasons: The proposed revisions are necessary to implement in part 363 statutory changes made by WIOA. The proposed changes are also consistent with proposed changes to part 361 governing the VR program since the Supported Employment program is supplemental to that program. Given the new statutory requirement that States provide a 10 percent match on the funds reserved for providing supported employment services to youth with the most significant disabilities, coupled with the fact that States may use VR funds to supplement the provision of supported employment services, we believe it is important to ensure the match requirements under the Supported Employment program are consistent with those under the VR program. To that end, we propose that third-party in-kind contributions would not be a permissible source of match under the Supported Employment program, since it is not permitted under the VR program. In so doing, we reduce the administrative burden on States from having to distinguish whether a match source is applicable to the supported employment funds verses the VR funds.

Program Income (§363.24)

Statute: Section 19 of the Act governs the carryover of funds, including program income, received by the Supported Employment program. In addition, section 108 of the Act permits the VR program to transfer payments received by the Social Security Administration under part 361 to the Supported Employment program. These statutory provisions remained substantively unchanged by WIOA.

Current Regulations: None.

Proposed Regulations: We propose to create a new §363.24 that would define program income, identify its uses, and clarify that program income may be treated as either an addition or deduction to the award.

In addition, we propose including requirements related to the carry-over of program income in proposed §363.25. This provision would clarify that program income may be carried over into the succeeding fiscal year.

Reasons: These regulations are necessary to govern the use and treatment of program income, consistent with sections 19 and 108 of the Act. Although statutory requirements governing program income have always applied to the Supported Employment program, we have found, through monitoring, that confusion exists among States as to how

and when program income should be reported under the Supported Employment program as opposed to under the VR program. We believe this proposed change would minimize such confusion and result in more accurate reporting of program income. Furthermore, these proposed changes are consistent with those proposed in part 361, which governs the VR program, since the Supported Employment program is supplemental to that program.

Carryover (§363.25)

Statute: Section 19 of the Act permits States to carry funds over to a succeeding fiscal year to the extent the State has satisfied any applicable match requirements.

Current Regulations: None.

Proposed Regulations: We propose to add a new §363.25 that mirrors the carryover requirements under part 361, which governs the VR program. Although section 19 of the Act has always applied to the Supported Employment program, the amendments made by WIOA change the effect of this requirement since States, for the first time, have a match requirement under this program. Therefore, a State would be permitted to carry over the 50 percent of the allotment reserved for serving youth with the most significant disabilities only if it has met the 10 percent match for

those funds in the fiscal year in which the funds were awarded. A State would be able to continue to carry over the other half of the allotment, to serve all other individuals, without having to satisfy a match requirement since the statute does not impose a match requirement on that portion of the supported employment allotment.

Reasons: The proposed revisions are necessary to implement in part 363 statutory changes made by WIOA. The proposed changes are also consistent with proposed changes to part 361, which governs the VR program, since the Supported Employment program is supplemental to that program.

Limitations on Administrative Costs (§363.51)

Statute: Section 603(c) of the Act, as amended by WIOA, reduces the limit allowed for administrative costs from 5 percent of the allotment to 2.5 percent. In addition, section 606(b)(7)(H) requires the State to assure in its State plan supplement for the Supported Employment program within the VR section of the Unified or Combined State Plan, that it will not expend more than 2.5 percent of the allotment for administrative costs.

Current Regulations: Current §363.51(b) contains a 5 percent limit. The current regulations do not reference

the 2.5 percent limit since this is a new statutory requirement.

Proposed Regulations: We propose to amend §363.51(b) to implement the reduced administrative cost limit of 2.5 percent. We also propose to amend the State plan requirements in §363.11 accordingly.

Reasons: The proposed revisions are necessary to implement in part 363 statutory changes made by WIOA.

Miscellaneous changes for clarity

Statute: Section 603 of the Act, as redesignated by WIOA, sets forth the procedures for allotting and reallocating funds under the Supported Employment program. This statutory provision remained substantively unchanged by WIOA.

Current Regulations: Current §§363.20 and 363.21 merely cross-reference to statutory provisions regarding procedures for allocating and reallocating funds that are obsolete given revisions made to title VI of the Act by WIOA.

Proposed Regulations: We propose to amend §§363.20 and 363.21 to mirror the statutory text regarding procedures for allocating and reallocating supported employment funds.

Reasons: The proposed changes are necessary to conform to statutory amendments made by WIOA that restructure title VI. The proposed changes would also outline the procedures for allocating and reallocating funds, rather than merely cross-referencing the Act, thereby making the proposed sections more user-friendly.

Limitation on Use of Subminimum Wages (Proposed 34 part 397)

Our discussion of part 397 is presented by subject in the order in which relevant sections appear in this part.

Purpose and the Department's Jurisdiction

Statute: Section 511 of the Act, as added by WIOA, imposes limitations on employers who hold special wage certificates under the Fair Labor Standards Act (FLSA) that must be satisfied before the employers may hire youth with disabilities at subminimum wage or continue to employ individuals with disabilities of any age at subminimum wage. Section 511 of the Act also establishes the roles and responsibilities of the designated State units (DSU) for the vocational rehabilitation (VR) program and State and local educational agencies, in assisting individuals with disabilities, including youth with disabilities, who are considering employment, or who are already employed, at

a subminimum wage, to maximize opportunities to achieve competitive integrated employment through services provided by VR and the local educational agencies.

Current Regulations: None.

Proposed Regulations: Proposed §397.1 establishes the purpose of the regulations in this part, which is to set forth requirements the DSUs and State and local educational agencies must satisfy to ensure that individuals with disabilities, especially youth with disabilities, have a meaningful opportunity to prepare for, obtain, maintain, advance in, or regain competitive integrated employment, including supported or customized employment.

This proposed section also states that these regulations should be read in concert with: part 300, which implements requirements under part B of the Individuals with Disabilities Education Act; part 361, which implements requirements for the VR program; and part 363, which implements the State Supported Employment Services program. We believe this clarification is necessary to ensure all stakeholders understand that nothing in this part is to be construed as altering any requirement under parts 300, 361, or 363.

Other relevant proposed regulations in this part include: §397.2, regarding the Department's jurisdiction; §397.3, regarding rules of construction; §397.4, regarding other applicable regulations; and §397.5, regarding applicable definitions.

Reasons: These proposed regulations are necessary to ensure stakeholders understand the purpose of section 511 of the Act, as added by WIOA, and the Department's authority and jurisdiction under this section, as well as the inter-relationship of these requirements with those under the Individuals with Disabilities Education Act and the VR program and Supported Employment program.

Coordinated Documentation Process

Statute: Section 511(d) of the Act, as added by WIOA, requires the DSU and the State educational agency to develop a coordinated process, or use an existing process, for providing youth with disabilities documentation demonstrating completion of the various actions required by section 511 of the Act. Other relevant statutory provisions include section 511(a) of the Act, regarding the actions that a youth must complete prior to beginning subminimum wage employment, and section 511(c) of the Act, regarding the actions that individuals with disabilities of

any age must complete in order to continue employment at subminimum wage.

Current Regulations: None.

Proposed Regulations: Proposed §397.10 would require the DSU, in consultation with the State educational agency, to develop a process that ensures individuals with disabilities, including youth with disabilities, receive documentation demonstrating completion of the various activities required by section 511 of the Act, such as, to name a few, the receipt of transition services by eligible children with disabilities under the Individuals with Disabilities Education Act and pre-employment transition services under section 113 of the Act, as appropriate.

Proposed §§397.20 and 397.30 would establish the documentation that the DSUs and local educational agencies, as appropriate, must provide to demonstrate completion of the various activities, required by section 511(a)(2) of the Act, by a youth with a disability. These would include completing pre-employment transition services under proposed §361.48(a) and the determination of eligibility or ineligibility for VR services under proposed §361.42 and §361.43.

Proposed §397.40 would establish the documentation that the DSUs must provide to individuals with disabilities of any age who are employed at a subminimum wage upon the completion of certain information and career counseling-related services, as required by section 511(c) of the Act.

Reasons: These proposed regulations are necessary to implement new statutory requirements. In so doing, these proposed regulations would inform DSUs, State, and local educational agencies of their specific responsibilities related to documentation required under section 511 of the Act and would ensure that individuals with disabilities have sufficient information available to make informed choices.

Contracting Prohibition

Statute: Section 511(b)(2) of the Act, as added by WIOA, prohibits a local or State educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) from entering into a contract or other arrangement with an entity, which holds a special wage certificate under 14(c) of the FLSA for the purpose of operating a program for a youth under which work is compensated at a subminimum wage.

Current Regulations: None.

Proposed Regulations: Proposed §397.31 would prohibit a local educational agency or a State educational agency from entering into a contract with an entity that employs individuals at subminimum wage for the purpose of operating a program under which a youth with a disability is engaged in subminimum wage employment. Although section 511(b)(2) of the Act refers to youth in general, the proposed regulation is limited to youth with disabilities in order to be consistent with all other provisions of section 511 of the Act.

Reasons: This proposed section is necessary to implement new statutory requirements. In so doing, this proposed regulation is consistent with the heightened emphasis in the Act, as amended by WIOA, on ensuring that individuals with disabilities, especially youth with disabilities, are given the opportunity to train for and obtain work in competitive integrated employment. While some State and local educational agencies contract with employers who hold special wage certificates under FLSA, others contract with employers who pay minimum wage, to create job training and other work experiences for students with disabilities. Through these training and work experience programs, students with disabilities gain knowledge and skills that

transfer into eventual jobs similar to those in which they receive their training, not only with regard to the type of duties performed, but also the wages earned. In the context of this proposed regulation, State and local educational agencies are not employers, but rather partners that facilitate entry of students with disabilities into training programs that are implemented by employers holding special wage certificates under the FLSA. We believe this statutory prohibition, which is contained in the proposed regulations, will result in fewer students with disabilities, participating in training programs at the subminimum wage level. As a result, we believe more students with disabilities, especially those with the most significant disabilities, will have the opportunity to gain work experiences in competitive integrated employment settings which, in turn, will lead to eventual employment outcomes in those settings rather than at the subminimum wage level. With regard to this proposed provision, the Secretary specifically seeks comments regarding the Department's role and jurisdiction with respect to these provisions.

Review of Documentation Process

Statute: Section 511(e)(2)(B) of the Act, as added by

WIOA, permits DSUs, along with the Department of Labor, to review individual documentation held by entities holding special wage certificates under the FLSA to ensure the required documentation for individuals with disabilities, including youth with disabilities, who are employed at the subminimum wage level, is maintained.

Current Regulations: None.

Proposed Regulations: Proposed §397.50 would authorize a DSU to review individual documentation, required by this part, for all individuals with disabilities who are employed at the subminimum wage level, that is maintained by employers, who hold special wage certificates under the FSLA.

Reasons: This proposed provision is necessary to implement new statutory requirements. In this context, the DSU's role is one of review not enforcement. The Department of Labor retains enforcement authority with respect to these employers under the FLSA.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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 OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

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

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

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

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

We have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

In assessing the potential costs and benefits--both

quantitative and qualitative--of these proposed regulations, we have determined that the benefits would justify the costs.

Need for Regulatory Action

Executive Order 12866 emphasizes that "Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people." The Department's goal in regulating is to incorporate the provisions of the Act, as amended by WIOA, into the Department's regulations governing the VR program and Supported Employment program at parts 361 and 363, respectively, as well as to clarify, update and improve these regulations. This regulatory action is also necessary to establish a new part 397 to implement specific the provisions of section 511 of the Act, as added by WIOA, which places limitations on the use of subminimum wages for individuals with disabilities.

Summary of potential costs and benefits

The Secretary believes that the proposed changes would substantially improve the programs covered in this NPRM,

and would yield substantial benefits in terms of program management, efficiency, and effectiveness. The Secretary believes that the proposed regulations represent the least burdensome way to implement the amendments to the Act made by WIOA. Due to the number of proposed regulatory changes, our analysis focuses solely on new requirements imposed by WIOA, organized in the following manner. First, we discuss the potential costs and benefits related to the VR program under section A that specifically address: competitive integrated employment and employment outcomes, pre-employment transition services and transition services, and additional VR program provisions. Second, we discuss the potential costs and benefits related to the Supported Employment program under section B. Finally, we discuss the costs and benefits pertaining to the establishment of proposed part 397 under section C.

Where possible The Department derived estimates by comparing the existing program regulations against the benefits and costs associated with implementation of provisions contained in this WIOA-required NPRM. The Department also made an effort, when feasible, to quantify and monetize the benefits and costs of the NPRM. When we were unable to quantify them—for example, due to data

limitations—we describe the benefits and costs qualitatively. In accordance with the regulatory analysis guidance contained in OMB Circular A-4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences (benefits and costs that accrue to individuals with disabilities) of the WIOA-required NPRM. In this analysis, the Department also considers the transfer of benefits from one group to another that do not affect total resources available to the VR program and Supported Employment program. However, in a number of service records the Department is unable to quantify these transfers due to limitations of the data it currently collects. In estimating costs, we used wage rates from the Bureau of Labor Statistics' Mean Hourly Wage Rate for State employees.

A. Vocational Rehabilitation Program

Competitive Integrated Employment and Employment Outcomes

The Act, as amended by WIOA, places heightened emphasis on the achievement of competitive integrated employment by individuals with disabilities, including those with the most significant disabilities. In so doing, Congress added a new term and accompanying definition to

the Act – "competitive integrated employment." While this is a new statutory term, it represents, in general, a consolidation of two existing regulatory definitions – "competitive employment" and "integrated setting." As a result of the statutory amendments, we propose to replace the existing regulatory definition of "competitive employment," with the new term "competitive integrated employment," by mirroring the statute and incorporating critical criteria from the existing regulatory definition of "integrated setting." Because this proposed change is more technical than substantive, and given that the substance of the proposed definition already exists in two separate definitions, we believe this particular change will have no significant impact on the VR program.

In addition to proposing to implement the new definition of "competitive integrated employment," we also believe it is necessary to propose changes to the current regulatory definition of "employment outcome." While the Act, as amended by WIOA, made only technical changes to the statutory definition of "employment outcome," we believe a regulatory change is necessary in light of the heightened emphasis throughout the Act on the achievement of competitive integrated employment under the VR program and

Supported Employment program. To that end, we propose to define "employment outcome" as an outcome in competitive integrated employment or supported employment, thereby eliminating uncompensated employment (e.g., homemakers and unpaid family workers) from the scope of employment outcomes for purposes of the VR program.

To date, the Department has exercised the Secretary's statutory discretion to permit types of employment not specified in the Act as "employment outcomes" under the VR program. In so doing, the Department has permitted uncompensated employment, such as work as homemakers and unpaid family workers, to constitute as an employment outcome under the VR program. However, given the heightened emphasis on competitive integrated employment in the Act, as amended by WIOA – from the purpose of the Act to the addition of section 511, the Secretary proposes to amend the current regulatory definition of "employment outcome" to include only compensated employment within its scope for purposes of the VR program. Thus, the Secretary intends to ensure that VR funds are no longer diverted for the provision of services that can be appropriately provided, in many cases, by independent living and other programs.

It is difficult to quantify the extent to which the proposed change to the definition of "employment outcome," which has the effect of eliminating homemakers and unpaid family workers from its scope, will affect VR program costs nationally due to a number of highly variable factors. For example, it is not known whether individuals who previously achieved homemaker outcomes will choose to pursue competitive integrated employment through the VR program in the future, or seek out other resources, such as those available from independent living programs. Based on data reported by VR agencies through the VR Case Service Report (RSA-911) for the period beginning in FY 1980 and ending in FY 2013, the percentage of individuals exiting the VR program as homemakers nationally declined significantly from 15 percent of all individuals achieving an employment outcome in fiscal year (FY) 1980 to 1.9 percent in FY 2013 (representing 3,467 of the 182,696 total employment outcomes that year). While the national percentage of homemaker outcomes compared to all employment outcomes is small, some designated State units (DSU) have a greater percentage of homemaker outcomes than others, particularly those serving only individuals who are blind and visually impaired. In FY 2013, the 24 DSUs that only provided

services to individuals who are blind and visually impaired reported that 10.5 percent of the 6,121 employment outcomes in that year were homemaker outcomes (or 645 outcomes). DSUs that serve individuals with disabilities other than those with blindness and visual impairments reported 656 homemaker outcomes in that year, or 0.8 percent of the 84,238 employment outcomes. In addition, the 32 DSUs that serve individuals with all disabilities reported 2,166 homemaker outcomes in FY 2013, representing 2.3 percent of their total 92,337 employment outcomes.

The average cost per employment outcome, including the average cost per homemaker outcome, can be calculated based on data reported by DSUs in the RSA-911 on the cost of purchased services for individuals exiting the VR program with an employment outcome. In FY 2013, the average cost per homemaker outcome for the VR program was $6,626, while the comparable average cost per employment outcome for all individuals exiting the VR program with an employment outcome that year was $5,672. It is possible that this higher average cost is because individuals obtaining a homemaker outcome generally require more intensive services or costly equipment because the nature or severity of their disabilities have prevented them from pursuing competitive

integrated employment. However, there may be other factors that drive up the average cost of these outcomes. For example, it may be that some of these individuals originally had a goal of competitive employment, but after receiving services for an intensive or long period of time without obtaining such an outcome, they may have chosen to change their goal. Further analysis is needed to identify the factors that contribute to the average higher cost of homemaker closures.

Given current information reported to the Department by DSUs, we are not able to predict how many individuals who would have possibly had a homemaker outcome might now choose to seek competitive employment. However, for the purpose of providing a gross estimate of these costs, we assume that approximately one-fourth (867) of the number of individuals who exited the VR program with a homemaker outcome will choose a goal of competitive integrated employment and continue to seek services through the VR program. We also assume that obtaining competitive integrated employment for these individuals may be more expensive than the current cost for obtaining a homemaker outcome, but also assume it is unlikely that the average costs for providing services to these individuals would

exceed more than 150 percent of their current costs (or approximately 175 percent of the average cost per employment outcome for all agencies in FY 2013). As such, we estimate the additional cost to DSUs to provide VR services to those individuals who previously would have exited the program with a homemaker outcomes would not exceed $3,313 per outcome, or about $2,872,370 per year. Alternatively, assuming that about 75 percent of the number of individuals who would have otherwise attained a homemaker outcome no longer seek services from DSUs (2,600) at an average cost of $6,626, there would be a net savings of $17,227,600 to the VR program. Based on these assumptions, we estimate an overall savings to the VR program of approximately $14,355,230.

We recognize that the proposed change in the definition of employment outcome could potentially increase the demand for services from independent living and other programs that can provide services similar to those that such individuals would have previously sought from the VR program and that some of these savings for the VR program could result in a cost transfer to other Federal, State, and local programs. The Department plans to provide guidance and technical assistance to: (1) facilitate the

transition to the new definition of employment outcome; and (2) minimize the potential disruption of services to current VR program consumers who do not currently have a competitive integrated employment or supported employment goal reflected in their individualized plan for employment. The Department also plans to provide guidance and technical assistance to assist both VR agencies and potential service providers in the referral and acquisition of services for individuals with disabilities seeking services for outcomes other than those covered under the proposed revised definition of employment outcome.

Finally the Department plans to work with other Federal agencies, such as the Administration for Community Living at the Department of Health and Human Services, in identifying any impact of the proposed change on independent living and other related programs and developing strategies to address potential problems.

Pre-Employment Transition Services and Transition Services

The Act, as amended by WIOA, places heightened emphasis on the provision of pre-employment transition services and other transition services to students and youth with disabilities, as applicable. As a result, the Secretary proposes to make numerous amendments to the VR

program regulations to implement new statutory requirements. A few of those proposed changes are relevant to this regulatory impact analysis discussion.

Foremost among these proposed changes is the requirement that DSUs reserve at least 15 percent of the State's VR allotment for the provision of pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services. Additionally, States may not include administrative costs associated with the provision of pre-employment transition services in the calculation of that 15 percent.

The proposed regulation would require DSUs to dedicate resources to: 1) ensure that the 15 percent is reserved from the State's VR allotment; 2) track the provision of pre-employment transition services to ensure funds were spent solely on authorized services and not on administrative costs; and 3) provide for administrative costs related to pre-employment transition services with non-reserved VR funds.

Second, section 113 of the Act, as added by WIOA, requires VR agencies to provide pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services. We propose to

interpret the term “potentially eligible” to mean all students with disabilities, as defined in proposed §361.5(c)(51). Prior to the enactment of WIOA, VR agencies were only permitted to provide pre-employment transition services or any other transition services to individuals who had been determined eligible for the VR program and who had an approved individualized plan for employment. In developing the proposed regulation, the Department considered limiting the provision of pre-employment transition services to those students with disabilities who have applied for VR services. However, this alternative interpretation is not proposed because we believe that Congress intended these services to reach a broader group of individuals than those who are eligible under current VR program regulations. The Department’s proposed interpretation, which is the broadest possible given the plain meaning of the statute, is consistent with Congressional intent and the stated desires of some VR agencies and other stakeholders.

Although pre-employment transition services are a new category of services identified in the Act, many of these services historically were provided under a more general category of transition services. Therefore, the provision

of these services is not new to VR agencies. However, until the enactment of WIOA, all such services were provided only to those students with disabilities who had been determined eligible for the VR program. Consequently, providing pre-employment transition services to all students with disabilities could increase staff time and resources spent on the provision of these services.

We are unable to estimate the potential increase in DSU administrative costs that may arise from implementation of new section 113 of the Act or the required 15 percent reservation of funds at this time. However, we have attempted to estimate the impact that this 15 percent reservation could have on the VR program as a whole.

Assuming that States are able to match all of the funds provided for the VR program in the FY 2015 VR appropriation, $3,052,453,598, the total aggregate amount of VR funds that would be required to be reserved for pre-employment transition services from all 80 State VR agencies would be $457,868,040. Because each State VR agency must reserve a portion of its allotment, it will now have fewer funds available to use for all other authorized activities, thereby reducing the available resources for services other than pre-employment transition services.

The extent of the impact of the reservation on a particular State will depend largely on the extent to which it has been providing transition services to students with disabilities that are now specified under section 113 as pre-employment transition services. States that currently provide extensive transition services to students with disabilities, including services that would meet the definition of pre-employment transition services, are likely to see less transfer of benefits among eligible individuals served by their agency. For States that have not provided such services or have only provided such services to this population to a small extent, there may be more extensive transfers of services and benefits of the VR program among individuals (i.e., to students with disabilities and away from other individuals who otherwise would have been served).

Ultimately, the total value of the benefits transfer is equivalent to the difference between the amount reserved by States under this provision (we assume here $457,868,040) and the cost of providing pre-employment transition services to students with disabilities who have such services outlined in their individualized plan for employment (i.e., those who would receive such services in

the absence of the mandated reservation).

Based on data reported through the RSA-911 for FY 2013, the service records for 206,050 transition-age youth (individuals ages 14 to 24 at the time of application) were closed, of which 123,119 received services. A portion of those served may qualify as students with a disability that would be able to receive pre-employment transition services. In FY 2013, of the 123,119 transition-age individuals who received services, 98,212 were aged 16 through 21, and most closely represent the population of "students with a disability" as defined under proposed regulations. DSUs expended a total of $503,208,438 on the purchase of VR services for these individuals, for an average cost of $5,124 per individual. Recognizing that the 98,212 students include only those who have applied for VR services and that under proposed regulations DSUs would provide pre-employment transition services to students with disabilities prior to their application for VR services, we anticipate that DSUs will be providing these services to a potentially larger number of students with disabilities with the reserved funds.

We emphasize that this is an estimate based on assumptions and that we cannot more definitively project

the transfer of benefits across the VR program related to the provision of pre-employment transition services due to both the unknown number of students in each State and nationally who may receive these services and the specific services that will be provided.

Third, section 103(b)(7) of the Act, as added by WIOA, permits VR agencies to provide transition services to groups of youth and students with disabilities. To that end, we propose to add §361.49(a)(7) to implement this requirement. In so doing, DSUs would be permitted to provide transition services to groups of students and youth with disabilities, who may not have applied, or been determined eligible, for VR services.

The proposed regulation benefits VR agencies in two significant ways: 1) it would give them the ability to serve groups of youth and students with disabilities simultaneously, who may need only basic generalized services, thereby reducing the amount of cost expended per individual; and 2) it would reduce administrative burden on the VR agencies, as well as the burden on students or youth with disabilities and their families, by not having to engage in processes for determining eligibility, conducting assessments, and developing individualized plans for

employment. However, we have not attempted to quantify the impact of this provision due to the variability in the number of individuals that may seek out these services nationally, the degree to which individuals would require these services within each State, and the services that would be provided in each State.

Additional Vocational Rehabilitation Program Provisions

VR Services Portion of the Unified or Combined State Plan

WIOA requires the VR State plan, which has been a stand-alone State plan, to be submitted as a VR services portion of a State's Unified or Combined State Plan for all six core programs of the workforce development system. Requirements related to the submission of Unified or Combined State Plans do not take effect until July 2016.

In preparing for the transition to the submission of Unified or Combined State Plans every four years, with modifications submitted every two years, we propose to amend regulations governing the annual submissions of certain reports and updates. In so doing, we would no longer require the submission of these particular reports and updates annually, but rather, they would be included in the VR services portion of the Unified or Combined State Plan and would be submitted at such time and in such manner

as determined by the Secretary. This flexibility would allow for VR program-specific reporting to be done in a manner consistent with those for the Unified or Combined State Plan under sections 102 or 103 of WIOA, thus avoiding additional burden or costs to DSUs through the submission of separate reports annually or whenever updates are made.

Section 101(a) of the Act, as amended by WIOA, requires DSUs to include additional descriptive information in the VR services portion of the Unified or Combined State Plan. Therefore, we propose to amend part 361 by requiring that DSUs describe in the VR services portion of the Unified or Combined State Plan the results of the comprehensive statewide needs assessment with respect to the needs of students and youth with disabilities for pre-employment transition services and other transition services, as appropriate; to identify goals and priorities to address these needs; and to describe strategies for the achievement of these goals. We also propose that the VR services portion of the Unified or Combined State Plan include a description of how the DSU will work with employers to identify competitive integrated employment opportunities and career exploration opportunities, in order to facilitate the provision of VR services, and

transition services for youth with disabilities and students with disabilities, such as pre-employment transition services. We also propose that the VR services portion of the Unified or Combined State Plan contain a description of collaboration with the State agency responsible for administering the State Medicaid plan under title XIX of the Social Security Act, the State agency responsible for providing services for individuals with developmental disabilities, and the State agency responsible for providing mental health services, to develop opportunities for community-based employment in integrated settings, to the greatest extent practicable. As a result, DSUs would be required to expend additional effort in the development of these descriptions beyond the 25 hours currently estimated for the development and submission of the entire State plan, now the VR services portion of the Unified or Combined State Plan. We estimate that DSUs will require an additional five hours for the development of these descriptions, for a total of 30 hours per agency. At an average hourly rate of $39.78 (based on data obtained from the Bureau of Labor Statistics for State government management occupations), a rate more consistent with State rates of pay than the $22.00 per hour used to

calculate current costs, each DSU would expend $1,193 in the development of and submission of the VR services portion of the Unified or Combined State Plan, resulting in a total of $95,472 for all 80 DSUs. Although these costs are significantly higher than the current estimate of $2,000 incurred by all 80 DSUs in the development and submission of the State plan, we believe that the additional burden is more accurate and outweighed by the benefit to the public through a more comprehensive understanding of the activities DSUs engage in to assist individuals with disabilities to obtain the skills necessary to achieve competitive integrated employment in job-driven careers.

Order of Selection

Section 101(a)(5) of the Act, as amended by WIOA, permits DSUs, at their discretion, to serve eligible individuals who require specific services or equipment to maintain employment, regardless of whether they are receiving VR services under an order of selection or their assignment to a priority category. Therefore, we propose to amend part 361 to implement this new statutory requirement. It is important to note that DSUs implementing an order of selection are not required to use

this authority; rather, they may choose to do so based upon agency policy, or the availability of financial and staff resources. DSUs implementing an order of selection would be required to state in the VR services portion of the Unified or Combined State Plan whether they have elected to exercise this discretion, thereby signaling a decision to serve eligible individuals who otherwise might have been placed on a waiting list under the State's order of selection, and who are at risk of losing their employment. This proposed change would increase flexibility for a State managing its resources. If a State were to implement this flexibility, it could prevent an individual from losing employment by avoiding a delay in services. On the other hand, DSUs that elect to implement this option would potentially need to reallocate resources to cover expenditures for services or equipment for individuals who meet the qualifications of this provision, and fall outside the open priority category of a DSU's order of selection.

For FY 2015, the State Plans of 34 of the 80 DSUs documented that the agency had established an order of selection, one agency more than in FY 2014. This total includes 8 percent of the 24 DSUs serving only individuals who are blind and visually impaired and 57 percent of the

56 other DSUs. Based on data reported through the RSA-911 in FY 2013, 17 percent of the individuals whose service records were closed and who received services were employed at application, with an average cost of purchased services $4,744. In addition, according to data reported through the VR program Cumulative Caseload (RSA-113) report, 33,856 individuals were on a waiting list for VR services at the close of FY 2013 due to the implementation of an order of selection. Assuming that 17 percent of the 33,856 individuals on the waiting list could potentially benefit from the provision of services and equipment to maintain employment, a possible 5,756 individuals could benefit from the proposed regulatory change for a total cost of $27,306,464. This figure represents the potential reallocation of resources to cover the cost of services for individuals who, prior to enactment of WIOA, may have not received them, and away from eligible individuals who would have received services based on a VR agency's order of selection policy.

However, the implementation of an order of selection by individual DSUs may differ from year to year, as well as within a given fiscal year. In fact, not all DSUs that indicate they have established an order of selection as

part of their State Plan actually implement that order or report that they had individuals on a waiting list during the year. In addition, we are unable to predict which DSUs on an order of selection would choose this option. The degree to which individuals will be referred for this service will also vary widely, as will the level of services or equipment that an individual could need to maintain employment.

Reports, Standards, and Indicators

As a result of amendments to the Act made by WIOA, we propose to revise §361.40 to reflect changes to reporting requirements in section 116(b) in title I of WIOA and amendments to section 101(a)(10) of the Act. Section 361.40, as proposed, does not list the actual data to be reported, but rather requires the collection and reporting of the information specified in sections 13, 14, and 101(a)(10) of the Act. New requirements under section 101(a)(10) include the reporting of data on the number of: individuals with open service records and the types of services these individuals are receiving (including supported employment); students with disabilities receiving pre-employment transition services; and individuals referred to State VR programs by one-stop operators and

individuals referred to such one-stop operators by State VR programs. The RSA-911 would be revised as described in the information collection published for comment elsewhere in this issue of the Federal Register, consistent with the requirements in proposed §361.40.

Proposed 361.40 also would require States to report the data necessary to assess VR agency performance on the standards and indicators subject to the performance accountability provisions described in section 116 of WIOA. The common performance accountability measures apply to all core programs of the workforce development system and will be implemented in joint regulations set forth in subpart E of part 361. The impact analysis of these regulations are addressed in the joint regulations.

We estimate that each DSU will need an additional 15 minutes per VR counselor to collect the new VR-specific data required by Section 101(a)(10) of the Act. Estimating an average of 125 counselors per DSU, the number of hours per DSU would increase by 31.25 for a total increase of 2,500 hours for all 80 DSUs. The estimated cost per DSU, using an hourly wage of $22.27 (based on data from the Bureau of Labor Statistics for State-employed VR counselors), would result in an increase of $695.94 per DSU

and a total increase of $55,675 for all 80 DSUs.

In addition, we estimate the burden hours for submission of the entire RSA-911 data file per DSU would increase from 50 hours per agency to 100 hours per agency, representing an increase of 50 hours due to the need to report all open case data on a quarterly basis (rather than only data for closed service records on an annual basis). The total number of hours needed for the submission of the data file for 80 agencies would increase from 4,000 to 8,000 hours. Using an average hourly wage rate of $33.63 (based on data from the Bureau of Labor Statistics State-employed database administrators), the estimated cost per DSU would be $3,363, and the estimated cost for all 80 DSUs would be $269,040. The total burden hours for both collection and submission would be 131.25 hours per DSU or a total of 10,500 hours for all 80 DSUs. The estimated total burden cost for both collection and submission per DSU would be $4,059, with a total burden cost of $324,715 for all 80 DSUs.

Finally, DSUs will incur expenses related to programming and modifications of data retrieval systems as a result of the revisions to the RSA-911 and its instructions due to the new VR-specific data required under

section 101(a)(10) of the Act. The costs are one-time, first-year costs. The burden on the DSUs related to the programming of their case management systems as a result of the redesigned RSA-911 will vary widely because agencies themselves range in size and the sophistication of their information technology systems. Roughly half of the 80 DSUs use case management and reporting systems purchased from software providers who are responsible for maintaining and updating software. We estimate those DSUs would experience no or minimal increases in cost burden. The remaining DSUs have developed their own case management systems for which changes will be made by their information technology staff or outside contractors. Approximately, half of these DSUs would make the changes internally and half would contract for the changes to be made.

We estimate those 20 DSUs that own, maintain, and update internal case management and reporting systems will expend an average of 240 hours at $44.72 (based on data from the Bureau of Labor Statistics for State-employed computer and information systems managers), for a total of $10,732.80 per DSU. The estimated total burden hours for all 20 DSUs would be 4,800 hours and at a cost of $214,656. We estimate that contractors who provide maintenance and

system updates to the 20 DSUs with internal case management systems would need 500 hours per DSU to accomplish the reprogramming of these systems, for a total of 10,000 hours, as a result of the proposed changes to the RSA-911 data file. Using an average hourly wage rate of $39.21 x 100 hours for private sector computer programmers, and a wage rate $67.32 x 400 hours for private sector computer and information system managers (based on Bureau Labor Statistics data for 2013), we estimate these 20 DSUs will incur expenses of $30,849.00 per DSU, or a total cost of $616,980.00.

We believe that these costs are outweighed by the benefits to the VR program because the new information to be reported and having access to more timely information on individuals currently participating in the VR program will better enable the Department and its partners to assess the performance of the program and monitor the implementation of WIOA, particularly as it relates to key policy changes, such as pre-employment transition services and its integration in the workforce development system.

Extended Evaluation

In implementing amendments to the Act made by WIOA, we propose to amend current §§361.41 and 361.42 by removing

requirements related to extended evaluation. Instead, a DSU would be required to use trial work experiences when conducting an exploration of an individual with a significant disability's abilities, capabilities, and capacity to perform in work situations. These proposed revisions would streamline the eligibility or ineligibility determination process for all applicants whose ability to benefit from VR services is in question.

VR program data collected by the Department do not distinguish between individuals who had a trial work experience and those that had an extended evaluation. However, data show that 5,205 individuals exited from the VR program during or after trial work experiences or extended evaluations in FY 2013. DSUs expended a total of $4,385,963 on the provision of services to these individuals for an average cost of $843 per individual. Because we are unable to estimate how many of the 5,205 individuals were in extended evaluation, we cannot quantify either the current or the potential change in costs for this specific group of individuals. Based on the monitoring of VR agencies, it should be noted that the use of these services varies among DSUs, mainly due to variations in opportunities for individuals to participate

in trial work experiences, and the extent to which DSUs historically utilized extended evaluation. We believe that the benefits of streamlining the eligibility determination process for applicants whose ability to benefit from VR services is in question and ensuring that ineligibility determinations are based on a full assessment of the capacity of an applicant to perform in realistic work settings outweighs the costs of removing the limited exception to trial work experiences.

Timeframe for Completing the Individualized Plan for Employment

Section 102(b) of the Act, as amended by WIOA, requires DSUs to develop individualized plans for employment within 90 days of date of eligibility determination. Consequently, we propose to amend §361.45 to implement this 90-day requirement. Due to variations in current DSU timelines for the development of the individualized plan for employment, the establishment of a 90-day timeframe by WIOA would ensure consistency across the VR program nationally and the timely delivery of services, thereby improving DSU performance and successful employment outcomes for individuals with disabilities.

We are unable to quantify potential additional costs

to DSUs nationwide due to the variance in timelines currently in place. It is likely that States with prolonged timelines beyond 90 days could experience an increase in outlays. For example, an increase in outlays could occur as a result of larger numbers of individuals, with approved individualized plans for employment, beginning to receive VR services at an earlier time than had historically been the case. However, while the overall cost per individual served are not likely to be affected by this proposed provision, the average time before some DSUs incur expenses related to the development of, and provision of services under, individualized plans for employment may be shortened, resulting in a shift of VR program outlays for services sooner than has been experienced. Therefore, in any given fiscal year outlays for these DSUs could be higher. While costs over the life of the service record should not be affected, some VR agencies could find it necessary to implement an order of selection due to the shifting of cost that would have been incurred in a subsequent fiscal year to a prior fiscal year as the result of a larger number of individuals with individualized plans for employment developed within 90 days. As always, DSUs are encouraged to conduct planning that incorporates

programmatic and fiscal elements to make projections and assessments of VR program resources and the number of individuals served, utilizing management tools including order of selection, as appropriate.

Services to Groups of Individuals with Disabilities

Section 103(b)(8) of the Act, as added by WIOA, permits a DSU to establish, develop, or improve assistive technology demonstration, loan, reutilization, or financing programs designed to promote access to assistive technology. To that end, we propose to amend §361.49 to implement this new authority. In so doing, we propose to limit the population to be served to individuals with disabilities who have applied, or been determined eligible, for VR services, thereby maintaining consistency with the authority to establish, develop, or improve a community rehabilitation program. We anticipate that this provision will benefit individuals with disabilities and employers through expanded access to assistive technology, reflecting the integral role assistive technology plays in the vocational rehabilitation and employment of individuals with disabilities. However, by limiting the use of this authority to services and activities that benefit applicants and eligible individuals, we ensure that this

authority is used in coordination with, rather than to supplant, services and activities provided under the Assistive Technology Act. We have not attempted to quantify additional costs associated with this provision due to the variable nature of the specific assistive technology needs of VR program participants, and the availability of assistive technology demonstration, loan, reutilization, or financing programs within each State.

Maintenance of Effort Requirements

Section 111(a) of the Act, as amended by WIOA, requires the Secretary to reduce any subsequent fiscal year VR award to satisfy a maintenance of effort (MOE) deficit in a prior year. As a result, we propose to amend §361.62 to implement this new requirement. Prior to the enactment of WIOA, the Secretary could only reduce the subsequent year's grant to satisfy an MOE deficit from the preceding fiscal year. If a MOE deficit was discovered after it was too late to reduce the succeeding years grant, the Secretary was required to seek recovery through an audit disallowance, whereby the State repaid the deficit amount with non-Federal funds.

Because the Secretary is now able to reduce any subsequent year's VR grant for any prior year's MOE

deficit, DSUs benefit as they are no longer required to repay MOE shortfalls with non-Federal funds, thereby increasing the availability of non-Federal funds, in those instances, for obligation as match under the VR program. Since FY 2010, two States were required to pay a total of $791,342 in non-Federal funds related to MOE penalties because their MOE shortfall was not known at the time the reduction in Federal funds would have been authorized. As a result, these funds were unavailable to be used as matching funds for the VR program in the year they were paid. On the other hand, the new authority could have resulted in the deduction of the $791,342 MOE penalties from a future Federal award.

B. The Supported Employment Program

Services to Youth with the Most Significant Disabilities in Supported Employment

Section 603(d) of the Act, as amended by WIOA, requires DSUs to reserve 50 percent of their supported employment State grant allotment to provide supported employment services, including extended services, to youth with the most significant disabilities. This new statutory requirement is consistent with the heightened emphasis throughout the Act on the provision of services to youth

with disabilities, especially those with the most significant disabilities. To that end, we propose to amend part 363 to implement this new requirement. The proposed changes are consistent with proposed changes to the VR program regulations, since the Supported Employment program is supplemental to that program.

After setting aside funds to assist in carrying out section 21 of the Act, the FY 2015 Federal appropriation provides $27,272,520 for distribution to DSUs under the Supported Employment State Grants. Assuming that States are able to provide the required 10 percent non-Federal match for the available Supported Employment formula grant funds in FY 2015, the 50 percent reservation would result in the dedication of $13,636,260 for supported employment services to youth with the most significant disabilities. Conversely, the reserved funds would not be available for the provision of supported employment services to individuals who are not youth with the most significant disabilities.

Match Requirements for Funds Reserved for Serving Youth with the Most Significant Disabilities in Supported Employment

Section 606(b) of the Act, as amended by WIOA,

requires States to provide a ten percent match for the 50 percent of the supported employment allotment reserved for providing supported employment services, including extended services, to youth with the most significant disabilities. We propose to implement this requirement in part 363. To date, the supported program has not had a match requirement.

As stated above, $27,272,520 is available for formula grants to States under the Supported Employment program for FY 2015. The 10 percent match requirement would generate $1,515,140 in non-Federal funds for supported employment services that will benefit youth with the most significant disabilities. In addition, if the appropriation increases in future years, the match requirement would result in additional supported employment resources for youth with the most significant disabilities. However, States will have to identify additional non-Federal resources in order to match the Federal funds reserved for this purpose .

Extended Services

Title VI of the Act, as amended by WIOA, permits DSUs to provide extended services to youth with the most significant disabilities, using the funds reserved for the provision of supported employment services to this

population. These services may be provided for a period up to four years. To that end, we propose to amend part 363 to implement this requirement. Prior to the enactment of WIOA, DSUs were not permitted to provide extended services to individuals of any age. Under the Act, as amended by WIOA, DSUs still may not provide extended services to individuals with the most significant disabilities who are not youth with the most significant disabilities. Since extended services have not previously been an authorized activity with the use of VR or supported employment funds, this proposed change could have significant impacts on States.

Nonetheless, we want to make clear that DSUs are not required to provide extended services to youth with the most significant disabilities, but rather are permitted to do so, thereby creating a funding source for the services that previously was not available.

Extension of Time for the Provision of Supported Employment Services

We propose to amend the definition of supported employment services in §361.5(c)(54) to implement the statutory change made by WIOA that extends the provision of supported employment services from 18 to 24 months. The

definition of supported employment services applies to both the VR program and Supported Employment program. In addition, under both current and proposed regulations, DSUs have the authority to exceed this time period under special circumstances if jointly agreed to by the individual and the rehabilitation counselor.

The statutory change implemented in these proposed regulations would benefit individuals with the most significant disabilities who require ongoing support services for a longer period of time to achieve stability in the employment setting, prior to full transition to extended services. This provision could result in DSUs using more resources under both the VR program and Supported Employment program to provide ongoing services.

DSUs typically have not provided ongoing support services for a full 18 months. In FY 2013, 15,458 individuals achieved supported employment outcomes within 21 months following the development of the individualized plans for employment, which period we assume could include the provision of supported employment services for a full 18 months and a minimum period of 90 days prior to case closure. Of these individuals, 10,608, or approximately 69 percent, achieve supported employment outcomes within 12

months. While we anticipate that most individuals may not need supported employment services for the full period of 24 months, in FY 2013, 1,759 individuals achieved supported employment outcomes within a period ranging from 21 months to 27 months of the development of the individualized plan for employment. DSUs expended $13,257, 816 on purchased services for these individuals, or an average of $7,537 per individual. Assuming this period includes the provision of supported employment services for a full 24 months and a minimum period of 90 days prior to case closure we estimate that an approximate number of individuals would benefit from the provision of supported employment services for an additional six months and that DSUs would incur similar costs for the provision of these services as a result of the proposed regulatory change.

Limitations on Supported Employment Administrative Costs

We propose to amend part 363 to implement a new requirement in the Act, as amended by WIOA, that reduces the maximum amount of a State's grant allotment under the Supported Employment program that can be used for administrative costs from 5 percent of the State's grant allotment to 2.5 percent. As a result, a larger portion of Federal supported employment funds must be spent on the

provision of supported employment services, including extended services to youth with the most significant disabilities, rather than administrative costs. However, any administrative costs incurred beyond the 2.5 percent limit on the use of Supported Employment funds may be paid for with VR program funds.

Based upon the $27,272,520 available for formula grants to States under the Supported Employment program in FY 2015, the total allowable amount of these Federal funds that can be used to support administrative costs would be reduced by half, from $1,363,626 to $681,813. Thus, for those DSUs that have typically used more than 2.5 percent of their allotment to cover program administrative costs, the new requirement would provide a small increase in the amount of funds available for the provision of services to individuals with the most significant disabilities pursuing a supported employment outcome. DSUs will be able to shift these excess costs to the VR State grants program since it does not have a cap on the amount of administrative funds that can be spent under that program.

C. Limitations on the Use of Subminimum Wage

The Act, as amended by WIOA, imposes limitations on the payment of subminimum wages by employers who hold

special wage certificates under the Fair Labor Standards Act. The requirements imposed by section 511 and thus proposed in part 397, do not take effect until July 22, 2016.

Pursuant to statutory requirements contained in section 511 of the Act, as added by WIOA, we propose to create a new §397.10 that would require the DSU, in consultation with the State educational agency, to develop a process, or utilize an existing process, that ensures individuals with disabilities, including youth with disabilities, receive documentation demonstrating completion of the various activities required by section 511. Proposed §§397.20 and 397.30 would establish the documentation that the DSUs and local educational agencies, as appropriate, must provide to demonstrate an individual's completion of the various activities required by section 511(a)(2) of the Act. These include completing pre-employment transition services under proposed §361.48(a) and the determination under an application for VR services under proposed §§361.42 and 361.43. Proposed §397.40 would establish the documentation that the DSUs must provide to individuals with disabilities upon the completion of certain information and career counseling-related services,

as required by section 511(c) of the Act. We have not attempted to quantify the costs to the DSUs related to the provision of this required documentation because the number of youth and other individuals who potentially could receive services under proposed part 397 will vary widely from State to State. In addition, there exists no reliable national data on which to base a calculation of costs. However, DSUs generate documentation throughout the vocational rehabilitation process that may meet the requirements of §§397.20 and 397.30, including written notification of a consumer's eligibility or ineligibility, copies of individualized plans for employment and subsequent amendments, and written notification when the consumer's case record is closed. As a result, the utilization of this documentation to meet section 511 requirements should not result in significant additional burden to DSUs.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed regulations easier to understand, including

answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading: for example, §361.1 Purpose.)
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

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

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed

regulations would not have a significant economic impact on a substantial number of small entities. The 80 entities that administer the VR program and Supported Employment program are State agencies, including those in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

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

The following sections contain information collection

requirements:

- Sections 361.10, 361.12, 361.13, 361.15, 361.16, 361.17, 361.18, 361.19, 361.20, 361.21, 361.22, 361.23, 361.24, 361.25, 361.26, 361.27, 361.29, 361.30, 361.31, 361.32, 361.34, 361.35, 361.36, 361.37, 361.40, 361.46, 361.51, 361.52, 361.53, and 361.55, as well as §§363.10 and 363.11, pertaining to the VR services portion of the Unified or Combined State Plan and Supplement for Supported Employment Services; and
- Sections 361.40 and 363.52, related to the VR program Case Service Report.

As a result of the amendments to the Act made by WIOA, we propose changes to some of these sections and their corresponding information collection requirements. Under the PRA the Department has submitted a copy of these sections to OMB for its review.

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

penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. In the final regulations, we will display the OMB control numbers assigned by OMB to any information collection requirement proposed in this NPRM and adopted in the final regulations, including: 1820-0013 (Cumulative Case Report), 1820-0017 (Annual Vocational Rehabilitation Program/Cost Report), 1820-0500 (VR State Plan), 1820-0508 (VR Case Service Report), 1820-0563 (Annual Report of Appeals), 1820-0693 (Program Improvement Plan), and 1820-0694 (VR Program Corrective Action Plan).

VR Services Portion of the Unified or Combined State Plan and Supplement for Supported Employment Services (1820-0500)

Section 101(a) of the Act, as amended by WIOA, adds new content requirements to the State plan, which is now to be submitted as the vocational rehabilitation services portion of the Unified or Combined State Plan under section 102 or 103 of title I of WIOA. As a result, proposed §§361.10, 361.18, 361.24, 361.29, and 361.36, along with proposed §§363.10 and 363.11, would cause substantive changes to the active and OMB-approved data collection

under 1820-0500 (VR State Plan). In addition, the VR State Plan form includes previously approved information collection requirements related to a number of current regulations that remain unchanged as a result of the amendments to the Act. There are also several proposed regulations related to this data collection that necessitate primarily conforming or technical changes to the form.

These current and proposed sections that contain already approved information collection requirements or that do not cause substantive changes to the form include: §§361.12, 361.13, 361.15, 361.16, 361.17, 361.19, 361.20, 361.21, 361.22, 361.23, 361.25, 361.26, 361.27, 361.30, 361.31, 361.34, 361.35, 361.37, 361.40, 361.46, 361.51, 361.52, 361.53, and 361.55. The proposed regulations and other adjustments described here would change the current OMB-approved annual aggregate burden of 1,002,000 hours at $22.00 per hour and estimated total annual costs of $22,044,000.00 for all 80 respondents.

The currently OMB-approved estimated annual burden of 1,002,000 hours for all 80 VR agencies includes a total of 2,000 hours (25 hours per agency) for the preparation and submission of the VR State Plan and a total of 1,000,000

hours (12,500 hours per agency) for record keeping associated with the case management of the individuals who apply for and receive services from the VR program, and Supported Employment program. However, we have determined that the time associated with this record keeping (1,000,000 hours annually for all 80 respondents) is part of the customary and usual business practices carried out by VR agencies, and thus, should not be included in the estimated annual burden for this form.

As previously stated there are a number of proposed regulations in parts 361 and 363 that necessitate substantive changes to the State plan. The most significant of these changes is in proposed §361.10 and would require VR agencies to submit the VR services portion of the Unified or Combined State Plan to be eligible to receive Federal VR program funds. Proposed §361.18 would require the VR services portion of the Unified or Combined State Plan to describe the procedures and activities the State agency will take to ensure it employs qualified rehabilitation personnel, including the minimum academic and experience requirements as amended by WIOA. Proposed §361.24 would require VR agencies to describe their coordination with employers to increase awareness and

employment opportunities for individuals with disabilities, as well as coordination with non-educational agencies serving out-of-school youth, and the lead agency and implementing entity for the coordination of activities available under section 4 of the Assistive Technology Act of 1998. Proposed §361.24 also would require VR agencies to describe in the plan their collaboration, to develop opportunities for community-based employment in integrated settings, to the greatest extent practicable, with the State agency responsible for administering the State Medicaid plan under title XIX of the Social Security Act, agencies providing services and supports for individuals with developmental disabilities, and the State agency responsible for providing mental health services. Proposed §361.29 would require VR agencies to include in the VR services portion of the Unified or Combined State Plan the results of the comprehensive statewide assessment regarding the needs of students and youth with disabilities for pre-employment transition services and other transition services. In addition, proposed §361.29 would require the plan to include an estimate of the number of eligible individuals who are not receiving VR services due to the implementation of an order of selection. This proposed

section also would require the plan to contain strategies to improve VR services for students and youth with disabilities, to address their needs as identified through the statewide needs assessment, and to provide pre-employment transition services. Proposed §361.36 would require VR agencies implementing an order of selection to indicate in the plan if they elect to provide services or equipment to individuals with disabilities to enable them to maintain employment, regardless of whether these individuals are receiving services under the order.

There are also proposed regulations in part 363 governing the State Supported Employment Services program that necessitate changes to the VR State Plan form. Proposed §363.10 would require the State to submit with the VR services portion of the Unified or Combined State Plan a supplement that meets the requirements of §363.11 to receive a grant under the State Supported Employment Services program. Proposed §363.11 would require the VR services portion of the Unified or Combined State Plan to describe the quality, scope, and extent of supported employment services to eligible individuals (including youth with the most significant disabilities), the State's goals and priorities with respect to the distribution of

funds received under this section, the provision of extended services for a period not to exceed four years, and an assurance to expend no more than 2.5 percent of the award under this part for administrative costs.

The regulations proposed under these sections of parts 361 and 363 would increase the time needed by each VR agency to prepare and submit the VR services portion of the Unified or Combined State Plan and its supported employment supplement from 25 to 30 hours annually.

In addition, the total cost of this data collection may increase due to the proposed adjustment to the average hourly wage rate of State personnel used to estimate the annual burden for this data collection from $22.00 to $39.78, so that wage rates are consistent with data reported by the Bureau of Labor Statistics.

In summary, our new information collection estimate for the VR State plan reflects the removal of the burden associated with the maintenance of case management records for individuals served through the VR program and Supported Employment program, adjustment of the average hourly wage rate for State VR personnel responsible for preparing the VR State plan form, and the increase in the estimated number of hours needed to prepare and submit this data

collection due to proposed regulatory changes. As a result of these changes, we estimate a total annual burden of 2,400 hours (30 hours for each of the 80 respondents), at $39.78 per hour, for a total annual cost of $95,472.00.

VR Case Service Report 1820-0508

The VR Case Service Report is used to collect annual individual level data on the individuals that have exited the VR program, including individuals receiving services with funds provided under the Supported Employment program. Sections 101(a)(10) and 606 of the Act contain data reporting requirements under the VR program and Supported Employment program, respectively. WIOA amends these sections to require States to report additional data describing the individuals served and the services provided through these programs. In addition, WIOA amends section 106 of the Act by eliminating the current VR evaluation standards and indicators and requiring that the standards and indicators used to assess the performance of the VR program be consistent with the performance accountability measures for the core programs of the workforce development system established under section 116 of WIOA. Consequently, we propose changes to §§361.40 and 363.52 that would cause substantive changes to the active and OMB-

approved data collection under 1820-0508 – the VR Case Service Report (RSA-911). Specifically the proposed regulations described here would change the current OMB-approved annual aggregate burden of 4,000 hours at $40.00 per hour and estimated total annual costs of $160,000.00 for all 80 respondents.

The most significant proposed change to this data collection affects the time at which data is collected as well as the frequency with which data is collected. Under the current approved form, VR agencies annually report data on each individual whose case file is closed after exiting the VR program in that fiscal year. However, new statutory requirements would necessitate the reporting of data for both current program participants (open service records), as well as individuals who have exited the program (closed records) on a quarterly basis. Specifically, proposed §361.40 would require a State to ensure in the VR services portion of the Unified or Combined State Plan that it will submit reports, including reports required under sections 13, 14, and 101(a)(10) of the Act. New reporting requirements under section 101(a)(10)(C) of the Act include data on the number of: individuals currently receiving services (open records) and the types of services they are

receiving, students with disabilities receiving pre-employment transition services, and individuals referred to the State VR program by one-stop operators and those referred to such one-stop operators by the State VR program. In addition, proposed §363.52 would require States to report separately data regarding eligible youth receiving supported employment services under parts 361 and 363.

Proposed §361.40 also would require States to report the data necessary to assess VR agency performance on the standards and indicators subject to the performance accountability provisions described in section 116 of WIOA. The common performance accountability measures established under section 116 of WIOA apply to all core programs of the workforce development system and will be implemented in joint regulations set forth in subpart E of part 361.

Because these new requirements would necessitate the reporting of data for both current program participants (open service records) as well as individuals who have exited the program (closed service records) on a quarterly basis, estimated data collection and reporting burden will increase. However, we propose to reduce the burden to respondents by eliminating redundant elements and

reorganizing some existing elements of the form. The regulations proposed under this section will increase the total annual burden for the 80 respondents by 4,000 hours. We estimate the total annual reporting burden to be 8,000 hours at $33.63 per hour (a rate more consistent with the rate reported through the Bureau of Labor Statistics for State-employed database administrators), for a total annual cost of $269,040.00.

Related OMB-approved Data Collections that Remain Unchanged

The regulations proposed through this NPRM do not cause substantive changes to the OMB-approved annual burden, respondents, or costs for the following OMB-approved data collections:

1820-0013 Cumulative Caseload Report

In the Cumulative Caseload Report State VR agencies report cumulative aggregate data on individuals served in the various stages of the VR process and services provided. Proposed regulations related to this data collection would not cause substantive changes to the current OMB-approved annual burden of 320 annual burden hours at $30.00 per hour with 80 respondents reporting quarterly for a total of 320 responses, and total annual costs of $9,600.00.

1820-0017 Annual Vocational Rehabilitation Program/Cost

Report

Proposed regulations related to this data collection would not cause substantive changes to the current OMB-approved annual burden of 320 annual burden hours at $30.00 per hour with 80 respondents and annual costs of $9,600.00.

1820-0563 Annual Report of Appeals

In this report, State VR agencies submit data on the number of individuals who have requested appeals for decisions made by the DSU pertaining to the provision of services, the types of dispute resolutions used to resolve these appeals, and the outcomes of these appeals. Proposed regulations related to this data collection would not cause substantive changes to the current OMB-approved annual burden of 160 annual burden hours at $30.00 per hour with 80 respondents and annual costs of $4,800.00.

1820-0693 Performance Improvement Plan (PIP)

A Performance Improvement Plan is developed when a VR agency has failed to achieve the required performance level for the evaluation standards and indicators established under section 106 of the Act. Proposed regulations related to this data collection would not cause substantive changes to the current OMB-approved annual burden of 125 annual burden hours at $30.00 per hour with 5 respondents

reporting quarterly for a total of 20 responses, and annual costs of $3,750.00.

1820-0694 VR Program Corrective Action Plan

A Corrective Action Plan is required when a DSU is found to be out of compliance with the Federal requirements governing the administration of the VR program through monitoring activities engaged in pursuant to section 107 of the Act. Proposed regulations related to this data collection would not cause substantive changes to the current OMB-approved annual burden of 975 annual burden hours at $30.00 per hour with 15 respondents reporting quarterly for a total of 60 responses, and annual costs of $29,250.00.

Note that in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published at 2 CFR 200, we require an authorized certifying official for each data collection to certify that the data is true, accurate and complete to the best of his or her knowledge or belief. This requirement does not cause any change to the estimated annual burden related to the preparation and submission of the data collections described in this section of the NPRM.

We have prepared an Information Collection Request (ICR) for these collections. If you want to review and comment on the ICR please follow the instructions listed under the ADDRESSES section of this notice. Please note the Office of Information and Regulatory Affairs (OMB) and the Department review all comments on an ICR that are posted at www.regulations.gov. In preparing your comments you may want to review the ICR in www.regulations.gov or in www.reginfo.gov. The comment period will run concurrently with the comment period of the NPRM. When commenting on the information collection requirements, we consider your comments on these collections of information in--

- Deciding whether the collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond.

This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collections of information contained in these regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. This does not affect the deadline for your comments to us on the proposed regulations.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov by selecting Docket ID ED-2015-OSERS-0001 or via postal mail commercial delivery, or hand delivery. Please specify the Docket ID number and indicate "Information Collection Comments" on the top of your comments if your comment relates to the information collection for this rule. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department

of Education, 400 Maryland Avenue, SW., Mailstop L-OM-2-2E319LBJ, room 2E115, Washington, D.C. 20202-4537. Comments submitted by fax or email and those submitted after the comment period will not be accepted. FOR FURTHER INFORMATION CONTACT: Electronically mail ICDocketMgr@ed.gov. Please do not send comments here.

Intergovernmental Review

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

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

Assessment of Educational Impact

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

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in §§361, 363, and 397 may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

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

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this

document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

(Catalog of Federal Domestic Assistance Numbers: 84.126A State Vocational Rehabilitation Services program; and 84.187 State Supported Employment Services program)

List of Subjects

34 CFR Part 361

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

34 CFR Part 363

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

34 CFR Part 397

Individuals with disabilities, Reporting and recordkeeping requirements, Students, Vocational rehabilitation, Youth.

Dated: March 6, 2015.

Arne Duncan,
Secretary of Education

For the reasons discussed in the preamble, the Secretary of Education proposes to amend title 34 of the Code of Federal Regulations as follows:

1. Part 361 is revised to read as follows:

PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.

361.1 Purpose.

361.2 Eligibility for a grant.

361.3 Authorized activities.

361.4 Applicable regulations.

361.5 Applicable definitions.

Subpart B—State Plan and Other Requirements for Vocational Rehabilitation Services

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

361.11 Withholding of funds.

ADMINISTRATION

361.12 Methods of administration.

361.13 State agency for administration.

361.14 Substitute State agency.

361.15 Local administration.

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

361.17 Requirements for a State Rehabilitation Council.

361.18 Comprehensive system of personnel development.

361.19 Affirmative action for individuals with disabilities.

361.20 Public participation requirements.

361.21 Consultations regarding the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan.

361.22 Coordination with education officials.

361.23 Requirements related to the statewide workforce development system.

361.24 Cooperation and coordination with other entities.

361.25 Statewideness.

361.26 Waiver of statewideness.

361.27 Shared funding and administration of joint programs.

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

361.29 Statewide assessment; annual estimates; annual State goals and priorities; strategies; and progress reports.

361.30 Services to American Indians.

361.31 Cooperative agreements with private nonprofit organizations.

361.32 Provision of training and services for employers.

361.33 [Reserved]

361.34 Supported employment State plan supplement.

361.35 Innovation and expansion activities.

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

361.37 Information and referral programs.

361.38 Protection, use, and release of personal information.

361.39 State-imposed requirements.

361.40 Reports; Evaluation standards and performance indicators.

PROVISION AND SCOPE OF SERVICES

361.41 Processing referrals and applications.

361.42 Assessment for determining eligibility and priority for services.

361.43 Procedures for ineligibility determination.

361.44 Closure without eligibility determination.

361.45 Development of the individualized plan for employment.

361.46 Content of the individualized plan for employment.

361.47 Record of services.

361.48 Scope of vocational rehabilitation services for individuals with disabilities.

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

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

361.51 Standards for facilities and providers of services.

361.52 Informed choice.

361.53 Comparable services and benefits.

361.54 Participation of individuals in cost of services based on financial need.

361.55 Annual review of individuals in extended employment and other employment under special certificate provisions of the Fair Labor Standards Act.

361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.

361.57 Review of determinations made by designated State unit personnel.

Subpart C—Financing of State Vocational Rehabilitation Programs

361.60 Matching requirements.

361.61 Limitation on use of funds for construction expenditures.

361.62 Maintenance of effort requirements.

361.63 Program income.

361.64 Obligation of Federal funds.

361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

Subpart D [Reserved]

Subpart E [Reserved]

Subpart F [Reserved]

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

Subpart A—General

§361.1 Purpose.

Under the State Vocational Rehabilitation Services Program, the Secretary provides grants to assist States in operating statewide comprehensive, coordinated, effective, efficient, and accountable vocational rehabilitation programs, each of which is—

(a) An integral part of a statewide workforce development system; and

(b) Designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for and engage in competitive integrated employment and achieve economic self-sufficiency.

(Authority: Section 100(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 720(a))

§361.2 Eligibility for a grant.

Any State that submits to the Secretary a vocational rehabilitation services portion of the Unified or Combined State Plan that meets the requirements of section 101(a) of the Act and this part is eligible for a grant under this program.

(Authority: Section 101(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a))

§361.3 Authorized activities.

The Secretary makes payments to a State to assist in—

(a) The costs of providing vocational rehabilitation services under the vocational rehabilitation services portion of the Unified or Combined State Plan; and

(b) Administrative costs under the vocational rehabilitation services portion of the Unified or Combined State Plan.

(Authority: Section 111(a)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 731(a)(1))

§361.4 Applicable regulations.

The following regulations apply to this program:

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

(1) 34 CFR part 76 (State-Administered Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(b) The regulations in this part 361.

(c) 2 CFR part 190 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)) as adopted in 2 CFR part 3485.

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

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

§361.5 Applicable definitions.

The following definitions apply to this part:

(a) Definitions in EDGAR 77.1.

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

(c) The following definitions:

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

(2) Administrative costs under the vocational rehabilitation services portion of the Unified or Combined State Plan means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program carried out under this part, including expenses related to program planning, development, monitoring, and evaluation, including, but not limited to, expenses for—

(i) Quality assurance;

(ii) Budgeting, accounting, financial management, information systems, and related data processing;

(iii) Providing information about the program to the public;

(iv) Technical assistance and support services to other State agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in §361.49(a)(4);

(v) The State Rehabilitation Council and other advisory committees;

(vi) Professional organization membership dues for designated State unit employees;

(vii) The removal of architectural barriers in State vocational rehabilitation agency offices and State-operated rehabilitation facilities;

(viii) Operating and maintaining designated State unit facilities, equipment, and grounds, but not including capital expenditures as defined in 2 CFR 200.13;

(ix) Supplies;

(x) Administration of the comprehensive system of personnel development described in §361.18, including

personnel administration, administration of affirmative action plans, and training and staff development;

(xi) Administrative salaries, including clerical and other support staff salaries, in support of these administrative functions;

(xii) Travel costs related to carrying out the program, other than travel costs related to the provision of services;

(xiii) Costs incurred in conducting reviews of determinations made by personnel of the designated State unit, including costs associated with mediation and impartial due process hearings under §361.57; and

(xiv) Legal expenses required in the administration of the program.

(Authority: Sections 7(1) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(1) and 709(c))

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

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

(4) Appropriate modes of communication means specialized aids and supports that enable an individual

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

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

(5) 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 §361.36 in the States that use an order of selection; 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 of 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 §361.36 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 in 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))

(6) Assistive technology terms.

(i) Assistive technology has the meaning given such term in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

(ii) Assistive technology device has the meaning given such term in section 3 of the Assistive Technology Act of 1998, except that the reference in such section to the term individuals with disabilities will be deemed to mean more than one individual with a disability as defined in paragraph (20)(A) of the Act.

(iii) Assistive technology service has the meaning given such term in section 3 of the Assistive Technology

Act of 1998, except that the reference in such section to the term—

(A) Individual with a disability will be deemed to mean an individual with a disability, as defined in paragraph (20)(A) of the Act; and

(B) Individuals with disabilities will be deemed to mean more than one such individual.

(Authority: Sections 7(3) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(3) and 709(c))

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

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

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

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

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

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

(H) Rehabilitation technology.

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

(J) Evaluation or control of specific disabilities.

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

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

(O) Customized employment.

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

(Q) Personal assistance services.

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

(ii) For the purposes of this definition, program means an agency, organization, or institution, or unit of

an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions. (Authority: Section 7(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(4))

(8) Comparable services and benefits. (i) Comparable services and benefits means 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 in accordance with §361.53; and

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

(ii) For the purposes of this definition, comparable services and benefits do not include awards and scholarships based on merit.

(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))

(9) 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 in 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

(iii) 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))

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

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

(ii) The construction of new buildings;

(iii) The acquisition of existing buildings;

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

(v) Architect's fees, site surveys, and soil investigation, if necessary, in connection with the acquisition of land or existing buildings, or the and construction, expansion, remodeling, or alteration of community rehabilitation facilities;

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

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

(Authority: Sections 7(6) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(6) and 709(c))

(11) Customized employment means competitive integrated employment, for an individual with a significant disability, that is—

(i) Based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability;

(ii) Designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer; and

(iii) Carried out through flexible strategies, such as—

(A) Job exploration by the individual; and

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

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

(2) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

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

(4) Providing services and supports at the job location.

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

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

(Authority: Sections 7(8)(A) and 101(a)(2)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(8)(A) and 721(a)(2)(A))

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

(i) The State vocational rehabilitation bureau, division, or other organizational unit that is primarily

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

(ii) The State agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

(Authority: Sections 7(8)(B) and 101(a)(2)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(8)(B) and 721(a)(2)(B))

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

(Authority: Sections 7(20)(A) and 102(a)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 722(a)(1))

(15) Employment outcome means, with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment, as defined in §361.5(c)(9) (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), 12(c), 100(a), and 102(b)(3)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(11), 709(c), 720(a), and 722(b)(4)(A))

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

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

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

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

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

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

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

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

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

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

(i) The acquisition of an existing building and, if necessary, the land in connection with the acquisition, if the building has been completed in all respects for at least one year prior to the date of acquisition and the Federal share of the cost of acquisition is not more than $300,000;

(ii) The remodeling or alteration of an existing building, provided the estimated cost of remodeling or

alteration does not exceed the appraised value of the existing building;

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

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

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

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

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

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

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

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

(18) Extended employment means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act. (Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(19) Extended services means ongoing support services and other appropriate services that are--

(i) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in supported employment;

(ii) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment;

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

(iv) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the designated State unit; and

(v) Provided to youth with the most significant disabilities by the designated State unit in accordance with requirements set forth in this part and part 363 for a period not to exceed 4 years. The designated State unit may not provide extended services to individuals with the most significant disabilities who are not youth with the most significant disabilities.

(Authority: Sections 7(13), 12(c), and 604(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(13), 709(c) and 795i)

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

(Authority: Sections 12(c) and 101(a)(8)(A)(i)(III) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(8)(A)(i)(III))

(21) Fair hearing board means a committee, body, or group of persons established by a State prior to January 1, 1985, that—

(i) Is authorized under State law to review determinations made by personnel of the designated State

unit that affect the provision of vocational rehabilitation services; and

(ii) Carries out the responsibilities of the impartial hearing officer in accordance with the requirements in §361.57(j).

(Authority: Sections 12(c) and 102(c)(6) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(6))

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

(i) Who either—

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

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

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

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

(Authority: 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))

(23) Governor means a chief executive officer of a State.

(Authority: Section 7(15) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(15))

(24) Impartial hearing officer. (i) Impartial hearing officer means an individual who—

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

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

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

(D) Has knowledge of the delivery of vocational rehabilitation services, the vocational rehabilitation services portion of the Unified or Combined State Plan, and the Federal and State regulations governing the provision of services;

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

(F) Has no personal, professional, or financial interest that could affect the objectivity of the individual.

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

(Authority: Section 7(16) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(16))

(25) Indian; American Indian; Indian American; Indian Tribe.

(i) In general. The terms "Indian", "American Indian", and "Indian American" mean an individual who is a member of an Indian tribe and include a Native and a descendant of a Native, as such terms are defined in subsections (b) and (c) of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(ii) Indian tribe. The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or

established pursuant to the Alaska Native Claims Settlement Act) and a tribal organization (as defined in section 4(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(1)).

(Authority: Section 7(19) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(19))

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

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

(27) Individual with a disability, except as provided in paragraph (c)(28)of this section, means an individual—

(i) Who has a physical or mental impairment;

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

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

(Authority: Section 7(20)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A))

(28) Individual with a disability, for purposes of §§361.5(c)(13), 361.13(a), 361.13(b)(1), 361.17(a), (b),

(c), and (j), 361.18(b), 361.19, 361.20, 361.23(b)(2), 361.29(a) and (d)(8), and 361.51(b), means an individual—

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

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

(iii) Who is regarded as having such an impairment. (Authority: Section 7(20)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(B))

(29) Individual with a most significant disability means an individual with a significant disability who meets the designated State unit's criteria for an individual with a most significant disability. These criteria must be consistent with the requirements in §361.36(d)(1) and (2). (Authority: Sections 7(21)(E) and 101(a)(5)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(21)(E) and 721(a)(5)(C))

(30) 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, respiratory or pulmonary dysfunction, 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, intellectual disability, 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)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(21)(A))

(31) Individual's representative means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian,

other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

(Authority: Sections 7(22) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(22) and 709(c))

(32) Integrated setting means--

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

(ii) With respect to an employment outcome, means a setting--

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

(33) Local workforce development board means a local board, as defined in section 3 of the Workforce Innovation and Opportunity Act.
(Authority: Section 7(25) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(25))

(34) 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))

(i)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.

(ii) [Reserved]

(35) Mediation means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in accordance with the requirements in §361.57(d) by a qualified and impartial mediator as defined in §361.5(c)(43).

(Authority: Sections 12(c) and 102(c)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(4))

(36) Nonprofit, with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(Authority: Section 7(26) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(26))

(37) Ongoing support services, as used in the definition of supported employment, means services that--

(i) Are needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment;

(ii) Are identified based on a determination by the designated State unit of the individual's need as specified in an individualized plan for employment;

(iii) Are furnished by the designated State unit from the time of job placement until transition to extended

services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

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

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

(B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;

(v) Consist of—

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in paragraph (c)(5)(ii) of this section;

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

(C) Job development and training;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

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

(G) Facilitation of natural supports at the worksite;

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

(I) Any service similar to the foregoing services. (Authority: Sections 7(27) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(27) and 709(c))

(38) Personal assistance services means a range of services, including, among other things, training in managing, supervising, and directing personal assistance services, provided by one or more persons, that are--

(i) Designed to assist an individual with a disability to perform daily living activities on or off the

job that the individual would typically perform without assistance if the individual did not have a disability;

(ii) Designed to increase the individual's control in life and ability to perform everyday activities on or off the job;

(iii) Necessary to the achievement of an employment outcome; and

(iv) Provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(Authority: Sections 7(28), 12(c), 102(b)(4)(B)(i)(I)(bb), and 103(a)(9) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(28), 709(c), 722(b)(4)(B)(i)(I)(bb), and 723(a)(9))

(39) 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 who are qualified in accordance with State licensure laws;

(ix) Podiatry;

(x) Physical therapy;

(xi) Occupational therapy;

(xii) Speech or hearing therapy;

(xiii) Mental health services;

(xiv) Treatment of either acute or chronic medical complications and emergencies that are associated with or

arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

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

(xvi) Other medical or medically related rehabilitation services.

(Authority: Sections 12(c) and 103(a)(6) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(6))

(40) 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 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))

(41) Post-employment services means one or more of the services identified in §361.48 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (Authority: Sections 12(c) and 103(a)(20) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(20))

Note to paragraph(c)(41): 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.

(42) Pre-employment transition services means the required activities and authorized activities specified in §361.48(a).

(Authority: Sections 7(30) and 113 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 7(30) and 733)

(43) Qualified and impartial mediator. (i) Qualified and impartial mediator means an individual who—

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

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

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

(D) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;

(E) Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and

(F) Has no personal, professional, or financial interest that could affect the individual's objectivity during the mediation proceedings.

(ii) An individual is not considered to be an employee of the designated State agency or designated State unit for the purposes of this definition solely because the individual is paid by the designated State agency or designated State unit to serve as a mediator.

(Authority: Sections 12(c) and 102(c)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(4))

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

(Authority: Sections 7(32) and (12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(32) and 709(c))

(45) Rehabilitation technology means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.
(Authority: Section 7(32) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(32))

(46) Reservation means a Federal or State Indian reservation, a public domain Indian allotment, a former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); 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: Section 121(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 741(e))

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

(Authority: Section 7(24) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(24))

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

(Authority: Section 7(34) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(34))

(49) State workforce development board means a State workforce development board, as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).

(Authority: Section 7(35) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(35))

(50) Statewide workforce development system means a workforce development system, as defined in section 3 of

the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).

(Authority: Section 7(36) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(36))

(51) Student with a disability. (i) Student with a disability means, in general, an individual with a disability who--

(A)(1) Is not younger than the earliest age for the provision of transition services under section 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)); or

(2) If the State involved elects to use a lower minimum age for receipt of pre-employment transition services under this Act, is not younger than that minimum age; and

(B)(1) Is not older than 21 years of age; or

(2) If the State law for the State provides for a higher maximum age for receipt of services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), is not older than that maximum age; and

(C)(1) Is eligible for, and receiving, special education or related services under Part B of the

Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

(2) Is a student who is an individual with a disability, for purposes of section 504.

(ii) Students with disabilities means more than one student with a disability.

(Authority: Section 7(37) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(37))

(52) 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))

(53) Supported employment. (i) Supported employment means—

(A) 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—

(1) 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

(2) 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 designated State unit, in order to perform this work; or

(B) Transitional employment, as defined in paragraph (c)(56) of this section, for individuals with the most significant disabilities due to mental illness, including youth with the most significant disabilities, constitutes supported employment.

(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, as defined in paragraph (c)(9) of this section, is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment within six months of achieving an employment outcome of supported employment.

(Authority: Sections 7(38), 12(c), and 602 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38), 709(c), and 795g)

(54) 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 designated State 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), 12(c), and 103(a)(16) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(39), 709(c), and 723(a)(16))

(55) 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, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

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

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

(Authority: Sections 12(c) and 103(a)(15) and (b)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(15) and (b)(7))

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

(Authority: Sections 7(38)(B) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38)(B) and 709(c))

(57) 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))

(i) Examples. The following are examples of expenses that would meet the definition of transportation. The examples are purely illustrative, do not address all possible circumstances, and are not intended as substitutes for individual counselor judgment.

Example 1: Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

Example 2: The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as modification would be considered a rehabilitation technology service.

Example 3: Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

(ii) [Reserved]

(58) Vocational rehabilitation services—

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

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

(Authority: Sections 7(40) and 103 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(40) and 723)

(59) Youth with a disability. (i) Youth with a disability means an individual with a disability who is not--

(A) Younger than 14 years of age; and

(B) Older than 24 years of age.

(ii) Youth with disabilities means more than one youth with a disability.

(Authority: Section 7(42) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(42))

Subpart B—State Plan and Other Requirements for Vocational Rehabilitation Services

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

(a) Purpose. (1) To be eligible to receive funds under this part for a fiscal year, a State must submit, and have approved, a vocational rehabilitation services portion of a Unified or Combined State Plan in accordance with sections 102 or 103 of the Workforce Innovation and Opportunity Act.

(2) The vocational rehabilitation services portion of the Unified or Combined State Plan must satisfy all requirements set forth in this part.

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

(c) Public participation. Prior to the adoption of any substantive policies or procedures specific to the

provision of vocational rehabilitation services under the vocational rehabilitation services portion of the Unified or Combined State Plan, including making any substantive amendment to those policies and procedures, the designated State agency must conduct public meetings throughout the State, in accordance with the requirements of §361.20.

(d) Submission, approval, disapproval, and duration. All requirements regarding the submission, approval, disapproval, and duration of the vocational rehabilitation services portion of the Unified or Combined State Plan are governed by joint regulations set forth in subpart D of this part.

(e) Submission of policies and procedures. The State is not required to submit policies, procedures, or descriptions required under this part that have been previously submitted to the Secretary and that demonstrate that the State meets the requirements of this part, including any policies, procedures, or descriptions submitted under this part that are in effect on July 22, 2014.

(f) Due process. If the Secretary disapproves the vocational rehabilitation services portion of the Unified

or Combined State Plan, the Secretary will follow these procedures:

(1) Informal resolution. Prior to disapproving the vocational rehabilitation services portion of the Unified or Combined State Plan, the Secretary attempts to resolve disputes informally with State officials.

(2) Notice. If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to disapprove the vocational rehabilitation services portion of the Unified or Combined State Plan and of the opportunity for a hearing.

(3) State plan hearing. If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(4) Initial decision. The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(5) Petition for review of an initial decision. The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR part 81.

(6) Review by the Secretary. The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(7) Final decision of the Department. The final decision of the Department is made in accordance with 34 CFR 81.44.

(8) Judicial review. A State may appeal the Secretary's decision to disapprove the vocational rehabilitation services portion of the Unified or Combined State Plan by filing a petition for review with the United States Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act. (Authority: Sections 101(a) and (b) and 107(d) of the Rehabilitation Act of 1973, as amended; 20 U.S.C. 1231g(a); and 29 U.S.C. 721(a) and (b) and 727(d))

§361.11 Withholding of funds.

(a) Basis for withholding. The Secretary may withhold or limit payments under section 111 or 603(a) of the Act, as provided by section 107(c) of the Act, if the Secretary determines that—

(1) The vocational rehabilitation services portion of the Unified or Combined State Plan, including the supported employment supplement, has been so changed that it no

longer conforms with the requirements of this part or part 363; or

(2) In the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan there is a failure to comply substantially with any provision of such plan or with an evaluation standard or performance indicator established under section 106 of the Act.

(b) Informal resolution. Prior to withholding or limiting payments in accordance with this section, the Secretary attempts to resolve disputed issues informally with State officials.

(c) Notice. If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to withhold or limit payments and of the opportunity for a hearing.

(d) Withholding hearing. If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) Initial decision. The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(f) Petition for review of an initial decision. The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(g) Review by the Secretary. The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(h) Final decision of the Department. The final decision of the Department is made in accordance with 34 CFR 81.44.

(i) Judicial review. A State may appeal the Secretary's decision to withhold or limit payments by filing a petition for review with the United States Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 12(c), 101(b), 107(c) and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(b), 727(c) and (d))

ADMINISTRATION

§361.12 Methods of administration.

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State agency, and the designated State unit if applicable,

employs methods of administration found necessary by the Secretary for the proper and efficient administration of the plan and for carrying out all functions for which the State is responsible under the plan and this part. These methods must include procedures to ensure accurate data collection and financial accountability.

(Authority: Sections 12(c) and 101(a)(6) and (a)(10)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6) and (a)(10)(A))

§361.13 State agency for administration.

(a) Designation of State agency. The vocational rehabilitation services portion of the Unified or Combined State Plan must designate a State agency as the sole State agency to administer the vocational rehabilitation services portion of the Unified or Combined State Plan, or to supervise its administration in a political subdivision of the State by a sole local agency, in accordance with the following requirements:

(1) General. Except as provided in paragraphs (a)(2) and (a)(3) of this section, the vocational rehabilitation services portion of the Unified or Combined State Plan must provide that the designated State agency is one of the following types of agencies:

(i) A State agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities; or

(ii) A State agency that includes a vocational rehabilitation unit as provided in paragraph (b) of this section.

(2) American Samoa. In the case of American Samoa, the vocational rehabilitation services portion of the Unified or Combined State Plan must designate the Governor.

(3) Designated State agency for individuals who are blind. If a State commission or other agency that provides assistance or services to individuals who are blind is authorized under State law to provide vocational rehabilitation services to individuals who are blind, and this commission or agency is primarily concerned with vocational rehabilitation or includes a vocational rehabilitation unit as provided in paragraph (b) of this section, the vocational rehabilitation services portion of the Unified or Combined State Plan may designate that agency as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind or to supervise its

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

(b) Designation of State unit. (1) General. If the designated State agency is not of the type specified in paragraph (a)(1)(i) of this section or if the designated State agency specified in paragraph (a)(3) of this section is not primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities, the vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the agency (or each agency if two agencies are designated) includes a vocational rehabilitation bureau, division, or unit that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State agency's vocational rehabilitation program under the vocational rehabilitation services portion of the Unified or Combined State Plan;

(ii) Has a full-time director who is responsible for the day-to-day operations of the vocational rehabilitation program;

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

(iv) Is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency; and

(v) Has the sole authority and responsibility described within the designated State agency in paragraph (a) of this section to expend funds made available under the Act in a manner that is consistent with the purpose of the Act.

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

(c) Responsibility for administration. (1) Required activities. At a minimum, the following activities are the responsibility of the designated State unit or the sole local agency under the supervision of the State unit:

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

(ii) The determination to close the record of services of an individual who has achieved an employment outcome in accordance with §361.56.

(iii) Policy formulation and implementation.

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

(v) Participation as a partner in the one-stop service delivery system established under title I of the Workforce Investment Act of 1998, in accordance with 20 CFR part 662.

(2) Non-delegable responsibility. The responsibility for the functions described in paragraph (c)(1) of this section may not be delegated to any other agency or individual.

(Authority: Section 101(a)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(2))

§361.14 Substitute State agency.

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

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

(3) The substitute agency must submit a vocational rehabilitation services portion of the Unified or Combined State Plan that meets the requirements of this part.

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

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

(Authority: Section 107(c)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 727(c)(3))

§361.15 Local administration.

(a) If the vocational rehabilitation services portion of the Unified or Combined State Plan provides for the administration of the plan by a local agency, the designated State agency must—

(1) Ensure that each local agency is under the supervision of the designated State unit and is the sole local agency as defined in §361.5(c)(47) that is responsible for the administration of the program within the political subdivision that it serves; and

(2) Develop methods that each local agency will use to administer the vocational rehabilitation program, in accordance with the vocational rehabilitation services portion of the Unified or Combined State Plan.

(b) A separate local agency serving individuals who are blind may administer that part of the plan relating to vocational rehabilitation of individuals who are blind, under the supervision of the designated State unit for individuals who are blind.

(Authority: Sections 7(24) and 101(a)(2)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(24) and 721(a)(2)(A))

<u>§361.16 Establishment of an independent commission or a State Rehabilitation Council.</u>

(a) General requirement. Except as provided in paragraph (b) of this section, the vocational rehabilitation services portion of the Unified or Combined State Plan must contain one of the following two assurances:

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

(i) Is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State and is primarily concerned with vocational rehabilitation or vocational and other rehabilitation services, in accordance with §361.13(a)(1)(i);

(ii) Is consumer-controlled by persons who—

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

(B) Represent individuals with a broad range of disabilities, unless the designated State unit under the direction of the commission is the State agency for individuals who are blind;

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

(iv) Conducts the functions identified in §361.17(h)(4).

(2) An assurance that—

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

(ii) The designated State unit, in accordance with §361.29, jointly develops, agrees to, and reviews annually State goals and priorities and jointly submits to the Secretary annual reports of progress with the Council;

(iii) The designated State unit regularly consults with the Council regarding the development, implementation, and revision of State policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services;

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

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

(B) All policies and information on all practices and procedures of general applicability provided to or used by rehabilitation personnel providing vocational rehabilitation services under this part; and

(C) Copies of due process hearing decisions issued under this part and transmitted in a manner to ensure that the identity of the participants in the hearings is kept confidential; and

(v) The vocational rehabilitation services portion of the Unified or Combined State Plan, and any revision to the vocational rehabilitation services portion of the Unified or Combined State Plan, includes a summary of input provided by the Council, including recommendations from the annual report of the Council, the review and analysis of consumer satisfaction described in §361.17(h)(4), and other reports prepared by the Council, and the designated State unit's response to the input and recommendations, including its reasons for rejecting any input or recommendation of the Council.

(b) Exception for separate State agency for individuals who are blind. In the case of a State that designates a separate State agency under §361.13(a)(3) to administer the part of the vocational rehabilitation services portion of the Unified or Combined State Plan under which vocational rehabilitation services are provided to individuals who are blind, the State must either establish a separate State Rehabilitation Council for each

agency that does not meet the requirements in paragraph (a)(1) of this section or establish one State Rehabilitation Council for both agencies if neither agency meets the requirements of paragraph (a)(1) of this section. (Authority: Sections 101(a)(21) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(21))

§361.17 Requirements for a State Rehabilitation Council.

If the State has established a Council under §361.16(a)(2) or (b), the Council must meet the following requirements:

(a) Appointment. (1) The members of the Council must be appointed by the Governor or, in the case of a State that, under State law, vests authority for the administration of the activities carried out under this part in an entity other than the Governor (such as one or more houses of the State legislature or an independent board), the chief officer of that entity.

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

greatest extent practicable, the extent to which minority populations are represented on the Council.

(b) Composition. (1) General. Except as provided in paragraph (b)(3) of this section, the Council must be composed of at least 15 members, including—

(i) At least one representative of the Statewide Independent Living Council, who must be the chairperson or other designee of the Statewide Independent Living Council;

(ii) At least one representative of a parent training and information center established pursuant to section 682(a) of the Individuals with Disabilities Education Act;

(iii) At least one representative of the Client Assistance Program established under part 370 of this chapter, who must be the director of or other individual recommended by the Client Assistance Program;

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

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

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

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

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

(B) Representatives of individuals with disabilities who have difficulty representing themselves or are unable due to their disabilities to represent themselves;

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

(ix) In a State in which one or more projects are funded under section 121 of the Act (American Indian Vocational Rehabilitation Services), at least one representative of the directors of the projects in such State;

(x) At least one representative of the State educational agency responsible for the public education of students with disabilities who are eligible to receive services under this part and part B of the Individuals with Disabilities Education Act;

(xi) At least one representative of the State workforce development board; and

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

(2) Employees of the designated State agency. Employees of the designated State agency may serve only as nonvoting members of the Council. This provision does not apply to the representative appointed pursuant to paragraph (b)(1)(iii) of this section.

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

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

(ii) Include—

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

(B) At least one representative of an individual who is blind, has multiple disabilities, and has difficulty

representing himself or herself or is unable due to disabilities to represent himself or herself.

(4) Exception. If State law in effect on October 29, 1992 requires a separate Council under paragraph (b)(3) of this section to have fewer than 15 members, the separate Council is in compliance with the composition requirements in paragraphs (b)(1)(vi) and (b)(1)(viii) of this section if it includes at least one representative who meets the requirements for each of those paragraphs.

(c) Majority. (1) A majority of the Council members must be individuals with disabilities who meet the requirements of §361.5(c)(28) and are not employed by the designated State unit.

(2) In the case of a separate Council established under §361.16(b), a majority of the Council members must be individuals who are blind and are not employed by the designated State unit.

(d) Chairperson. (1) The chairperson must be selected by the members of the Council from among the voting members of the Council, subject to the veto power of the Governor; or

(2) In States in which the Governor does not have veto power pursuant to State law, the appointing authority described in paragraph (a)(1) of this section must designate a member of the Council to serve as the chairperson of the Council or must require the Council to designate a member to serve as chairperson.

(e) Terms of appointment. (1) Each member of the Council must be appointed for a term of no more than three years, and each member of the Council, other than a representative identified in paragraph (b)(1)(iii) or (ix) of this section, may serve for no more than two consecutive full terms.

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

(3) The terms of service of the members initially appointed must be, as specified by the appointing authority as described in paragraph (a)(1) of this section, for varied numbers of years to ensure that terms expire on a staggered basis.

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

original appointment, except the appointing authority as described in paragraph (a)(1) of this section may delegate the authority to fill that vacancy to the remaining members of the Council after making the original appointment.

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

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

(h) Functions. The Council must, after consulting with the State workforce development board—

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

(i) Eligibility, including order of selection;

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

(iii) Functions performed by State agencies that affect or potentially affect the ability of individuals

with disabilities in achieving employment outcomes under this part;

(2) In partnership with the designated State unit—

(i) Develop, agree to, and review State goals and priorities in accordance with §361.29(c); and

(ii) Evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Secretary in accordance with §361.29(e);

(3) Advise the designated State agency and the designated State unit regarding activities carried out under this part and assist in the preparation of the vocational rehabilitation services portion of the Unified or Combined State Plan and amendments to the plan, applications, reports, needs assessments, and evaluations required by this part;

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

(i) The functions performed by the designated State agency;

(ii) The vocational rehabilitation services provided by State agencies and other public and private entities responsible for providing vocational rehabilitation

services to individuals with disabilities under the Act; and

(iii) The employment outcomes achieved by eligible individuals receiving services under this part, including the availability of health and other employment benefits in connection with those employment outcomes;

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

(6) To avoid duplication of efforts and enhance the number of individuals served, coordinate activities with the activities of other councils within the State, including the Statewide Independent Living Council established under chapter 1, title VII of the Act, the advisory panel established under section 612(a)(21) of the Individuals with Disabilities Education Act, the State Developmental Disabilities Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, the State mental health planning council established under section 1914(a) of the Public

Health Service Act, and the State workforce development board, and with the activities of entities carrying out programs under the Assistive Technology Act of 1998;

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

(8) Perform other comparable functions, consistent with the purpose of this part, as the Council determines to be appropriate, that are comparable to the other functions performed by the Council.

(i) Resources. (1) The Council, in conjunction with the designated State unit, must prepare a plan for the provision of resources, including staff and other personnel, that may be necessary and sufficient for the Council to carry out its functions under this part.

(2) The resource plan must, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.

(3) Any disagreements between the designated State unit and the Council regarding the amount of resources necessary to carry out the functions of the Council must be

resolved by the Governor, consistent with paragraphs (i)(1) and (2) of this section.

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

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

(j) Meetings. The Council must—

(1) Convene at least four meetings a year in locations determined by the Council to be necessary to conduct Council business. The meetings must be publicly announced, open, and accessible to the general public, including individuals with disabilities, unless there is a valid reason for an executive session; and

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

(k) Compensation. Funds appropriated under title I of the Act, except funds to carry out sections 112 and 121 of the Act, may be used to compensate and reimburse the

expenses of Council members in accordance with section 105(g) of the Act.

(Authority: Section 105 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 725)

§361.18 Comprehensive system of personnel development.

The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the procedures and activities the State agency will undertake to establish and maintain a comprehensive system of personnel development designed to ensure an adequate supply of qualified rehabilitation personnel, including professionals and paraprofessionals, for the designated State unit. If the State agency has a State Rehabilitation Council, this description must, at a minimum, specify that the Council has an opportunity to review and comment on the development of plans, policies, and procedures necessary to meet the requirements of paragraphs (b) through (d) of this section. This description must also conform with the following requirements:

(a) Personnel and personnel development data system. The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the development and maintenance of a system by the State agency

for collecting and analyzing on an annual basis data on qualified personnel needs and personnel development, in accordance with the following requirements:

(1) Data on qualified personnel needs must include—

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

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

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

(2) Data on personnel development must include—

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

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

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

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

personnel from minority backgrounds and personnel who are individuals with disabilities.

(c) Personnel standards. (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must include the State agency's policies and describe—

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

(ii) The 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, including requirements for—

(A)(1) Attainment of a baccalaureate degree in a field of study reasonably related to vocational rehabilitation, to indicate a level of competency and skill demonstrating basic preparation in a field of study such as vocational rehabilitation counseling, social work,

psychology, disability studies, business administration, human resources, special education, supported employment, customized employment, economics, or another field that reasonably prepares individuals to work with consumers and employers; and

(2) Demonstrated paid or unpaid experience, for not less than one year, consisting of—

(i) Direct work with individuals with disabilities in a setting such as an independent living center;

(ii) Direct service or advocacy activities that provide such individual with experience and skills in working with individuals with disabilities; or

(iii) Direct experience in competitive integrated employment environments as an employer, as a small business owner or operator, or in self-employment, or other experience in human resources or recruitment, or experience in supervising employees, training, or other activities; or

(B) Attainment of a master's or doctoral degree in a field of study such as vocational rehabilitation counseling, law, social work, psychology, disability studies, business administration, human resources, special education, management, public administration, or another field that reasonably provides competence in the employment

sector, in a disability field, or in both business-related and rehabilitation-related fields; and

(2) As used in this section—

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

(A) Provides rehabilitation services to individuals with disabilities;

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

(C) Has a specified scope of responsibility.

(ii) Ensuring that personnel have a 21st-century understanding of the evolving labor force and the needs of individuals with disabilities means that personnel have specialized training and experience that enables them to work effectively with individuals with disabilities to assist them to achieve competitive integrated employment and with employers who hire such individuals. Relevant personnel skills include, but are not limited to—

(A) Understanding the medical and psychosocial aspects of various disabilities;

(B) Assessing an individual’s skills and abilities to obtain and retain competitive integrated employment and establishing a plan to meet the individual’s career goals;

(C) Counseling, case management, and advocacy to modify environmental and attitudinal barriers;

(D) Understanding the effective utilization of rehabilitation technology;

(E) Developing effective relationships with employers in the public and private sectors and

(F) Delivering job development and job placement services that respond to today’s labor market.

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

(i) A system of staff development for rehabilitation professionals and paraprofessionals within the State unit, particularly with respect to assessment, vocational counseling, job placement, and rehabilitation technology, including training implemented in coordination with

entities carrying out State programs under section 4 of the Assistive Technology Act of 1998 (29 U.S.C. 3003);

(ii) Procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated State unit significant knowledge from research and other sources; and

(iii) Policies and procedures relating to the establishment and maintenance of standards to ensure that personnel, including rehabilitation professionals and paraprofessionals, needed within the designated State unit to carry out this part are appropriately and adequately prepared and trained.

(2) The specific training areas for staff development should be based on the needs of each State unit and may include, but are not limited to—

(i) Training regarding the Workforce Innovation and Opportunity Act and the amendments it made to the Rehabilitation Act of 1973;

(ii) Training with respect to the requirements of the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and Social Security work incentive programs, including programs under the Ticket to Work and Work Incentives Improvement Act of 1999, training

to facilitate informed choice under this program, and training to improve the provision of services to culturally diverse populations; and

(iii) Activities related to—

(A) Recruitment and retention of qualified rehabilitation personnel;

(B) Succession planning; and

(C) Leadership development and capacity building.

(e) Personnel to address individual communication needs. The vocational rehabilitation services portion of the Unified or Combined State Plan must describe how the designated State unit includes among its personnel, or obtains the services of--

(1) Individuals able to communicate in the native languages of applicants and eligible individuals who have limited English proficiency; and

(2) Individuals able to communicate with applicants and eligible individuals in appropriate modes of communication.

(f) Coordination with personnel development under the Individuals with Disabilities Education Act. The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the procedures and

activities the State agency will undertake to coordinate its comprehensive system of personnel development under the Act with personnel development under the Individuals with Disabilities Education Act.

(Authority: Sections 12(c) and 101(a)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(7))

§361.19 Affirmative action for individuals with disabilities.

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State agency takes affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as stated in section 503 of the Act.

(Authority: Section 101(a)(6)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(6)(B))

§361.20 Public participation requirements.

(a) Conduct of public meetings. (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that prior to the adoption of any substantive policies or procedures governing the provision of vocational rehabilitation services under the Unified or

Combined State Plan, the designated State agency conducts public meetings throughout the State to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures.

(2) For purposes of this section, substantive changes to the policies or procedures governing the provision of vocational rehabilitation services that would require the conduct of public meetings are those that directly impact the nature and scope of the services provided to individuals with disabilities, or the manner in which individuals interact with the designated State agency or in matters related to the delivery of vocational rehabilitation services. Examples of substantive changes include, but are not limited to--

(i) Any changes to policies or procedures that fundamentally alter the rights and responsibilities of individuals with disabilities in the vocational rehabilitation process;

(ii) Organizational changes to the designated State agency or unit that would likely affect the manner in which services are delivered;

(iii) Any changes that affect the nature and scope of vocational rehabilitation services provided by the designated State agency or unit;

(iv) Changes in formal or informal dispute procedures;

(v) The adoption or amendment of policies instituting an order of selection; and

(vi) Changes to policies and procedures regarding the financial participation of eligible individuals.

(3) Non-substantive, e.g., administrative changes that would not require the need for public hearings include:

(i) Internal procedures that do not directly affect individuals receiving vocational rehabilitation services, such as payment processing or personnel procedures;

(ii) Changes to the case management system that only affect vocational rehabilitation personnel;

(iii) Changes in indirect cost allocations, internal fiscal review procedures, or routine reporting requirements;

(iv) Minor revisions to vocational rehabilitation procedures or policies to correct production errors, such as typographical and grammatical mistakes; and

(v) Changes to contract procedures that do not affect the delivery of vocational rehabilitation services.

(b) Notice requirements. The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State agency, prior to conducting the public meetings, provides appropriate and sufficient notice throughout the State of the meetings in accordance with—

(1) State law governing public meetings; or

(2) In the absence of State law governing public meetings, procedures developed by the designated State agency in consultation with the State Rehabilitation Council.

(c) Summary of input of the State Rehabilitation Council. The vocational rehabilitation services portion of the Unified or Combined State Plan must provide a summary of the input of the State Rehabilitation Council, if the State agency has a Council, into the vocational rehabilitation services portion of the Unified or Combined State Plan and any amendment to that portion of the plan, in accordance with §361.16(a)(2)(v).

(d) Special consultation requirements. The vocational rehabilitation services portion of the Unified

or Combined State Plan must assure that the State agency actively consults with the director of the Client Assistance Program, the State Rehabilitation Council, if the State agency has a Council, and, as appropriate, Indian tribes, tribal organizations, and native Hawaiian organizations on its policies and procedures governing the provision of vocational rehabilitation services under the vocational rehabilitation services portion of the Unified or Combined State Plan.

(e) Appropriate modes of communication. The State unit must provide to the public, through appropriate modes of communication, notices of the public meetings, any materials furnished prior to or during the public meetings, and the policies and procedures governing the provision of vocational rehabilitation services under the vocational rehabilitation services portion of the Unified or Combined State Plan.

(Authority: Sections 12(c), 101(a)(16)(A) and 105(c)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(16)(A) and 725(c)(3))

§361.21 Consultations regarding the administration of the vocational rehabilitation services portion of the Unified or Combined State plan.

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that, in connection with matters of general policy arising in the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan, the designated State agency takes into account the views of—

(a) Individuals and groups of individuals who are recipients of vocational rehabilitation services or, as appropriate, the individuals' representatives;

(b) Personnel working in programs that provide vocational rehabilitation services to individuals with disabilities;

(c) Providers of vocational rehabilitation services to individuals with disabilities;

(d) The director of the Client Assistance Program; and

(e) The State Rehabilitation Council, if the State has a Council.

(Authority: Sections 101(a)(16)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(16)(B))

§361.22 Coordination with education officials.

(a) Plans, policies, and procedures. (1) The vocational rehabilitation services portion of the Unified

or Combined State Plan must contain plans, policies, and procedures for coordination between the designated State agency and education officials responsible for the public education of students with disabilities that are designed to facilitate the transition of students with disabilities from the receipt of educational services, including pre-employment transition services, in school to the receipt of vocational rehabilitation services under the responsibility of the designated State agency.

(2) These plans, policies, and procedures in paragraph (a)(1) of this section must provide for the development and approval of an individualized plan for employment in accordance with §361.45 as early as possible during the transition planning process and not later than the time a student determined to be eligible for vocational rehabilitation services leaves the school setting or, if the designated State unit is operating under an order of selection, before each eligible student able to be served under the order leaves the school setting.

(b) Formal interagency agreement. The vocational rehabilitation services portion of the Unified or Combined State Plan must include information on a formal interagency

agreement with the State educational agency that, at a minimum, provides for—

(1) Consultation and technical assistance, which may be provided using alternative means for meeting participation (such as video conferences and conference calls), to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;

(2) Transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and implementation of their individualized education programs (IEPs) under section 614(d) of the Individuals with Disabilities Education Act;

(3) The roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services;

(4) Procedures for outreach to and identification of students with disabilities who are in need of transition services. Outreach to these students should occur as early as possible during the transition planning process and must

include, at a minimum, a description of the purpose of the vocational rehabilitation program, eligibility requirements, application procedures, and scope of services that may be provided to eligible individuals;

(5) Coordination necessary to satisfy documentation requirements set forth at 34 CFR part 397 with regard to students and youth with disabilities who are seeking subminimum wage employment; and

(6) Assurance that, in accordance with 34 CFR 397.31, neither the State educational agency nor the local educational agency will enter into a contract or other arrangement with an entity, as defined in 34 CFR 397.5(d), for the purpose of operating a program under which a youth with a disability is engaged in subminimum wage employment.

(c) Construction. Nothing in this part will be construed to reduce the obligation under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) of a local educational agency or any other agency to provide or pay for any transition services that are also considered special education or related services and that are necessary for ensuring a free appropriate public education to children with disabilities within the State involved.

(Authority: Sections 101(a)(11)(D), 101(c), and 511 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721 (a)(11)(D), 721(c), and 794g)

§361.23 Requirements related to the statewide workforce development system.

As a required partner in the one-stop service delivery system (which is part of the statewide workforce development system under title I of the Workforce Innovation and Opportunity Act), the designated State unit must satisfy all requirements set forth in joint regulations in subpart F of this part.

(Authority: Section 101(a)(11)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(11)(A); Section 121 (b)(1)(B)(iv) of the Workforce Innovation and Opportunity Act; 29 U.S.C. 3151)

§361.24 Cooperation and coordination with other entities.

(a) Interagency cooperation. The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the designated State agency's cooperation with and use of the services and facilities of Federal, State, and local agencies and programs, including the State programs carried out under section 4 of the Assistive Technology Act of 1998 (29 U.S.C. 3003), programs

carried out by the Under Secretary for Rural Development of the Department of Agriculture, noneducational agencies serving out-of-school youth, and State use contracting programs, to the extent that such Federal, State, and local agencies and programs are not carrying out activities through the statewide workforce development system.

(b) Coordination with the Statewide Independent Living Council and independent living centers. The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State unit, the Statewide Independent Living Council established under title VII, chapter 1, part B of the Act, and the independent living centers established under title VII, Chapter 1, Part C of the Act have developed working relationships and coordinate their activities.

(c) Coordination with Employers. The vocational rehabilitation services portion of the Unified or Combined State Plan must describe how the designated State unit will work with employers to identify competitive integrated employment opportunities and career exploration opportunities, in order to facilitate the provision of-

(1) Vocational rehabilitation services; and

(2) Transition services for youth with disabilities and students with disabilities, such as pre-employment transition services.

(d) Cooperative agreement with recipients of grants for services to American Indians. (1) General. In applicable cases, the vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State agency has entered into a formal cooperative agreement with each grant recipient in the State that receives funds under part C of the Act (American Indian Vocational Rehabilitation Services).

(2) Contents of formal cooperative agreement. The agreement required under paragraph (d)(1) of this section must describe strategies for collaboration and coordination in providing vocational rehabilitation services to American Indians who are individuals with disabilities, including—

(i) Strategies for interagency referral and information sharing that will assist in eligibility determinations and the development of individualized plans for employment;

(ii) Procedures for ensuring that American Indians who are individuals with disabilities and are living on or

near a reservation or tribal service area are provided vocational rehabilitation services;

(iii) Strategies for the provision of transition planning by personnel of the designated State unit, the State educational agency, and the recipient of funds under part C of the Act, that will facilitate the development and approval of the individualized plan for employment under §361.45; and

(iv) Provisions for sharing resources in cooperative studies and assessments, joint training activities, and other collaborative activities designed to improve the provision of services to American Indians who are individuals with disabilities.

(e) Reciprocal referral services between two designated State units in the same State. If there is a separate designated State unit for individuals who are blind, the two designated State units must establish reciprocal referral services, use each other's services and facilities to the extent feasible, jointly plan activities to improve services in the State for individuals with multiple impairments, including visual impairments, and otherwise cooperate to provide more effective services,

including, if appropriate, entering into a written cooperative agreement.

(f) Cooperative agreement regarding individuals eligible for home and community-based waiver programs. The vocational rehabilitation services portion of the Unified or Combined State Plan must include an assurance that the designated State unit has entered into a formal cooperative agreement with the State agency responsible for administering the State Medicaid plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and the State agency with primary responsibility for providing services and supports for individuals with intellectual disabilities and individuals with developmental disabilities, with respect to the delivery of vocational rehabilitation services, including extended services, for individuals with the most significant disabilities who have been determined to be eligible for home and community-based services under a Medicaid waiver, Medicaid State plan amendment, or other authority related to a State Medicaid program.

(g) Interagency cooperation. The vocational rehabilitation services portion of the Unified or Combined State Plan shall describe how the designated State agency

will collaborate with the State agency responsible for administering the State Medicaid plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), the State agency responsible for providing services with developmental disabilities, and the State agency responsible for providing mental health services, to develop opportunities for community-based employment in integrated settings, to the greatest extent practicable.

(h) Coordination with assistive technology programs. The vocational rehabilitation services portion of the Unified or Combined State Plan must include an assurance that the designated State unit, and the lead agency and implementing entity (if any) designated by the Governor of the State under section 4 of the Assistive Technology Act of 1998 (29 U.S.C. 3003), have developed working relationships and will enter into agreements for the coordination of their activities, including the referral of individuals with disabilities to programs and activities described in that section.

(i) Coordination with ticket to work and self-sufficiency program. The vocational rehabilitation services portion of the Unified or Combined State Plan must include an assurance that the designated State unit will

coordinate activities with any other State agency that is functioning as an employment network under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b-19).

(Authority: Sections 12(c) and 101(a)(11) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(11))

§361.25 Statewideness.

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that services provided under the vocational rehabilitation services portion of the Unified or Combined State Plan will be available in all political subdivisions of the State, unless a waiver of statewideness is requested and approved in accordance with §361.26.

(Authority: Section 101(a)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(4))

§361.26 Waiver of statewideness.

(a) Availability. The State unit may provide services in one or more political subdivisions of the State that increase services or expand the scope of services that are available statewide under the vocational rehabilitation services portion of the Unified or Combined State Plan if—

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

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

(3) For purposes other than those specified in §361.60(b)(3)(i) and consistent with the requirements in §361.60(b)(3)(ii), the State includes in its vocational rehabilitation services portion of the Unified or Combined State Plan, and the Secretary approves, a waiver of the statewideness requirement, in accordance with the requirements of paragraph (b) of this section.

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

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

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

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

(4) Contain a written assurance that all other requirements of the vocational rehabilitation services portion of the Unified or Combined State Plan, including a State's order of selection requirements, will apply to all services approved under the waiver.

(Authority: Section 101(a)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(4))

§361.27 Shared funding and administration of joint programs.

(a) If the vocational rehabilitation services portion of the Unified or Combined State Plan provides for the designated State agency to share funding and administrative responsibility with another State agency or local public agency to carry out a joint program to provide services to individuals with disabilities, the State must submit to the Secretary for approval a plan that describes its shared funding and administrative arrangement.

(b) The plan under paragraph (a) of this section must include—

(1) A description of the nature and scope of the joint program;

(2) The services to be provided under the joint program;

(3) The respective roles of each participating agency in the administration and provision of services; and

(4) The share of the costs to be assumed by each agency.

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

(Authority: Section 101(a)(2)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(2)(A))

<u>§361.28 Third-party cooperative arrangements involving funds from other public agencies.</u>

(a) The designated State unit may enter into a third-party cooperative arrangement for providing or contracting for the provision of vocational rehabilitation services with another State agency or a local public agency that is providing part or all of the non-Federal share in accordance with paragraph (c) of this section, if the designated State unit ensures that—

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

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

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

(4) All requirements of the vocational rehabilitation services portion of the Unified or Combined State Plan, including a State's order of selection, will apply to all services provided under the cooperative arrangement.

(b) If a third party cooperative arrangement does not comply with the statewideness requirement in §361.25, the State unit must obtain a waiver of statewideness, in accordance with §361.26.

(c) The cooperating agency’s contribution toward the non-Federal share required under the arrangement, as set

forth in paragraph (a) of this section, may be made through:

(1) Cash transfers to the designated State unit; and

(2) Certified personnel expenditures for the time cooperating agency staff spent providing direct vocational rehabilitation services pursuant to a third-party cooperative arrangement that meets the requirements of this section. Certified personnel expenditures may include the allocable portion of staff salary and fringe benefits based upon the amount of time cooperating agency staff spent providing services under the arrangement.

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

<u>§361.29 Statewide assessment; annual estimates; annual State goals and priorities; strategies; and progress reports.</u>

(a) <u>Comprehensive statewide assessment</u>. (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must include—

(i) The results of a comprehensive, statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the State unit has a Council) every three years. Results of the assessment

are to be included in the vocational rehabilitation portion of the Unified or Combined State Plan, submitted in accordance with the requirements of §361.10(a) and the joint regulations of this part. The comprehensive needs assessment must describe the rehabilitation needs of individuals with disabilities residing within the State, particularly the vocational rehabilitation services needs of—

(A) Individuals with the most significant disabilities, including their need for supported employment services;

(B) Individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program carried out under this part;

(C) Individuals with disabilities served through other components of the statewide workforce development system as identified by those individuals and personnel assisting those individuals through the components of the system; and

(D) Youth with disabilities, and students with disabilities, including

(1) Their need for pre-employment transition services or other transition services; and

(2) An assessment of the needs of individuals with disabilities for transition services and pre-employment transition services, and the extent to which such services provided under this part are coordinated with transition services provided under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) in order to meet the needs of individuals with disabilities.

(ii) An assessment of the need to establish, develop, or improve community rehabilitation programs within the State.

(2) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State will submit to the Secretary a report containing information regarding updates to the assessments under paragraph (a) of this section for any year in which the State updates the assessments at such time and in such manner as the Secretary determines appropriate.

(b) Annual estimates. The vocational rehabilitation services portion of the Unified or Combined State Plan must include, and must assure that the State will submit a report to the Secretary (at such time and in such manner

determined appropriate by the Secretary) that includes, State estimates of—

(1) The number of individuals in the State who are eligible for services under this part;

(2) The number of eligible individuals who will receive services provided with funds provided under this part and under part §363, including, if the designated State agency uses an order of selection in accordance with §361.36, estimates of the number of individuals to be served under each priority category within the order;

(3) The number of individuals who are eligible for services under paragraph (b)(1) of this section, but are not receiving such services due to an order of selection; and

(4) The costs of the services described in paragraph (b)(2) of this section, including, if the designated State agency uses an order of selection, the service costs for each priority category within the order.

(c) Goals and priorities. (1) In general. The vocational rehabilitation services portion of the Unified or Combined State Plan must identify the goals and priorities of the State in carrying out the program.

(2) Council. The goals and priorities must be jointly developed, agreed to, reviewed annually, and, as necessary, revised by the designated State unit and the State Rehabilitation Council, if the State unit has a Council.

(3) Submission. The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State will submit to the Secretary a report containing information regarding revisions in the goals and priorities for any year in which the State revises the goals and priorities at such time and in such manner as determined appropriate by the Secretary.

(4) Basis for goals and priorities. The State goals and priorities must be based on an analysis of—

(i) The comprehensive statewide assessment described in paragraph (a) of this section, including any updates to the assessment;

(ii) The performance of the State on the standards and indicators established under section 106 of the Act; and

(iii) Other available information on the operation and the effectiveness of the vocational rehabilitation program carried out in the State, including any reports

received from the State Rehabilitation Council under §361.17(h) and the findings and recommendations from monitoring activities conducted under section 107 of the Act.

(5) Service and outcome goals for categories in order of selection. If the designated State agency uses an order of selection in accordance with §361.36, the vocational rehabilitation services portion of the Unified or Combined State Plan must identify the State's service and outcome goals and the time within which these goals may be achieved for individuals in each priority category within the order.

(d) Strategies. The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the strategies the State will use to address the needs identified in the assessment conducted under paragraph (a) of this section and achieve the goals and priorities identified in paragraph (c) of this section, including—

(1) The methods to be used to expand and improve services to individuals with disabilities, including how a broad range of assistive technology services and assistive technology devices will be provided to those individuals at each stage of the rehabilitation process and how those

services and devices will be provided to individuals with disabilities on a statewide basis;

(2) The methods to be used to improve and expand vocational rehabilitation services for students with disabilities, including the coordination of services designed to facilitate the transition of such students from the receipt of educational services in school to postsecondary life, including the receipt of vocational rehabilitation services under the Act, postsecondary education, employment, and pre-employment transition services;

(3) Strategies developed and implemented by the State to address the needs of students and youth with disabilities identified in the assessments described in paragraph (a) of this section and strategies to achieve the goals and priorities identified by the State to improve and expand vocational rehabilitation services for students and youth with disabilities on a statewide basis;

(4) Strategies to provide pre-employment transition services.

(5) Outreach procedures to identify and serve individuals with disabilities who are minorities and

individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program;

(6) As applicable, the plan of the State for establishing, developing, or improving community rehabilitation programs;

(7) Strategies to improve the performance of the State with respect to the evaluation standards and performance indicators established pursuant to section 106 of the Act and section 116 of Workforce Innovation and Opportunity Act; and

(8) Strategies for assisting other components of the statewide workforce development system in assisting individuals with disabilities.

(e) Evaluation and reports of progress. (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must include—

(i) The results of an evaluation of the effectiveness of the vocational rehabilitation program; and

(ii) A joint report by the designated State unit and the State Rehabilitation Council, if the State unit has a Council, to the Secretary on the progress made in improving the effectiveness of the program from the previous year. This evaluation and joint report must include—

(A) An evaluation of the extent to which the goals and priorities identified in paragraph (c) of this section were achieved;

(B) A description of the strategies that contributed to the achievement of the goals and priorities;

(C) To the extent to which the goals and priorities were not achieved, a description of the factors that impeded that achievement; and

(D) An assessment of the performance of the State on the standards and indicators established pursuant to section 106 of the Act.

(2) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State unit and the State Rehabilitation Council, if the State unit has a Council, will jointly submit to the Secretary a report that contains the information described in paragraph (e)(1) of this section at such time and in such manner the Secretary determines appropriate.

(Authority: Section 101(a)(15) and (25) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(15) and (25))

<u>§361.30 Services to American Indians.</u>

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State agency provides vocational rehabilitation services to American Indians who are individuals with disabilities residing in the State to the same extent as the designated State agency provides vocational rehabilitation services to other significant populations of individuals with disabilities residing in the State.

(Authority: Sections 101(a)(13) and 121(b)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(13) and 741(b)(3))

§361.31 Cooperative agreements with private nonprofit organizations.

The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the manner in which cooperative agreements with private nonprofit vocational rehabilitation service providers will be established.

(Authority: Section 101(a)(24)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(24)(B))

§361.32 Provision of training and services for employers.

The designated State unit may expend payments received under this part to educate and provide services to

employers who have hired or are interested in hiring individuals with disabilities under the vocational rehabilitation program, including--

(a) Providing training and technical assistance to employers regarding the employment of individuals with disabilities, including disability awareness, and the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and other employment-related laws;

(b) Working with employers to--

(1) Provide opportunities for work-based learning experiences (including internships, short-term employment, apprenticeships, and fellowships);

(2) Provide opportunities for pre-employment transition services;

(3) Recruit qualified applicants who are individuals with disabilities;

(4) Train employees who are individuals with disabilities; and

(5) Promote awareness of disability-related obstacles to continued employment.

(c) Providing consultation, technical assistance, and support to employers on workplace accommodations, assistive

technology, and facilities and workplace access through collaboration with community partners and employers, across States and nationally, to enable the employers to recruit, job match, hire, and retain qualified individuals with disabilities who are recipients of vocational rehabilitation services under this part, or who are applicants for such services; and

(d) Assisting employers with utilizing available financial support for hiring or accommodating individuals with disabilities.

(Authority: Section 109 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 728A)

§361.33 [Reserved]

§361.34 Supported employment State plan supplement.

(a) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State has an acceptable plan under part 363 of this chapter that provides for the use of funds under that part to supplement funds under this part for the cost of services leading to supported employment.

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

vocational rehabilitation services portion of the Unified or Combined State Plan submitted under this part.

(Authority: Sections 101(a)(22) and 606 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(22) and 795k)

§361.35 Innovation and expansion activities.

(a) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State will reserve and use a portion of the funds allotted to the State under section 110 of the Act--

(1) For the development and implementation of innovative approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities, particularly individuals with the most significant disabilities, including transition services for students and youth with disabilities and pre-employment transition services for students with disabilities, consistent with the findings of the comprehensive statewide assessment of the rehabilitation needs of individuals with disabilities under §361.29(a) and the State's goals and priorities under §361.29(c);

(2) To support the funding of the State Rehabilitation Council, if the State has a Council,

consistent with the resource plan identified in §361.17(i); and

(3) To support the Statewide Independent Living Council, consistent with the Statewide Independent Living Council resource plan prepared under title VII, chapter 1 of the Act. The State and the Statewide Independent Living Council may determine in the Statewide Independent Living Council resource plan that other sources of available funding may be used instead of funding under this section.

(b) The vocational rehabilitation services portion of the Unified or Combined State Plan must—

(1) Describe how the reserved funds will be used; and

(2) Include a report describing how the reserved funds were used.

(Authority: Sections 12(c) and 101(a)(18) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a) (18))

<u>§361.36 Ability to serve all eligible individuals; order of selection for services.</u>

(a) <u>General provisions</u>. (1) The designated State unit either must be able to provide the full range of services listed in section 103(a) of the Act and §361.48, as appropriate, to all eligible individuals or, in the

event that vocational rehabilitation services cannot be provided to all eligible individuals in the State who apply for the services, include in the vocational rehabilitation services portion of the Unified or Combined State Plan the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services.

(2) The ability of the designated State unit to provide the full range of vocational rehabilitation services to all eligible individuals must be supported by a determination that satisfies the requirements of paragraph (b) or (c) of this section and a determination that, on the basis of the designated State unit's projected fiscal and personnel resources and its assessment of the rehabilitation needs of individuals with significant disabilities within the State, it can—

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

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

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

(iv) Meet all program requirements.

(3) If the designated State unit is unable to provide the full range of vocational rehabilitation services to all eligible individuals in the State who apply for the services, the vocational rehabilitation services portion of the Unified or Combined State Plan must—

(i) Show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;

(ii) Provide a justification for the order of selection;

(iii) Identify service and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order, as required under §361.29(c)(5);

(iv) Assure that—

(A) In accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and

(B) Individuals who do not meet the order of selection criteria will have access to services provided through the information and referral system established under §361.37; and

(v) State whether the designated State unit will elect to serve, in its discretion, eligible individuals (whether or not the individuals are receiving vocational rehabilitation services under the order of selection) who require specific services or equipment to maintain employment, notwithstanding the assurance provided pursuant to paragraph (3)(iv)(A) of this section.

(b) Basis for assurance that services can be provided to all eligible individuals. (1) For a designated State unit that determined, for the current fiscal year and the preceding fiscal year, that it is able to provide the full range of services, as appropriate, to all eligible individuals, the State unit, during the current fiscal and preceding fiscal year, must have in fact—

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

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

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

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

(2) For a designated State unit that was unable to provide the full range of services to all eligible individuals during the current or preceding fiscal year or that has not met the requirements in paragraph (b)(1) of this section, the determination that the designated State unit is able to provide the full range of vocational rehabilitation services to all eligible individuals in the next fiscal year must be based on—

(i) A demonstration that circumstances have changed that will allow the designated State unit to meet the requirements of paragraph (a)(2) of this section in the next fiscal year, including—

(A) An estimate of the number of and projected costs of serving, in the next fiscal year, individuals with existing individualized plans for employment;

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

(C) The projected costs of administering the program in the next fiscal year, including, but not limited to, costs of staff salaries and benefits, outreach activities, and required statewide studies; and

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

(ii) Comparable data, as relevant, for the current or preceding fiscal year, or for both years, of the costs listed in paragraphs (b)(2)(i)(A) through (C) of this section and the resources identified in paragraph (b)(2)(i)(D) of this section and an explanation of any projected increases or decreases in these costs and resources; and

(iii) A determination that the projected revenues and the projected number of qualified personnel for the program in the next fiscal year are adequate to cover the costs identified in paragraphs (b)(2)(i)(A) through (C) of this

section to ensure the provision of the full range of services, as appropriate, to all eligible individuals.

(c) Determining need for establishing and implementing an order of selection. (1) The designated State unit must determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection.

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

(3) If a designated State unit establishes an order of selection, but determines that it does not need to implement that order at the beginning of the fiscal year, it must continue to meet the requirements of paragraph (a)(2) of this section, or it must implement the order of selection by closing one or more priority categories.

(d) Establishing an order of selection. (1) Basis for order of selection. An order of selection must be based on a refinement of the three criteria in the definition of individual with a significant disability in section 7(21)(A) of the Act and §361.5(c)(29).

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

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

(ii) Type of disability;

(iii) Age, sex, race, color, or national origin;

(iv) Source of referral;

(v) Type of expected employment outcome;

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

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

(e) Administrative requirements. In administering the order of selection, the designated State unit must—

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

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

(3) Continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and

(4) Ensure that its funding arrangements for providing services under the vocational rehabilitation services portion of the Unified or Combined State Plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the designated State unit must renegotiate these funding arrangements so that they are consistent with the order of selection.

(f) State Rehabilitation Council. The designated State unit must consult with the State Rehabilitation Council, if the State unit has a Council, regarding the—

(1) Need to establish an order of selection, including any reevaluation of the need under paragraph (c)(2) of this section;

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

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

(4) Administration of the order of selection.

(Authority: Sections 12(d); 101(a)(5); 101(a)(12); 101(a)(15)(A), (B) and (C); 101(a)(21)(A)(ii); and 504(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(d), 721(a)(5), 721(a)(12), 721(a)(15)(A), (B) and (C); 721(a)(21)(A)(ii), and 794(a))

§361.37 Information and referral programs.

(a) General provisions. The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that—

(1) The designated State agency will implement an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the agency's order of selection criteria for receiving vocational rehabilitation services if the agency is operating on an order of selection, are

provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, advancing in, or regaining employment; and

(2) The designated State agency will refer individuals with disabilities to other appropriate Federal and State programs, including other components of the statewide workforce development system.

(b) The designated State unit must refer to appropriate programs and service providers best suited to address the specific rehabilitation, independent living and employment needs of an individual with a disability who makes an informed choice not to pursue an employment outcome under the vocational rehabilitation program, as defined in §361.5(c)(15). Before making the referral required by this paragraph, the State unit must---

(1) Consistent with §361.42(a)(4)(i), explain to the individual that the purpose of the vocational rehabilitation program is to assist individuals to achieve an employment outcome as defined in §361.5(c)(15);

(2) Consistent with §361.52, provide the individual with information concerning the availability of employment

options, and of vocational rehabilitation services, to assist the individual to achieve an appropriate employment outcome;

(3) Inform the individual that services under the vocational rehabilitation program can be provided to eligible individuals in an extended employment setting if necessary for purposes of training or otherwise preparing for employment in an integrated setting;

(4) Inform the individual that, if he or she initially chooses not to pursue an employment outcome as defined in §361.5(c)(15), he or she can seek services from the designated State unit at a later date if, at that time, he or she chooses to pursue an employment outcome; and

(5) Refer the individual, as appropriate, to the Social Security Administration in order to obtain information concerning the ability of individuals with disabilities to work while receiving benefits from the Social Security Administration.

(c) Criteria for appropriate referrals. In making the referrals identified in paragraph (a)(2) of this section, the designated State unit must—

(1) Refer the individual to Federal or State programs, including programs carried out by other

components of the statewide workforce development system, best suited to address the specific employment needs of an individual with a disability; and

(2) Provide the individual who is being referred—

(i) A notice of the referral by the designated State agency to the agency carrying out the program;

(ii) Information identifying a specific point of contact within the agency to which the individual is being referred; and

(iii) Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

(d) Order of selection. In providing the information and referral services under this section to eligible individuals who are not in the priority category or categories to receive vocational rehabilitation services under the State's order of selection, the State unit must identify, as part of its reporting under section 101(a)(10) of the Act and §361.40, the number of eligible individuals who did not meet the agency's order of selection criteria for receiving vocational rehabilitation services and did receive information and referral services under this section.

(Authority: Sections 7(11), 12(c), 101(a)(5)(D), 101(a)(10)(C)(ii), and 101(a)(20) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(5)(D), 721(a)(10)(C)(ii), and 721(a)(20))

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

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

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

(ii) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

(iii) All applicants or their representatives are informed about the State 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 State unit intends to use or release the information;

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

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

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

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

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

(2) The State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making

extensive searches and must establish policies and procedures governing access to records.

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

(c) Release to applicants and eligible individuals. (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by an applicant or eligible individual, the State unit 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 State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

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

(4) An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the designated State unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services, consistent with §361.47(a)(12).

(d) Release for audit, evaluation, and research. Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or

research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that—

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

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

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

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

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

(e) Release to other programs or authorities. (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the State unit may release personal information to another agency or organization for its

program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

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

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

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

(Authority: 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))

§361.39 State-imposed requirements.

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

(Authority: Section 17 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 714)

§361.40 Reports; Evaluation standards and performance indicators.

(a) Reports. (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State agency will submit reports, including reports required under sections 13, 14, and 101(a)(10) of the Act—

(i) In the form and level of detail and at the time required by the Secretary regarding applicants for and eligible individuals receiving services, including students

receiving pre-employment transition services in accordance with §361.48(a); and

(ii) In a manner that provides a complete count (other than the information obtained through sampling consistent with section 101(a)(10)(E) of the Act) of the applicants and eligible individuals to—

(A) Permit the greatest possible cross-classification of data; and

(B) Protect the confidentiality of the identity of each individual.

(2) The designated State agency must comply with any requirements necessary to ensure the accuracy and verification of those reports.

(b) Evaluation standards and performance indicators.

(1) Standards and indicators. The evaluation standards and performance indicators for the vocational rehabilitation program carried out under this part are subject to the performance accountability provisions described in section 116(b) of the Workforce Innovation and Opportunity Act and implemented in joint regulations set forth in subpart E of this part.

(2) Compliance. A State's compliance with common performance measures and any necessary corrective actions

will be determined in accordance with joint regulations set forth in subpart E of this part.

(Authority: Sections 12(c), 101(a)(10)(A) and (F), and 106 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c),721(a)(10)(A) and (F), and 726)

Provision and Scope of Services

§361.41 Processing referrals and applications.

(a) Referrals. The designated State unit must establish and implement standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through the one-stop service delivery systems under section 121 of the Workforce Innovation and Opportunity Act. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(b) Applications. (1) Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in one-stop centers under section 121 of the

Workforce Innovation and Opportunity Act, an eligibility determination must be made within 60 days, unless—

(i) Exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and the individual agree to a specific extension of time; or

(ii) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with §361.42(e).

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

(i)(A) Has completed and signed an agency application form;

(B) Has completed a common intake application form in a one-stop center requesting vocational rehabilitation services; or

(C) Has otherwise requested services from the designated State unit;

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

(iii) Is available to complete the assessment process.

(3) The designated State unit must ensure that its application forms are widely available throughout the State, particularly in the one-stop centers under section 121 of the Workforce Innovation and Opportunity Act. (Authority: Sections 12(c), 101(a)(6)(A) and 102(a)(6) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(6)(A) and 722(a)(6))

§361.42 Assessment for determining eligibility and priority for services.

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

(a) Eligibility requirements. (1) Basic requirements. The designated State unit's determination of

an applicant's eligibility for vocational rehabilitation services must be based only on the following requirements:

(i) A determination by qualified personnel that the applicant has a physical or mental impairment;

(ii) A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; and

(iii) A determination by a qualified vocational rehabilitation counselor employed by the designated State unit that the applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interest, and informed choice. For purposes of an assessment for determining eligibility and vocational rehabilitation needs under this part, an individual is presumed to have a goal of an employment outcome.

(2) Presumption of benefit. The designated State unit must presume that an applicant who meets the eligibility requirements in paragraphs (a)(1)(i) and (ii)

of this section can benefit in terms of an employment outcome.

(3) Presumption of eligibility for Social Security recipients and beneficiaries. (i) Any applicant who has been determined eligible for Social Security benefits under title II or title XVI of the Social Security Act is—

(A) Presumed eligible for vocational rehabilitation services under paragraphs (a)(1) and (2) of this section; and

(B) Considered an individual with a significant disability as defined in §361.5(c)(29).

(ii) If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under title II or title XVI of the Social Security Act (and, therefore, is presumed eligible for vocational rehabilitation services under paragraph (a)(3)(i)(A) of this section), but is unable to provide appropriate evidence, such as an award letter, to support that assertion, the State unit must verify the applicant's eligibility under title II or title XVI of the Social Security Act by contacting the Social Security Administration. This verification must be made within a reasonable period of time that enables the State unit to

determine the applicant's eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with §361.41(b)(2).

(4) Achievement of an employment outcome. Any eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits under title II or title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(i) The State unit is responsible for informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome.

(ii) The applicant's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome, and no additional demonstration on

the part of the applicant is required for purposes of satisfying paragraph (a)(4) of this section.

(5) Interpretation. Nothing in this section, including paragraph (a)(3)(i), is to be construed to create an entitlement to any vocational rehabilitation service.

(b) Interim determination of eligibility. (1) The designated State unit may initiate the provision of vocational rehabilitation services for an applicant on the basis of an interim determination of eligibility prior to the 60-day period described in §361.41(b)(2).

(2) If a State chooses to make interim determinations of eligibility, the designated State unit must—

(i) Establish criteria and conditions for making those determinations;

(ii) Develop and implement procedures for making the determinations; and

(iii) Determine the scope of services that may be provided pending the final determination of eligibility.

(3) If a State elects to use an interim eligibility determination, the designated State unit must make a final determination of eligibility within 60 days of the individual submitting an application for services in accordance with §361.41(b)(2).

(c) Prohibited factors. (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State unit will not impose, as part of determining eligibility under this section, a duration of residence requirement that excludes from services any applicant who is present in the State. The designated State unit may not require the applicant to demonstrate a presence in the State through the production of any documentation that under State or local law, or practical circumstances, results in a duration of residency.

(2) In making a determination of eligibility under this section, the designated State unit also must ensure that—

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

(ii) The eligibility requirements are applied without regard to the—

(A) Age, sex, race, color, or national origin of the applicant;

(B) Type of expected employment outcome;

(C) Source of referral for vocational rehabilitation services;

(D) Particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family;

(E) Applicants' employment history or current employment status; and

(F) Applicants' educational status or current educational credential.

(d) Review and assessment of data for eligibility determination. Except as provided in paragraph (e) of this section, the designated State unit—

(1) Must base its determination of each of the basic eligibility requirements in paragraph (a) of this section on—

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

(ii) To the extent existing data do not describe the current functioning of the individual or are unavailable,

insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and any other support services that are necessary to determine whether an individual is eligible; and

(2) Must base its presumption under paragraph (a)(3)(i) of this section that an applicant who has been determined eligible for Social Security benefits under title II or title XVI of the Social Security Act satisfies each of the basic eligibility requirements in paragraph (a) of this section on determinations made by the Social Security Administration.

(e) Trial work experiences for individuals with significant disabilities. (1) Prior to any determination that an individual with a disability is unable to benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability or that the individual is ineligible for vocational rehabilitation services, the designated State unit must conduct an exploration of the

individual's abilities, capabilities, and capacity to perform in realistic work situations.

(2)(i) The designated State unit must develop a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in competitive integrated work situations through the use of trial work experiences, which must be provided in competitive integrated employment settings to the maximum extent possible, consistent with the informed choice and rehabilitation needs of the individual.

(ii) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic integrated work settings.

(iii) Trial work experiences must be of sufficient variety and over a sufficient period of time for the designated State unit to determine that there is sufficient evidence to conclude that the individual cannot benefit from the provision of vocational rehabilitation services in terms of a competitive integrated employment outcome; and

(iv) The designated State unit must provide appropriate supports, including assistive technology devices and services and personal assistance services, to

accommodate the rehabilitation needs of the individual during the trial work experiences.

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

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

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

(Authority: Sections 7(2), 12(c), 101(a)(12), 102(a), 103(a)(1), 103(a)(9), 103(a)(10) and 103(a)(14) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(2), 709(c), 721(a)(12), 722(a), 723(a)(1), 723(a)(9), 723(a)(10) and 723(a)(14))

Note to §361.42: Clear and convincing evidence means that the designated State unit has a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system

of law and is to be individually applied on a case-by-case basis. The term clear means unequivocal. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of "clear and convincing evidence" must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. (S. Rep. No. 357, 102d Cong., 2d. Sess. 37-38 (1992))

§361.43 Procedures for ineligibility determination.

If the State unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, the State unit must—

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

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

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

(d) Refer the individual—

(1) To other programs that are part of the one-stop service delivery system under the Workforce Investment Act that can address the individual's training or employment-related needs; or

(2) To Federal, State, or local programs or service providers, including, as appropriate, independent living

programs and extended employment providers, best suited to meet their rehabilitation needs, if the ineligibility determination is based on a finding that the individual has chosen not to pursue, or is incapable of achieving, an employment outcome as defined in §361.5(c)(15).

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

(Authority: Sections 12(c) and 102(a)(5) and (c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(a)(5)and (c))

§361.44 Closure without eligibility determination.

The designated State unit may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for

determining eligibility and priority for services, and the State unit has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation. (Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§361.45 Development of the individualized plan for employment.

(a) General requirements. The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that—

(1) An individualized plan for employment meeting the requirements of this section and §361.46 is developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services or, if the designated State unit is operating under an order of selection in accordance with §361.36, for each eligible individual to whom the State unit is able to provide services; and

(2) Services will be provided in accordance with the provisions of the individualized plan for employment.

(b) Purpose. (1) The designated State unit must conduct an assessment for determining vocational

rehabilitation needs, if appropriate, for each eligible individual or, if the State is operating under an order of selection, for each eligible individual to whom the State is able to provide services. The purpose of this assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment.

(2) The individualized plan for employment must be designed to achieve a specific employment outcome, as defined in §361.5(c)(15), that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(c) Required information. The State unit must provide the following information to each eligible individual or, as appropriate, the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual's representative:

(1) Options for developing an individualized plan for employment. Information on the available options for developing the individualized plan for employment, including the option that an eligible individual or, as

appropriate, the individual's representative may develop all or part of the individualized plan for employment—

(i) Without assistance from the State unit or other entity; or

(ii) With assistance from—

(A) A qualified vocational rehabilitation counselor employed by the State unit;

(B) A qualified vocational rehabilitation counselor who is not employed by the State unit;

(C) A disability advocacy organization; or

(D) Resources other than those in paragraph (c)(1)(ii)(A) through (C) of this section.

(2) Additional information. Additional information to assist the eligible individual or, as appropriate, the individual's representative in developing the individualized plan for employment, including—

(i) Information describing the full range of components that must be included in an individualized plan for employment;

(ii) As appropriate to each eligible individual—

(A) An explanation of agency guidelines and criteria for determining an eligible individual's financial commitments under an individualized plan for employment;

(B) Information on the availability of assistance in completing State unit forms required as part of the individualized plan for employment; and

(C) Additional information that the eligible individual requests or the State unit determines to be necessary to the development of the individualized plan for employment;

(iii) A description of the rights and remedies available to the individual, including, if appropriate, recourse to the processes described in §361.57; and

(iv) A description of the availability of a client assistance program established under part 370 of this chapter and information on how to contact the client assistance program.

(3) Individuals entitled to benefits under title II or XVI of the Social Security Act. For individuals entitled to benefits under title II or XVI of the Social Security Act on the basis of a disability or blindness, the State unit must provide to the individual general information on additional supports and assistance for individuals with disabilities desiring to enter the workforce, including assistance with benefits planning.

(d) Mandatory procedures. The designated State unit must ensure that—

(1) The individualized plan for employment is a written document prepared on forms provided by the State unit;

(2) The individualized plan for employment is developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice, consistent with §361.52, in selecting—

(i) The employment outcome, including the employment setting;

(ii) The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;

(iii) The entity or entities that will provide the vocational rehabilitation services; and

(iv) The methods available for procuring the services;

(3) The individualized plan for employment is—

(i) Agreed to and signed by the eligible individual or, as appropriate, the individual's representative; and

(ii) Approved and signed by a qualified vocational rehabilitation counselor employed by the designated State unit;

(4) A copy of the individualized plan for employment and a copy of any amendments to the individualized plan for employment are provided to the eligible individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual's representative;

(5) The individualized plan for employment is reviewed at least annually by a qualified vocational rehabilitation counselor and the eligible individual or, as appropriate, the individual's representative to assess the eligible individual's progress in achieving the identified employment outcome;

(6) The individualized plan for employment is amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the State unit or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome,

the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services;

(7) Amendments to the individualized plan for employment do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative and by a qualified vocational rehabilitation counselor employed by the designated State unit;

(8) The individualized plan for employment is amended, as necessary, to include the postemployment services and service providers that are necessary for the individual to maintain, advance in or regain employment, consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(9) An individualized plan for employment for a student with a disability is developed—

(i) In consideration of the student's individualized education program or 504 services, as applicable; and

(ii) In accordance with the plans, policies, procedures, and terms of the interagency agreement required under §361.22.

(e) Standards for developing the individualized plan for employment. The individualized plan for employment must be developed as soon as possible, but not later than 90 days after the date of determination of eligibility, unless the State unit and the eligible individual agree to the extension of that deadline to a specific date by which the individualized plan for employment must be completed.

(f) Data for preparing the individualized plan for employment. (1) Preparation without comprehensive assessment. To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individual's individualized plan for employment must be determined based on the data used for the assessment of eligibility and priority for services under §361.42.

(2) Preparation based on comprehensive assessment.

(i) If additional data are necessary to determine the employment outcome and the nature and scope of services to be included in the individualized plan for employment of an eligible individual, the State unit must conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for

supported employment services, of the eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual in accordance with the provisions of §361.5(c)(5)(ii).

(ii) In preparing the comprehensive assessment, the State unit must use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the individualized plan for employment, including information—

(A) Available from other programs and providers, particularly information used by education officials and the Social Security Administration;

(B) Provided by the individual and the individual's family; and

(C) Obtained under the assessment for determining the individual's eligibility and vocational rehabilitation needs.

(Authority: Sections 7(2)(B), 101(a)(9), 102(b), and 103(a)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(2)(B), 721(a)(9), 722(b), and 723(a)(1))

§ 361.46 Content of the individualized plan for employment.

(a) Mandatory components. Regardless of the approach in §361.45(c)(1) that an eligible individual selects for purposes of developing the individualized plan for employment, each individualized plan for employment must--

(1) Include a description of the specific employment outcome, as defined in §361.5(c)(15), that is chosen by the eligible individual and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice consistent with the general goal of competitive integrated employment (except that in the case of an eligible individual who is a student or a youth with a disability, the description may be a description of the individual’s projected post-school employment outcome);

(2) Include a description under §361.48 of--

(i) These specific rehabilitation services needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal assistance services, including training in the management of those services; and

(ii) In the case of a plan for an eligible individual that is a student or youth with a disability, the specific transition services and supports needed to achieve the

individual’s employment outcome or projected post-school employment outcome.

(3) Provide for services in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual;

(4) Include timelines for the achievement of the employment outcome and for the initiation of services;

(5) Include a description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services;

(6) Include a description of the criteria that will be used to evaluate progress toward achievement of the employment outcome; and

(7) Include the terms and conditions of the individualized plan for employment, including, as appropriate, information describing—

(i) The responsibilities of the designated State unit;

(ii) The responsibilities of the eligible individual, including—

(A) The responsibilities the individual will assume in relation to achieving the employment outcome;

(B) If applicable, the extent of the individual's participation in paying for the cost of services; and

(C) The responsibility of the individual with regard to applying for and securing comparable services and benefits as described in §361.53; and

(iii) The responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in §361.53.

(b) Supported employment requirements. An individualized plan for employment for an individual with a most significant disability for whom an employment outcome in a supported employment setting has been determined to be appropriate must—

(1) Specify the supported employment services to be provided by the designated State unit;

(2) Specify the expected extended services needed, which may include natural supports;

(3) Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed, include a description of the

basis for concluding that there is a reasonable expectation that those sources will become available;

(4) Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the individualized plan for employment by the time of transition to extended services;

(5) Provide for the coordination of services provided under an individualized plan for employment with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent that job skills training is provided, identify that the training will be provided on site; and

(7) Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

(c) Post-employment services. The individualized plan for employment for each individual must contain, as determined to be necessary, statements concerning—

(1) The expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

(2) A description of the terms and conditions for the provision of any post-employment services; and

(3) If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in §361.53.

(d) Coordination of services for students with disabilities. The individualized plan for employment for a student with a disability must be coordinated with the individualized education program or 504 services, as applicable, for that individual in terms of the goals, objectives, and services identified in the education program.

(Authority: Sections 101(a)(8), 101(a)(9), and 102(b)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(8), 721(a)(9), and 722(b)(4))

§361.47 Record of services.

(a) The designated State unit must maintain for each applicant and eligible individual a record of services that

includes, to the extent pertinent, the following documentation:

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

(2) If an applicant or eligible individual receiving services under an individualized plan for employment has been determined to be ineligible, documentation supporting that determination in accordance with the requirements under §361.43.

(3) Documentation that describes the justification for closing an applicant's or eligible individual's record of services if that closure is based on reasons other than ineligibility, including, as appropriate, documentation indicating that the State unit has satisfied the requirements in §361.44.

(4) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation supporting that determination.

(5) If an individual with a significant disability requires an exploration of abilities, capabilities, and

capacity to perform in realistic work situations through the use of trial work experiences or, as appropriate, an extended evaluation to determine whether the individual is an eligible individual, documentation supporting the need for, and the plan relating to, that exploration or, as appropriate, extended evaluation and documentation regarding the periodic assessments carried out during the trial work experiences or, as appropriate, the extended evaluation, in accordance with the requirements under §361.42(e) and (f).

(6) The individualized plan for employment, and any amendments to the individualized plan for employment, consistent with the requirements under §361.46.

(7) Documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding the provision of assessment services and the extent to which the eligible individual exercised informed choice in the development of the individualized plan for employment with respect to the selection of the specific employment outcome, the specific vocational rehabilitation services needed to achieve the employment outcome, the entity to provide the services, the employment setting, the

settings in which the services will be provided, and the methods to procure the services.

(8) In the event that an individual's individualized plan for employment provides for vocational rehabilitation services in a non-integrated setting, a justification to support the need for the non-integrated setting.

(9) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals in accordance with §361.5(c)(9)(i).

(10) In the event an individual achieves an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act or the designated State unit closes the record of services of an individual in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with §361.5(c)(15) or that an eligible individual through informed choice chooses to remain in extended employment, documentation of the results of the annual reviews required under §361.55, of the

individual's input into those reviews, and of the individual's or, if appropriate, the individual's representative's acknowledgment that those reviews were conducted.

(11) Documentation concerning any action or decision resulting from a request by an individual under §361.57 for a review of determinations made by designated State unit personnel.

(12) In the event that an applicant or eligible individual requests under §361.38(c)(4) that documentation in the record of services be amended and the documentation is not amended, documentation of the request.

(13) In the event an individual is referred to another program through the State unit's information and referral system under §361.37, including other components of the statewide workforce development system, documentation on the nature and scope of services provided by the designated State unit to the individual and on the referral itself, consistent with the requirements of §361.37.

(14) In the event an individual's record of service is closed under §361.56, documentation that demonstrates the services provided under the individual's individualized

plan for employment contributed to the achievement of the employment outcome.

(15) In the event an individual's record of service is closed under §361.56, documentation verifying that the provisions of §361.56 have been satisfied.

(b) The State unit, in consultation with the State Rehabilitation Council if the State has a Council, must determine the type of documentation that the State unit must maintain for each applicant and eligible individual in order to meet the requirements in paragraph (a) of this section.

(Authority: Sections 12(c), 101(a)(6), (9), (14), and (20) and 102(a), (b), and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(6), (9), (14), and (20) and 722(a), (b), and (d))

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

(a) Pre-employment transition services. Each State must ensure that the designated State unit, in collaboration with the local educational agencies involved, provide, or arrange for the provision of, pre-employment transition services for all students with disabilities, as defined in §361.5(c)(51), in need of such services, without

regard to the type of disability, from funds reserved in accordance with §361.65 and any funds made available from State, local, or private funding sources.

(1) Availability of services. Pre-employment transition services may be provided to all students with disabilities, regardless of whether an application for services has been submitted.

(2) Required activities. The designated State unit must provide the following pre-employment transition services:

(i) Job exploration counseling;

(ii) Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible;

(iii) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;

(iv) Workplace readiness training to develop social skills and independent living; and

(v) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).

(3) Authorized activities. Funds available and remaining after the provision of the required activities described in paragraph (a)(2) of this section may be used to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by—

(i) Implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;

(ii) Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently; participate in postsecondary education experiences; and obtain, advance in and retain competitive integrated employment;

(iii) Providing instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;

(iv) Disseminating information about innovative, effective, and efficient approaches to achieve the goals of this section;

(v) Coordinating activities with transition services provided by local educational agencies under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

(vi) Applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel, in order to better achieve the goals of this section;

(vii) Developing model transition demonstration projects;

(viii) Establishing or supporting multistate or regional partnerships involving States, local educational agencies, designated State units, developmental disability agencies, private businesses, or other participants to achieve the goals of this section; and

(ix) Disseminating information and strategies to improve the transition to postsecondary activities of

individuals who are members of traditionally unserved and underserved populations.

(4) Pre-employment transition coordination. Each local office of a designated State unit must carry out responsibilities consisting of—

(i) Attending individualized education program meetings for students with disabilities, when invited;

(ii) Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;

(iii) Working with schools, including those carrying out activities under section 614(d) of the IDEA, to coordinate and ensure the provision of pre-employment transition services under this section;

(iv) When invited, attending person-centered planning meetings for individuals receiving services under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and

(b) Services for individuals who have applied for or been determined eligible for vocational rehabilitation services. As appropriate to the vocational rehabilitation

needs of each individual and consistent with each individual's individualized plan for employment, the designated State unit must ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, advancing in or regaining an employment outcome that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

(1) Assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with §361.42.

(2) Assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with §361.45.

(3) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with §361.52.

(4) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce development system, in accordance with §§361.23, 361.24, and 361.37, and to advise those individuals about client assistance programs established under 34 CFR part 370.

(5) In accordance with the definition in §361.5(c)(40), physical and mental restoration services, to the extent that financial support is not readily available from a source other than the designated State unit (such as through health insurance or a comparable service or benefit as defined in §361.5(c)(10)).

(6) Vocational and other training services, including personal and vocational adjustment training, 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 State unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

(7) Maintenance, in accordance with the definition of that term in §361.5(c)(35).

(8) Transportation in connection with the provision of any vocational rehabilitation service and in accordance with the definition of that term in §361.5(c)(57).

(9) Vocational rehabilitation services to family members, as defined in §361.5(c)(23), of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(10) 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.

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

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

(13) Supported employment services in accordance with the definition of that term in §361.5(c)(54).

(14) Personal assistance services in accordance with the definition of that term in §361.5(c)(39).

(15) Post-employment services in accordance with the definition of that term in §361.5(c)(42).

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

(17) Rehabilitation technology in accordance with the definition of that term in §361.5(c)(45), including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(18) 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, or pre-employment transition services for students.

(19) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those

resources are authorized to be provided through the statewide workforce development system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

(20) Customized employment in accordance with the definition of that term in §361.5(c)(11).

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

(Authority: Sections 7(37), 103(a), and 113 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 704(37), 723(a), and 733)

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

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

(1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide 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 facility for a public or nonprofit community rehabilitation program as defined in §§361.5(c)(10), 361.5(c)(16) and 361.5(c)(17). Examples of special circumstances include the destruction by natural disaster of the only available center serving an area or a State determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

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

(3) Special services to provide 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.

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

(5) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the designated State unit, including enterprises established under the Randolph-Sheppard program, management services and supervision provided by the State unit along with the acquisition by the State unit of vending facilities or other equipment, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:

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

(ii) Initial stocks and supplies includes those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed six months.

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

(iv) If the designated State unit provides for these services, it must ensure that only individuals with significant disabilities will be selected to participate in this supervised program.

(v) If the designated State unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the State 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.

(6) Consultation and technical assistance services to assist State educational agencies and local educational agencies in planning for the transition of students and

youth with disabilities from school to postsecondary life, including employment.

(7) Transition services to youth with disabilities and students with disabilities who may not have yet applied or been determined eligible for vocational rehabilitation services, 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 State to provide services for individuals with developmental disabilities, centers for independent living (as defined in section 702 of the Act), housing and transportation authorities, workforce development systems, and businesses and employers. These specific transition services are to benefit a group of students with disabilities or youth with disabilities and are not individualized services directly related to an individualized plan for employment goal. Services may include, but are not limited to, group tours of universities and vocational training programs, employer or business site visits to learn about career opportunities, career fairs coordinated with workforce development and employers to facilitate mock interviews and

resume writing, and other general services applicable to groups of students with disabilities and youth with disabilities.

(8) The establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998 (29 U.S.C. 3001 et seq.) to promote access to assistive technology for individuals with disabilities who are applicants of or have been determined eligible for vocational rehabilitation services and employers.

(9) 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—

(i) Such Eligibility;

(ii) Previous completion of a bachelor’s degree program at an institution of higher education or scheduled completion of such a degree program prior to matriculating in the program for which the individual proposes to use the support; and

(iii) Acceptance by a program at an institution of higher education in the United States that confers a master's degree in a 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--

(A) No training provided at an institution of higher education may be paid for with funds under this program unless maximum efforts have been made by the designated State unit to secure grant assistance, in whole or in part, from other sources to pay for such training; and

(B) Nothing in this paragraph prevents any designated State unit from providing similar support to individuals with disabilities within the State who are eligible to receive support under this title and who are not served under this section.

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

(1) 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

(2) 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), 101(a)(6)(A), and 103(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(6), and 723(b))

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

(a) Policies. The State unit must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in §361.48 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's individualized plan for employment 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:

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

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

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

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

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

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

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

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

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

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

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

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

(Authority: Sections 12(c) and 101(a)(6) of the Rehabilitation Act of 1973, as amended and 29 U.S.C. 709(c) and 721(a)(6))

§361.51 Standards for facilities and providers of services.

(a) Accessibility of facilities. The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that any facility used in connection with the delivery of vocational rehabilitation services under this part meets program accessibility requirements consistent with the requirements, as applicable, of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, section 504 of the Act, and the regulations implementing these laws.

(b) Affirmative action. The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that community rehabilitation programs that receive assistance under part B of title I of the Act take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as in section 503 of the Act.

(c) Special communication needs personnel. The designated State unit must ensure that providers of vocational rehabilitation services are able to communicate—

(1) In the native language of applicants and eligible individuals who have limited English proficiency; and

(2) By using appropriate modes of communication used by applicants and eligible individuals.

(Authority: Sections 12(c) and 101(a)(6)(B) and (C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(B) and (C))

§361.52 Informed choice.

(a) General provision. The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that applicants and eligible individuals or, as appropriate, their representatives are provided information and support services to assist applicants and eligible individuals in exercising informed choice throughout the rehabilitation process consistent with the provisions of section 102(d) of the Act and the requirements of this section.

(b) Written policies and procedures. The designated State unit, in consultation with its State Rehabilitation Council, if it has a Council, must develop and implement

written policies and procedures that enable an applicant or eligible individual to exercise informed choice throughout the vocational rehabilitation process. These policies and procedures must provide for—

(1) Informing each applicant and eligible individual (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of the designated State unit and including youth with disabilities), 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) Assisting applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) Developing and implementing 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) Assisting eligible individuals or, as appropriate, the individuals' representatives, in acquiring information that enables them to exercise informed choice in the development of their individualized plans for employment with respect to the selection of the—

(i) Employment outcome;

(ii) Specific vocational rehabilitation services needed to achieve the employment outcome;

(iii) Entity that will provide the services;

(iv) Employment setting and the settings in which the services will be provided; and

(v) Methods available for procuring the services; and

(5) Ensuring that the availability and scope of informed choice is consistent with the obligations of the designated State agency under this part.

(c) 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 individualized plan for employment, the designated State unit must provide the individual or the individual's representative, or assist

the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the—

(1) Cost, accessibility, and duration of potential services;

(2) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;

(3) Qualifications of potential service providers;

(4) Types of services offered by the potential providers;

(5) Degree to which services are provided in integrated settings; and

(6) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

(d) Methods or sources of information. In providing or assisting the individual or the individual's representative in acquiring the information required under

paragraph (c) of this section, the State unit may use, but is not limited to, the following methods or sources of information:

(1) Lists of services and service providers.

(2) Periodic consumer satisfaction surveys and reports.

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

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

(5) Opportunities for individuals to visit or experience various work and service provider settings.

(Authority: Sections 12(c), 101(a)(19); 102(b)(2)(B) and 102(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(19); 722(b)(2)(B) and 722(d))

§361.53 Comparable services and benefits.

(a) Determination of availability. The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that prior to providing an accommodation or auxiliary aid or service or any vocational rehabilitation services, except those services listed in

paragraph (b) of this section, to an eligible individual or to members of the individual's family, the State unit must determine whether comparable services and benefits, as defined in §361.5(c)(8), exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay—

(1) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;

(2) An immediate job placement; or

(3) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

(b) Exempt services. The following vocational rehabilitation services described in §361.48(a) are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section:

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

(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, including other components of the statewide workforce development system, if those services are not available under this part.

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

(5) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

(6) Post-employment services consisting of the services listed under paragraphs (b)(1) through (5) of this section.

(c) Provision of services. (1) If comparable services or benefits exist under any other program and are 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, the designated State unit must use those

comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

(2) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome specified in the individualized plan for employment, the designated State unit must provide vocational rehabilitation services until those comparable services and benefits become available.

(d) Interagency coordination. (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the Governor, in consultation with the entity in the State responsible for the vocational rehabilitation program and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between the designated State vocational rehabilitation unit and any appropriate public entity, including the State entity responsible for administering the State Medicaid program, a public institution of higher education, and a component of the statewide workforce development system, to ensure the provision of vocational rehabilitation services, and, if appropriate, accommodations or auxiliary aids and services,

(other than those services listed in paragraph (b) of this section) that are included in the individualized plan for employment of an eligible individual, including the provision of those vocational rehabilitation services (including, if appropriate, accommodations or auxiliary aids and services) during the pendency of any interagency dispute in accordance with the provisions of paragraph (d)(3)(iii) of this section.

(2) The Governor may meet the requirements of paragraph (d)(1) of this section through—

(i) A State statute or regulation;

(ii) A signed agreement between the respective officials of the public entities that clearly identifies the responsibilities of each public entity for the provision of the services; or

(iii) Another appropriate mechanism as determined by the designated State vocational rehabilitation unit.

(3) The interagency agreement or other mechanism for interagency coordination must include the following:

(i) Agency financial responsibility. An identification of, or description of a method for defining, the financial responsibility of the designated State unit and other public entities for the provision of vocational

rehabilitation services, and, if appropriate, accommodations or auxiliary aids and services other than those listed in paragraph (b) of this section and a provision stating the financial responsibility of the public entity for providing those services.

(ii) Conditions, terms, and procedures of reimbursement. Information specifying the conditions, terms, and procedures under which the designated State unit must be reimbursed by the other public entities for providing vocational rehabilitation services, and accommodations or auxiliary aids and services based on the terms of the interagency agreement or other mechanism for interagency coordination.

(iii) Interagency disputes. Information specifying procedures for resolving interagency disputes under the interagency agreement or other mechanism for interagency coordination, including procedures under which the designated State unit may initiate proceedings to secure reimbursement from other public entities or otherwise implement the provisions of the agreement or mechanism.

(iv) Procedures for coordination of services. Information specifying policies and procedures for public entities to determine and identify interagency coordination

responsibilities of each public entity to promote the coordination and timely delivery of vocational rehabilitation services, and accommodations or auxiliary aids and services, other than those listed in paragraph (b) of this section.

(e) Responsibilities under other law. (1) If a public entity (other than the designated State unit) is obligated under Federal law (such as the Americans with Disabilities Act, section 504 of the Act, or section 188 of the Workforce Innovation and Opportunity Act) or State law, or assigned responsibility under State policy or an interagency agreement established under this section, to provide or pay for any services considered to be vocational rehabilitation services (e.g., interpreter services under §361.48(j)), and, if appropriate, accommodations or auxiliary aids and services other than those services listed in paragraph (b) of this section, the public entity must fulfill that obligation or responsibility through—

(i) The terms of the interagency agreement or other requirements of this section;

(ii) Providing or paying for the service directly or by contract; or

(iii) Other arrangement.

(2) If a public entity other than the designated State unit fails to provide or pay for vocational rehabilitation services, and, if appropriate, accommodations or auxiliary aids and services for an eligible individual as established under this section, the designated State unit must provide or pay for those services to the individual and may claim reimbursement for the services from the public entity that failed to provide or pay for those services. The public entity must reimburse the designated State unit pursuant to the terms of the interagency agreement or other mechanism described in paragraph (d) of this section in accordance with the procedures established in the agreement or mechanism pursuant to paragraph (d)(3)(ii) of this section.

(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))

§361.54 Participation of individuals in cost of services based on financial need.

(a) No Federal requirement. There is no Federal requirement that the financial need of individuals be considered in the provision of vocational rehabilitation services.

(b) State unit requirements. (1) The State unit may choose to consider the financial need of eligible individuals or individuals who are receiving services through trial work experiences under §361.42(e) for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (b)(3) of this section.

(2) If the State unit chooses to consider financial need—

(i) It must maintain written policies—

(A) Explaining the method for determining the financial need of an eligible individual; and

(B) Specifying the types of vocational rehabilitation services for which the unit has established a financial needs test;

(ii) The policies must be applied uniformly to all individuals in similar circumstances;

(iii) The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region; and

(iv) The policies must ensure that the level of an individual's participation in the cost of vocational rehabilitation services is—

(A) Reasonable;

(B) Based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and

(C) Not so high as to effectively deny the individual a necessary service.

(3) The designated State unit may not apply a financial needs test, or require the financial participation of the individual—

(i) As a condition for furnishing the following vocational rehabilitation services:

(A) Assessment for determining eligibility and priority for services under §361.48(b)(1), except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences under §361.42(e).

(B) Assessment for determining vocational rehabilitation needs under §361.48(b)(2).

(C) Vocational rehabilitation counseling and guidance under §361.48(b)(3).

(D) Referral and other services under §361.48(b)(4).

(E) Job-related services under §361.48(b)(12).

(F) Personal assistance services under §361.48(b)(14).

(G) Any auxiliary aid or service (e.g., interpreter services under §361.48(b)(10), reader services under §361.48(b)(11)) that an individual with a disability requires under section 504 of the Act (29 U.S.C. 794) or the Americans with Disabilities Act (42 U.S.C. 12101, et seq.), or regulations implementing those laws, in order for the individual to participate in the vocational rehabilitation program as authorized under this part; or

(ii) As a condition for furnishing any vocational rehabilitation service if the individual in need of the service has been determined eligible for Social Security benefits under titles II or XVI of the Social Security Act.

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

<u>§361.55 Semi-annual review of individuals in extended employment and other employment under special certificate provisions of the Fair Labor Standards Act</u>.

(a) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State unit conducts a semi-annual review and reevaluation for the first two years of such employment and annually thereafter, in accordance with the requirements in paragraph (b) of this section for an individual with a disability served under this part—

(1) Who has achieved an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act; or

(2) Whose record of services is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with §361.5(c)(15) or that the individual made an informed choice to remain in extended employment.

(b) For each individual with a disability who meets the criteria in paragraph (a) of this section, the designated State unit must—

(1) Semi-annually review and reevaluate the status of each individual for two years after the individual's record of services is closed (and annually thereafter) to determine the interests, priorities, and needs of the individual with respect to competitive integrated

employment or training for competitive integrated employment;

(2) Enable the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and must document that input in the record of services, consistent with §361.47(a)(10), with the individual's or, as appropriate, the individual's representative's signed acknowledgment that the review and reevaluation have been conducted; and

(3) Make maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individual in engaging in competitive integrated employment as defined in §361.5(c)(9).

(Authority: Sections 12(c) and 101(a)(14) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(14))

<u>§361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome</u>.

The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:

(a) Employment outcome achieved. The individual has achieved the employment outcome that is described in the individual's individualized plan for employment in accordance with §361.46(a)(1) and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(b) Employment outcome maintained. The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.

(c) Satisfactory outcome. At the end of the appropriate period under paragraph (b) of this section, the individual and the qualified rehabilitation counselor employed by the designated State unit consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.

(d) Post-employment services. The individual is informed through appropriate modes of communication of the availability of post-employment services.

(Authority: Sections 12(c), 101(a)(6), and 106(a)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 711(c), 721(a)(6), and 726(a)(2))

§361.57 Review of determinations made by designated State unit personnel.

(a) Procedures. The designated State unit must develop and implement procedures to ensure that an applicant or eligible individual who is dissatisfied with any determination made by personnel of the designated State unit that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination. The procedures must be in accordance with paragraphs (b) through (k) of this section:

(b) General requirements. (1) Notification. Procedures established by the State unit under this section must provide an applicant or eligible individual or, as appropriate, the individual's representative notice of—

(i) The right to obtain review of State unit determinations that affect the provision of vocational rehabilitation services through an impartial due process hearing under paragraph (e) of this section;

(ii) The right to pursue mediation under paragraph (d) of this section with respect to determinations made by designated State unit personnel that affect the provision of vocational rehabilitation services to an applicant or eligible individual;

(iii) The names and addresses of individuals with whom requests for mediation or due process hearings may be filed;

(iv) The manner in which a mediator or impartial hearing officer may be selected consistent with the requirements of paragraphs (d) and (f) of this section; and

(v) The availability of the client assistance program, established under 34 CFR part 370, to assist the applicant or eligible individual during mediation sessions or impartial due process hearings.

(2) Timing. Notice described in paragraph (b)(1) of this section must be provided in writing—

(i) At the time the individual applies for vocational rehabilitation services under this part;

(ii) At the time the individual is assigned to a category in the State's order of selection, if the State has established an order of selection under §361.36;

(iii) At the time the individualized plan for employment is developed; and

(iv) Whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated.

(3) Evidence and representation. Procedures established under this section must—

(i) Provide an applicant or eligible individual or, as appropriate, the individual's representative with an opportunity to submit during mediation sessions or due process hearings evidence and other information that supports the applicant's or eligible individual's position; and

(ii) Allow an applicant or eligible individual to be represented during mediation sessions or due process hearings by counsel or other advocate selected by the applicant or eligible individual.

(4) Impact on provision of services. The State unit may not institute a suspension, reduction, or termination of vocational rehabilitation services being provided to an applicant or eligible individual, including evaluation and assessment services and individualized plan for employment development, pending a resolution through mediation, pending a decision by a hearing officer or reviewing

official, or pending informal resolution under this section unless—

(i) The individual or, in appropriate cases, the individual's representative requests a suspension, reduction, or termination of services; or

(ii) The State agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

(5) Ineligibility. Applicants who are found ineligible for vocational rehabilitation services and previously eligible individuals who are determined to be no longer eligible for vocational rehabilitation services pursuant to §361.43 are permitted to challenge the determinations of ineligibility under the procedures described in this section.

(c) Informal dispute resolution. The State unit may develop an informal process for resolving a request for review without conducting mediation or a formal hearing. A State's informal process must not be used to deny the right of an applicant or eligible individual to a hearing under paragraph (e) of this section or any other right provided under this part, including the right to pursue mediation

under paragraph (d) of this section. If informal resolution under this paragraph or mediation under paragraph (d) of this section is not successful in resolving the dispute within the time period established under paragraph (e)(1) of this section, a formal hearing must be conducted within that same time period, unless the parties agree to a specific extension of time.

(d) Mediation. (1) The State must establish and implement procedures, as required under paragraph (b)(1)(ii) of this section, to allow an applicant or eligible individual and the State unit to resolve disputes involving State unit determinations that affect the provision of vocational rehabilitation services through a mediation process that must be made available, at a minimum, whenever an applicant or eligible individual or, as appropriate, the individual's representative requests an impartial due process hearing under this section.

(2) Mediation procedures established by the State unit under paragraph (d) of this section must ensure that—

(i) Participation in the mediation process is voluntary on the part of the applicant or eligible individual, as appropriate, and on the part of the State unit;

(ii) Use of the mediation process is not used to deny or delay the applicant's or eligible individual's right to pursue resolution of the dispute through an impartial hearing held within the time period specified in paragraph (e)(1) of this section or any other rights provided under this part. At any point during the mediation process, either party or the mediator may elect to terminate the mediation. In the event mediation is terminated, either party may pursue resolution through an impartial hearing;

(iii) The mediation process is conducted by a qualified and impartial mediator, as defined in §361.5(c)(43), who must be selected from a list of qualified and impartial mediators maintained by the State—

(A) On a random basis;

(B) By agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative; or

(C) In accordance with a procedure established in the State for assigning mediators, provided this procedure ensures the neutrality of the mediator assigned; and

(iv) Mediation sessions are scheduled and conducted in a timely manner and are held in a location and manner that is convenient to the parties to the dispute.

(3) Discussions that occur during the mediation process must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(4) An agreement reached by the parties to the dispute in the mediation process must be described in a written mediation agreement that is developed by the parties with the assistance of the qualified and impartial mediator and signed by both parties. Copies of the agreement must be sent to both parties.

(5) The costs of the mediation process must be paid by the State. The State is not required to pay for any costs related to the representation of an applicant or eligible individual authorized under paragraph (b)(3)(ii) of this section.

(e) Impartial due process hearings. The State unit must establish and implement formal review procedures, as

required under paragraph (b)(1)(i) of this section, that provide that—

(1) hearing conducted by an impartial hearing officer, selected in accordance with paragraph (f) of this section, must be held within 60 days of an applicant's or eligible individual's request for review of a determination made by personnel of the State unit that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of time;

(2) In addition to the rights described in paragraph (b)(3) of this section, the applicant or eligible individual or, if appropriate, the individual's representative must be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence;

(3) The impartial hearing officer must—

(i) Make a decision based on the provisions of the approved vocational rehabilitation services portion of the Unified or Combined State Plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements; and

(ii) Provide to the individual or, if appropriate, the individual's representative and to the State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing; and

(4) The hearing officer's decision is final, except that a party may request an impartial review under paragraph (g)(1) of this section if the State has established procedures for that review, and a party involved in a hearing may bring a civil action under paragraph (i) of this section.

(f) Selection of impartial hearing officers. The impartial hearing officer for a particular case must be selected—

(1) From a list of qualified impartial hearing officers maintained by the State unit. Impartial hearing officers included on the list must be—

(i) Identified by the State unit if the State unit is an independent commission; or

(ii) Jointly identified by the State unit and the State Rehabilitation Council if the State has a Council; and

(2)(i) On a random basis; or

(ii) By agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative.

(g) Administrative review of hearing officer's decision. The State may establish procedures to enable a party who is dissatisfied with the decision of the impartial hearing officer to seek an impartial administrative review of the decision under paragraph (e)(3) of this section in accordance with the following requirements:

(1) A request for administrative review under paragraph (g) of this section must be made within 20 days of the mailing of the impartial hearing officer's decision.

(2) Administrative review of the hearing officer's decision must be conducted by—

(i) The chief official of the designated State agency if the State has established both a designated State agency and a designated State unit under §361.13(b); or

(ii) An official from the office of the Governor.

(3) The reviewing official described in paragraph (g)(2)(i) of this section—

(i) Provides both parties with an opportunity to submit additional evidence and information relevant to a final decision concerning the matter under review;

(ii) May not overturn or modify the hearing officer's decision, or any part of that decision, that supports the position of the applicant or eligible individual unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to the approved vocational rehabilitation services portion of the Unified or Combined State Plan, the Act, Federal vocational rehabilitation regulations, or State regulations and policies that are consistent with Federal requirements;

(iii) Makes an independent, final decision following a review of the entire hearing record and provides the decision in writing, including a full report of the findings and the statutory, regulatory, or policy grounds for the decision, to the applicant or eligible individual or, as appropriate, the individual's representative and to the State unit within 30 days of the request for administrative review under paragraph (g)(1) of this section; and

(iv) May not delegate the responsibility for making the final decision under paragraph (g) of this section to any officer or employee of the designated State unit.

(4) The reviewing official's decision under paragraph (g) of this section is final unless either party brings a civil action under paragraph (i) of this section.

(h) Implementation of final decisions. If a party brings a civil action under paragraph (h) of this section to challenge the final decision of a hearing officer under paragraph (e) of this section or to challenge the final decision of a State reviewing official under paragraph (g) of this section, the final decision of the hearing officer or State reviewing official must be implemented pending review by the court.

(i) Civil action. (1) Any party who disagrees with the findings and decision of an impartial hearing officer under paragraph (e) of this section in a State that has not established administrative review procedures under paragraph (g) of this section and any party who disagrees with the findings and decision under paragraph (g)(3)(iii) of this section have a right to bring a civil action with respect to the matter in dispute. The action may be brought in any State court of competent jurisdiction or in a

district court of the United States of competent jurisdiction without regard to the amount in controversy.

(2) In any action brought under paragraph (i) of this section, the court—

(i) Receives the records related to the impartial due process hearing and the records related to the administrative review process, if applicable;

(ii) Hears additional evidence at the request of a party; and

(iii) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(j) State fair hearing board. A fair hearing board as defined in §361.5(c)(21) is authorized to carry out the responsibilities of the impartial hearing officer under paragraph (e) of this section in accordance with the following criteria:

(1) The fair hearing board may conduct due process hearings either collectively or by assigning responsibility for conducting the hearing to one or more members of the fair hearing board.

(2) The final decision issued by the fair hearing board following a hearing under paragraph (j)(1) of this

section must be made collectively by, or by a majority vote of, the fair hearing board.

(3) The provisions of paragraphs (b)(1), (2), and (3) of this section that relate to due process hearings and of paragraphs (e), (f), (g), and (h) of this section do not apply to fair hearing boards under this paragraph (j).

(k) Data collection. (1) The director of the designated State unit must collect and submit, at a minimum, the following data to the Secretary for inclusion each year in the annual report to Congress under section 13 of the Act:

(i) A copy of the standards used by State reviewing officials for reviewing decisions made by impartial hearing officers under this section.

(ii) The number of mediations held, including the number of mediation agreements reached.

(iii) The number of hearings and reviews sought from impartial hearing officers and State reviewing officials, including the type of complaints and the issues involved.

(iv) The number of hearing officer decisions that were not reviewed by administrative reviewing officials.

(v) The number of hearing decisions that were reviewed by State reviewing officials and, based on these reviews, the number of hearing decisions that were—

(A) Sustained in favor of an applicant or eligible individual;

(B) Sustained in favor of the designated State unit;

(C) Reversed in whole or in part in favor of the applicant or eligible individual; and

(D) Reversed in whole or in part in favor of the State unit.

(2) The State unit director also must collect and submit to the Secretary copies of all final decisions issued by impartial hearing officers under paragraph (e) of this section and by State review officials under paragraph (g) of this section.

(3) The confidentiality of records of applicants and eligible individuals maintained by the State unit may not preclude the access of the Secretary to those records for the purposes described in this section.

(Authority: Section 102(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 722(c))

Subpart C—Financing of State Vocational Rehabilitation Programs

§361.60 Matching requirements.

(a) Federal share. (1) General. Except as provided in paragraph (a)(2) of this section, the Federal share for expenditures made by the State under the vocational rehabilitation services portion of the Unified or Combined State Plan, including expenditures for the provision of vocational rehabilitation services and the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan, is 78.7 percent.

(2) Construction projects. The Federal share for expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project.

(b) Non-Federal share. (1) General. Except as provided in paragraph (b)(2) and (b)(3) of this section, expenditures made under the vocational rehabilitation services portion of the Unified or Combined State Plan to meet the non-Federal share under this section must be consistent with the provisions of 2 CFR 200.306(b).

(2) Third party in-kind contributions. Third party in-kind contributions specified in 2 CFR 200.306(b) may not be used to meet the non-Federal share under this section.

(3) Contributions by private entities. Expenditures made from those cash contributions provided by private organizations, agencies, or individuals and that are deposited in the State agency's account or, if applicable, sole local agency's account, in accordance with State law prior to their expenditure and that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the funds are earmarked for—

(i) Meeting in whole or in part the State's share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes;

(ii) Particular geographic areas within the State for any purpose under the vocational rehabilitation services portion of the Unified or Combined State Plan, other than those described in paragraph (b)(3)(i) of this section, in accordance with the following criteria:

(A) Before funds that are earmarked for a particular geographic area may be used as part of the non-Federal share, the State must notify the Secretary that the State cannot provide the full non-Federal share without using these funds.

(B) Funds that are earmarked for a particular geographic area may be used as part of the non-Federal share without requesting a waiver of statewideness under §361.26.

(C) Except as provided in paragraph (b)(3)(i) of this section, all Federal funds must be used on a statewide basis consistent with §361.25, unless a waiver of statewideness is obtained under §361.26; and

(iii) Any other purpose under the vocational rehabilitation services portion of the Unified or Combined State Plan, provided the expenditures do not benefit in any way the donor, employee, officer, or agent, any member of his or her immediate family, his or her partner, an individual with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial or other interest. The Secretary does not consider a donor's receipt from the State unit of a subaward or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the subaward or contract is awarded under the State's regular competitive procedures.

(Authority: Sections 7(14), 101(a)(3), 101(a)(4) and 104 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(14), 721(a)(3), 721(a)(4) and 724))

Example for paragraph (b)(3): Contributions may be earmarked in accordance with §361.60(b)(3)(iii) for providing particular services (e.g., rehabilitation technology services); serving individuals with certain types of disabilities (e.g., individuals who are blind), consistent with the State's order of selection, if applicable; providing services to special groups that State or Federal law permits to be targeted for services (e.g., students with disabilities who are receiving special education services), consistent with the State's order of selection, if applicable; or carrying out particular types of administrative activities permissible under State law. Contributions also may be restricted to particular geographic areas to increase services or expand the scope of services that are available statewide under the vocational rehabilitation services portion of the Unified or Combined State Plan in accordance with the requirements in §361.60(b)(3)(ii).

§361.61 Limitation on use of funds for construction expenditures.

No more than 10 percent of a State's allotment for any fiscal year under section 110 of the Act may be spent on the construction of facilities for community rehabilitation program purposes.

(Authority: Section 101(a)(17)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(17)(A))

§361.62 Maintenance of effort requirements.

(a) General requirements. The Secretary reduces the amount otherwise payable to a State for any fiscal year by the amount by which the total expenditures from non-Federal sources under the vocational rehabilitation services portion of the Unified or Combined State Plan for any previous fiscal year were less than the total of those expenditures for the fiscal year two years prior to that previous fiscal year.

(b) Specific requirements for construction of facilities. If the State provides for the construction of a facility for community rehabilitation program purposes, the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at

least equal to the expenditures for those services for the second prior fiscal year.

(c) Separate State agency for vocational rehabilitation services for individuals who are blind. If there is a separate part of the vocational rehabilitation services portion of the Unified or Combined State Plan administered by a separate State agency to provide vocational rehabilitation services for individuals who are blind—

(1) Satisfaction of the maintenance of effort requirements under paragraphs (a) and (b) of this section is determined based on the total amount of a State's non-Federal expenditures under both parts of the vocational rehabilitation services portion of the Unified or Combined State Plan; and

(2) If a State fails to meet any maintenance of effort requirement, the Secretary reduces the amount otherwise payable to the State for any fiscal year under each part of the plan in direct proportion to the amount by which non-Federal expenditures under each part of the plan in any previous fiscal year were less than they were for that part of the plan for the fiscal year 2 years prior to that previous fiscal year.

(d) Waiver or modification. (1) The Secretary may waive or modify the maintenance of effort requirement in paragraph (a) of this section if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that—

(i) Cause significant unanticipated expenditures or reductions in revenue that result in a general reduction of programs within the State; or

(ii) Require the State to make substantial expenditures in the vocational rehabilitation program for long-term purposes due to the one-time costs associated with the construction of a facility for community rehabilitation program purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment.

(2) The Secretary may waive or modify the maintenance of effort requirement in paragraph (b) of this section or the 10 percent allotment limitation in §361.61 if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural

disaster, that result in significant destruction of existing facilities and require the State to make substantial expenditures for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation program purposes in order to provide vocational rehabilitation services.

(3) A written request for waiver or modification, including supporting justification, must be submitted to the Secretary for consideration as soon as the State has determined that it has failed to satisfy its maintenance of effort requirement due to an exceptional or uncontrollable circumstance, as described in paragraphs (d)(1) and (2) of this section.

(Authority: Sections 101(a)(17) and 111(a)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(17) and 731(a)(2))

§361.63 Program income.

(a) Definition. For purposes of this section, program income means gross income received by the State that is directly generated by a supported activity under this part.

(b) Sources. Sources of program income include, but are not limited to: payments from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes; payments received from workers' compensation funds; payments received by the State agency from insurers, consumers, or others for services to defray part or all of the costs of services provided to particular individuals; and income generated by a State-operated community rehabilitation program for activities authorized under this part.

(c) Use of program income. (1) Except as provided in paragraph (c)(2) of this section, program income, whenever earned, must be used for the provision of vocational rehabilitation services and the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan. Program income—

(i) Is considered earned in the fiscal year in which it is received; and

(ii) Must be disbursed during the period of performance of the award, prior to requesting additional cash payments, in accordance with 2 CFR 200.305(b)(5).

(2) Payments provided to a State from the Social Security Administration for assisting Social Security

beneficiaries and recipients to achieve employment outcomes may also be used to carry out programs under part B of title I of the Act (client assistance), title VI of the Act (supported employment), and title VII of the Act (independent living).

(3) The State is authorized to treat program income using the deduction or addition alternative in accordance with 2 CFR 200.307(e)(1) and (2).

(4) Program income cannot be used to meet the non-Federal share requirement under §361.60.

(Authority: Sections 12(c) and 108 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 728; 2 CFR part 200)

§361.64 Obligation of Federal funds.

(a) Except as provided in paragraph (b) of this section, any Federal award funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State by the beginning of the succeeding fiscal year remain available for obligation by the State during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year remain available for obligation in the succeeding fiscal

year only to the extent that the State met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: Section 19 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 716)

§361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

(a) Allotment. (1) The allotment of Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act, and payments are made to the State on a quarterly basis, unless some other period is established by the Secretary.

(2) If the vocational rehabilitation services portion of the Unified or Combined State Plan designates one State agency to administer, or supervise the administration of, the part of the plan under which vocational rehabilitation services are provided for individuals who are blind and another State agency to administer the rest of the plan, the division of the State's allotment is a matter for State determination.

(3) Reservation for pre-employment transition services. (i) Pursuant to section 110(d) of the Act, the State must reserve at least 15 percent of the State's allotment, received in accordance with section 110(a) of the Act for the provision of pre-employment transition services, as described at §361.48(a) of this part.

(ii) The funds reserved in accordance with paragraph (3)(i) of this section--

(A) Must only be used for pre-employment transition services authorized in §361.48(a); and:

(B) Must not be used to pay for administrative costs associated with the provision of such services or any other vocational rehabilitation services.

(b) Reallotment. (1) The Secretary determines not later than 45 days before the end of a fiscal year which States, if any, will not use their full allotment.

(2) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the period of performance of the award, provided the State can meet the matching requirement by obligating the non-Federal share of any reallotted funds in the fiscal year for which the funds were appropriated.

(3) In the event more funds are requested by agencies than are available, the Secretary will determine the process for allocating funds available for reallotment.

(4) Funds reallotted to another State are considered to be an increase in the recipient State's allotment for the fiscal year for which the funds were appropriated.

(Authority: Sections 12(c), 110 and 111 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 730, and 731)

Subpart D [Reserved]

Subpart E [Reserved]

Subpart F [Reserved]

2. Part 363 is revised to read as follows:

PART 363—THE STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

Subpart A—General

Sec.

363.1 What is the State Supported Employment Services Program?

363.2 Who is eligible for an award?

363.3 Who is eligible for services?

363.4 What are the authorized activities under the State Supported Employment Services program?

363.5 What regulations apply?

363.6 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

363.10 What documents must a State submit to receive a grant?

363.11 What are the vocational rehabilitation services portion of the Unified or Combined State Plan supplement requirements?

Subpart C—How Are State Supported Employment Services Programs Financed?

363.20 How does the Secretary allocate funds?

363.21 How does the Secretary reallocate funds?

363.22 How are funds reserved for youth with the most significant disabilities?

363.23 What are the matching requirements?

363.24 What is program income and how may it be used?

363.25 What is the period of availability of funds?

Subpart D [Reserved]

Subpart E [Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

363.50 What collaborative agreements must the State develop?

363.51 What are the allowable administrative costs?
363.52 What are the information collection and reporting requirements?
363.53 What requirements must a State meet before it provides for the transition of an individual to extended services?
363.54 When will an individual be considered to have achieved an employment outcome in supported employment?
363.55 What notice requirements apply to this program?

AUTHORITY: Sections 602-608 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795g-795m, unless otherwise noted.

Subpart A—General

§363.1 What is the State Supported Employment Services Program?

(a) Under the State supported employment services program, the Secretary provides grants to assist States in developing and implementing collaborative programs with appropriate entities to provide programs of supported employment services for individuals with the most significant disabilities, including youth with the most significant disabilities, to enable them to achieve an

employment outcome of supported employment in competitive integrated employment. Grants made under the State supported employment services program supplement a State's vocational rehabilitation program grants under 34 CFR part 361.

(b) For purposes of this part, "supported employment" means competitive integrated employment, including customized employment, or employment in an integrated work setting in which individuals with the most significant disabilities are working on a short-term basis toward competitive integrated employment, that is individualized and customized consistent with the unique strengths, abilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities--

(1)(i) For whom competitive integrated employment has not historically occurred; or

(ii) For whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(2) Who, because of the nature and severity of the disability, need intensive supported employment services, and extended services after the transition from support

provided by the designated State unit in order to perform the work.

(c) 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, as defined at 34 CFR 361.5(c)(9), is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment within six months of the individual entering supported employment.

(Authority: Sections 7(38), 7(39), 12(c), and 602 of the Rehabilitation Act of 1973, as amended; 29 U.S.C., 705(38) 705(39), 709(c), and 795g)

§363.2 Who is eligible for an award?

Any State that submits the documentation required by §363.10, as part of the vocational rehabilitation services portion of the Unified or Combined State Plan under 34 CFR part 361, is eligible for an award under this part.

(Authority: Section 606(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795k(a))

§363.3 Who is eligible for services?

A State may provide services under this part to any individual, including a youth with a disability, if—

(a) The individual has been determined to be--

(1) Eligible for vocational rehabilitation services in accordance with 34 CFR 361.42; and

(2) An individual with the most significant disabilities;

(b) For purposes of activities carried out under §363.4(a)(2) of this part, the individual is a youth with a disability, as defined at 34 CFR 361.5(c)(59), who satisfies the requirements of this section; and

(c) Supported employment has been identified as the appropriate employment outcome for the individual on the basis of a comprehensive assessment of rehabilitation needs, as defined at 34 CFR 361.5(c)(5), including an evaluation of rehabilitation, career, and job needs.

(Authority: Section 605 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795j)

<u>§363.4 What are the authorized activities under the State Supported Employment Services program</u>?

(a) The State may use funds allotted under this part to--

(1) Provide supported employment services, as defined at 34 CFR 361.5(c)(54);

(2) Provide extended services, as defined at 34 CFR 361.5(c)(19), to youth with the most significant disabilities, in accordance with §363.11(f), for a period of time not to exceed four years; and

(3) With funds reserved, in accordance with §363.22 for the provision of supported employment services to youth with the most significant disabilities, leverage other public and private funds to increase resources for extended services and expand supported employment opportunities.

(b) Except as provided in paragraph (a)(2) of this section, a State may not use funds under this part to provide extended services to individuals with the most significant disabilities.

(c) Nothing in this part will be construed to prohibit a State from providing--

(1) Supported employment services in accordance with the vocational rehabilitation services portion of the Unified or Combined State Plan submitted under 34 CFR part 361 by using funds made available through a State allotment under that part.

(2) Discrete postemployment services in accordance

with 34 CFR 361.48(b) by using funds made available under 34 CFR part 361 to an individual who is eligible under this part.

(d) A State must coordinate with the entities described in §363.50(a) regarding the services provided to individuals with the most significant disabilities, including youth with the most significant disabilities, under this part and under 34 CFR part 361 to ensure that the services are complementary and not duplicative.

(Authority: Sections 7(39), 12(c), 604, 606(b)(6), and 608 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(39), 709(c), 795i, 795k(b)(6), and 795m)

§363.5 What regulations apply?

The following regulations apply to the State supported employment services program:

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

(1) 34 CFR part 76 (State-Administered Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(b) The regulations in this part 363.

(c) The following regulations in 34 CFR part 361 (The State Vocational Rehabilitation Services Program): §§361.5, 361.31, 361.32, 361.34, 361.35, 361.39, 361.40, 361.41, 361.42, 361.47(a), 361.48, 361.49, and 361.53.

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

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

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

§363.6 What definitions apply?

The following definitions apply to this part;

(a) Definitions in 34 CFR part 361.

(b) Definitions in 34 CFR part 77.

(c) Definitions in 2 CFR part 200, Subpart A.

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

Subpart B—How Does a State Apply for a Grant?

§363.10 What documents must a State submit to receive a grant?

(a) To be eligible to receive a grant under this part, a State must submit to the Secretary, as part of the vocational rehabilitation services portion of the Unified or Combined State Plan under 34 CFR part 361, a State plan supplement that meets the requirements of §363.11.

(b) A State must submit revisions to the vocational rehabilitation services portion of the Unified or Combined State Plan supplement submitted under this part as may be necessary.

(Authority: Section 606(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795k(a))

§363.11 What are the vocational rehabilitation services portion of the Unified or Combined State Plan supplement requirements?

Each State plan supplement, submitted in accordance with §363.10, must--

(a) Designate a designated State unit or, as applicable, units, as defined in 34 CFR 361.5(c)(13), as the State agency or agencies to administer the Supported Employment program under this part;

(b) Summarize the results of the needs assessment of individuals with most significant disabilities, including youth with the most significant disabilities, conducted under 34 CFR 361.29(a), with respect to the rehabilitation and career needs of individuals with most significant disabilities and their need for supported employment services. The results of the needs assessment must also address needs relating to coordination;

(c) Describe the quality, scope, and extent of supported employment services to be provided to eligible individuals with the most significant disabilities under this part, including youth with the most significant disabilities;

(d) Describe the State's goals and plans with respect to the distribution of funds received under §363.20;

(e) Demonstrate evidence of the designated State unit’s efforts to identify and make arrangements, including entering into cooperative agreements, with—

(1) Other State agencies and other appropriate entities to assist in the provision of supported employment services; and

(2) Other public or non-profit agencies or organizations within the State, employers, natural

supports, and other entities with respect to the provision of extended services;

(f) Describe the activities to be conducted for youth with the most significant disabilities with the funds reserved in accordance with §363.22, including–

(1) The provision of extended services to youth with the most significant disabilities for a period not to exceed four years, in accordance with §363.4(a)(2); and

(2) How the State will use supported employment funds reserved under §363.22 to leverage other public and private funds to increase resources for extended services and expand supported employment opportunities for youth with the most significant disabilities;

(g) Assure that—

(1) Funds made available under this part will only be used to provide authorized supported employment services to individuals who are eligible under this part to receive such services;

(2) The comprehensive assessments of individuals with significant disabilities, including youth with the most significant disabilities, conducted under 34 CFR part 361 will include consideration of supported employment as an appropriate employment outcome;

(3) An individualized plan for employment, as described at 34 CFR 361.45 and 361.46, will be developed and updated, using funds received under 34 CFR part 361, in order to—

(i) Specify the supported employment services to be provided, including, as appropriate, transition services and pre-employment transition services to be provided for youth with the most significant disabilities;

(ii) Specify the expected extended services needed, including the extended services that may be provided under this part to youth with the most significant disabilities in accordance with an approved individualized plan for employment for a period not to exceed four years; and

(iii) Identify, as appropriate, the source of extended services, which may include natural supports, programs, or other entities, or an indication that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed;

(4) The State will use funds provided under this part only to supplement, and not supplant, the funds received under 34 CFR part 361, in providing supported employment

services specified in the individualized plan for employment;

(5) Services provided under an individualized plan for employment will be coordinated with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent job skills training is provided, the training will be provided onsite;

(7) Supported employment services will include placement in an integrated setting based on the unique strengths, resources, interests, concerns, abilities, and capabilities of individuals with the most significant disabilities, including youth with the most significant disabilities;

(8) The designated State agency or agencies, as described in paragraph (a) of this section, will expend no more than 2.5 percent of the State's allotment under this part for administrative costs of carrying out this program; and

(9) The designated State agency or agencies will provide, directly or indirectly through public or private entities, non-Federal contributions in an amount that is not less than 10 percent of the costs of carrying out

supported employment services provided to youth with the most significant disabilities with the funds reserved for such purpose under §363.22; and

(h) Contain any other information and be submitted in the form and in accordance with the procedures that the Secretary may require.

(Authority: Section 606 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795k)

Subpart C—How Are State Supported Employment Services Programs Financed?

§363.20 How does the Secretary allocate funds?

(a) States. The Secretary will allot the sums appropriated for each fiscal year to carry out the activities of this part among the States on the basis of relative population of each State, except that—

(1) No State will receive less than $250,000, or 1/3 of 1 percent of the sums appropriated for the fiscal year for which the allotment is made, whichever amount is greater; and

(2) If the sums appropriated to carry out this part for the fiscal year exceed the sums appropriated to carry out this part (as in effect on September 30, 1992) in fiscal year 1992 by $1,000,000 or more, no State will

receive less than $300,000, or 1/3 of 1 percent of the sums appropriated for the fiscal year for which the allotment is made, whichever amount is greater.

(b) Certain Territories. (1) For the purposes of this part, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands are not considered to be States.

(2) Each jurisdiction described in paragraph (b)(1) of this section will be allotted not less than 1/8 of 1 percent of the amounts appropriated for the fiscal year for which the allotment is made.

(Authority: Section 603(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795h(a))

§363.21 How does the Secretary reallocate funds?

(a) Whenever the Secretary determines that any amount of an allotment to a State under §363.20 for any fiscal year will not be expended by such State for carrying out the provisions of this part, the Secretary will make such amount available for carrying out the provisions of this part to one or more of the States that the Secretary determines will be able to use additional amounts during such year for carrying out such provisions.

(b) Any amount made available to a State for any fiscal year in accordance with paragraph (a) will be regarded as an increase in the State's allotment under this part for such year.

(Authority: Section 603(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795h(b))

§363.22 How are funds reserved for youth with the most significant disabilities?

A State that receives an allotment under this part must reserve and expend 50 percent of such allotment for the provision of supported employment services, including extended services, to youth with the most significant disabilities in order to assist those youth in achieving an employment outcome in supported employment.

(Authority: Sections 12(c) and 603(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 795h(d))

§363.23 What are the matching requirements?

(a) Non-Federal Share. (1) For funds allotted under §363.20 and not reserved under §363.22 for the provision of supported employment services to youth with the most significant disabilities, there is no non-Federal share requirement.

(2)(i) For funds allotted under §363.20 and reserved under §363.22 for the provision of supported employment services to youth with the most significant disabilities, a designated State agency must provide non-Federal expenditures in an amount that is not less than 10 percent of the total expenditures made with the reserved funds for the provision of supported employment services to youth with the most significant disabilities, including extended services.

(ii) In the event that a designated State agency uses more than 50 percent of its allotment under this part to provide supported employment services to youth with the most significant disabilities as required by §363.22, there is no requirement that a designated State agency provide non-Federal expenditures to match the excess Federal funds spent for this purpose.

(2) Except as provided under paragraphs (b) and (c) of this section, non-Federal expenditures made under the vocational rehabilitation services portion of the Unified or Combined State Plan supplement to meet the non-Federal share requirement under this section must be consistent with the provision of 2 CFR 200.306.

(b) Third-party in-kind contributions. Third-party in-kind contributions, as described in 2 CFR 200.306(b), may not be used to meet the non-Federal share under this section.

(c)(1) Contributions by private entities. Expenditures made from contributions by private organizations, agencies, or individuals that are deposited into the sole account of the State agency, in accordance with State law may be used as part of the non-Federal share under this section, provided the expenditures under the vocational rehabilitation services portion of the Unified or Combined State Plan supplement, as described in §363.11, do not benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor shares a financial interest.

(2) The Secretary does not consider a donor's receipt from the State unit of a contract or subaward with funds allotted under this part to be a benefit for the purpose of this paragraph if the contract or subaward is awarded under the State's regular competitive procedures.

(Authority: Sections 12(c) and 606(b)(7)(I) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 795k(b)(7)(I))

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

(a) Definition. (1) Program income means gross income earned by the State that is directly generated by authorized activities supported under this part.

(2) Program income received through the transfer of Social Security Administration payments from the State Vocational Rehabilitation Services program, 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 must be used for the provision of services authorized under §363.4. Program income earned or received during the fiscal year must be disbursed during the period of performance of the award, prior to requesting additional cash payments in accordance with 2 CFR 200.305(b)(5).

(2) States are authorized to treat program income as—

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

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

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

§363.25 What is the period of availability of funds?

(a) Except as provided in paragraph (b) of this section, any Federal award funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State by the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended by the State prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation by the State during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year and reserved for the provision of supported employment services to youth with the most significant disabilities, in accordance with §363.22 of this part, remain available for obligation in the succeeding fiscal year only to the extent that the State met the matching requirement, as described at §363.23, for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

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

Subpart D [Reserved]

Subpart E [Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

§363.50 What collaborative agreements must the State develop?

(a) A designated State unit must enter into one or more written collaborative agreements, memoranda of understanding, or other appropriate mechanisms with other public agencies, private nonprofit organizations, and other available funding sources, including employers and other natural supports, as appropriate, to assist with the provision of supported employment services and extended services to individuals with the most significant disabilities in the State, including youth with the most significant disabilities, to enable them to achieve an employment outcome of supported employment in competitive integrated employment.

(b) These agreements provide the mechanism for collaboration at the State level that is necessary to ensure the smooth transition from supported employment services to extended services, the transition of which is inherent to the definition of "supported employment" in

§363.1(b). To that end, the agreement may contain information regarding the–

(1) Supported employment services to be provided, for a period not to exceed 24 months, by the designated State unit with funds received under this part.

(2) Extended services to be provided to youth with the most significant disabilities, for a period not to exceed four years, by the designated State unit with the funds reserved under §363.22 of this part;

(3) Extended services to be provided by other public agencies, private nonprofit organizations, or other sources, including employers and other natural supports, following the provision of authorized supported employment services, or extended services as appropriate for youth with the most significant disabilities, under this part; and

(4) Collaborative efforts that will be undertaken by all relevant entities to increase opportunities for competitive integrated employment in the State for individuals with the most significant disabilities, especially youth with the most significant disabilities.

(Authority: Sections 7(38), 7(39), 12(c), 602, and 606(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38), 705(39), 709(c), 795g, and 795k(b))

§363.51 What are the allowable administrative costs?

(a) A State may use funds under this part to pay for expenditures incurred in the administration of activities carried out under this part, consistent with the definition of administrative costs in 34 CFR 361.5(c)(2).

(b) A designated State agency may not expend more than 2.5 percent of a State's allotment under this part for administrative costs for carrying out the State supported employment program.

(Authority: Sections 7(1), 12(c), and 603(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(1), 709(c), and 795h(c))

§363.52 What are the information collection and reporting requirements?

Each State agency designated in §363.11(a) of this part must collect and report separately the information required under 34 CFR 361.40 for--

(a) Eligible individuals receiving supported employment services under this part;

(b) Eligible individuals receiving supported employment services under 34 CFR part 361;

(c) Eligible youth receiving supported employment services and extended services under this part; and

(d) Eligible youth receiving supported employment services under 34 CFR part 361 and extended services.

(Authority: Sections 13 and 607 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 710 and 795l)

§363.53 What requirements must a State meet before it provides for the transition of an individual to extended services?

A designated State unit must provide for the transition of an individual with the most significant disabilities, including youth with the most significant disabilities, to extended services no later than 24 months after the individual enters supported employment, unless a longer period is established in the individualized plan for employment. Before assisting the individual in transitioning from supported employment services to extended services, the designated State unit must ensure–

(a) The supported employment is–

(1) In competitive integrated employment, including customized employment; or

(2) In an integrated work setting in which individuals are working on a short-term basis, as described in §363.1(c), toward competitive integrated employment;

(3) Individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individual; and

(b) The source of extended services for the individual has been identified so there will be no interruption of services.

(Authority: Sections 7(13), 7(38), 7(39), 12(c), 602, and 606(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(13), 705(38), 705(39), 709(c), 795g, and 795k(b))

§363.54 When will an individual be considered to have achieved an employment outcome in supported employment?

An individual with the most significant disabilities, including a youth with the most significant disabilities, who is receiving services under this part will be determined to have achieved an employment outcome of supported employment if the individual–

(a) Maintains supported employment for at least 90 days after the individual has–

(1) Completed all supported employment services provided under this part, as well as any other services listed on the individualized plan for employment and provided under 34 CFR part 361; and

(2) Begun extended services provided by either the designated State unit, in the case of a youth with a most significant disabilities receiving services with the funds reserved under §363.22, or another provider for all other individuals with the most significant disabilities;

(b) Satisfies requirements for case closure, as set forth in 34 CFR 361.56; and

(c) Satisfies the requirement at §363.1(c) if the individual's supported employment is in an integrated setting, but is not in competitive integrated employment, as defined in 34 CFR 361.5(c)(9).

(Authority: Sections 7(38), 7(39), 12(c), and 602 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38), 705(39), 709 (c), and 795g)

§363.55 What notice requirements apply to this program?

Each grantee must advise applicants for or recipients of services under this part, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, including

youth with the most significant disabilities, of the availability and purposes of the Client Assistance Program, including information on seeking assistance from that program.

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

3. Part 397 is added to read as follows:

Part 397--LIMITATIONS ON USE OF SUBMINIMUM WAGE

Subpart A–General Provisions

Sec.

397.1 Purpose.

397.2 What is the Department of Education’s jurisdiction under this part?

397.3 What rules of construction apply to this part?

397.4 What regulations apply?

397.5 What definitions apply?

Subpart B–Coordinated Documentation Procedures Related To Youth With Disabilities

397.10 What documentation process must the designated State unit develop?

Subpart C–Designated State Unit Responsibilities Prior To Youth With Disabilities Starting Subminimum Wage Employment

397.20 What are the responsibilities of a designated State unit to youth with disabilities who are known to be considering subminimum wage employment?

Subpart D–Local Educational Agency Responsibilities Prior To Youth With Disabilities Starting Subminimum Wage Employment

397.30 What are the responsibilities of a local

educational agency to youth with disabilities who are known to be considering subminimum wage employment?

397.31 Are there any contracting limitations on educational agencies under this part?

Subpart E–Designated State Unit Responsibilities To Individuals With Disabilities During Subminimum Wage Employment

397.40 What are the responsibilities of a designated State unit for individuals with disabilities, regardless of age, who are employed at subminimum wage?

Subpart F–Review Of Documentation Process

397.50 What is the role of the designated State unit in the review of documentation process under this part?

AUTHORITY: Section 511 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794g, unless otherwise noted

Subpart A–General Provisions

§397.1 Purpose.

(a) The purpose of this part is to set forth requirements the designated State units and State and local educational agencies must satisfy to ensure that individuals with disabilities, especially youth with disabilities, have a meaningful opportunity to prepare for, obtain, maintain, advance in, or regain competitive

integrated employment, including supported or customized employment.

(b) This part requires--

(1) A designated State unit to provide youth with disabilities documentation demonstrating that they have completed certain requirements, as described in this part, prior to starting subminimum wage employment with entities holding special wage certificates under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)), as defined in 397.5(d);

(2) A designated State unit to provide, at certain prescribed intervals, career counseling and information and referral services, designed to promote opportunities for competitive integrated employment, to individuals with disabilities, regardless of age, who are known to be employed at a subminimum wage level for the duration of such employment; and

(3) A designated State unit, in consultation with the State educational agency, to develop a, or utilize an existing, process to document completion of required activities under this part by a youth with a disability.

(c) The provisions in this part authorize a designated State unit, or a representative of a designated

State unit, to engage in the review of individual documentation required to be maintained by these entities under this part.

(d) The provisions in this part work in concert with requirements in 34 CFR part 300, 361, and 363, and do not alter any requirements under those parts.

(Authority: Sections 12(c) and 511 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g)

§397.2 What is the Department of Education's jurisdiction under this part?

(a) The Department of Education has jurisdiction under this part to implement guidelines for–

(1) Documentation requirements imposed on designated State units and local educational agencies;

(2) Requirements related to the services that designated State units must provide to individuals regardless of age who are employed at the subminimum wage level; and

(3) Requirements under §397.31 of this part.

(b) Nothing in this part will be construed to grant to the Department of Education, or its grantees, jurisdiction over requirements set forth in the Fair Labor Standards Act, including those imposed on entities holding

special wage certificates under section 14(c) of that Act, which is administered by the Department of Labor.

(Authority: Sections 12(c), 511(b)(3), and 511(c) and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 794g(b)(3), 794g(c), and 794g(d))

§397.3 What rules of construction apply to this part?

Nothing in this part will be construed to—

(a) Change the purpose of the Rehabilitation Act, which is to empower individuals with disabilities to maximize opportunities for achieving competitive integrated employment;

(b) Promote subminimum wage employment as a vocational rehabilitation strategy or employment outcome, as defined in 34 CFR 361.5(c)(15); and

(c) Affect the provisions of the Fair Labor Standards Act, as amended before or after July 22, 2014.

(Authority: Sections 12(c) and 511(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g(b))

§397.4 What regulations apply?

(a) The regulations in 34 CFR part 300 governing the definition of transition services, and the Individualized Education Program requirements related to the development

of postsecondary goals and the transition services needed to assist the eligible child in reaching those goals (§§300.320(b), 300.321(b), 300.324(c), and 300.43).

(b) The regulations at 34 CFR part 361 governing the vocational rehabilitation program, especially those regarding eligibility determinations §361.42; individualized plans for employment §361.45 and §361.46; provision of vocational rehabilitation services, including pre-employment transition services, transition services, and supported employment services §361.48; ineligibility determinations §361.43; and case closures §361.56.

(c) The regulations at 29 CFR part 525 governing the employment of individuals with disabilities at subminimum wage rates pursuant to a certificate issued by the Secretary of the Department of Labor.

(d) The regulations in this part 387.

(Authority: Sections 12(c), 102(a) and (b), 103(a), and 113 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 722(a) and (b), 723(a), and 733; sections 601(34) and 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(34) and 1414(d)); and section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c))

§397.5 What definitions apply?

(a) The following terms have the meanings given to them in 34 CFR §361.5(c):

(1) Act;

(2) Competitive integrated employment;

(3) Customized employment;

(4) Designated State unit;

(5) Extended services;

(6) Individual with a disability;

(7) Individual with a most significant disability;

(8) Individual's representative;

(9) Individualized plan for employment;

(10) Pre-employment transition services;

(11) Student with a disability;

(12) Supported employment;

(13) Vocational rehabilitation services; and

(14) Youth with a disability.

(b) The following terms have the meanings given to them in 34 CFR part 300:

(1) Local educational agency (§300.28);

(2) State educational agency (§300.41); and

(3) Transition services (§300.43).

(c) The following terms have the meaning given to them in 29 CFR 525.3 and section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)):

(1) Federal minimum wage has the meaning given to that term in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)); and

(2) Special wage certificate means a certificate issued to an employer under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)) and 29 CFR part 525 that authorizes payment of subminimum wages, wages less than the statutory minimum wage, to workers with disabilities for the work being performed.

(d) For purposes of this part, entity means an employer, or a contractor or subcontractor of that employer, that holds a special wage certificate described in section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)).

(Authority: Sections 7, 12(c), and 511(a) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705, 709(c), and 794g(a) and (f); sections 601 and 614(d) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401 and 1414(d); section 901 of the Elementary and Secondary Education Act of 1965, 20 U.S.C. 7801; and sections 6(a)(1)

and 14(c) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1) and 29 U.S.C. 214(c))

Subpart B–Coordinated Documentation Procedures Related To Youth With Disabilities

§397.10 What documentation process must the designated State unit develop?

(a) The designated State unit, in consultation with the State educational agency, must develop a new process, or utilize an existing process, to document the completion of the actions described in §397.20 and §397.30 by a youth with a disability.

(b) The documentation process must ensure that—

(1) A designated State unit provides a youth with a disability documentation of completion of appropriate pre-employment transition services, in accordance with §361.48(a) and as required by §397.20(a)(1);

(2) In the case of a student with a disability, for actions described in §397.30--

(i) The designated State unit will receive from the appropriate school official, responsible for the provision of transition services, documentation of completion of appropriate transition services under the Individuals with Disabilities Education Act, including those provided under

section 614(d)(1)(A)(i)(VIII) (20 U.S.C.1414(d)(1)(A)(i)(VIII));

(ii) The designated State unit must provide documentation of completion of the transition services, as documented and provided by the appropriate school official in accordance with paragraph (b)(2) of this section, to the youth with a disability.

(c) The designated State unit must provide--

(1) Documentation required by this part in a form and manner consistent with this part and in an accessible format for the youth; and

(2) Documentation required by this part to a youth as soon as possible upon the completion of each of the required actions, but no later than 90 days after completion of each of the required actions in §397.20 and §397.30.

(Authority: Sections 12(c) and 511(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g(d))

Subpart C–Designated State Unit Responsibilities Prior To Youth With Disabilities Starting Subminimum Wage Employment

§397.20 What are the responsibilities of a designated State unit to youth with disabilities who are known to be considering subminimum wage employment?

(a) A designated State unit must provide youth with disabilities documentation upon the completion of the following actions:

(1) Pre-employment transition services that are available to the individual under 34 CFR §361.48; and

(2) Application for vocational rehabilitation services, in accordance with 34 CFR §361.41(b), with the result that the individual was determined--

(i) Ineligible for vocational rehabilitation services, in accordance with 34 CFR §361.43; or

(ii) Eligible for vocational rehabilitation services, in accordance with 34 CFR §361.42; and

(A) The youth with a disability had an approved individualized plan for employment, in accordance with 34 CFR 361.46;

(B) The youth with a disability was unable to achieve the employment outcome specified in the individualized plan for employment, as described in 34 CFR 361.5(c)(15) and 361.46, despite working toward the employment outcome with reasonable accommodations and appropriate supports and

services, including supported employment services and customized employment services, for a reasonable period of time; and

(C) The youth with a disability's case record, which meets all of the requirements of 34 CFR 361.47, is closed.

(3)(i) Regardless of the determination made under paragraph (a)(2) of this section, the youth with a disability has received career counseling, and information and referrals to Federal and State programs and other resources in the individual's geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment.

(ii) The career counseling and information and referral services provided in accordance with paragraph (a)(3)(i) of this section must–

(A) Be provided in a manner that facilitates informed choice and decision-making by the youth, or the youth's representative as appropriate; and

(B) Not be for subminimum wage employment by an entity defined in §397.5(d), and such employment-related services are not compensated at a subminimum wage and do

not directly result in employment compensated at a subminimum wage provided by such an entity.

(b) The following special requirements apply--

(1) For purposes of this part, all documentation provided by a designated State unit must satisfy the requirements for such documentation under 34 CFR part 361.

(2) The individualized plan for employment, required in paragraph (a)(3)(i) of this section, must include a specific employment goal consistent with competitive integrated employment, including supported or customized employment.

(3)(i) For purposes of paragraph (a)(2)(ii)(B) of this section, a determination as to what constitutes "reasonable period of time" must be consistent with the disability-related and vocational needs of the individual, as well as the anticipated length of time required to complete the services identified in the individualized plan for employment.

(ii) For an individual whose specified employment goal is in supported employment, such reasonable period of time is up to 24 months, unless under special circumstances the individual and the rehabilitation counselor jointly agree to extend the time to achieve the

employment outcome identified in the individualized plan for employment.

(Authority: Sections 7(5), 7(39), 12(c), 102(a) and (b), 103(a), 113, and 511(a) and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(5), 705(39), 709(c), 722(a) and (b), 723(a), 733, and 794g(a) and (d))

Subpart D–Local Educational Agency Responsibilities Prior To Youth With Disabilities Starting Subminimum Wage Employment

§397.30 What are the responsibilities of a local educational agency to youth with disabilities who are known to be seeking subminimum wage employment?

Of the documentation to demonstrate a youth with a disability's completion of the actions described in §397.20(a) of this part, a local educational agency, as defined in §397.5(b)(1), can provide the youth with documentation that the youth has received transition services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), such as transition services available to the individual under section 614(d)of that act (20 U.S.C. 1414(d)).

(Authority: Sections 511(a)(2)(A) and 511(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794g(a)(2)(A) and (d))

§397.31 Are there any contracting limitations on educational agencies under this part?

Neither a local educational agency, as defined in §397.5(b)(1), nor a State educational agency, as defined in §397.5(b)(2), may enter into a contract or other arrangement with an entity, as defined in §397.5(d), for the purpose of operating a program under which a youth with a disability is engaged in subminimum wage employment.

(Authority: Section 511(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794g(b)(2))

Subpart E–Designated State Unit Responsibilities To Individuals With Disabilities During Subminimum Wage Employment

§397.40 What are the responsibilities of a designated State unit for individuals with disabilities, regardless of age, who are employed at a subminimum wage?

(a) Counseling and information services. (1) A designated State unit must provide career counseling, and information and referral services, as described in §397.20(a)(4) to individuals with disabilities, regardless

of age, or the individual's representative as appropriate, who are known by the designated State unit to be employed by an entity, as defined in §397.5(d), at a subminimum wage level.

(2) A designated State unit may know the identification of individuals with disabilities described in this paragraph through the vocational rehabilitation process or by referral from the client assistance program, another agency, or an entity, as defined in §397.5(d).

(3) The career counseling and information and referral services must be provided in a manner that–

(i) Is understandable to the individual with a disability; and

(ii) Facilitates independent decision-making and informed choice as the individual makes decisions regarding opportunities for competitive integrated employment and career advancement, particularly with respect to supported employment, including customized employment.

(b) Other services. (1) Upon a referral by an entity, as defined in 397.5(d), that has fewer than 15 employees, of an individual with a disability who is employed at a subminimum wage by that entity, a designated State unit must also inform the individual of self-

advocacy, self-determination, and peer mentoring training opportunities available in the community.

(2) The services described in paragraph (c)(1) of this section must be provided by an entity that does not have a financial interest in the individual’s employment outcome.

(c) Required intervals. The services required by this section must be carried out once every six months for the first year of the individual's subminimum wage employment and annually thereafter for the duration of such employment.

(d) Documentation. The designated State unit must provide timely documentation to the individual upon completion of the activities required under this section.

(e) Provision of services. Nothing in this section will be construed as requiring a designated State unit to provide the services required by this section directly. A designated State unit may contract with other entities, i.e., other public and private service providers, as appropriate, to fulfill the requirements of this section. (Authority: Sections 12(c) and 511(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g(c))

Subpart F–Review Of Documentation Process

§397.50 What is the role of the designated State unit in the review of documentation process under this part?

The designated State unit, or a contractor working directly for the designated State unit is authorized to engage in the review of individual documentation required under this part that is maintained by entities, as defined at 397.5(d), under this part.

(Authority: Section 511(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794g(e))

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