

1973 - Regulations on the Rehabilitation Act

PART 361--THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

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SUBPART A--GENERAL

SECTION 361.1 THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM.

- (a) General. Part 361 includes all requirements relative to the conduct of State vocational rehabilitation service programs under State plans for vocational rehabilitation authorized under Title I of the Rehabilitation Act of 1973, as amended. Part 361 covers procedures to be followed by a State vocational rehabilitation agency in submitting a State plan for approval by the Secretary and the required scope and content of an appropriate State plan. Part 361 also specifies those costs under State plans for which Federal financial participation is available.
- (b) Regulations which apply to the State vocational rehabilitation service program. The following regulations apply to the State plan for vocational rehabilitation services program:
 - (1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-administered programs), Part 77 (Definitions that apply to Departmental Regulations), Part 78 (Education Appeal Board) except for hearings under Subpart G of Part 361 and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).
 - (2) The regulations in this Part 361.
- (c) Definitions which apply to the state vocational rehabilitation service program.
 - (1) The following terms used in this part 361 are defined in 34 CFR Part 77:
 - "EDGAR"
 - "Fiscal Year"
 - "Nonprofit"
 - "Private"
 - "Public"
 - "Secretary"
 - "State"
 - "Work of Art"
 - (2) The following definitions also apply to this Part 361: "Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) as amended by the Rehabilitation Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub.L. 95-602).

(Section 12(c) of the Act; 29 U.S.C. 711(c)) "American Indian" means a person who is a member of an Indian tribe.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Blind" or "blind individual" means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Commissioner" means the Commissioner of the Rehabilitation Services Administration.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Competitive work," as used in the definition of "Supported employment," means work that is performed on a full-time basis or on a part-time basis, averaging at least 20 hours per week for each pay period, and for which an individual is compensated in accordance with the Fair Labor Standards Act.

[Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c)]

"Construction of a rehabilitation facility" means:

- (i) The construction of new buildings, the acquisition of existing buildings, or the expansion, remodeling, alteration or renovation of existing buildings which are to be utilized for rehabilitation facility purposes; or
- (ii) The acquisition of initial equipment of such new, newly acquired, newly expanded, newly remodeled, newly altered or newly renovated buildings.

(Section 7(1) of the Act; 29 U.S.C. 706(1))

"Designated State unit" or "State unit" means either:

- (i) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with handicaps and which is responsible for the administration of the vocational rehabilitation program of the State agency; or
- (ii) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Section 7(3) of the Act; 29 U.S.C. 706(d))

"Eligible" or "eligibility," when used in relation to an individual's qualifications for vocational rehabilitation services, refers to a certification that:

- (i) An individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment, and
- (ii) Vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability.

(Section 7(7) of the Act; 29 U.S.C. 706(7))

"Employability means a determination that, with the provision of vocational rehabilitation services, the individual is likely to enter or retain, as a primary objective, full-time employment, or if appropriate part time employment, consistent with the capacities and abilities of the individual in the competitive labor market; the practice of a profession; self-employment; homemaking; farm or family work (including work for which payment is in kind rather than in cash); sheltered employment; home-based employment; supported employment or

other gainful work.

(Section 7(6) of the Act; 29 U.S.C. 706(6))

"Establishment of a rehabilitation facility" means;

- (i) The acquisition, expansion, remodeling, or alteration of existing buildings, necessary to adapt them or increase their effectiveness for rehabilitation facility purposes;
- (ii) The acquisition of initial or additional equipment for these buildings essential for providing vocational rehabilitation services; or
- (iii) The initial or additional staffing of a rehabilitation facility for a period, in the case of any individual staff person, not longer than 4 years and 3 months.

(Section 7(4) of the Act; 29 U.S.C. 706(4))

"Evaluation of vocational rehabilitation potential" means, as appropriate, in each case:

- (i) A preliminary diagnostic study to determine that an individual is eligible for vocational rehabilitation services;
- (ii) A thorough diagnostic study consisting of a comprehensive evaluation of pertinent factors bearing on the individual's handicap to employment and vocational rehabilitation potential, in order to determine which vocational rehabilitation services may be of benefit to the individual in terms of employability;
- (iii) Any other goods or services, including rehabilitation engineering services, necessary to determine the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services in terms of employability;
- (iv) Referral to other agencies or organizations, when appropriate; and
- (v) The provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual is an individual with handicaps for whom a vocational goal is feasible.

(Section 7(5) of the Act; 29 U.S.C. 708(5))

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously. [Authority: Sec. 101(a)(8) of the Act; 29 U.S.C. 721 (a)(8)]

"Family member" or "member of the family" means any relative by blood or marriage of an individual with handicaps and other individual living in the same household with whom the individual with handicaps has a close interpersonal relationship.

(Section 103(a)(3) of the Act; 29 U.S.C. 723(a)(3))

"Individual with handicaps" except in Section 361.15(b), Section 361.51(e), and Section 361.52(g) means an individual

- (i) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and
- (ii) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended

evaluation of vocational rehabilitation potential is necessary to determine whether the individual might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(Section 7(8)(A) of the Act; 29 U.S.C. 706(8)(A))

"Individual with handicaps," for purposes of Section 361.15(b), Section 361.51(e), and Section 361.52(g), means an individual

- (i) Who has a physical or mental impairment which 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.

(Section 7(8)(B) of the Act; 29 U.S.C. 706(8)(B))

"Impartial hearing officer" means an individual--

- (i) Who is not an employee of a public agency that is involved in any decision regarding the furnishing or denial of rehabilitation services to a vocational rehabilitation applicant or client. An individual is not an employee of a public agency solely because the individual is paid by that agency to serve as a hearing officer;
- (ii) Who has not been involved in previous decisions regarding the vocational rehabilitation applicant or client;
- (iii) Who has background and experience in, and knowledge of, the delivery of vocational rehabilitation services; and
- (iv) Who has no personal or financial interest that would be in conflict with the individual's objectivity.

[Authority: Sec. 102(d) of the Act; 29 U.S.C. 722(d)]

"Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

[Authority: Sec. 7(21) of the Act; 29 U.S.C. 706(21)]

"Initial expenditure," as applied to the use of reallocated funds, means obligations incurred by November 15 of the fiscal year subsequent to the fiscal year from which the funds were reallocated.

[Authority: Sec. 110(c)(2) of the Act; 29 U.S.C. 730(c)(2)]

"Integrated work settings," as used in the definition of "Supported employment," means job sites where--

- (i) (A) Most co-workers are not handicapped; and
- (B) Individuals with handicaps are not part of a work group of other individuals with handicaps; or
- (ii) (A) Most co-workers are not handicapped; and
- (B) If a job site described in paragraph (i)(B) of this definition is not possible, individuals with handicaps are part of a small work group of not more than eight individuals with handicaps; or
- (iii) If there are no co-workers or the only co-workers are members of a small work group of not more than eight individuals, all of whom have handicaps, individuals with handicaps have regular contact with non-handicapped individuals, other than personnel providing support services, in the immediate work setting.

[Authority: Sections 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c)]

"Local agency" means an agency of a unit of general local government or of an Indian tribe (or combination of those units or tribes) that has the sole responsibility under an agreement with the State agency to conduct a vocational rehabilitation program in the locality under the supervision of the State agency in accordance with the State plan.

(Section 7(9) of the Act; 29 U.S.C. 706(9))

"On-going support services," as used in the definition of "Supported employment," means continuous or periodic job skill training services provided at least twice monthly at the work site throughout the term of employment to enable the individual to perform the work. The term also includes other support services provided at or away from the work site, such as transportation, personal care services, and counseling to family members, if skill training services are also needed by, and provided to, that individual at the work site.

[Authority: Sections 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c)]

"Physical and mental restoration services" means:

- (i) Medical or corrective surgical treatment;
- (ii) Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a psychologist licensed or certified in accordance with State laws and regulations;
- (iii) Dentistry;
- (iv) Nursing services;
- (v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;
- (vi) Convalescent or nursing home care;
- (vii) Drugs and supplies;
- (viii) Prosthetic, orthotic or other assistive devices including hearing aids, essential to obtaining or retaining employment;
- (ix) 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 a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;
- (x) Podiatry;
- (xi) Physical therapy;
- (xii) Occupational therapy;
- (xiii) Speech or hearing therapy;
- (xiv) Psychological services;
- (xv) Therapeutic recreation services;
- (xvi) Medical or medically related social work services;
- (xvii) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;

(xviii) Special services for the treatment of individuals suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xix) Other medical or medically related rehabilitation services including art therapy, dance therapy, music therapy and psychodrama.

(Section 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

"Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Section 7(7)(A)(i) of the Act; 29 U.S.C. 706(7)(A)(i))

"Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with handicaps in areas that include education, rehabilitation, employment, transportation, independent living, and recreation.

[Authority: Section 7(12) of the Act; 29 U.S.C. 706(12)]

"Rehabilitation facility" means a facility that is operated for the primary purpose of providing vocational rehabilitation services to individuals with handicaps, and that provides singly or in combination one or more of the following services to individuals with handicaps:

- (i) Vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social, and vocational services;
- (ii) Testing, fitting, or training in the use of prosthetic and orthotic devices;
- (iii) Prevocational conditioning or recreational therapy;
- (iv) Physical and occupational therapy;
- (v) Speech and hearing therapy;
- (vi) Psychiatric, psychological and social services;
- (vii) Evaluation of rehabilitation potential;
- (viii) Personal and work adjustment;
- (ix) Vocational training with a view toward career advancement (in combination with other rehabilitation services);
- (x) Evaluation or control of specific disabilities;
- (xi) Orientation and mobility services and other adjustment services to blind individuals;
- (xii) Transitional or extended employment for those individuals with handicaps who cannot be readily absorbed in the competitive labor market.
- (xiii) Psychosocial rehabilitation services for individuals with chronic mental illness; and
- (xiv) Rehabilitation engineering services.

(Section 7(13) of the Act; 29 U.S.C. 706(13))

"Reservation" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provision of the Alaska Native Claim Settlement Act.

(Section 130(e) of the Act; 29 U.S.C. 750(e))

"Individual with severe handicaps" means an individual with handicaps:

- (i) Who has a severe physical or mental disability that seriously limits one or more functional capacities (mobility, communication, self-care, self direction, inter-personal skills, work tolerance, or work skills) in terms of employability;
- (ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- (iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Section 7(15) of the Act; 29 U.S.C. 706 (15))

"State agency" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

"State plan" means the State plan for vocational rehabilitation services, or the vocational rehabilitation services part of a consolidated rehabilitation plan under Section 361.2(d) of this part.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Substantial handicap to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance, by preventing the obtaining, retaining, or preparing for employment consistent with the individual's capacities and abilities.

(Sections 7(7)(A)(i) and 12(c) of the Act; 29 U.S.C. 706(7)(A)(i) and 711(c))

"Supported employment" means--

- (i) Competitive work in an integrated work setting with on-going support services for individuals with severe handicaps for whom competitive employment--
 - (A) Has not traditionally occurred; or
 - (B) Has been interrupted or intermittent as a result of severe handicaps; or
- (ii) Transitional employment for individuals with chronic mental illness.

"Transitional employment for individuals with chronic mental

illness," as used in the definition of "Supported employment," means competitive work in an integrated work setting for individuals with chronic mental illness who may need support services (but not necessarily job skills training services) provided either at the work site or away from the work site to perform the work. The job placement may not necessarily be a permanent employment outcome for the individual.

[Authority: Sections. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c)]

"Vocational rehabilitation services" when provided to an individual, means those services listed in Section 361.42 of this part.

(Section 103(a) of the Act; 29 U.S.C. 723(a))

"Vocational rehabilitation services" when provided for the benefit of groups of individuals, also means:

- (i) In the case of any type of small business enterprise operated by the individuals with severe handicaps under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;
- (ii) The establishment of a rehabilitation facility;
- (iii) The construction of a rehabilitation facility;
- (iv) The provision of other facilities and services, including services provided at rehabilitation facilities, which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized written rehabilitation program of any one individual with handicaps.
- (v) The use of existing telecommunications systems; and
- (vi) The use of services providing recorded material for blind persons and captioned films or video cassettes for deaf persons.

(Section 103(b) of the Act; 29 U.S.C. 723(b))

"Workshop" means a rehabilitation facility, or that part of a rehabilitation facility, engaged in production or service operation for the primary purpose of providing gainful employment as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist.

(Sections 7(11) and 12(c) of the Act; 29 U.S.C. 706(11) and 711(c))

SUBPART B--STATE PLANS FOR VOCATIONAL REHABILITATION SERVICES

State Plan Content: Administration

SECTION 361.2 THE STATE PLAN: GENERAL REQUIREMENTS.

- (a) Purpose. In order for a State to be eligible for grants from the allotment of funds under Title I of the Act, it must submit an approvable State plan covering a three-year period and meeting Federal requirements. The State plan must provide for financial participation by the State, or if the State chooses, by the State and local agencies jointly, and must provide that it will be in effect in all political subdivisions of the State, except as specifically provided in Section 361.11 (Shared funding and administration of special joint projects or programs) and Section 361.12 (Waiver of Statewideness).

- (b) Form and Content. The State plan must contain, in the form prescribed by the Secretary a description of the State's vocational rehabilitation program, the plans and policies to be followed in carrying out the program and other information requested by the Secretary.

The State plan must consist of:

- (1) A part providing detailed commitments specified by the Secretary that must be amended or reaffirmed every three years; including--
- (i) A description of how rehabilitation engineering services will be provided to assist an increasing number of individuals with handicaps;
 - (ii) A summary of the results of a comprehensive, Statewide assessment of the rehabilitation needs of individuals with severe handicaps residing within the State and the State's response to the assessment; and
 - (iii) An acceptable plan under 34 CFR Part 363.
- (2) A part containing a fiscal year programming description, based on the findings of the continuing Statewide studies (Section 361.17), the annual evaluation of the effectiveness of the State's program (Section 361.17) and other pertinent reviews and studies. This annual programming description must include:
- (i) Changes in policy resulting from the continuing Statewide studies and the annual evaluation of the effectiveness of the program;
 - (ii) Estimates of the number of individuals with handicaps who will be served with funds provided under the Act;
 - (iii) A description of the methods used to expand and improve services to those individuals who have the most severe handicaps, including individuals served under 34 CFR Part 363;
 - (iv) A justification for and description of the order of selection (Section 361.36) of individuals with handicaps to whom vocational rehabilitation services will be provided (unless the designated State unit assures that it is serving all eligible individuals with handicaps who apply);
 - (v) A description of the outcome and service goals to be achieved for individuals with handicaps in each priority category within the order of selection in effect in the State and the time within which these goals may be achieved. These goals must include those objectives, established by the State unit and consistent with those set by the Secretary in instructions concerning the State plan that are measurable in terms of service expansion or program improvements in specified program areas, and that the State unit plans to achieve during a specified period of time.
 - (vi) A description of the plans, policies, and methods to be followed to assist in the transition from education to employment-related activities, including a summary of the previous year's activities and accomplishments.
- (c) Separate part relating to rehabilitation of the blind. If a separate State agency for the blind administers or supervises the

administration of that part of the State plan relating to the rehabilitation of blind individuals, that part of the State plan must meet all requirements applicable to a separate State plan.

- (d) Consolidated rehabilitation plan. The State may choose to submit a consolidated rehabilitation plan which includes the State plan for vocational rehabilitation services and either the State plan for independent living rehabilitation services or the State's plan for its program for persons with developmental disabilities, or both. If the State's plan for persons with developmental disabilities is included, the State planning and advisory council for developmental disabilities and the agency or agencies administering the State's program for persons with developmental disabilities must have concurred in the submission of the consolidated rehabilitation plan. A consolidated rehabilitation plan must comply, and be administered in accordance with this Act and the Developmental Disabilities Assistance and Bill of Rights Act, as amended. The Secretary may approve the consolidated rehabilitation plan to serve as the substitute for the separate plans which would otherwise be required.
- (e) Designation of a new State agency or a new State unit. Before designating a new State agency or a new State Unit, the chief administrative officer of the state agency must assure the Secretary in writing that the vocational rehabilitation program will continue to operate in conformity with the most recent approved State plan, until a new State plan is submitted. The State agency must submit a new State plan within 90 days following the designation of a new State agency or a new State unit.
- (f) Transition to new State agency or State unit. When a new State agency or a new State unit is designated under paragraph (e) of this section, the State agency must turn over to that agency program and financial records and other pertinent information and resources necessary for the effective conduct of the vocational rehabilitation program.

(Sections 6 and 101(a) of the Act; 29 U.S.C. 705 and 721(a))

SECTION 361.3 STATE PLAN APPROVAL.

The State plan must be submitted for approval for each three-year period no later than July 1 of the year preceding the first fiscal year for which the State plan is submitted.

(Section 101(b) of the Act; 29 U.S.C. 721(b))

SECTION 361.4 WITHHOLDING OF FUNDS.

- (a) When withheld. Payments under section 111 or 121 of the Act may be withheld, suspended, or limited as provided by section 101(c) of the Act, when after a reasonable notice and opportunity for hearing has been given to the State agency, the Commissioner finds that:
 - (1) The State plan has been so changed that it no longer conforms with the requirements of section 101(a) of the Act, or
 - (2) In the administration of the State plan, there is a failure to comply substantially with any provision of such plan.
- (b) Notification of State agency. The State agency is notified of the decision.
- (c) Judicial review. The decision to withhold, suspend, or limit payments described in paragraph (a) of this section may be appealed to the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 101(d) of the Act.
- (d) Informal discussions. Hearings described in paragraph (a) of this section are not called until after reasonable effort has been made to resolve the questions involved by conference and discussion with

State officials.

(Sections 101(c)(1) and 101(d) of the Act; 29 U.S.C. 721(c)(1) and 721(d))

SECTION 361.5 STATE AGENCY FOR ADMINISTRATION.

- (a) Designation of sole State agency. The State plan must designate a State agency as the sole State agency to administer the State plan, or to supervise its administration in a political subdivision of the State by a sole local agency. In the case of American Samoa, the State plan must designate the Governor, in the case of the Trust Territory of the Pacific Islands, the State plan must designate the High Commissioner.
- (b) Sole State agency. The State plan must provide that the sole State agency, except for American Samoa, and the Trust Territory of the Pacific Islands, and except for a sole State agency for the blind as specified in paragraph (c) of this section, must be:
 - (1) A State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of individuals with handicaps. This agency must be an independent State commission, board, or other agency, which has as its major function vocational rehabilitation, or vocational and other rehabilitation of handicapped individuals. The agency must have the authority, subject to the supervision of the Office of Governor, when appropriate, to define the scope of the vocational rehabilitation program within the provision of State and Federal law, and to direct its administration without external administrative controls; or
 - (2) The State agency administering or supervising the administration of education or vocational education in the State; or
 - (3) A State agency which includes at least two other major organizational units, each of which administers one or more of the State's major programs of public education, public health, public welfare, or labor.
- (c) Sole State agency for the blind. Where the State commission for the blind or other agency which provides assistance or services to the blind is authorized under State law to provide vocational rehabilitation services to blind individuals, this agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for the blind or to supervise its administration in a political subdivision of the State by a sole local agency.
- (d) Authority. The State plan must set forth the legal basis for administration by sole local rehabilitation agencies, if applicable.
- (e) Responsibility for administration. The State plan must assure that all decisions affecting eligibility for, the nature and scope of available vocational rehabilitation services, and the provision of these services are made by the State agency through its designated State unit, or by a designated vocational rehabilitation unit of a local agency under the supervision of the designated State unit. This responsibility may not be delegated to any other agency or individual.

(Sections 101(a)(1) and 101(a)(2) of the Act; 29 U.S.C. 721(a)(1) and 721(a)(2))

SECTION 361.6 ORGANIZATION OF THE STATE AGENCY.

- (a) Organization. The State plan must describe the organizational structure of the State agency, including a description of organizational units, the programs and functions assigned to each,

and the relationships among these units within the State agency. These descriptions must be accompanied by organizational charts reflecting:

- (1) The relationship of the State agency to the Governor and his or her office and to other agencies administering major programs of public education, public health, public welfare, or labor of parallel stature within the State government; and
 - (2) The internal structure of the State agency and the designated State unit, if applicable. The organizational structure must provide for all the vocational rehabilitation functions for which the State agency is responsible, and for clear lines of administrative and supervisory authority.
- (b) Designated State unit. Where the designated State agency is of the type specified in Section 361.5(b)(2) or (3), or Section 361.5(c), the State plan must assure that the agency (or each agency, where two agencies are designated), includes a vocational rehabilitation bureau, division or other organizational unit which:
- (1) Is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of individuals with handicaps, and is responsible for the administration of the State agency's vocational rehabilitation program, which includes the determination of eligibility for; the determination of the nature and scope of; and the the provision of vocational rehabilitation services under the State plan;
 - (2) Has a full time director in accordance with Section 361.8; and
 - (3) Has a staff, all or almost all of whom are employed full time on the rehabilitation work of the organizational unit.
- (c) Location of designated State unit.
- (1) The State plan must assure that the designated State unit, specified in paragraph (b) of this section, is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency, or in the case of an agency described in Section 361.5(b)(2), the unit must be so located and have that status, or the director of the unit must be the executive officer of the State agency.
 - (2) In the case of a State which has not designated a separate State agency for the blind as provided for in Section 361.5 the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided to blind individuals to one organizational unit of the State agency and may assign responsibility for the rest of the plan to another organizational unit of the agency, with the provisions of paragraphs (b) and (c)(1) of this section applying separately to each of these units.

(Section 101(a)(2) of the Act; 29 U.S.C. 721(a)(2))

SECTION 361.7 DESIGNATION OF SUBSTITUTE STATE VOCATIONAL
REHABILITATION AGENCY

- (a) General Provisions.
- (1) If the Secretary has withheld all funding from a State under Section 361.4, designate another agency to substitute for the State agency in carrying out the State's program of vocational rehabilitation services. Funds are considered to be withheld when a final administrative decision under Section 361.4 is in effect and funds either are not granted to a State agency or are granted to the State agency to enable it to operate the program on a temporary basis pending the orderly transition of

- responsibility to a substitute agency.
- (2) Any public agency or nonprofit organization or agency within the State or any political subdivision of the State may apply for designation as a substitute agency.
 - (3) To be eligible for designation as a substitute agency, the applicant must submit a proposal for a substitute State plan which meets the requirements of this part.
 - (4) The substitute State plan covers a three-year period or the remaining portion of the period covered by the previously approved State plan. The Secretary may not make a grant to a substitute agency until he approves its plan.
- (b) Proposal submittal. A proposal for submitting a substitute State plan must be in the format required by the Secretary.
 - (c) Factors considered in evaluating proposals. In selecting a substitute agency, the Secretary considers the following factors:
 - (1) The program and financial capacity of the applicant agency for carrying out a program of vocational rehabilitation services, including the source of funds to be contributed in order to match Federal funds;
 - (2) The organizational structure of the applicant agency;
 - (3) The qualifications to be required of the applicant agency staff; and
 - (4) The extent to which the proposed State vocational rehabilitation service program is comparable to the program which had been carried out under the most recent previously approved State plan in the State.
 - (d) Review of proposals. In selecting a substitute agency, the Secretary evaluates the relative merit of all proposals which are submitted.
 - (e) Substitute agency matching share. The Secretary shall not make any payment to the substitute agency unless it has provided assurances that it will contribute the same proportion of the total amount of funds as the State would have been obligated to contribute if the State agency were carrying out the vocational rehabilitation service program.
 - (f) State agency re-designation. If the state agency changes its State plan or agrees to change its administration of the plan to comply with Federal requirements, the State agency is redesignated as the agency to operate the vocational rehabilitation program. The State agency resumes its operation of the program either at the end of the three-year period for which the substitute State plan has been approved or on any earlier date determined by the Secretary after agreement by the substitute agency and the State agency.

(Section 101(c)(2) of the Act; 29 U.S.C. 721(c)(2))

SECTION 361.8 STATE UNIT DIRECTOR.

The State plan must assure that there will be a full-time director who directs the State agency specified in Section 361.5(b)(1) or the designated State unit specified in Section 361.6(b).

(Section 101(a)(2)(A) of the Act; 29 U.S.C. 721(a)(2)(A))

SECTION 361.9 LOCAL ADMINISTRATION.

- (a) Scope of written agreement. The State plan must assure that any local administration of the plan by a sole local agency is based on a written agreement between the local agency and the designated State unit with the concurrence of the State agency which:
 - (1) Indicates that the local agency will conduct a vocational rehabilitation program through its designated unit under the supervision of the designated State unit in accordance with the

State plan and in compliance with Statewide standards established by the designated State unit;

- (2) Assures that the designated unit of the local agency will be responsible for carrying out the vocational rehabilitation program and will meet the requirements for this unit specified in Section 361.6(b);
- (3) Describes the methods to be followed by the designated State unit in its supervision of the local agency's vocational rehabilitation program;
- (4) Indicates the basis on which the designated State unit participates financially in its locally administered vocational rehabilitation programs;
- (5) Indicates whether the local unit will utilize another local public or nonprofit agency in providing vocational rehabilitation services to individuals with handicaps and the arrangements to be made; and
- (6) Assures that the sole local agency will be responsible through its designated unit for the administration of the vocational rehabilitation program and will employ staff for carrying out the vocational rehabilitation program including a full-time director.

- (b) Responsibility of local agency. If the State plan provides for local administration, it must assure that the sole local agency is responsible through its designated unit for the administration of the program within the political subdivision which it serves. A separate local agency serving the blind may administer that part of the plan relating to vocational rehabilitation of the blind, under the supervision of the designated State unit for the blind.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

SECTION 361.10 METHODS OF ADMINISTRATION.

The State plan must assure that the State agency and the designated State unit employ those methods 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.

(Section 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

SECTION 361.11 SHARED FUNDING AND ADMINISTRATION OF SPECIAL JOINT PROJECTS OR PROGRAMS

- (a) Procedural requirements. In order to carry out a special joint project or program to provide services to individuals with handicaps, the State unit with the concurrence of the State agency must request the Secretary to authorize it to share funding and administrative responsibility for a joint project or program with another agency or agencies of the State, or with a local agency. The Secretary approves a request for the shared funding and administration of a special joint project or program which he had determined will more effectively accomplish the purpose of the Act and may also waive the provisions of Section 361.2(a) that the State plan must be in effect in all political subdivisions of the State.
- (b) Scope of written agreement. The State plan must assure that each special joint project or program is based on a written agreement which:
 - (1) Describes the nature and scope of the joint project or program, the services to be provided, the respective roles of each participating agency in the provision of services and in their administration and the share of the costs to be assumed by each;

- (2) Specifies the period of joint project or program, and plans for anticipated continuation;
- (3) Provides a budget showing for each fiscal year the financial participation by the State unit and each participating agency;
- (4) Provides written assurance that funds will be legally available for purposes of the joint project or program;
- (5) Provides that the State unit shall annually evaluate the effectiveness of each project or program with special attention to its vocational rehabilitation objectives;
- (6) Assures that the State unit and each participating agency will furnish information and reports required by the Secretary to determine whether the activities are achieving the purposes of the project or program and warrant continuation; and
- (7) Assures that the State unit's portion of the joint project or program will comply with applicable requirements of the Act and this part.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

SECTION 361.12 WAIVER OF STATEWIDENESS.

- (a) Purpose of waiver. If the State unit desires to carry out activities in one or more political subdivisions through local financing in order to promote the vocational rehabilitation of substantially larger numbers of individuals with handicaps with particular types of disabilities, the State plan must identify the types of activities to be carried out in this manner.
- (b) Procedural requirements. The State plan must assure in these cases that the State unit;
 - (1) Obtains a written description of any activity to be carried out in a particular political subdivision;
 - (2) Obtains written assurance from the political subdivision that the non-Federal share of funds is available to the State;
 - (3) Requires that its approval be given to each proposal before the proposal is put into effect in a political subdivision.
 - (4) Has sole responsibility for administration (or supervision of locally administered vocational rehabilitation programs if the vocational rehabilitation program is administered by local agencies) of the program in a particular local political subdivision in accordance with Section 361.6, except to the extent that funding and administrative responsibility is shared with respect to a joint program under Section 361.12.
 - (5) Assures that all requirements of the State plan apply to these activities, except the requirement that the program be in effect in all political subdivision of the State, and except that the provision of Section 361.78 may be applicable for Federal financial participation in expenditures for carrying out these activities; and
 - (6) Furnishes other information and reports required by the Secretary.

(Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

SECTION 361.13 COOPERATIVE PROGRAMS INVOLVING FUNDS FROM OTHER PUBLIC AGENCIES

- (a) Scope of written agreement. The State plan must assure that, when the State's share of the cost of a cooperative program for providing or administering vocational rehabilitation services is made available in whole or in part by a State or local public agency other than the designated State unit, the cooperative program is based on a written agreement which:
 - (1) Describes program goals and the activities to be undertaken to

- achieve these goals;
- (2) Assures only individuals eligible for vocational rehabilitation services will be served;
 - (3) Assures that the vocational rehabilitation services are not services of the cooperating agency to which the individual with handicaps, would be entitled if he were not an applicant or client of the designated State unit and represent new services or new patterns of services of the cooperating agency.
 - (4) Provides for an annual budget;
 - (5) Provides that expenditures for vocational rehabilitation services and the administration of these services will be under the direct control and at the discretion of the designated State unit.
 - (6) Assures that the costs of administrative activities are not costs which are attributable to the general expense of the State or locality in carrying out the administrative functions of the State or local government;
- (b) Annual review. The State unit must review each cooperative program annually to determine its effectiveness and to assure that it is being operated in compliance with the requirements of the written agreement.

Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A)]

SECTION 361.14 STAFFING OF THE STATE'S
VOCATIONAL REHABILITATION PROGRAM

- (a) General staffing requirement. The State plan must assure that staff in sufficient number and with appropriate qualifications is available to carry out all functions required under this part, including program planning and evaluation, staff development, rehabilitation facility development and utilization, medical consultation, and rehabilitation counseling services for individuals with severe handicaps.
- (b) Special communication need staffing. The State plan must further assure that the designated State unit includes on its staff or makes available personnel able to communicate in the native languages of applicants for service and State unit clients with limited English-speaking ability from ethnic groups which represent substantial segments of the population of the State. The State plan must assure that the State unit includes on its staff or arranges to have available individuals able to communicate with applicants for service and State unit clients individuals who rely on special modes of communications such as manual communication, tactile, oral, and non-verbal communication devices.

(Section 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

SECTION 361.15 AFFIRMATIVE ACTION PLAN
FOR INDIVIDUALS WITH HANDICAPS.

- (a) [Reserved]
- (b) The State plan must also assure that the State unit develops and implements a plan to take affirmative action to employ and advance in employment qualified individuals with handicaps. This plan must provide for specific action steps, timetables, and complaint and enforcement procedures necessary to assure affirmative action.
(Sections 101(a)(6) and 101(a)(7) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(7))

SECTION 361.16 STAFF DEVELOPMENT.

The State plan must assure that there is a program of staff development for all classes of positions which are involved in the administration and operation of the State's vocational rehabilitation program. The staff

development program must include, as a minimum:

- (a) A systematic determination of training needs to improve staff effectiveness and a system for evaluating the effectiveness of the training activities provided;
- (b) An orientation program for new staff; and
- (c) An operating plan for providing training opportunities for all classes of positions consistent with the determination of training needs.

(Section 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

SECTION 361.17 STATE STUDIES AND EVALUATIONS.

- (a) General provisions. The State plan must assure that the State unit conducts continuing Statewide studies of the needs of individuals with handicaps within the State, including a full needs assessment for serving individuals with severe handicaps; the State's need for rehabilitation facilities, and the methods by which these needs may be most effectively met.
- (b) Scope of Statewide studies. The continuing Statewide studies must--
 - (1) Determine the relative needs for vocational rehabilitation services of different significant segments of the population of individuals with handicaps, including utilizing data provided by State special education agencies under section 618(b)(3) of the Education of the Handicapped Act, with special reference to the need for expanding services to individuals with the most severe handicaps;
 - (2) Review a broad variety of means and methods to provide, expand, and improve vocational rehabilitation services in order to determine which means and methods are the most effective;
 - (3) Review the appropriateness of the criteria used by the designated State unit in determining individuals to be ineligible for vocational rehabilitation services;
 - (4) Determine the capacity and condition of rehabilitation facilities and rehabilitation facility services within the State and identify ways in which the overall effectiveness of rehabilitation facility services within the State might be improved; and
 - (5) Otherwise contribute to the orderly and effective development of vocational rehabilitation services and rehabilitation facilities within the State
- (c) Annual evaluation. The State plan must assure that the State conducts an evaluation of the effectiveness of the State's vocational rehabilitation program in achieving service goals and priorities, as established in the plan. This evaluation must measure the adequacy of State unit performance in providing vocational rehabilitation services especially to those individuals with the most severe handicaps and must be conducted according to the general standards for evaluation developed by the Secretary. Findings derived from the annual evaluation must be reflected in the State plan, its amendments and in the development of plans and policies for the provision of vocational rehabilitation services either directly by the State unit or within rehabilitation facilities.

(Section 101(a)(15) and (a)(19) of the Act; 29 U.S.C. 721(a)(15) and (a)(19))

SECTION 361.18 STATE PLAN AND OTHER
POLICY DEVELOPMENT CONSULTATION.

- (a) Public participation in State plan development.
 - (1) The State plan must assure that the State unit conducts public

meetings throughout the State, after appropriate and sufficient notice, to allow interested groups, organizations and individuals an opportunity to comment on the State plan and to participate in the formulation of policies governing the provision of vocational rehabilitation services within the State.

- (2) The State plan must include a summary of the public comments and the State unit's response to those comments.
 - (3) The State plan must further assure that the State unit establishes and maintains a written description of procedures used to obtain and consider views on State plan development and policy development and implementation.
- (b) Consultation with Indian tribes. The State plan must further assure that, as appropriate, the State unit actively consults in the development of the State plan with those Indian tribes and tribal organizations and native Hawaiian organizations that represent significant numbers of individuals with handicaps within the state.
- (c) Other consultations.
- (1) The State plan must further assure that the State unit seeks and takes into account, in connections with matters of general policy development and implementation arising in the administration of State plan, the views of--
 - (i) Current or former clients of vocational rehabilitation services or, as appropriate, the parents, guardian, or other representatives;
 - (ii) Providers of vocational rehabilitation services; and
 - (iii) Others interested in vocational rehabilitation.
 - (2) Matters of general policy development and implementation include, but are not limited to--
 - (i) Program planning, development, and evaluation;
 - (ii) Development of legislative and budgetary proposals;
 - (iii) Assessing research and services proposals;
 - (iv) Affirmative action for employment of qualified individuals with handicaps; and
 - (v) Development of procedures for review of rehabilitation counselor or coordinator determinations.
- (d) Public access. The State plan must further assure the State unit will make available to the public for review and inspection, a report of activities undertaken in the area of State plan and policy development as well as a summary of comments submitted at the scheduled public meetings and the State unit's response to these comments.
- (Sections 101(a)(18) and 101(a)(23) of the Act; 29 U.S.C. 721(a)(18) and 721(a)(23))

SECTION 361.19 COOPERATION WITH OTHER PUBLIC AGENCIES.

- (a) General provisions. The State plan must assure that, where appropriate, the State unit enters into cooperative arrangements or cooperative agreements with, and utilizes the services and facilities of, the State and local agencies administering the State's social services and financial assistance programs; other programs for individuals with handicaps such as the State's developmental disabilities program, veterans' programs, health and mental health programs, education programs, including adult education, higher education, special education and vocational education programs, workers' compensation programs, manpower programs and public employment offices; the Social Security

Administration; the Office of Workers' Compensation Programs of the Department of Labor, the Veterans' Administration; and other Federal, State and local public agencies providing services related to the rehabilitation of handicapped individuals.

- (b) Coordination with education programs. The State plan must also assure that specific arrangements or agreements are made for the coordination of services for any individual who is eligible for vocational rehabilitation services and is also eligible for services under Part B of the Education of Handicapped Children Act or the Vocational Education Act.
- (c) Coordination with veterans' programs. The State plan must also assure that there will be maximum coordination and consultation with programs relating to the rehabilitation of disabled veterans.
- (d) Reciprocal referral services with separate agency for the blind. Where there is a separate State unit for the blind, the two State units must establish reciprocal referral services, utilize each other's services and facilities to the extent feasible, jointly plan activities to improve services to the individuals with handicaps in the State, and otherwise cooperate to provide more effective services.

(Section 101(a)(11) of the Act; 29 U.S.C. 721(a)(11))

SECTION 361.20 ESTABLISHMENT AND MAINTENANCE OF INFORMATION AND REFERRAL RESOURCES.

- (a) General Provisions. The State plan must assure the establishment and maintenance of information and referral programs adequate to ensure that individuals with handicaps within the State are given accurate information about State vocational rehabilitation services and independent living services, vocational rehabilitation services available from other agencies, organizations, and rehabilitation facilities, and, to the extent possible, other Federal and State services and programs that assist individuals, including client assistance programs. The State plan must also assure that the State unit will refer individuals with handicaps to other appropriate Federal and State programs that might be of benefit to them. The State plan must further assure that the State unit will utilize existing information and referral systems in the State to the greatest extent possible.
- (b) Special information and referral resources. The State plan must further assure that, to the greatest extent possible, information and referral services utilize interpreters for the deaf, existing telecommunication systems, specialized media systems for handicapped persons and special materials for blind individuals, deaf individuals, and deaf-blind individuals, as needed.

(Section 101(a)(22) of the Act; 29 U.S.C. 721(a)(22))

SECTION 361.21 STATE PLAN FOR REHABILITATION FACILITIES.

The State plan must assure that the designated State unit maintains a State rehabilitation facilities plan which includes an inventory of rehabilitation facilities and rehabilitation facility services available within the State and a description of the utilization patterns of the facilities and their utilization potential. The inventory must also include a determination of needs for new, expanded or otherwise modified rehabilitation facilities, or rehabilitation facility services and a prioritized list of facility projects necessary to achieve short-range State unit goals. The State plan must also assure that the inventory of facilities is developed with the active participation of a representative group of providers and recipients of vocational rehabilitation services and is available to the public for review and inspection.

(Section 101(a)(15) of the Act; 29 U.S.C. 721(a)(15))

SECTION 361.22 UTILIZATION OF REHABILITATION FACILITIES.

The State plan must assure that the designated State unit utilizes existing rehabilitation facilities to the maximum extent feasible to provide vocational rehabilitation services to individuals with handicaps in accordance with the State plan for rehabilitation facilities under Section 361.21. The State plan must describe the methods used to ensure appropriate use of these facilities and must provide for appropriate means for entering into agreements with the operators of these facilities for the provision of vocational rehabilitation services.

(Sections 101(a)(12) and (a)(15) of the Act; 29 U.S.C. 721(a)(12) and (a)(15))

SECTION 361.23 REPORTS.

The State plan must assure that the State agency or the designated State unit, as appropriate, submits reports in the form and detail and at the time required by the Secretary, including reports required under special evaluation studies. The State agency or the designated State unit, as appropriate must also comply with any requirements necessary to assure the correctness and verification of reports.

(Section 101(a)(10) of the Act; 29 U.S.C. 721(a)(10))

SECTION 361.24 GENERAL ADMINISTRATIVE AND FISCAL REQUIREMENTS.

- (a) General provisions. The State plan must assure that the State agency and the designated State unit adopt policies and methods pertinent to the fiscal administration and control of the vocational rehabilitation program, including sources of funds, incurrence and payment of obligations, disbursements, accounting, and auditing. The State plan must assure that the State agency and the designated State unit maintain accounts and supporting documents necessary for an accurate and expeditious determination at any time of the status of Federal grants, including the disposition of monies received and the nature and amount of charges claimed against these grants.
- (b) Awards made by State agency. The State plan must assure that the State agency or the designated State unit, as appropriate adopt policies and methods necessary to assure sound administration and control of funds awarded by the State agency or the State unit to any public or other nonprofit agency or organization to carry out a program of vocational rehabilitation services.
- (c) Applicability of 34 CFR Part 74. The provision of 34 CFR Part 74 establishing uniform administrative requirements and cost principles, apply to all grants made under this part except for the requirement concerning in-kind contributions under Subpart G of 34 CFR Part 74.
- (d) Applicability of Department of Health and Human Services regulations. Several Department of Health and Human Services regulations apply under this part. These include:
 - 45 CFR Part 19 - Limitations on Payment or Reimbursement for Drugs
 - 45 CFR Part 46 - Protection of human subjects
 - 45 CFR Part 75 - Informal grant appeals procedures(Indirect cost rates and other cost allocations)

(Sections 11 and 12(c) of the Act; 29 U.S.C. 710 and 711(c))

SECTION 361.25 STATE-IMPOSED REQUIREMENTS.

The designated State unit shall identify as a State-imposed requirement any State rule or policy relating to its administration or operation of programs under the Act, including any rule or policy based on interpretation of any Federal law, regulation, or guideline.

[Authority: Section 17 of the Act; 29 U.S.C. 716]
State Plan Content: Provision and Scope of Service

SECTION 361.30 PROCESSING REFERRALS AND APPLICATIONS.

The State plan must assure that the State unit establishes and maintains written standards and procedures to assure expeditious and equitable handling of referrals and applications for vocational rehabilitation services.

(Section 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

SECTION 361.31 ELIGIBILITY FOR VOCATIONAL REHABILITATION SERVICES.

(a) General provisions.

(1) The State plan must assure that eligibility requirements are applied by the designated State unit without regard to sex, race, age, creed, color, or national origin of the individual applying for service. The State plan must also assure that no group of individuals is excluded or found ineligible solely on the basis of type of disability. With respect to age, the State plan must assure that no upper or lower age limit is established which will, in and of itself, result in a finding of ineligibility for any individual with handicaps who otherwise meets the basic eligibility requirements specified in paragraph (b) of this section.

(2) The State plan must assure that no residence requirement, durational or other, is imposed which excludes from services any individual who is present in the State.

(b) Basic conditions. The State plan must assure that eligibility is based only upon:

(1) The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

(2) A reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.

(c) Interim determination of eligibility. The State plan may provide for vocational rehabilitation services to be initiated for an individual on the basis of an interim determination of eligibility. If the State chooses this approach, it must identify the criteria established for making an interim determination of eligibility, the procedures to be followed, the services which may be provided, and the period, not to exceed 90 days, during which services may be provided until a final determination of eligibility is made.

(Sections 7(7)(A), 12(c), 101(a)(6) and 101(a)(14) of the Act; 29 U.S.C. 706(7)(A), 711(c), 721(a)(6), and 721(a)(14))

SECTION 361.32 EVALUATION OF VOCATIONAL REHABILITATION POTENTIAL: PRELIMINARY DIAGNOSTIC STUDY.

(a) Basic conditions. The State plan must assure that, in order to determine whether any individual is eligible for vocational rehabilitation services, there is a preliminary diagnostic study to determine:

(1) Whether the individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(2) Whether vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability, or whether an extended evaluation of vocational rehabilitation potential is necessary to make this determination.

(b) Scope of diagnostic study. The State plan must assure that the preliminary diagnostic study includes examinations and diagnostic studies to make the determinations specified in paragraph (a) of

this section. In all cases, the evaluation places primary emphasis upon determining the individual's potential for achieving a vocational goal.

- (c) Specific evaluations. The State plan must also assure that the preliminary diagnostic study includes an appraisal of the current general health status of the individual based, to the maximum extent possible, on available medical information, and, as appropriate, evaluations by qualified personnel of the potential to benefit from rehabilitation engineering services. The State plan must further assure that in all cases of mental or emotional disorder, an examination is provided by a physician skilled in the diagnosis and treatment of such disorders, or by a psychologist licensed or certified in accordance with State laws and regulations, in those States where laws and regulations pertaining to the practice of psychology have been established.
(Sections 7(5) and 103(a)(1) of the Act; 29 U.S.C. 706(5) and 723(a)(1))

SECTION 361.33 EVALUATION OF VOCATIONAL REHABILITATION POTENTIAL: THOROUGH DIAGNOSTIC STUDY.

- (a) General provision. The State plan must assure that, as appropriate in each case, when an individual's eligibility for vocational rehabilitation services has been determined, there is a thorough diagnostic study to determine the nature and scope of services needed by the individual. This study consists of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, recreational, and other factors relating to the individual's handicap to employment and rehabilitation needs.
- (b) Scope of thorough diagnostic study. The thorough diagnostic study includes in all cases to the degree needed, an appraisal of the individual's employability, personality, intelligence level, educational achievement, work experience, personal, vocational, and social adjustment, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed. The study also, includes, as appropriate for each individual, an appraisal of the individual's patterns of work behavior, ability to acquire occupational skill and capacity for successful job performance, and the need for rehabilitation engineering services.
(Section 7(5) of the Act; 29 U.S.C. 706(5))

SECTION 361.34 EXTENDED EVALUATION TO DETERMINE VOCATIONAL REHABILITATION POTENTIAL

- (a) Basic conditions. The State plan must assure that the furnishing of vocational rehabilitation services under an extended evaluation to determine vocational rehabilitation potential is based only upon:
- (1) The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and
 - (2) An inability to make a determination that vocational rehabilitation services might benefit the individual in terms of employability unless there is an extended evaluation to determine vocational rehabilitation potential.
- (b) Duration and scope of services. Vocational rehabilitation services necessary for determination of rehabilitation potential, including those provided within a thorough diagnostic study, may be provided to an individual with handicaps for a total period not longer than 18 months.
- (c) Other conditions.

- (1) The extended evaluation period begins on the date of certification for extended evaluation to determine rehabilitation potential required in Section 361.35(b). Only one 18 month maximum period is permitted during the time that the case is open. If a case has been closed because of a determination that the individual's needs have changed, the case may be re-opened and a subsequent evaluation of vocational rehabilitation potential may be carried out.
 - (2) Vocational rehabilitation services, authorized after the expiration of extended evaluation period, are provided only if the certification of eligibility required in Section 361.35(a) has been executed by an appropriate State unit staff member.
- (d) Review. The State plan must assure a thorough assessment of the individual's progress as frequently as necessary but at least once every 90 days during the extended evaluation period. This assessment includes periodic reports from the facility, or person providing the services, to determine the results of the services and to determine whether the individual may be determined to be eligible or ineligible.
- (e) Termination. The State plan must assure that at any time before the end of an 18-month extended evaluation period, the extended evaluation must be terminated when:
- (1) The individual is found eligible for vocational rehabilitation services since there is a reasonable assurance that the individual can be expected to benefit in terms of employability from vocational rehabilitation services; or
 - (2) The individual is found ineligible for any additional vocational rehabilitation services since it has been determined on the basis of clear evidence that the individual cannot be expected to benefit in terms of employability from vocational rehabilitation services. In this case, the procedures described in Section 361.40(d) are to be followed and the individual is referred for services under the State's independent living rehabilitation program under Part 1363 of this chapter.

(Section 7(5) of the Act; 29 U.S.C. 706(5))

SECTION 361.35 CERTIFICATION: ELIGIBILITY;
EXTENDED EVALUATION TO DETERMINE VOCATIONAL REHABILITATION
POTENTIAL; INELIGIBILITY.

- (a) Certification of eligibility. The State plan must assure that, before or at the same time that the State unit accepts an individual with handicaps for vocational rehabilitation services, there must be a certification that the individual has met the basic eligibility requirements specified in Section 361.31(b). The State plan must further assure that the certification of eligibility is dated and signed by an appropriate State unit staff member.
- (b) Certification for extended evaluation to determine vocational rehabilitation potential. The State plan must assure that before, and as a basis for providing an extended evaluation to determine vocational rehabilitation potential, there must be a certification that the individual has met the requirements in Section 361.34(a). The State plan must further assure that the certification is dated and signed by an appropriate State unit staff member.
- (c) Certification of ineligibility.
 - (1) The State plan must assure that, whenever the State unit determines on the basis of clear evidence that an applicant or recipient of vocational rehabilitation is ineligible for

services, there must be a certification dated and signed by an appropriate designated State unit staff member.

- (2) The State plan must further assure that the certification indicates the reason for the ineligibility determination and is made only after full consultation with the individual or, as appropriate, the individual's parent, guardian, or other representative, or after giving a clear opportunity for this consultation. The designated State unit notifies the individual in writing of the action taken and informs the individual of the individual's rights and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of rehabilitation counselor or coordinator determinations under Section 361.48. The individual is provided a detailed explanation of the availability of the resources within a client assistance project established under Section 112 of the Act, and referral is made to other agencies and facilities, including when appropriate, the State's independent living rehabilitation program under Part 365.
- (d) Review of ineligibility determination. The State plan must further assure that when an applicant for vocational rehabilitation services has been determined on the basis of the preliminary diagnostic study to be ineligible because of a finding that the individual cannot be expected to achieve a vocational goal, the ineligibility determination will be reviewed within 12 months. This review need not be conducted in situations where 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.
- (e) Closure without eligibility determination. The State plan must provide that the State unit may close a case without any determination of eligibility when an applicant is unavailable during an extended period of time to complete an evaluation of vocational rehabilitation potential and the State unit has made repeated effort to contact the individual and to encourage the individual's participation.
(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

SECTION 361.36 ORDER OF SELECTION FOR SERVICES.

- (a) General provisions. The State plan must include and explain the justification for the order to be followed in selecting individuals with handicaps to be provided vocational rehabilitation if services cannot be provided to all eligible individuals who apply.
- (b) Priority for individuals with severe handicaps. The State plan must assure that those individuals with the most severe handicaps are selected for service before other individuals with handicaps.
- (c) Disabled public safety officers. The State plan must also assure that special consideration will be given to those individuals with handicaps whose handicapping condition arose from a disability sustained in the line of duty while performing as public safety officer and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities.

(Section 101(a)(5)(A) of the Act; 29 U.S.C. 721(a)(5)(A))

SECTION 361.37 SERVICES TO CIVIL EMPLOYEES OF THE UNITED STATES

The State plan must assure that vocational rehabilitation services are available to civil employees of the U.S. Government who are disabled in line of duty, under the same terms and conditions applied to other individuals with handicaps.

(Sections 101(a)(13)(A) of the Act; U.S.C. 721(a)(13)(A))

SECTION 361.38 SERVICES TO HANDICAPPED AMERICAN INDIANS.

The State plan must assure that vocational rehabilitation services are provided to American Indians with handicaps residing in the State to the same extent that these services are provided to other significant groups of the State's handicapped population. The State plan must further assure that the designated State unit continues to provide vocational rehabilitation services, including, as appropriate, services traditionally used by Indian tribes, to American Indians with handicaps on reservations eligible for services by a special tribal program under Section 130 of the Act.

(Section 101(a)(20) and 130 of the Act; 29 U.S.C.

721(a)(20) and 750)

SECTION 361.39 THE CASE RECORD FOR THE INDIVIDUAL.

The State plan must assure that the designated State unit maintains for each applicant for, and recipient of, vocational rehabilitation services a case record which includes, to the extent pertinent, the following information:

- (a) Documentation concerning the preliminary diagnostic study supporting the determination of eligibility, the need for an extended evaluation of vocational rehabilitation potential, and, as appropriate, documentation concerning the thorough diagnostic study supporting the nature and scope of vocational rehabilitation services to be provided;
- (b) In the case of an individual who has applied for vocational rehabilitation services and has been determined to be ineligible, documentation specifying the reasons for the ineligibility determination, and noting a review of the ineligibility determination carried out not later than twelve months after the determination was made;
- (c) Documentation supporting any determination that the individual's handicaps are severe;
- (d) Documentation as to periodic assessment of the individual during an extended evaluation of vocational rehabilitation potential;
- (e) An individualized written rehabilitation program as developed under Section 361.40 and Section 361.41 and any amendments to the program;
- (f) In the event that physical and mental restoration services are provided, documentation supporting the determination that the clinical status of the individual with handicaps is stable or slowly progressive unless the individual is being provided an extended evaluation of rehabilitation potential;
- (g) Documentation supporting any decision to provide services to family members;
- (h) Documentation relating to the participation by the individuals with handicaps in the cost of any vocational rehabilitation services if the State unit elects to condition the provision of services on the financial need of the individual;
- (i) Documentation relating to the eligibility of the individual for any similar benefits, and the use of any similar benefits;
- (j) Documentation that the individual has been advised of the confidentiality of all information pertaining to his case, and documentation and other material concerning any information released

- about the individual with handicaps with his or her written consent;
- (k) Documentation as to the reason for closing the case including the individual's employment status and, if determined to be rehabilitated, the basis on which the employment was determined to be suitable;
 - (l) Documentation of any plans to provide post-employment services after the employment objective has been achieved, the basis on which these plans were developed, and a description of the services provided and the outcomes achieved;
 - (m) Documentation concerning any action and decision involving the request by the individual with handicaps for review of rehabilitation counselor or coordinator determinations under Section 361.48; and
 - (n) In the case of an individual who has been provided vocational rehabilitation services under an individualized written program but who has been determined after the initiation of these services to be no longer capable of achieving a vocational goal, documentation of any reviews of this determination in accordance with Section 361.40(d).
(Sections 101(a)(6) and 101(a)(9) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(9))

SECTION 361.40 THE INDIVIDUALIZED WRITTEN REHABILITATION PROGRAM;
PROCEDURES

- (a) General Provisions. The State plan must assure that an individualized written rehabilitation program is initiated and periodically updated for each eligible individual and for each individual being provided services under an extended evaluation to determine rehabilitation potential. The State plan must also assure that vocational rehabilitation services are provided in accordance with the written program. The individualized written rehabilitation program must be developed jointly by the vocational rehabilitation counselor or coordinator and the individual with handicaps or, as appropriate, that individual and a parent, guardian or other representative, including other suitable professional and informed advisors. The State unit must provide a copy of the written program, and any amendments to the individual with handicaps or, as appropriate, that individual and a parent, guardian, or other representative and must advise each individual with handicaps, or that individual's representative of all State unit procedures and requirements affecting the development and review of individualized written rehabilitation programs.
- (b) Initiation of program. The individualized written rehabilitation program must be initiated after certification of eligibility under Section 361.35(a) or certification for extended evaluation to determine rehabilitation potential under Section 361.35(b).
- (c) Review. The State must assure that the individualized written program will be reviewed as often as necessary but at least on an annual basis. Each individual with handicaps, or, as appropriate, that individual's parent, guardian or other representative must be given an opportunity to review the program and, if necessary, jointly redevelop and agree to its terms.
- (d) Review of ineligibility determination. The State plan must assure that if services are to be terminated under a written program because of a determination that the individual with handicaps is not capable of achieving a vocational goal and is therefore no longer eligible, or if in the case of an individual with handicaps who has been provided services under an extended evaluation of vocational

rehabilitation potential, services are to be terminated because of a determination that the individual cannot be determined to be eligible, the following conditions and procedures will be met or carried out.

- (1) This decision is made only with the full participation of the individual or, as appropriate, the individual's parent, guardian, or other representative, unless the individual has refused to participate, the individual is no longer present in the State or his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal. When the full participation of the individual or a representative of the individual has been secured in making the decision, the views of the individual are recorded in the individualized written rehabilitation program;
- (2) The rationale for the ineligibility decision is recorded as an amendment to the individualized written rehabilitation program certifying that the provision of vocational rehabilitation services has demonstrated that the individual is not capable of achieving a vocational goal, and a certification of ineligibility under Section 361.35(c) is then executed; and
- (3) There will be a periodic review, at least annually, of the ineligibility decision in which the individual is given opportunity for full consultation in the reconsideration of the decision, except in situations where a periodic review would be precluded because the individual has refused services or has refused periodic review, 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. The first review of the ineligibility decision is initiated by the State unit. Any subsequent reviews, however, are undertaken at the request of the individual.
(Sections 101(a)(9) and 102 of the Act; 29 U.S.C. 721(a)(9) and 722)

SECTION 361.41 THE INDIVIDUALIZED WRITTEN REHABILITATION PROGRAM:
CONTENT.

- (a) Scope of content. The State plan must assure that each individualized written rehabilitation program is based on a determination of employability designed to achieve the vocational objective of the individual and is developed through assessments of the individual's particular rehabilitation needs. Each individualized written rehabilitation program must, as appropriate, include, but not be limited to, statements concerning--
 - (1) The basis on which a determination of eligibility has been made, or the basis on which a determination has been made that an extended evaluation of vocational rehabilitation potential is necessary to make a determination of eligibility;
 - (2) The long range and intermediate rehabilitation objectives established for the individual; based on an assessment determined through an evaluation of rehabilitation potential;
 - (3) The specific rehabilitation services to be provided to achieve the established rehabilitation objectives including, if appropriate, rehabilitation engineering services;
 - (4) An assessment of the expected need for post-employment services;
 - (5) The projected dates for the initiation of each vocational rehabilitation service, and the anticipated duration of each service;

- (6) A procedure and schedule for periodic review and evaluation of progress toward achieving rehabilitation objectives based upon objective criteria, and a record of these reviews and evaluations;
 - (7) A reassessment, prior to case closure, of the need for post-employment services;
 - (8) The views of the individual with handicaps, or as appropriate, that individual and a parent, guardian, or other representative, including other suitable professional and informed advisors concerning the individual's goals and objectives and the vocational rehabilitation services being provided;
 - (9) The terms and conditions for the provision of vocational rehabilitation services including responsibilities of the individual with handicaps in implementing the individualized written rehabilitation program, the extent of client participation in the cost of services if any, and the extent to which comparable services and benefits are available to the individual under any other programs;
 - (10) An assurance that the individual with handicaps has been informed of that individual's rights and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for review of rehabilitation counselor or coordinator determinations under Section 361.48;
 - (11) An assurance that the individual with handicaps has been provided a description of the availability of a client assistance program established under Section 112 of the Act;
 - (12) The basis on which the individual has been determined to be rehabilitated under Section 361.43; and
 - (13) The plans for the provision of post-employment services after a suitable employment goal has been achieved and the basis on which those plans are developed; and, if appropriate for individuals with severe handicaps, a statement of how these services will be provided or arranged through cooperative agreements with other service providers.
- (b) Supported employment placements. Each individualized written rehabilitation program must also contain, for individuals with severe handicaps for whom a vocational objective of supported employment has been determined to be appropriate--
- (1) A description of the time-limited services, not to exceed 18 months in duration, to be provided by the State unit; and
 - (2) A description of the extended services needed, an identification of the State, Federal, or private programs that will provide the continuing support, and a description of the basis for determining that continuing support is available in accordance with 34 CFR 363.11(e)(2).
- [Authority: Sections 101(a)(9), (a)(11), 102 and 634(a) of the Act; U.S.C. 721(a)(9), (a)(11), 722, and 795)
- (c) Coordination with education agencies. When services are being provided to a handicapped individual who is also eligible for services under the Education for Handicapped Children Act, the individualized written rehabilitation program is prepared in coordination with the appropriate education agency and includes a summary of relevant elements of the individualized education program for that individual.
(Sections 101(a)(9) and (a)(11) of the Act; 29 U.S.C. 721(a)(9) and (a)(11))

SECTION 361.42 SCOPE OF STATE UNIT PROGRAM: VOCATIONAL
REHABILITATION

SERVICES FOR INDIVIDUALS.

- (a) Scope of services. The State plan must assure that, as appropriate to the vocational rehabilitation needs of each individual, the following vocational rehabilitation services are available:
- (1) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;
 - (2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout the program of services, for an individual with handicaps necessary to help individuals with handicaps secure needed services from other agencies, and advising clients and client applicants about client assistance programs under 34 CFR Part 370.
 - (3) Physical and mental restoration services, necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;
 - (4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials except that no training or training services in institutions of higher education (universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit to secure grant assistance in whole or in part from other sources;
 - (5) Maintenance, including payments, not exceeding the estimated cost of subsistence and provided at any time after vocational rehabilitation services have begun through the time when post employment services are being provided. Maintenance covers that individual's basic living expenses, such as food, shelter, clothing, and other subsistence expenses which are necessary to support and derive the full benefit of the other vocational rehabilitation services being provided;
 - (6) Transportation, including necessary travel and related expenses including subsistence during travel (or per diem payments in lieu of subsistence) in connection with transporting individuals with handicaps and their attendants or escorts for the purpose of supporting and deriving the full benefit of the other vocational rehabilitation services being provided. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective;
 - (7) Services to members of a handicapped individual's family when necessary to the vocational rehabilitation of the individual with handicaps;
 - (8) Interpreter services and note-taking services for the deaf, including tactile interpreting for deaf-blind individuals;
 - (9) Reader services, rehabilitation teaching services, note-taking services and orientation and mobility services for the blind;
 - (10) Telecommunications, sensory and other technological aids and devices;
 - (11) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public

- service employment;
 - (12) Placement in suitable employment;
 - (13) Post-employment services necessary to maintain or regain other suitable employment;
 - (14) Occupational licenses, including any licenses, permit or other written authority required by a State, city or other governmental unit to be obtained in order to enter an occupation or enter a small business, tools, equipment, initial stocks (including livestock) and supplies;
 - (15) Rehabilitation engineering services; and
 - (16) Other goods and services that can reasonably be expected to benefit an individual with handicaps in terms of employability.
- (b) Written policies. The State plan must also assure that the State unit establishes and maintains written policies covering the scope and nature of each of the vocational rehabilitation services specified in paragraph (a) of this section, and the conditions, criteria, and procedures under which each service is provided.
- (c) Special requirements. In the case of telecommunications, sensory, and other technological aids and devices, the written policies must ensure that individualized prescriptions and fittings are performed only by individuals licensed in accordance with State licensure laws, or by appropriate certified professionals. Any hearing aid recommended on the basis of an evaluation of the auditory system must be fitted in accordance with the specifications of the findings obtained under Section 361.33. Newly developed aids and devices not requiring individualized fittings must meet any engineering and safety standards recognized by the Secretary.
(Sections 101(a)(6) and 103(a) of the Act; 29 U.S.C. 721(a)(6) and 723(a))

SECTION 361.43 INDIVIDUALS DETERMINED TO BE REHABILITATED.

- (a) Minimum requirements. The State plan must assure that an individual determined to be rehabilitated, must have been as a minimum:
- (1) Determined to be eligible under Section 361.35(a):
 - (2) Provided an evaluation of vocational rehabilitation potential, and counseling and guidance as essential vocational rehabilitation services;
 - (3) Provided appropriate and substantial vocational rehabilitation services in accordance with the individualized written rehabilitation program developed under Section 361.40 and Section 361.41; and
 - (4) Determined to have achieved and maintained a suitable employment goal for at least 60 days.
- (b) Post-employment services. The State plan must also assure that after an individual has been determined to be rehabilitated, the State unit will provide post-employment services if necessary to assist an individual to maintain or regain other suitable employment;
(Sections 12(c) and 101(a)(6) and 103(a)(2) of the Act; 29 U.S.C. 711(c), 721(a)(6) and 723(a)(2))

SECTION 361.44 AUTHORIZATION OF SERVICES.

The State plan must assure that written authorization is made, either before or at the same time as the purchase of services. Where a State unit employee is permitted to make oral authorization in an emergency situation, there must be prompt documentation and the authorization must be confirmed in writing and forwarded to the provider of the services.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

SECTION 361.45 STANDARD FOR FACILITIES AND PROVIDERS OF SERVICES.

- (a) General provisions. The State plan must assure that the designated State unit adopts and maintains written minimum standards for the various types of facilities and providers of services utilized by the State unit in providing vocational rehabilitation services. The State unit must make these standards readily available to unit personnel and to the public.
- (b) Rehabilitation facility standards. The State unit must establish written standards covering physical plant, equipment, and safety for rehabilitation facilities. For workshops, the State unit must also establish standards applicable to health conditions, wages, hours, working conditions, and worker's compensation or liability insurance for handicapped persons employed in the workshop. These standards must incorporate applicable standards established by the Secretary and must conform with regulations of the Secretary of Labor relating to occupational safety and health standards for rehabilitation facilities. These standards must also assure that all medical and related health services provided in a rehabilitation facility are prescribed by, or under the formal supervision of persons licensed to prescribe or supervise the provision of these services in the State. State unit standards must assure that any rehabilitation facility to be utilized in the provision of vocational rehabilitation services complies with the requirements of the Architectural Barriers Act of 1968, the Uniform Accessibility Standards, and their implementing standards in 41 CFR Part 101-19.6 et seq. and the American National Standards Institute, No. A117.1-1986.
- (c) Rehabilitation facility personnel and providers of services. The Secretary exercises no authority concerning the selection, method of selection, tenure of office, or compensation of any individual employed in any facility or personnel utilized in providing service. (Section 12(c) and 101(a)(7) of the Act; 29 U.S.C. 711(c) and 721(a)(7))

SECTION 361.46 RATES OF PAYMENT.

The State plan must assure that the State unit establishes and maintains written policies to govern rates of payment for all purchased vocational rehabilitation services. Any vendor providing services authorized by the State unit must agree not to make any charge to or accept any payment from the handicapped individual or his or her family for the service unless the amount of the charge or payment is previously known and, where applicable, approved by the State unit.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

SECTION 361.47 FINANCIAL NEED; DETERMINATION OF THE AVAILABILITY OF COMPARABLE SERVICES AND BENEFITS.

- (a) Financial need.
 - (1) There is no Federal requirement that the financial need of an individual with handicaps be considered in the provision of any vocational rehabilitation services.
 - (2) If the State unit chooses to consider the financial need of individuals with handicaps for purposes of determining the extent of their participation in the cost of vocational rehabilitation services, the State unit must maintain written policies covering the determination of financial need, and the State plan must specify the types of vocational services for which the unit has established a financial needs test. These policies must be applied uniformly so that equitable treatment is accorded all individuals with handicaps in similar circumstances.

- (3) The State plan must assure that no financial needs test is applied as a condition for furnishing the following vocational rehabilitation services:
 - (i) Evaluation of rehabilitation potential, except for those vocational rehabilitation services other than of a diagnostic nature which are provided under an extended evaluation of rehabilitation potential under Section 361.34;
 - (ii) Counseling, guidance, and referral services; and
 - (iii) Placement.
- (b) Availability of comparable services and benefits.
 - (1) The State plan must assure that, before the State unit provides any vocational rehabilitation services, except those services enumerated in paragraph (b)(2) of this section, to an individual with handicaps or to members of that individual's family, it determines whether comparable services and benefits are available under any other program.
 - (2) The requirements of paragraph (b)(1) of this section do not apply to the following services:
 - (i) Evaluation of rehabilitation potential;
 - (ii) Counseling, guidance, and referral;
 - (iii) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, that are not provided in institutions of higher education (Section 361.42(a)(4));
 - (iv) Placement;
 - (v) Rehabilitation engineering services;
 - (vi) Post-employment services consisting of the services listed under paragraphs (b)(2)(i)-(v) of this section.
 - (3) The requirements of paragraph (b)(1) of this section also do not apply if the determination of the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any individual with handicaps who is at extreme medical risk. A determination of extreme medical risk shall be based upon medical evidence provided by an appropriate licensed medical professional.
 - (4) The State plan must assure also that if comparable services and benefits are available, they must be utilized to meet, in whole or part, the cost of vocational rehabilitation services. (Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

SECTION 361.48

- REVIEW OF REHABILITATION COUNSELOR OR COORDINATOR DETERMINATIONS.
- (a) Informing affected individuals. All applicants and clients must be informed of the opportunities available under this section, including the names and addresses of individual with whom appeals may be filed.
 - (b) Informal reviews. States may continue to use an informal administrative review process if it is likely to result in a timely resolution of disagreements in particular instances, but this process may not be used as a means to delay a more formal hearing before an impartial hearing officer unless the parties jointly agree to a delay.
 - (c) Formal appeals procedures.
 - (1) Except as provided in paragraph (e) of this section, the State plan must assure that procedures are established by the

Director of the designated State unit so that any applicant for or client of vocational rehabilitation services who is dissatisfied with any determinations made by a rehabilitation counselor or coordinator concerning the furnishing or denial of services may request a timely review of those determinations.

(2) At a minimum each State's formal review procedures must provide that--

- (i) A hearing by an impartial hearing officer is held within 45 days of a request by the applicant or client;
- (ii) The applicant or client or, if appropriate, the individual's parent, guardian, or other representative, is afforded an opportunity to present additional evidence, information, and witnesses to the impartial hearing officer, to be represented by counsel or other appropriate advocate, and to examine all witnesses and other relevant sources of information and evidence;
- (iii) The impartial hearing officer makes a decision based on the provisions of the approved State plan and the Act and provides to the applicant or client or, if appropriate, the individual's parent, guardian, or other representative, and to the Director of the designated State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing;
- (iv) If the Director of the designated State unit decides to review the decision of the impartial hearing officer, the Director shall notify in writing the applicant or client or if appropriate, the individual's parent, guardian, or other representative, of that intent within 20 days of the mailing of the impartial hearing officer's decision;
- (v) If the Director of the designated State unit fails to provide the notice required by paragraph (c)(2)(iv) of this section, the impartial hearing officer's decision becomes a final decision;
- (vi) The decision of the Director of the designated State unit to review any impartial hearing officer's decision must be based on standards of review contained in written State unit policy;
- (vii) If the Director of the designated State unit decides to review the decision of the impartial hearing officer, the applicant or client, or, if appropriate, the individual's parent, guardian, or other representative, is provided an opportunity for the submission of additional evidence and information relevant to the final decision;
- (viii) Within 30 days of providing notice of intent to review the impartial hearing officer's decision, the Director of the designated State unit makes a final decision and provides a full report in writing of the decision, and of the findings and grounds for the decision, to the applicant or client, or, if appropriate, the individual's parent, guardian, or other representative; and

- (ix) The Director of the designated State unit cannot delegate responsibility to make any final decision to any other officer or employee of the designated State unit.
- (d) Extension of time. Except for the time limitation established in paragraph (c)(2)(iv) of this section, each State's review procedures may provide for reasonable time extensions for good cause shown at the request of a party or at the request of both parties.
- (e) State fair hearing board. The provisions of paragraphs (c) and (d) of this section are not applicable if there is in any State a fair hearing board that was established before January 1, 1985, that is authorized under State law to review rehabilitation counselor or coordinator determinations and to carry out the responsibilities of the Director of the designated State unit under this section.
- (f) Data collection. The Director of the designated State unit shall collect and submit, at a minimum, the following data to the Secretary for inclusion each year in the annual report to Congress under section 13 of the Act:
 - (1) A description of State procedures for review of rehabilitation counselor or coordinator determinations.
 - (2) The number of appeals to impartial hearing officers and the State Director, including the type of complaints and the issues involved.
 - (3) The number of decisions by the State Director reversing in whole or in part a decision of the impartial hearing officer.
 - (4) The number of decisions affirming the position of the dissatisfied vocational rehabilitation applicant or client assisted through the client assistance program.[Authority: Sections 12(c), 101(a)(6), and 102(d) of the Act; 29 U.S.C. 711(c), 721(a)(6) and 722(d)].

SECTION 361.49 PROTECTION, USE AND RELEASE OF PERSONAL INFORMATION.

- (a) General provisions. The State plan must assure that the State agency and the State unit will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and list of names. These policies and procedures must assure that:
 - (1) Specific safeguards protect current and stored personal information;
 - (2) All applicants, clients, representatives of applicants or clients, and, as appropriate, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for accessing and releasing this information;
 - (3) All applicants or their representatives are informed about the State unit need to collect personal information and the policies governing its use, including:
 - (i) Identification of the authority under which information is collected;
 - (ii) Explanation of the principal purposes for which the State unit intends to use or release the information;
 - (iii) Explanation of whether the individuals providing the information is mandatory or voluntary and the effects of not providing requested information to the State unit;
 - (iv) Identification of those situations where the State unit requires or does not require informed written consent of the individual before information may be released; and
 - (v) Identification of other agencies to which information is

routinely released.

- (4) Persons who are unable to communicate in English or who rely on special modes of communication must be provided explanations about State policies and procedures affecting personal information through methods that can be adequately understood by them;
 - (5) These policies and procedures must prevail over less stringent State laws and regulations; and
 - (6) The State agency or 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 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 which 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 involved individuals.
- (1) When requested in writing by the involved individual or his or her representative, the State unit must make all information in the case record accessible to the individual or release it to him or her or a representative in a timely manner. Medical, psychological, or other information which the State unit believes may be harmful to the individual may not be released directly to the individual but must be provided through his or her representative, a physician or a licensed or certified psychologist;
 - (2) When personal information has been obtained from another agency, or organization, it may be released only by, or under the conditions established by, the other agency or organization.
- (d) Release for audit, evaluation, and research. Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for handicapped persons, 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 his or her representative.
- (e) Release to other programs or authorities.
- (1) Upon receiving the informed written consent of the individual, the State unit may release to another agency or organization

for its program purposes only that personal information which may be released to the involved individual, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the State unit believes may be harmful to the individual may be released when the other agency or organization assures the State unit that the information will be used only for the purposes for which it is being provided and will not be further released to the involved individual;

- (2) The State unit must release personal information if required by Federal law;
- (3) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, (except where expressly prohibited by federal or State laws or regulations), and in response to judicial order; and
- (4) The State unit may also release personal information in order to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others. (Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

SECTION 361.50 SCOPE OF STATE UNIT PROGRAM: MANAGEMENT SERVICES AND SUPERVISION FOR SMALL BUSINESS ENTERPRISES FOR INDIVIDUALS WITH SEVERE HANDICAPS.

- (a) General provisions. The State plan may provide for establishing small business enterprises operated by individuals with severe handicaps and may also provide for management services and supervision for these enterprises. "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 severe handicaps. "Management services and supervision" does not include those services or costs which pertain to the ongoing operation of the individual business enterprise after the initial establishment period.
- (b) Special policies. If the State plan provides for management services and supervision, it must assure that the State unit maintains:
 - (1) A description of the types of small business enterprises to be established;
 - (2) A description of the policies governing the acquisition of vending facilities or other equipment and initial stocks (including livestock) and supplies for business enterprises;
 - (3) A description of the policies governing the management and supervision of the program;
 - (4) A description of how management and supervision will be accomplished either by the State unit or by some other organization as the nominee of the unit subject to its control; and
 - (5) An assurance that only individuals with severe handicaps will be selected to participate in this supervised program.
- (c) Set-aside funds. If the State unit chooses to set aside funds from the proceeds of the operation of business enterprises, the State plan must also assure that the State unit maintains a description of the methods used in setting aside funds, and the purposes for which funds are set aside. Funds may be used only for small business

enterprises program purposes and any benefits for operators must be provided on an equitable basis.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

SECTION 361.51 SCOPE OF STATE UNIT PROGRAM:

ESTABLISHMENT OF REHABILITATION FACILITIES.

If the State plan provides for the establishment of public or other nonprofit rehabilitation facilities, it must assure that:

- (a) The State unit will determine that the need for the establishment of any rehabilitation facility assisted under this section has been demonstrated in the State's inventory of rehabilitation facilities under Section 361.21;
- (b) Any rehabilitation facility to be established will meet the State unit's standards for rehabilitation facilities maintained under Section 361.45;
- (c) The primary purpose of any rehabilitation facility to be established is to provide vocational rehabilitation services or transitional or extended employment to individuals with handicaps;
- (d) Initial or additional staffing assistance will be available only for personnel who are engaged in new or expanded program activities of the rehabilitation facility; and
- (e) Any rehabilitation facility established under this part will develop and implement a plan to take affirmative action to employ and advance in employment qualified individuals with handicaps which provides for specific action steps, timetables, and complaint and enforcement procedures.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

SECTION 361.52 SCOPE OF UNIT PROGRAM:

CONSTRUCTION OF REHABILITATION FACILITIES.

If the State plan provides for the construction of public or other nonprofit rehabilitation facilities, it must assure that:

- (a) The State unit will determine that the need for the construction of any rehabilitation facility assisted under this section has been demonstrated in the State's inventory of rehabilitation facilities under Section 361.21;
- (b) Any rehabilitation facility to be constructed will meet the State unit's standards for rehabilitation facilities maintained under Section 361.45;
- (c) The primary purpose of any rehabilitation facility to be constructed under this section is to provide vocational rehabilitation services or transitional or extended employment to individuals with handicaps;
- (d) The total Federal financial participation in the expenditures for the construction of rehabilitation facilities for a fiscal year will not exceed 10 percent of the State's allotment for that year under section 110 of the Act;
- (e) For each fiscal year the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of rehabilitation facilities and the establishment of rehabilitation facilities, will be at least equal to the average of its expenditures for the other vocational rehabilitation services for the preceding three fiscal years;
- (f) In addition to any other requirement imposed by law, each proposal will be subject to the requirements for the construction of a rehabilitation facility under Title III of the Act and the condition that the applicant will furnish and comply with all assurances set

forth in the application; and

- (g) Any rehabilitation facility constructed under this part will develop and implement a plan to take affirmative action to employ and advance in employment qualified individuals with handicaps which provides for specific action steps, timetables and complaint and enforcement procedures.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

SECTION 361.53 SCOPE OF STATE UNIT PROGRAM: FACILITIES AND SERVICES FOR GROUPS OF INDIVIDUALS WITH HANDICAPS.

The State plan may provide for facilities and services, including services provided at rehabilitation facilities, which may be expected to contribute substantially to the vocational rehabilitation of a group of individuals, but which are not related directly to the individualized rehabilitation program of any one individual with handicaps. If the State plan includes these facilities and services, it must assure that the State unit establishes and maintains written policies covering their provision.

(Section 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

SECTION 361.54 SCOPE OF STATE UNIT PROGRAM: TELECOMMUNICATIONS SYSTEMS.

The State plan may provide for the use of existing telecommunications systems which have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with handicaps, especially those who are homebound, those who live in rural areas, and those who rely on special modes of communication. These telecommunications systems shall include telephone, television, satellite, tactile-vibratory devices, and similar systems, as appropriate. If the State plan includes these systems, it must assure that the State unit establishes and maintains written policies covering their use.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

SECTION 361.55 SCOPE OF STATE UNIT PROGRAM; SPECIAL MATERIALS FOR BLIND INDIVIDUALS AND FOR DEAF INDIVIDUALS.

The State plan may provide for the use of special services available to provide recorded material for blind individuals, captioned television, films or video cassettes for deaf individuals, tactile materials for deaf-blind individuals, and other special materials providing tactile, vibratory, auditory, and visual read-out. If the State plan includes these materials, it must assure that the State unit establishes and maintains written policies covering their provision. These policies must ensure that the special communication services are available in the native languages of individuals with handicaps from ethnic groups which represent substantial segments of the population of the State.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

SECTION 361.56 UTILIZATION OF COMMUNITY RESOURCES.

The State plan must assure that, in providing vocational rehabilitation services, maximum utilization is made of public or other vocational or technical training facilities or other appropriate community resources.

(Sections 101(a)(12)(A) of the Act; 29 U.S.C. 721(a)(12)(A))

SECTION 361.57 UTILIZATION OF PROFITMAKING ORGANIZATIONS FOR ON-THE-JOB TRAINING IN CONNECTION WITH SELECTED PROJECTS.

The State plan must assure that the State unit has the authority to enter into contracts with profit-making organizations for the purpose of

providing on-the-job training and related programs for individuals with handicaps under Section 621 of the Act (projects with industry) or Section 622 of the Act (business opportunities for handicapped individuals). The State plan must also assure that profitmaking organizations are utilized by the State unit when it has been determined that they are better qualified to provide needed services than nonprofit agencies, organizations, or facilities in the State.

(Section 101(a)(21) of the Act; 29 U.S.C. 721(3)(21))

SECTION 361.58 PERIODIC REVIEW OF EXTENDED EMPLOYMENT IN REHABILITATION FACILITIES.

The State plan must assure periodic review and re-evaluation at least annually, of the status of those individuals with handicaps who have been placed by the State unit in extended employment in rehabilitation facilities, to determine the feasibility of their employment or their training for future employment in the competitive labor market. The State plan must assure that maximum effort is made to place these individuals in competitive employment or training for competitive employment whenever feasible.

(Section 101(a)(16) of the Act; 29 U.S.C. 721(a)(16))

SUBPART C -- FINANCING OF STATE VOCATIONAL REHABILITATION PROGRAMS
Federal Financial Participation

SECTION 361.70 EFFECT OF STATE RULES.

Subject to the provisions and limitations of the Act and this part, Federal financial participation is available in expenditures made under the State plan (including the administration thereof) in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local agencies.

(Section 111(a) of the Act; 29 U.S.C. 731(a))

SECTION 361.71 VOCATIONAL REHABILITATION SERVICES TO INDIVIDUALS.

- (a) Federal financial participation is available in expenditures made under the State plan for providing an evaluation of vocational rehabilitation potential, and for providing specified vocational rehabilitation services to individuals with handicaps as appropriate. Other goods and services not specified under this part and necessary to determine the vocational rehabilitation potential of individuals with handicaps or to be of benefit in terms of the individual's employability may also be provided. (This may include expenditures for short periods of medical care for acute conditions arising during the course of rehabilitation, which, if not cared for, would constitute a hazard to the evaluation of vocational rehabilitation potential or to the achievement of the rehabilitation objective.)
- (b) Federal financial participation may also be available for costs necessary to determine an individual's eligibility to participate in the business opportunity program under Section 622 of the Act and the cost of native healing practitioners who are recognized as such by an Indian tribe when services are being provided to handicapped American Indians under the State plan and when the native healing practitioner services are necessary to achieve the individual's vocational rehabilitation objective.
- (c) Federal financial participation is not available in any expenditure made, either directly or indirectly, for the purchase of any land, or for the purchase or erection of any building (except for a shelter under Section 361.72) for any one individual with handicaps or for a group of individuals with handicaps under Section 361.75.

(Sections 12(c) and 103(a) of the Act; 29 U.S.C. 711(c) and 723(a))

SECTION 361.72 MANAGEMENT SERVICES AND SUPERVISION FOR SMALL BUSINESS

ENTERPRISES FOR INDIVIDUALS WITH SEVERE HANDICAPS.

- (a) Federal financial participation is available in expenditures made under the State plan for the acquisition of equipment, and initial stocks (including livestock) and supplies for small business enterprises (including vending facilities) for individuals with severe handicaps, and management services and supervision provided by the State unit to improve the operation of these small business enterprises (including vending facilities). "Equipment" includes shelters, which are those facilities for a business undertaking which are customarily furnished to the operator of a similar business occupying premises under a short-term lease. Federal financial participation is not available in any expenditure for the purchase of any land, nor for the purchase or erection of any building. This exclusion with respect to buildings does not apply to shelters as described in this paragraph.
- (b) Federal financial participation is available for expenditures specified under paragraph (a) of this section, which are made from funds set aside by the State unit from the proceeds of the operation of small business enterprises for individuals with the most severe handicaps under its management and supervision.

(Sections 12(c) and 103(b) of the Act; 29 U.S.C. 711(c) and 723(b))

SECTION 361.73 ESTABLISHMENT OF REHABILITATION FACILITIES.

- (a) Federal financial participation is available in expenditures made under the State plan for the establishment of public and other nonprofit rehabilitation facilities for the following types of expenditures, except as limited in paragraph (b) of this section:
- (1) Acquisition of existing buildings, and where necessary, the land in connection therewith;
 - (2) Remodeling and alteration of existing buildings;
 - (3) Expansion of existing buildings;
 - (4) Architect's fees;
 - (5) Site survey and soil investigation;
 - (6) Initial and additional fixed or movable equipment of existing building;
 - (7) Initial and additional staffing of rehabilitation facilities; and
 - (8) Such other direct expenditures as are appropriate to the establishment project.
- (b) Federal financial participation is not available in any expenditure:
- (1) For the acquisition of an existing building when the Federal share of the cost of acquisition of the building under this section is more than \$300,000.
 - (2) For the rental of land, or rental of buildings in connection with the establishment of rehabilitation facilities;
 - (3) For the remodeling or alteration of an existing building when the estimated cost of remodeling or alteration exceeds the fair market value of the building prior to its remodeling or alteration;
 - (4) For the expansion of an existing building which has not been completed in all respects;
 - (5) For the expansion of an existing building to the extent that the total size of the resultant expanded building, determined in square footage of usable space, will be greater than twice the size of the original existing building; or
 - (6) For the expansion of an existing building if the method of joining the expanded portion of the existing building indicates that, in effect, a separate structure is involved.

- (c) The amount of Federal financial participation in the establishment of a rehabilitation facility, including initial and additional equipment, and initial and additional staffing for a period not longer than 4 years and 3 months, shall be the applicable Federal share in accordance with Section 361.86.
- (d) Funds made available to a private nonprofit agency for the establishment of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the State unit in making direct expenditures for similar purposes.
(Sections 7(4), 12 (c) and 103(b) of the Act; 29 U.S.C. 706(4), 711(c), and 723(b))

SECTION 361.74 CONSTRUCTION OF REHABILITATION FACILITIES.

- (a) Federal financial participation is available in expenditures made under the State plan for the construction of public or other nonprofit rehabilitation facilities for the following types of expenditures:
 - (1) Acquisition of land in connection with the construction of a rehabilitation facility;
 - (2) Acquisition of existing buildings;
 - (3) Remodeling, alteration or renovation of existing buildings;
 - (4) Construction of new buildings and expansion of existing buildings when the expansion is extensive enough to be tantamount to new construction;
 - (5) Architect's fees;
 - (6) Site survey and soil investigation;
 - (7) Initial fixed or movable equipment of such new, newly acquired, expanded, remodeled, altered or renovated buildings;
 - (8) Works of art in an amount not to exceed 1 per cent of the total cost of the project; and
 - (9) Other direct expenditures appropriate to the construction project, except that Federal financial participation is not available for costs of off-site improvements.
- (b) The amount of Federal financial participation in the construction of a rehabilitation facility may not be more than 50 percent of the total cost of the project.
- (c) Funds made available to a private nonprofit agency for the construction of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the State unit in making direct expenditures for similar purposes.
(Sections 7(1), 12(c), and 103(b) of the Act; 29 U.S.C. 706(1), 711(c) and 723(b))

SECTION 361.75 OTHER VOCATIONAL REHABILITATION SERVICES FOR THE BENEFIT OF GROUPS WITH HANDICAPS.

Federal financial participation is available in expenditures made under a State plan for the provision of other facilities and services including services provided at rehabilitation facilities which may be expected to contribute substantially to the vocational rehabilitation of a group of individuals with handicaps, but which are not related directly to the rehabilitation of any one individual with handicaps. Federal financial participation is also available in expenditures for the use of existing telecommunications systems and for the use of special materials for blind individuals, deaf individuals and deaf-blind individuals.

(Sections 12(c) and 103(b) of the Act; 29 U.S.C. 711(c) and 723(b))

SECTION 361.76 STATE AND LOCAL FUNDS.

For purposes of this part, "State or local funds" means:

- (a) Funds made available by appropriation directly to the State or local agency, funds made available by allotment or transfer from any other unit of State or local government, or expenditures made by any unit of State or local government under a cooperative program under Section 361.13.
 - (b) Contributions by private organizations or individuals, which are deposited in the account of the State or local agency in accordance with State law, for expenditure by, and at the sole discretion of, the State or local agency. Contributions earmarked for meeting the State's share for providing particular services, for serving certain types of disabilities, for providing services for special groups identified on the basis of criteria which would be acceptable for the earmarking of public funds, or for carrying on types of administrative activities so identified may be considered to be State funds, if permissible under State law, except that Federal financial participation will not be available in expenditures that revert to the donor's use or facility;
 - (c) Funds set aside pursuant to Section 361.72(b); or
 - (d) Contributions by private agencies, organizations or individuals deposited in the account of the State or local agency in accordance with State law, which are earmarked, under a condition imposed by the contributor, for meeting (in whole or in part) the State's share for establishing or constructing a particular rehabilitation facility, if permissible under State law. These funds may be used to earn Federal funds only with respect to expenditures for establishing or constructing the particular rehabilitation facility for which the contributions are earmarked.
- (Section 12(c) of the Act; 29 U.S.C. 711(c))

SECTION 361.77 SHARED FUNDING AND ADMINISTRATION
OF JOINT PROJECTS OR PROGRAMS.

Where the Secretary approves a request by the State unit to participate in a joint project or program with another agency or agencies of the State, or with a local agency in accordance with Section 361.11. Federal financial participation is available in the State unit share of costs for which there is Federal participation under the Act.

(Sections 12(c) and 101(a)(1)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(1)(A))

SECTION 361.78 WAIVER OF STATEWIDENESS.

If the approved State plan provides for activities to be carried out in one or more political subdivisions through local financing (Section 361.12), Federal financial participation is available in expenditures made under the State plan for vocational rehabilitation services and administration in connection with these activities except that funds made available to the State unit by these political subdivisions of the State (including funds contributed to such a subdivision by a private agency, organization or individual) may be earmarked for use within a specific geographical area or for use within a specific facility or for the benefit of a group of individuals with a particular disability. Nothing in this paragraph, however, authorizes the further earmarking of funds for a particular individual or for members of a particular organization, and Federal financial participation is not available in expenditures that revert to the donor's use of facility where the donor is a private agency, organization or individual.

(Sections 12(c) and 101(a)(4) of the Act; 29 U.S.C. 711(c) and 721(a)(4))
Allotment and Payment

SECTION 361.85 ALLOTMENT OF FEDERAL FUNDS FOR VOCATIONAL
REHABILITATION SERVICES.

- (a) The allotment of the Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act.
- (b) For fiscal year 1987 and for each subsequent fiscal year, the Secretary reserves, from the amount appropriated for grants under section 100(b)(1), not less than one quarter of one percent and not more than one percent to carry out Part D of Title I of the Act.
- (c) Where the State plan designates separate agencies to administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for the blind, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.
- (d) The total Federal financial participation in the expenditures for construction for a fiscal year may not exceed 10 percent of the State's allotment for that year. The amount of the State's share of expenditures for vocational rehabilitation services other than for the establishment of rehabilitation facilities or the construction of rehabilitation facilities must be at least equal to the average of its expenditures for those other vocational rehabilitation services for the preceding 3 fiscal years.
 - (1) 33 percent of the total number of American Indians residing on the reservation to be served in the first full fiscal year during which the special project is in operation;
 - (2) 66 percent of such American Indians in the second full fiscal year during which the special project is in operation; and
 - (3) 100 percent of such American Indians in the third full fiscal year during which the special project is in operation.

(Sections 12(c) and 110 of the Act: 29 U.S.C. 711(c) and 730)
SECTION 361.86 PAYMENTS FROM ALLOTMENTS FOR VOCATIONAL
REHABILITATION SERVICES.

- (a) Except as provided in Section 361.85(d), the Secretary pays to each State an amount computed in accordance with the requirements of Section 111 of the Act. For fiscal years 1987 and 1988, the Federal share for each State is 80 percent (except for the cost of construction of rehabilitation facilities). Beginning in fiscal year 1989, the Federal share for each State decreases by one percent per year for five years for funds received in excess of the amount received in fiscal year 1988. The Federal share of these excess payments is 79 percent in fiscal year 1989; 78 percent in fiscal year 1990; 77 percent in fiscal year 1991; 76 percent in fiscal year 1992; and 75 percent in fiscal year 1993 (except for the cost of construction of rehabilitation facilities).
 - (1) Amounts otherwise payable to a State under this section for any fiscal year are reduced by the amount (if any) by which expenditures from non-Federal sources, as specified in Section 361.76 (except for expenditures with respect to which the State is entitled to payments under Subpart F of this part) for that fiscal year under the State's approved plan for vocational rehabilitation services are less than expenditures under the plan for the average of the total of those expenditures for the three preceding fiscal years.
 - (2) The Secretary may waive or modify any requirement or limitation in Section 111(a)(2)(A) and (B) of the Act, if the Secretary determines that a waiver or modification of the State maintenance of effort requirement 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 cause significant unanticipated expenditures or reductions in revenue and result in a general reduction of programs within the State. A written request for waiver or modification, including supporting justification, must be submitted to the Secretary as soon as the State determines that an exceptional or uncontrollable circumstance will prevent it from making its required expenditures from non-Federal sources.

- (3) If a reduction in payments for any fiscal year is required in the case of a State where separate agencies administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for blind individuals, and the rest of the plan, the reduction is made in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan are less than they were under that part of the plan for the average of the total of those expenditures for the three preceding fiscal years.
[Authority: Sections 7(7), 12(c) and 111 of the Act; 29 U.S.C 706(7), 711(c), and 731]
(Sections 12(c) and 110 of the Act; 29 U.S.C 711(c) and 730.

SECTION 361.87 REALLOTMENT.

- (a) The Secretary makes a determination as to what States (if any) will not use their full allotment not later than 45 days before the end of a fiscal year.
- (b) 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 fiscal year, or to pay for initial expenditures during the subsequent fiscal year. To receive reallotted funds, a State must assure that it will be able to obligate fully all of its original allotment within the fiscal year for which the funds were appropriated. Funds reallotted to another State are considered to be an increase to that State's allotment for the fiscal year for which the funds were appropriated.
[Authority: Section 110(c)(1) of the Act; 29 U.S.C. 730]

SECTION 361.88 METHOD OF COMPUTING AND MAKING PAYMENTS.

- (a) Estimates. Before the beginning of each fiscal quarter or other prescribed period, the Secretary estimates the amount to be paid to each State from its allotment for vocational rehabilitation services under section 110 of the Act, and its allotment for innovation and expansion projects under section 120 of the Act. This estimate is based on records of the State and information furnished by it, and any other investigation found necessary by the Secretary.
- (b) Payments. The Secretary pays, from the allotment available, the amount estimated for the determined period. In making any payment, additions and subtractions are made as necessary in balancing the Federal-State account for any prior period on the basis of the State's accounting. Payments are made prior to audit or settlement through a Letter of Credit system.

(Section 12(c) and 111 of the Act; 29 U.S.C. 711(c) and 731)

SECTION 361.89 REFUNDS.

Any amount refunded or repaid by the State is credited to the Federal account in proportion to the Federal participation in the expenditures by reason of which the refunds or repayments were made. These sums are considered as granted from the State's allotment.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

SECTION 361.90 DETERMINING TO WHICH FISCAL YEAR
EXPENDITURES ARE CHARGEABLE.

In determining to which Federal fiscal year expenditures are chargeable, states are governed by the following:

- (a) Expenditures are chargeable to a particular fiscal year in accordance with State laws or regulations. In the absence of applicable provisions of State laws or regulations, the actual date of the expenditure is controlling;
- (b) In the event that a State's fiscal year does not coincide with the Federal fiscal year, appropriate State laws or regulations governing the recording of expenditures govern;
- (c) In those States which appropriate funds for a biennium, the principles provided in State laws, regulations and practices for determining to which year of the biennium an expenditure is charged apply.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

SECTION 361.91 AUDITS.

- (a) Whenever considered necessary and appropriate, the operations of the State program are audited. These audits are made to determine whether the State program is being operated in a manner that:
 - (1) Encourages prudent use of program funds; and
 - (2) Provides a reasonable degree of assurance that funds are being properly expended for the purpose for which appropriated and provided under the Act and the State plan.
- (b) Final determination as to action to be taken as a result of an audit is made by the Secretary.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

SECTION 361.92 APPEALS PROCEDURES AND EXPENDITURES SETTLEMENT.

The State agency has the right to appeal proposed audit exceptions in which it has not concurred. When expenditures have not been accepted by the Secretary and the State has not made proper restitution, the claim is deducted from subsequent grants made to the State agency.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

SUBPART F -- GRANTS FOR INNOVATION AND EXPANSION OF VOCATIONAL REHABILITATION SERVICES

SECTION 361.150 PURPOSE.

Under section 121(a) of the Act, grants may be made for the purpose of paying a portion of the cost of planning, preparing for, and initiating special programs under the State plan in order to expand vocational rehabilitation services, including:

- (a) Programs to initiate or expand services to individuals who are the most severely handicapped, or
- (b) Special programs to initiate or expand services to classes of individuals with handicaps who have unusual and difficult problems in connection with their rehabilitation, particularly individuals with handicaps who are poor and the responsibility for whose treatment, education, and rehabilitation is shared by the designated State unit with other agencies.

(Section 121(a) of the Act; 29 U.S.C. 741(a))

SECTION 361.151 SPECIAL PROJECT REQUIREMENTS.

- (a) All project activities to be performed under this subpart must either be included within the scope of the approved State plan, or the State plan must be amended to include them.
- (b) Grants may be made to a State agency or at the option of the State agency to a public or nonprofit organization or agency.
- (c) The approval of the appropriate State agency must be secured before funds may be granted to any organization or agency other than the State agency for the provision of direct services with handicapped individuals or for establishing or maintaining facilities which

- provide direct services to individuals with handicaps.
- (d) Written program descriptions of activities to be conducted under grants under this subpart, including a budget, must be submitted in detail and according to the procedures required by the Secretary.
 - (e) Federal financial participation in the cost of any project under this subpart is not available for any period longer than 36 months.
 - (f) The construction of a rehabilitation facility may not be undertaken unless it has been demonstrated to be essential to carrying out a project for providing services under this subpart. In addition, the need for the facility must have been demonstrated in the State's inventory of rehabilitation facilities under Section 361.23.
 - (g) Grants may not be made solely for the purpose of planning or determining the feasibility of initiating a vocational rehabilitation service program.
 - (h) In order to receive assistance, a public or other nonprofit organization or agency, including a public or other nonprofit rehabilitation facility, must develop and implement an affirmative action plan for equal employment opportunity and advancement opportunity for qualified individuals with handicaps. The affirmative action plan must provide for specific action steps, time tables, and complaint and enforcement procedures.
(Sections 12(c), 121(a) and 121(b) of the Act; 29 U.S.C. 711(c), 741(a) and 741(b))

SECTION 361.152 ALLOTMENT OF FEDERAL FUNDS.

- (a) The allotment and any reallocation of Federal funds under this subpart is computed in accordance with the requirements of section 120 of the Act.
- (b) If at any time after the start of any fiscal year, or after a review after May 1 of that fiscal year, the Secretary determines that any amount will not be utilized by a State in carrying out the purpose of this subpart, he makes that amount available to one or more other States which he determines will be able to use additional amounts during the fiscal year. Any amount made available to any State under this paragraph of this section is regarded as an increase in the State's allotment for the year.
- (c) Where the State plan designates separate agencies to administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for the blind, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.
- (d) Within each State's allotment, the Secretary may require that up to 50 percent of available funds must be expended in connection with projects which he has first approved. If the Secretary so requires, he notifies the States of any established program priorities at least 90 days prior to the beginning of each fiscal year.
(Sections 12(c), 120 and 121 of the Act; 29 U.S.C. 711(c), 740 and 741)

SECTION 361.153 PAYMENTS FROM ALLOTMENTS.

From the sums allotted under Section 361.152, the Secretary pays to each State for any project approved under this subpart, an amount up to 90 percent of the costs of the project, (except for a project for construction of a rehabilitation facility where the amount is no more than 50 percent of the total cost of the project) consistent with annual instructions or program guidelines. The amount of Federal financial participation in the costs of construction of a rehabilitation facility is the same percentage specified in Section 361.74(b).

(Sections 7(6) and 121(b) of the Act; 29 U.S.C. 706(6) and 741(b))

SECTION 361.154 METHODS OF COMPUTING AND MAKING PAYMENTS.

Computing and making payments are done in accordance with Section 361.87. The provisions of Section 361.88 through 361.91 also apply. Section 12(c) of the Act; 29 U.S.C. 711(c))

SECTION 361.155 REPORTS.

A grantee must submit reports required by the Secretary and must comply with any requirements necessary to assure the correctness and verification of these reports. These reports include an annual report of program accomplishments reflecting the extent to which programs of vocational rehabilitation services have been initiated or expanded for individuals with severe handicaps or for other individuals who have unusual and difficult problems in connection with their rehabilitation. (Section 12(c) of the Act; 29 U.S.C. 711(c))

SUBPART G -- PROCEDURES FOR HEARINGS ON STATE PLAN CONFORMITY AND COMPLIANCE

SECTION 361.170 GENERAL PROVISIONS.

- (a) Scope. These hearing procedures apply to notice and opportunity for a hearing on:
 - (1) Disapproval of a State plan or amendment; and
 - (2) Determination that the State agency has failed in the administration of its approved plan to comply substantially with the provisions of its plan.
- (b) Negotiations. Nothing in this subpart limits negotiations between the Rehabilitation Services Administration and the State. Negotiations on hearing issues are not part of the hearing and are not subject to the rules in this subpart.
- (c) How to get records. Papers filed in connection with a hearing may be inspected and copied in the office of the Rehabilitation Services Administration Hearing Clerk. Individuals may direct inquiries to the Rehabilitation Services Administration Hearing Clerk, Department of Education, 330 C Street SW, Washington, D.C. 20201.
- (d) How to file and serve papers.
 - (1) Anyone who wishes to submit papers for the docket shall file with the Rehabilitation Services Administration Hearing Clerk an original and two copies except that only originals of exhibits and testimony transcripts need be filed.
 - (2) Anyone who wishes papers to be part of the record shall also serve copies on the parties by personal delivery or by mail, and file proof of this service with the Rehabilitation Services Administration Hearing Clerk. Service on a party's designated attorney is the same as service on the party.
- (e) When rules are suspended. After notifying the parties, the Secretary or the individual designated as presiding officer may modify or waive any rule in this subpart if it is decided that the action is equitable and will not unduly prejudice the rights of any party.

Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

SECTION 361.171 HOW TO REQUEST A HEARING.

- (a) Time limit. A State agency has 60 days from receipt of the Secretary's written notice of proposed disapproval of a State plan or plan amendment, or intended compliance action to request a hearing. The agency shall make its request in writing to the Secretary.
- (b) What happens if a State agency does not request a hearing. If the State agency does not request a hearing within the time allowed by paragraph (a) of this section, the Secretary makes a final

determination and notifies the agency by letter of the decision to withhold either all further payments under the plan or only payments for those portions of the plan affected.

- (c) How request is acknowledged--
- (1) Notice of hearing. Within 30 days of receiving a hearing request, the Secretary notifies the State agency in writing of the date, time, and place of the hearing and of the issues to be considered. The Secretary publishes the hearing notice in the Federal Register. The hearing will be held in a setting with accommodations necessary to make it free from architectural, communication and other barriers to the participation of handicapped persons.
 - (2) When a hearing is held. The date set for a hearing is 20 to 60 days from the date the State agency receives the hearing notice. However, the State agency and the presiding officer may agree in writing to a different date.
(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 21(b) and 721(c))

SECTION 361.172 HEARING ISSUES.

- (a) What the hearing issues are. The issues at a hearing are those included in the Secretary's notice to the State agency.
- (b) How the Secretary may add issues. At least 20 days before a hearing, the Secretary notifies the agency by letter of any additional issues to be considered. The Secretary publishes this notice in the Federal Register. If the agency does not receive its notice of additional issues in the required time, any party may request that the presiding officer postpone the hearing. If a request is made, the presiding officer sets a new hearing date that is 20 to 60 days from the date the agency received the notice of additional issues.
- (c) How actions by the State may cause the Secretary to add, modify, or remove issues. The Secretary may add, modify, or remove issues if the State agency:
 - (1) Conforms its plan to Federal requirements; or
 - (2) Changes its practices or organization to comply with its approved State plan.
- (d) What happens if State action causes the Secretary to add, modify, or remove issues.
 - (1) If the Secretary specifies new or modified issues, the hearing proceeds on these issues.
 - (2) (i) If the Secretary removes an issue, the hearing proceeds on the remaining issues. If the Secretary removes all issues, the Secretary terminates the hearing proceedings. The Secretary may terminate hearing proceedings or remove issues before, during, or after the hearing.
 - (ii) Before removing an issue, the Commissioner notifies the parties other than the Rehabilitation Services Administration and the State agency of the issue and the reasons for removing the issue. Within 20 days of the date of this notice, the parties may submit comments in writing on the merits of the proposed removal. The Secretary considers these comments and they become part of the record.
(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

SECTION 361.173 WHAT THE PURPOSE OF A HEARING IS.

The purpose of the hearing is to receive factual evidence and testimony, including expert opinion testimony, related to the issues. The presiding officer may not allow argument as evidence.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

SECTION 361.174 WHO PRESIDES.

The presiding officer at a hearing is the Commissioner or a person the Commissioner designates. If the Commissioner designates a presiding officer, the Commissioner sends copies of the designation notice to the parties.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

SECTION 361.175 HOW TO BE A PARTY OR AN AMICUS CURIAE TO A HEARING.

- (a) Rehabilitation Services Administration and State agency. The Rehabilitation Services Administration and the State agency are parties to a hearing without having to request participation.
- (b) Other parties or amicus curiae. An individual or group wishing to be a party or amicus curiae to a hearing may file a petition with the Rehabilitation Services Administration Hearing Clerk no more than 15 days following publication of the hearing notice in the Federal Register. A petitioner who wishes to be a party must also provide a copy of the petition to each party of record at that time.
- (c) What must be in a petition. A petition must state concisely:
 - (1) Whether the petitioner wishes to be a party or an amicus curiae;
 - (2) The petitioner's interest in the proceedings;
 - (3) Who will appear for the petitioner;
 - (4) The issues on which the petitioner wishes to participate; and
 - (5) Whether the petitioner intends to present witnesses, if the petitioner wishes to be a party.

(Sections 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

SECTION 361.176 WHAT HAPPENS TO A PETITION.

- (a) Petitions to be a party.
 - (1) The presiding officer determines if the issues to be considered at the hearing have caused the petitioner injury and if the petitioner's interest is within the zone of interest protected by the governing Federal statute. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reasons in the notice.
 - (2) Before making this determination, the presiding officer will allow any party to file comments on the petition to be a party. Any party who wishes to file comments must do so within 5 days of receiving the petition.
 - (3) If the presiding officer decides that parties by petition have common interest, the officer may require that they designate a single representative, or may recognize two or more of these parties to represent all of them.
- (b) Petitions to be amicus curiae. The presiding officer determines if the petitioner has a legitimate interest in the proceedings and may contribute materially to the proper settlement of the issues. The officer also determines if the petitioners' participation would unduly delay the proceedings. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a

written notice of the decision. If the presiding officer denies the petition, the officer states the reason in this notice. (Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

SECTION 361.177 RIGHTS OF PARTIES AND AMICUS CURIAE.

- (a) What rights parties have. A party may:
- (1) Appear by counsel or other authorized representative in all hearing proceedings;
 - (2) Participate in any prehearing conference held by the presiding officer;
 - (3) Stipulate facts that, if uncontested, become part of the record;
 - (4) Make opening statements;
 - (5) Present relevant evidence;
 - (6) Present witnesses who must be available for cross-examination;
 - (7) Present oral arguments at the hearing; and
 - (8) Submit written briefs, proposed finds of fact, and proposed conclusions of law, after the hearing.
- (b) What rights an amicus curiae has. An amicus curiae may:
- (1) Present an oral statement at the hearing at the time specified by the presiding officer;
 - (2) Submit a written statement of position to the presiding officer before the hearing begins; and
 - (3) Submit a brief or written statement at the same time the parties submit briefs. If the amicus curiae submits a written statement or brief, the amicus curiae shall serve a copy on each party.

Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

SECTION 361.178 AUTHORITY OF PRESIDING OFFICER.

- (a) General rule. The presiding officer conducts a fair hearing, avoids delay, maintains order and makes a record of the proceedings. In so doing, he or she has authority that includes:
- (1) Regulating the course of the hearing;
 - (2) Regulating the participation and conduct of parties, amici curiae, and others at the hearing;
 - (3) Ruling on procedural matters and, if necessary, issuing protective orders or other relief to a party against whom discovery is sought;
 - (4) Taking any action authorized by the rules in this subpart;
 - (5) Making a final decision, if the Secretary is the presiding officer;
 - (6) Administering oaths and affirmations;
 - (7) Examining witnesses;
 - (8) Receiving or excluding evidence; and
 - (9) Ruling on or limiting evidence or discovery.
- (b) What the presiding officer may not do. The presiding officer may not compel by subpoena the production of witnesses, papers, or other evidence.
- (c) When the presiding officer's authority is limited. If the presiding officer is not the Secretary, the officer certifies the entire record to the Secretary, including a recommended decision on each issue in the hearing, but may not make a final decision. (Sections 12(c), 101(b), 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

SECTION 361.179 DISCOVERY.

A party has the right to conduct discovery against other parties. These

discovery proceedings are subject to Rules 26-37, Federal Rules of Civil Procedure. The presiding officer promptly rules on any written objection to discovery and may restrict or control discovery to prevent undue delay in the hearing. If a party fails to respond to discovery procedures, the presiding officer may issue any order and imposed any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

SECTION 361.180 HOW EVIDENCE IS HANDLED.

- (a) Testimony. Witnesses, under oath or affirmation, give oral testimony at a hearing. Witnesses must be available at a hearing for cross-examination by the parties.
- (b) Rules of evidence. Technical rules of evidence do not apply to hearings described in this subpart. The presiding officer applies any rules or principles necessary to ensure disclosure of the most credible evidence available and to subject testimony to cross-examination. Cross-examination may be on any material matter, regardless of the scope of direct examination.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

SECTION 361.181 WHAT HAPPENS TO UNSPONSORED WRITTEN MATERIAL.

Letters and other written material regarding matters at issue, if not submitted specifically on behalf of a party, become part of the correspondence section of the docket. This material is not part of the evidence or the record.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

SECTION 361.182 WHAT THE RECORD IS.

- (a) Official transcript. The Rehabilitation Services Administration designates the official reporter for a hearing. The Rehabilitation Services Administration Hearing Clerk has the official transcript of testimony, and other material submitted with the official transcript. The parties and the public may obtain transcripts of testimony from the official reporter at rates that do not exceed the maximum fixed by contract between the reporter and the Rehabilitation Services Administration. Upon notice to the parties, the presiding officer may authorize transcript corrections that involve matters of substance.
- (b) Record. The record for the hearing decision is the transcript of testimony, exhibits, and all other papers and requests filed in the proceedings except for the correspondence section of the docket. The record includes rulings and any recommended decision.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

SECTION 361.183 POSTHEARING BRIEFS.

The presiding officer fixes the time for filing posthearing briefs. They may contain proposed findings of fact and conclusions of law. The presiding officer may permit filing of reply briefs.

(Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

SECTION 361.184 DECISIONS.

- (a) If the Commissioner is the presiding officer. If the Commissioner is the presiding officer, the Commissioner issues a final decision 60 days after the time allowed for filing posthearing or reply briefs ends. The Commissioner provides copies of the decision to all parties and any amici curiae.

- (b) If the Commissioner appoints a presiding officer.
 - (1) No later than 30 days after the time for filing posthearings or reply briefs ends, the presiding officer certifies the entire record, including his or her recommended decision, to the Commissioner.
 - (2) The Commissioner provides a copy of the recommended decision to the parties and any amici curiae. Within 20 days, a party may file with the Commissioner, exceptions to the recommended decision. The party must file a supporting brief or statement with the exception.
 - (3) The Commissioner reviews the record, and, within 60 days of the date of receipt of the presiding officer's recommended decision, the Commissioner issues a final decision. The Commissioner provides copies of the decision to all parties and any amici curiae.
- (c) If the Commissioner decides, after a hearing, that the plan or plan amendment is not approvable, or substantial noncompliance exists, the final decision indicates whether RSA will withhold all further payments or only payments under portions of the plan affected. (Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

SECTION 361.185 WHEN A DECISION IS EFFECTIVE.

- (a) The Commissioner's decision, which constitutes "final agency action" within the meaning of 5 U.S.C. 704 and a final determination under section 101(b) and (c)(1) of the Act, specifies the effective date for RSA's reduction or withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter.
- (b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the plan or State agency administration of the plan meets all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court. (Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

SECTION 361.186 HOW THE STATE MAY APPEAL.

A State may appeal to the U.S. Court of Appeals which has jurisdiction in the State, the final decision of the Commissioner disapproving the State plan or plan amendment or finding noncompliance. The State must file the appeal within 30 days after receiving the Commissioner's final decision. (Sections 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

TITLE II -- RESEARCH AND TRAINING

SEC. 200. DECLARATION OF PURPOSE

The purpose of this title is to--

- [200](1) provide for a comprehensive and coordinated approach to the administration and conduct of research, demonstration projects, and related activities for the rehabilitation of individuals with handicaps, including programs designed to train persons who provide rehabilitation services and persons who conduct research, by authorizing Federal assistance in accordance with a plan for rehabilitation research developed under this title;
- [200](2) facilitate the distribution of information concerning developments in rehabilitation procedures, methods, and devices to rehabilitation professionals and to individuals with handicaps to assist such individuals to live more independently;
- [200](3) improve the distribution of technological devices and equipment for individuals with handicaps by providing financial support for the development and distribution of such devices and equipment; and
- [200](4) increase the scientific and technological information presently available in the field of rehabilitation.

SEC. 201. AUTHORIZATION OF APPROPRIATIONS

[201](a) There are authorized to be appropriated--

- [201-a](1) for the purpose of providing for the expenses of the National Institute on Disability and Rehabilitation Research under section 202, other than expenses to carry out section 204, such sums as may be necessary for fiscal year 1987, and for each succeeding fiscal year ending prior to October 1, 1991; and
- [201-a](2) \$49,000,000 for fiscal year 1987, \$52,000,000 for fiscal year 1988, \$55,000,000 for fiscal year 1989, \$58,000,000 for fiscal year 1990, and \$60,378,500 for fiscal year 1991 for the purpose of carrying out section 204, of which \$1,000,000 shall be available for fiscal year 1987, \$1,050,000 for fiscal year 1988, \$1,102,500 for fiscal year 1989, \$1,160,000 for fiscal year 1990, and \$1,208,000 for fiscal year 1991 for the purpose of carrying out the last sentence of section 204(b)(2)(C).
- [201](b) Funds appropriated under this title shall remain available until expended.

SEC. 202. NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH

[202](a) In order to promote and coordinate research with respect to individuals with handicaps and to more effectively carry out the programs under section 204, there is established within the Department of Education, a National Institute on Disability and Rehabilitation Research (hereinafter in this title referred to as the "Institute"), which shall be headed by a Director (hereinafter in this title referred to as the "Director"). In the performance of the functions of the office, the Director shall be directly responsible to the Secretary or to the same Under Secretary or Assistant Secretary of the Department of Education, to whom the Commissioner is responsible under section 3(a) of this Act.

[202](b) The Director, through the Institute, shall be responsible for--

- [202-b](1) administering the programs described in section 204;
- [202-b](2) disseminating information acquired through research funded by the Institute to other Federal, State, tribal and local public agencies and to private organizations engaged in research relating to rehabilitation or providing rehabilitation services;

- [202-b](3) coordinating, through the Interagency Committee established by section 203 of this Act, all Federal programs and policies relating to research in rehabilitation;
- [202-b](4) disseminating educational materials to primary and secondary schools, institutions of higher education, and to public and private entities concerning how the quality of life of individuals with handicaps may be improved;
- [202-b](5) conducting an education program to inform the public about ways of providing for the rehabilitation of individuals with handicaps, including information relating to family care and self care;
- [202-b](6) conducting conferences, seminars, and workshops (including in-service training programs) concerning research and engineering advances in rehabilitation pertinent to the problems of individuals with handicaps;
- [202-b](7) taking whatever action is necessary to keep the Congress fully and currently informed with respect to the implementation and conduct of programs and activities carried out under this title; and
- [202-b](8) producing, in conjunction with the Department of Labor, the National Center for Health Statistics, the Bureau of the Census, the Social Security Administration, the Bureau of Indian Affairs, the Indian Health Service and other Federal departments and agencies, as may be appropriate, statistical reports and studies on the employment, health, income, and other demographic characteristics of individuals with handicaps and disseminating such reports, and studies to rehabilitation professionals and others to assist in the planning and evaluation of vocational and other rehabilitation services for the individuals with handicaps.
- [202](c)(1) The Director of the Institute shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be an individual with substantial experience in rehabilitation and in research administration. The Director shall be compensated at the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code. In carrying out any of the functions of the office under this section, the Director shall be guided by general policies of the National Council on Disability established in title IV. The Director shall not delegate any of the functions of the office to any officer who is not directly responsible to the Director.
- [202-c](2) There shall be a Deputy Director of the Institute (hereinafter in this section referred to as the "Deputy Director") who shall be appointed by the Secretary. The Deputy Director shall be compensated at the rate provided for grade GS-17 of the General Schedule under section 5332 of title 5, United States Code, and shall act for the Director during the absence or disability of the Director, exercising such powers as the Director may prescribe. In the case of any vacancy in the office of the Director, the Deputy Director shall serve as Director until a Director is appointed under paragraph (1). The position created by this paragraph shall be in addition to the number of positions placed in grade GS-17 of the General Schedule under section 5108 of title 5, United States Code.
- [202-c](3) The Director, subject to the approval of the President, may appoint, for terms not to exceed three years, without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, and may compensate, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, such technical and professional employees of the Institute as the Director deems necessary to accomplish the functions of the Institute and also appoint and compensate without regard to such provisions, in a number not to exceed one-fifth of the number of full-time, regular technical and professional employees of

the Institute.

[202-c](4) The Director may obtain the service of consultants, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

[202](d) The Director pursuant to regulations which the Secretary shall prescribe, may establish and maintain fellowships with such stipends and allowances, including travel and subsistence expenses provided for under title 5, United States Code, as the Director considers necessary to procure the assistance of highly qualified research fellows from the United States and foreign countries.

[202](e) The Director shall, pursuant to regulations which the Secretary shall prescribe, provide for scientific review of all research grants and programs over which the Director has authority by utilizing, to the maximum extent possible, appropriate peer review groups established within the Institute and composed of non-Federal scientists and other experts in the rehabilitation field.

[202](f) Not less than 90 percent of the funds appropriated under paragraph (2) of section 201(a) to carry out section 204 shall be expended by the Director to carry out such section through grants or contracts with qualified public or private agencies and individuals.

[202](g) The Director shall develop and submit to appropriate committees of the Congress within eighteen months after the effective date of this section a long-range plan for rehabilitation research which shall--

[202-g](1) identify any research which should be conducted respecting the problems encountered by individuals with handicaps in their daily activities, especially problems related to employment;

[202-g](2) determine the funding priorities for research activities under this section and explain the basis for such priorities, including a detailed description of any new types of research recommended under this paragraph for funding; and

[202-g](3) specify appropriate goals and timetables for activities to be conducted under this section.

The plan required by this subsection shall be developed by the Director in consultation with the Commissioner, the National Council on Disability established under title IV, the Secretary of Education, officials responsible for the administration of the Developmental Disabilities Assistance and Bill of Rights Act, the Interagency Committee established by section 203 and any other persons or entities the Director considers appropriate. Such plan shall be reviewed at least once every three years and may be revised at any time by the Director to the extent necessary.

[202](h) In order to promote cooperation among Federal departments and agencies conducting research programs, the Director shall consult with the administrators of such programs, and with the Interagency Committee established by section 203 regarding the design of research projects conducted by such entities and the result and applications of such research.

[202](i)(1) The Director shall take appropriate actions to provide for a comprehensive and coordinated research program under this title. In providing such a program the Director may undertake joint activities with other Federal entities engaged in research and with appropriate private entities. Any Federal entity proposing to establish any research project related to the purposes of this Act shall consult, through the Interagency Committee established by section 203, with the Director as Chairperson of such Committee and provide the Director with sufficient prior opportunity to comment on such project.

[202-i](2) Any person responsible for administering any program of the National Institutes of Health, the Veterans' Administration, the National Science Foundation, the National Aeronautics and Space Administration, the

Office of Special Education and Rehabilitative Services, or of any other Federal entity, shall, through the Interagency Committee established by section 203, consult and cooperate with the Director in carrying out such program if the program is related to the purposes of this section.

[202](j)(1) The Director shall make a grant for the establishment of a program of pediatric rehabilitation research.

[202-j](2) The Director shall establish, either directly or by way of a grant or contract, a Research and Training Center in the Pacific Basin in order to improve services to individuals with handicaps through relevant rehabilitation research and training in the Pacific Basin and to assist in the coordination of rehabilitation services provided by a broad range of agencies and entities. Such Center shall--

[202-j-2](A) develop a sound demographic base,

[202-j-2](B) analyze, develop, and utilize appropriate technology,

[202-j-2](C) develop a culturally relevant rehabilitation manpower development program, and

[202-j-2](D) facilitate interagency communication and cooperation, implementing advanced information technology; and

[202-j](3) The Director shall establish, directly or by grant or contract, a center associated with an institution of higher education, for research and training concerning the delivery of rehabilitation services to rural areas.

[202](k) The Director shall make grants to institutions of higher education for the training of researchers in the field of rehabilitation of individuals with handicaps.

[202](l) The Director shall submit to the Congress, not later than one year after the date of the enactment of the Rehabilitation Act Amendments of 1986, policy recommendations for the establishment by the Congress of an agency designed to ensure

[202-l](1) the development and cost-effective production and marketing of technological devices; and

[202-l](2) the efficient distribution of such technology to individuals with handicaps.

Such recommendations shall specifically evaluate the feasibility of the chartering by Congress of a private organization or the establishment of a joint public-private corporation to provide marketing and production-related services to the public and private sectors. The policy recommendation shall include suggested funding alternatives for an organization or agency and such other suggestions as the Director or the Committee on Handicapped Research may consider appropriate. Further such recommendations shall consider any potential conflicts of interest in the evaluation and marketing of new products for use by individuals with handicaps. In developing such policy recommendations, the Director shall solicit the views of the Interagency Interagency Committee on Disability Research and shall submit any dissenting views offered by any member of that Committee together with the submission of policy recommendations.

[202](m) The Director shall conduct a study of health insurance practices and policies which affect individuals with handicaps. Not later than February 1, 1990, the Director shall submit a report of the study to the appropriate committees of the Congress.

SEC. 203. INTERAGENCY COMMITTEE

[203](a)(1) In order to promote coordination and cooperation among Federal departments and agencies conducting rehabilitation research programs, there is established within the Federal Government an Interagency Committee on Disability Research (hereinafter in this section referred to as the "Committee"), chaired by the Director and comprised of such members as the President may designate, including the following (or their designees): the

Director, the Commissioner, the Secretary of Education, the Administrator of Veterans' Affairs, the Director of the National Institutes of Health, the Director of the National Institute of Mental Health, the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation, the Assistant Secretary of the Interior for Indian Affairs, the Director of the Indian Health Service and the Director of the National Science Foundation.

[203-a](2) The Committee shall meet not less than four times each year.

[203](b) The Committee shall identify, assess, and seek to coordinate all Federal programs, activities, and projects, and plans for such programs, activities, and projects with respect to the conduct of research related to rehabilitation of individuals with handicaps.

[203](c) The Committee, not later than eighteen months after the date of enactment of this section, and annually thereafter, shall submit to the President and to the appropriate committees of the Congress a report making such recommendations as the Committee deems appropriate with respect to coordination of policy and development of objectives and priorities for all Federal programs relating to the conduct of research related to rehabilitation of individuals with handicaps.

SEC. 204. RESEARCH

[204](a) The Director may make grants to and contracts with States and public or private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations to pay part of the cost of projects for the purpose of planning and conducting research, demonstrations, and related activities which bear directly on the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to individuals with handicaps, especially those with the most severe handicaps, under this Act. Such projects may include medical and other scientific, technical, methodological, and other investigations into the nature of disability, methods of analyzing it and restorative techniques, including basic research where related to rehabilitation techniques or services; studies and analysis of industrial, vocational, social, recreational, psychiatric, psychological, economic, and other factors affecting rehabilitation of individuals with handicaps; special problems of homebound and institutionalized individuals; studies, analyses, and demonstrations of architectural and engineering design adapted to meet the special needs of individuals with handicaps; studies, analyses, and other activities related to supported employment; and related activities which hold promise of increasing knowledge and improving methods in the rehabilitation of individuals with handicaps and individuals with the most severe handicaps.

[204](b) In addition to carrying out projects under subsection (a) of this section, the Director may make grants to pay part or all of the cost of the following specialized research activities:

[204-b](1) Establishment and support of Rehabilitation Research and Training Centers to be operated in collaboration with institutions of higher education for the purpose of

[204-b-1](A) providing training (including graduate training) to assist individuals to more effectively provide rehabilitation services,

[204-b-1](B) providing coordinated and advanced programs of research in rehabilitation, and

[204-b-1](C) providing training (including graduate training) for rehabilitation research and other rehabilitation personnel. The research to be carried out at each Center (and as appropriate shall include consideration of rural issues) shall be determined on the basis of the particular needs of individuals with handicaps in the geographic area served by the Center, and may include basic or applied medical

rehabilitation research, research regarding the psychological and social aspects of rehabilitation, and research related to vocational rehabilitation. The Centers shall be encouraged to develop practical applications for the findings of their research. Grants may include funds for services rendered by such a center to individuals with handicaps in connection with such research and training activities. Rehabilitation Research and Training Centers shall include both comprehensive centers dealing with multiple disabilities and centers focused on particular disabilities. Grants to Centers need not be automatically terminated at the end of a project period and may be renewed on the basis of a thorough evaluation and peer review including site visits. Training of students preparing to be rehabilitation personnel through centers shall be an important priority. Grants may include faculty support for teaching of rehabilitation related courses of study for credit and other courses offered by the institutions of higher education affiliated with the Center.

The peer review of all applications for the renewal of a Rehabilitation Research and Training Center grant shall take into account the past performance of the applicant in carrying out the grant. The host institution with which the Rehabilitation Research and Training Center is affiliated may not collect in excess of 15 percent in indirect cost charges. Beginning with fiscal year 1991, awards under clause (C) of this paragraph shall be made on a competitive basis.

[204-b](2) Establishment and support of Rehabilitation Engineering Research Centers to

[204-b-2](A) develop and disseminate innovative methods of applying advanced medical technology, scientific achievement, and psychiatric, psychological, and social knowledge to solve rehabilitation problems through planning and conducting research, including cooperative research with public or private agencies and organizations, designed to produce new scientific knowledge, equipment, and devices suitable for solving problems in the rehabilitation of individuals with handicaps and for reducing environmental barriers,

[204-b-2](B) demonstrate and disseminate innovative models for the delivery to rural and urban areas of cost-effective rehabilitation engineering services that promote utilization of engineering and other scientific research to assist in meeting the employment and independent living needs of individuals with severe handicaps,

[204-b-2](C) cooperate with State agencies designated pursuant to section 101 in developing systems of information exchange and coordination to promote the prompt utilization of engineering and other scientific research to assist in solving problems in the rehabilitation of individuals with handicaps, and

[204-b-2](D) demonstrate and disseminate innovative models for the delivery of cost-effective rehabilitation engineering services to assist in meeting the needs of, and addressing the barriers confronted by, individuals with handicaps. In fiscal year 1987, at least two such Rehabilitation Engineering Centers shall be established. One grant to provide demonstrations pursuant to clause (D) of this paragraph shall be made to an agency or organization in the State of South Carolina and one such grant shall be made to an agency or organization in the State of Connecticut.

[204-b](3) Conduct of a program for spinal cord injury research, to include support of spinal cord injuries projects and demonstrations established pursuant to sections 310 and 311, which will

[204-b-3](A) insure dissemination of research findings among all such Centers,

[204-b-3](B) provide encouragement and support for initiatives and new

approaches by individuals and institutional investigations, and
[204-b-3](C) establish and maintain close working relationships with other governmental and voluntary institutions and organizations engaged in similar efforts, in order to unify and coordinate scientific efforts, encourage joint planning, and promote the interchange of data and reports among spinal cord injury investigations.

In the award of grants under this paragraph the Director shall take into account the location of any proposed Center and the appropriate geographic and regional allocation of such Centers.

[204-b](4) Conduct of a program for end-stage renal disease research to include support of projects and demonstrations for providing special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the rehabilitation of individuals suffering from such disease and which will

[204-b-4](A) insure dissemination of research findings,

[204-b-4](B) provide encouragement and support for initiatives and new approaches by individual and institutional investigators, and

[204-b-4](C) establish and maintain close working relationships with other governmental and voluntary institutions and organizations engaged in similar efforts, in order to unify and coordinate scientific efforts, encourage joint planning, and promote the interchange of data and reports among investigators in the field of end-stage renal disease. No person shall be selected to participate in such program who is eligible for services for such disease under any other provision of law.

[204-b](5) Conduct of a program for international rehabilitation research, demonstration, and training for the purpose of developing new knowledge and methods in the rehabilitation of individuals with handicaps in the United States, cooperating with and assisting in developing and sharing information found useful in other nations in the rehabilitation of individuals with handicaps, and initiating a program to exchange experts and technical assistance in the field of rehabilitation of individuals with handicaps with other nations as a means of increasing the levels of skill of rehabilitation personnel.

[204-b](6) Conduct of a research program concerning the use of existing telecommunications system (including telephone, television, satellite, radio, and other similar systems) which have the potential for substantially improving service delivery methods, and the development of appropriate programming to meet the particular needs of individuals with handicaps.

[204-b](7) Conduct of a program of joint projects with the National Institutes of Health, the National Institute of Mental Health, the Health Services Administration, the Administration on Aging, the National Science Foundation, the Veterans' Administration, the Department of Health and Human Services, the National Aeronautics and Space Administration, other Federal agencies, and private industry in areas of joint interest involving rehabilitation.

[204-b](8) Conduct of a program of research related to the rehabilitation of children with handicaps and of individuals with handicaps who are aged sixty or older except that research concerning Indian Americans with handicaps shall include those 55 and older.

[204-b](9) Conduct of a research program to develop and demonstrate innovative methods to attract and retain professionals to serve in rural areas in the rehabilitation of individuals with handicaps including individuals with severe handicaps.

[204-b](10) Conduct of a model research and demonstration project designed to assess the feasibility of establishing a center for producing and distributing to deaf individuals captioned video cassettes providing a

broad range of educational, cultural, scientific, and vocational programming.

[204-b](11) Conduct of a model research and demonstration program to develop innovative methods of providing services for preschool age children with handicaps, including the following:

[204-b-11](A) early intervention, parent counseling, infant stimulation, early identification, diagnosis, and evaluation of children with severe handicaps up to the age of five, with a special emphasis on children with severe handicaps up to the age of three;

[204-b-11](B) such physical therapy, language development, pediatric, nursing, psychological, and psychiatric services as are necessary for such children; and

[204-b-11](C) appropriate services for the parents of such children, including psychological and psychiatric services, parent counseling, and training.

[204-b](12) Conduct of a model research and training program under which model training centers shall be established to develop and use more advanced and effective methods of evaluating and developing the employment potential of individuals with handicaps, including programs which--

[204-b-12](A) provide training and continuing education for personnel involved with the employment of individuals with handicaps;

[204-b-12](B) develop model procedures for testing and evaluating the employment potential of individuals with handicaps;

[204-b-12](C) develop model training programs to teach individuals with handicaps skills which will lead to appropriate employment;

[204-b-12](D) develop new approaches for job placement of individuals with handicaps, including new followup procedures relating to such placement; and

[204-b-12](E) provide information services regarding education, training, employment, and job placement for individuals with handicaps.

[204-b](13) Conduct of a rehabilitation research program under which financial assistance is provided in order to

[204-b-13](A) test new concepts and innovative ideas,

[204-b-13](B) demonstrate research results of high potential benefits,

[204-b-13](C) purchase prototype aids and devices for evaluation,

[204-b-13](D) develop unique rehabilitation training curricula, and

[204-b-13](E) be responsive to special initiatives of the Director.

No single grant under this paragraph may exceed \$50,000 in any fiscal year and all payments made under this paragraph in any fiscal year may not exceed 5 percentum of the amount available under section 204 to the National Institute on Disability and Rehabilitation Research in any fiscal year. Regulations and administrative procedures with respect to financial assistance under this paragraph shall, to the maximum extent possible, be expedited.

[204-b](14) Conduct of studies of the rehabilitation needs of American Indian populations and of effective mechanisms for the delivery of rehabilitation services to Indians residing on and off reservations.

[204-b](15) Conduct of a demonstration program under which one or more projects national in scope shall be established to develop procedures to provide incentives for the development, manufacturing, and marketing of orphan technological devices designed to enable individuals with handicaps to achieve independence and access to gainful employment.

[204](c) The provisions of section 306 shall apply to assistance provided under this section, unless the context indicates to the contrary.

[204](d)(1) In carrying out evaluations of research demonstration and related projects under this section, the Director is authorized to make arrangements for site visits to obtain information on the accomplishments of the projects.

[204-d](2) The Director shall not make a grant under this section which exceeds \$299,999 unless the peer review of the grant application has included a site visit.

TITLE III -- SUPPLEMENTARY SERVICES AND FACILITIES

PART A -- Construction and Training Programs.

SEC. 300. DECLARATION OF PURPOSE

The purpose of this title is to--

- [300](1) authorize grants and contracts to assist in the construction and initial staffing of rehabilitation facilities and authorize such staffing as the Commissioner deems appropriate;
- [300](2) authorize grants and contracts to assist in the provision of vocational training services to individuals with handicaps;
- [300](3) authorize grants for special projects and demonstrations which hold promise of expanding or otherwise improving rehabilitation services to individuals with handicaps, including individuals with spinal cord injuries, older blind individuals, and deaf individuals whose maximum vocational potential has not been reached, which experiment with new types of patterns of services or devices for the rehabilitation of individuals with handicaps (including opportunities for new careers for individuals with handicaps, and for other individuals in programs serving individuals with handicaps) and which provide vocational rehabilitation services to migratory agricultural workers with handicaps or seasonal farmworkers with handicaps; and
- [300](4) establish uniform grant and contract requirements for programs assisted under this title and certain other provisions of this Act.

SEC. 301. GRANTS FOR CONSTRUCTION OF REHABILITATION FACILITIES

[301](a) For the purpose of making grants and contracts under this section for construction of rehabilitation facilities, staffing, and planning assistance, there is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990, and 1991. Amounts so appropriated shall remain available for expenditure with respect to construction projects funded or staffing grants made under this section prior to October 1, 1992.

[301](b)(1) The Commissioner is authorized to make grants to assist in meeting the costs of construction of public or nonprofit rehabilitation facilities. Such grants may be made to States and public or nonprofit organizations and agencies for projects for which applications are approved by the Commissioner under this section.

[301-b](2) To be approved, an application for a grant for a construction project under this section must conform to the provisions of section 306.

[301-b](3) The amount of a grant under this section with respect to any construction project in any State shall be equal to the same percentage of the cost of such project as the Federal share which is applicable in the case of rehabilitation facilities (as defined in section 645(g) of the Public Health Service Act (42 U.S.C. 291o(a)), in such State except that if the Federal share with respect to rehabilitation facilities in such State is determined pursuant to subparagraph (b)(2) of section 645 of such Act (42 U.S.C. 291o(b)(2)), the percentage of the cost for purposes of this section shall be determined in accordance with regulations prescribed by the Commissioner designed to achieve as nearly as practicable results comparable to the results obtained under such subparagraph.

[301](c) The Commissioner is also authorized to make grants to assist in the staffing of any public or nonprofit rehabilitation facility constructed after the date of enactment of this section (whether or not such construction was financed with the aid of a grant under this section) by covering part of the

costs (determined in accordance with regulations the Commissioner shall prescribe) of compensation of professional or technical personnel of such facility during the period beginning with the commencement of the operation of such facility and ending with the close of four years and three months after the month in which such operation commenced. Such grants with respect to any facility may not exceed 75 per centum of such costs for the period ending with the close of the fifteenth month following the month in which such operation commenced, 60 per centum of such costs for the first year thereafter, 45 per centum of such costs for the second year thereafter, and 30 per centum of such costs for the third year thereafter.

[301](d) The Commissioner is also authorized to make grants upon application approved by the State agency designed under section 101 to administer the State plan, to public or nonprofit agencies, institutions, or organizations to assist them in meeting the cost of planning rehabilitation facilities and the services to be provided by such facilities.

SEC. 302. VOCATIONAL TRAINING SERVICES FOR INDIVIDUALS WITH HANDICAPS.

[302](a) For the purpose of making grants and entering into contracts under this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.

[302](b)(1) The Commissioner is authorized to make grants to States and public or nonprofit organizations and agencies to pay up to 90 per centum of the cost of projects for providing vocational training services to individuals with handicaps, especially those with the most severe handicaps, in public or nonprofit rehabilitation facilities.

[302-b](2)(A) Vocational training services for purposes of this subsection shall include training with a view toward career advancement; training in occupational skills; related services, including work evaluation, work testing, provision of occupational tools and equipment required by the individual to engage in such training, and job tryouts; and payment of weekly allowances to individuals receiving such training and related services.

[302-b-2](B) Such allowances may not be paid to any individual for any period in excess of two years, and such allowances for any week shall not exceed \$30 plus \$10 for each of the individual's dependents, or \$70, whichever is less. In determining the amount of such allowances for any individual, consideration shall be given to the individual's need for such an allowance, including any expenses reasonably attributable to receipt of training services, the extent to which such an allowance will help assure entry into and satisfactory completion of training, and such other factors, specified by the Commissioner, as will promote such individual's capacity to engage in gainful and suitable employment.

[302-b](3) The Commissioner may make a grant for a project pursuant to this subsection only if the Commissioner determines that

[302-b-3](A) the purpose of such project is to prepare individuals with handicaps, especially those with the most severe handicaps, for gainful and suitable employment, including supported employment;

[302-b-3](B) the individuals to receive training services under such project will include only those who have been determined to be suitable for and in need of such training services by the State agency or agencies designated as provided in section 101(a)(1) of the State in which the rehabilitation facility is located;

[302-b-3](C) the full range of training services will be made available to each such individual, to the extent of that individual's need for such services; and

[302-b-3](D) the project, including the participating rehabilitation facility and the training services provided, meets such other requirements as the

Commissioner may prescribe in regulations for carrying out the purposes of this subsection.

- [302](c)(1) The Commissioner is authorized to make grants to public or nonprofit rehabilitation facilities, or to an organization or combination of such facilities, to pay the Federal share of the cost of projects to analyze, improve, and increase their professional services to individuals with handicaps, their management effectiveness, or any other part of their operations affecting their capacity to provide employment and services for such individuals.
- [302-c](2) No part of any grant made pursuant to this subsection may be used to pay costs of acquiring, constructing, expanding, remodeling, or altering any building.

SEC. 303. LOAN GUARANTEES FOR REHABILITATION FACILITIES

- [303](a) It is the purpose of this section to assist and encourage the provision of needed facilities for programs for individuals with handicaps primarily served by State rehabilitation programs.
- [303](b) The Commissioner may, in accordance with this section and subject to section 306, guarantee the payment of principal and interest on loans made to nonprofit private entities by non-Federal lenders and by the Federal Financing Bank for the construction of rehabilitation facilities, including equipment used in their operation.
- [303](c) In the case of a guarantee of any loan to a nonprofit private entity under this section, the Commissioner shall pay, to the holder of such loan and for and on behalf of the project for which the loan was made, amounts sufficient to reduce by 2 percent per annum the net effective interest rate otherwise payable on such loan. Each holder of a loan which is guaranteed under this section shall have a contractual right to receive from the United States interest payments required by the preceding sentence.
- [303](d) The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued, or which have been directly made, may not exceed \$100,000,000.
- [303](e)(1) The Commissioner may not approve a loan guarantee for a project under this section unless the Commissioner determines that
- [303-e-1](A) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Commissioner determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States, and
- [303-e-1](B) the loan would not be available on reasonable terms and conditions without the guarantee under this section.
- [303-e](2)(A) The United State shall be entitled to recover from the applicant for a loan guarantee under this section the amount of any payment made pursuant to such guarantee, unless the Commissioner for good cause waives such right of recovery. Upon making any such payment, the United State shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.
- [303-e-2](B) To the extent permitted by subparagraph (C), any terms and conditions applicable to a loan guarantee under this section (including terms and conditions imposed under paragraph (1)) may be modified by the Commissioner to the extent considered consistent with the interests of the United States.
- [303-e-2](C) Any loan guarantee made by the Commissioner under this section shall be incontestable

[303-e-2-C](i) in the hands of an applicant on whose behalf such guarantee is made unless the applicant engaged in fraud or misrepresentation in securing such guarantee and

[303-e-2-C](ii) as to any person (or a successor in interest) who makes or contracts to make a loan to such applicant in reliance thereon unless such person (or a successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

[303-e-2](D) Guarantees of loans under this section shall be subject to such further terms and conditions as the Commissioner considers necessary to assure that the purposes of this section will be achieved.

[303](f)(1) There is established in the Treasury a loan guarantee fund (hereinunder in this subsection referred to as the "fund") which shall be available to the Commissioner without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts--

[303-f-1](A) to enable the Commissioner to discharge the responsibilities under loan guarantees issued under this section; and

[303-f-1](B) for payment of interest under subsection (c) on loans guaranteed under this section.

There are authorized to be appropriated such amounts as may be necessary to provide the sums required for the fund. There shall also be deposited in the fund amounts received by the Commissioner in connection with loan guarantees under this section and other property or assets derived by the Commissioner from operations respecting such loan guarantees, including any money derived from the sale of assets.

[303-f](2)(A) If at any time the sums in the fund are insufficient to enable the Commissioner--

[303-f-2-A](i) to make payments of interest under subsection (c); or

[303-f-2-A](ii) to otherwise comply with guarantees under this section of loans to nonprofit private entities;

the Commissioner is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Commissioner with the approval of the Secretary of the Treasury.

[303-f-2](B) Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations.

[303-f-2](C) The Secretary of the Treasury shall purchase any notes and other obligations issued under this paragraph, and for that purpose the Secretary may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purposes for which securities may be issued under that Act are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by the Secretary under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as a public debt transaction of the United States.

[303-f-2](D) Sums borrowed under this paragraph shall be deposited in the fund and redemption of such notes and obligations shall be made by the Commissioner from the fund.

SEC. 304. TRAINING

[304](a) The Commissioner may make grants to and contracts with States and

public or nonprofit agencies and organizations, including institutions of higher education, to pay part of the cost of projects for training, traineeships, and related activities designed to assist in increasing the numbers of qualified personnel trained in providing vocational, medical, social, and psychological rehabilitation services to individuals with handicaps, including

[304-a](1) personnel specially trained in providing employment assistance to individuals with handicaps through job development and job placement services,

[304-a](2) personnel specifically trained to identify, assess, and meet the individual rehabilitation needs of individuals with severe handicaps,

[304-a](3) personnel specifically trained to deliver services to individuals who may benefit from receiving comprehensive services for independent living, personnel specifically trained to deliver services in client assistance programs, and

[304-a](4) personnel trained in performing other functions necessary to the development of such services. In carrying out the provisions of this subsection+h the Commissioner shall, in addition to furnishing training in the services provided under this Act to rehabilitation counselors furnish training to such counselors in the applicability of the provisions of section 504.

Recipients of grants or contracts under this section shall give due regard to the training of individuals with handicaps as part of the effort to increase the number of qualified personnel available to provide rehabilitation services.

[304](b)(1) In making such grants or contracts, funds made available for any year shall be targeted to areas of personnel shortage which may include projects in rehabilitation engineering, rehabilitation medicine, rehabilitation nursing, rehabilitation counseling, rehabilitation social work, rehabilitation psychiatry, rehabilitation psychology, rehabilitation dentistry, physical therapy, occupational therapy, speech pathology and audiology, physical education, therapeutic recreation, workshop and facility administration, prosthetics and orthotics, specialized personnel in providing services to blind and deaf individuals, specialized personnel in providing job development and job placement services for individuals with handicaps, specialized personnel in providing employment training for supported employment, other specialized personnel for those individuals with handicaps, recreation for individuals with handicaps, and other fields contributing to the rehabilitation of individuals with handicaps, including homebound and institutionalized individuals and individuals with handicaps with limited English-speaking ability.

[304-b](2)(A) Except as provided in subparagraph (B), no grant under this section may be used to provide any one course of study to an individual for a period of more than four years.

[304-b-2](B) If the grant recipient determines that an individual has a handicap which seriously affects the completion of training under this section, the grant recipient may modify the limitation under subparagraph (A).

[304-b](3)(A) A recipient of a grant or contract under this section shall provide assurances that each individual who receives a scholarship utilizing funds provided under such grant or contract shall enter into an agreement with the recipient under which the individual shall---

[304-b-3-A](i) within the ten year period after completing the training for which the scholarship was awarded, maintain employment in a non-profit rehabilitation or related agency, or in a State rehabilitation agency, on a full time basis for a period of not less than two years for each year for which assistance was

- received; and
- [304-b-3-A](ii) repay all or part of any scholarship received, plus interest, if the individual does not fulfill the requirements of clause (i), except as the Commissioner by regulation may provide for repayment exceptions and deferrals.
- [304-b-3](B) The Commissioner shall be responsible for the enforcement of each agreement entered into under subparagraph (A) upon completion of training under such subparagraph.
- [304](c) The Commissioner shall evaluate the impact of the training programs conducted under this section, shall determine training needs for qualified personnel necessary to provide services to individuals with handicaps, and shall develop a long-term rehabilitation manpower plan designed to target resources on areas of personnel shortage. The commissioner shall prepare and submit to the Congress, simultaneously with the budget submission for the succeeding fiscal year for the Rehabilitation Services Administration, a report, setting forth and justifying in detail how the training funds for the fiscal year prior to such submission are allocated by professional discipline and other program areas. The report shall also contain findings on personnel shortages, how funds proposed for the succeeding fiscal year will be allocated under the President's budget proposal, and how the findings of personnel shortages justify the allocations.
- [304](d)(1) For the purpose of training a sufficient number of interpreters to meet the communications needs of deaf individuals, the Secretary, through the Office of Information and Resources for Individuals with Disabilities, may award grants under this section to any public or private nonprofit agency or organization to establish interpreter training programs or to provide financial assistance for ongoing interpreter training programs. Not more than twelve programs shall be established or assisted by grants under this section. The Secretary shall award grants for programs in such geographic areas throughout the United States as the Secretary considers appropriate to best carry out the purpose of this section. Priority shall be given to public or private nonprofit agencies or organizations with existing programs that have demonstrated their capacity for providing interpreter training services.
- [304-d](2) No grant shall be awarded under this section unless the applicant has submitted an application to the Secretary in such form, and in accordance with such procedures, as the Secretary may require. Any such application shall--
- [304-d-2](A) describe the manner in which an interpreter training program would be developed and operated during the five-year period following the award of any grant under this section;
- [304-d-2](B) demonstrate the applicant's capacity or potential for providing training for interpreters for deaf individuals;
- [304-d-2](C) provide assurances that any interpreter trained or retrained under such program shall meet such minimum standards of competency as the Secretary may establish for purposes of this section;
- [304-d-2](D) provide assurances that
- [304-d-2-D](i) to the extent appropriate, the applicant shall provide for the training or retraining (including short-term and in-service training) of teachers who are involved in providing instruction to deaf individuals but who are not certified as teachers of deaf individuals, and
- [304-d-2-D](ii) funds for such inservice training shall be provided under this section only through funds appropriated under the Education of the Handicapped Act; and
- [304-d-2](E) contain such other information as the Secretary may require.
- [304](e)(1) The Commissioner is authorized to provide technical assistance to

State rehabilitation agencies and rehabilitation facilities, directly or through contracts with State vocational rehabilitation agencies or non-profit organizations.

[304-e](2) An expert or consultant appointed or serving under contract pursuant to this section shall be compensated at a rate subject to approval of the Commissioner which shall not exceed the daily rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code. Such an expert or consultant may be allowed travel and transportation expenses in accordance with section 5703 of Title 5, the United States Code.

[304](f) There are authorized to be appropriated to carry out this section \$31,000,000 for the fiscal year 1987, \$33,000,000 for the fiscal year 1988, \$35,000,000 for the fiscal year 1989, \$37,000,000 for the fiscal year 1990, and \$38,517,000 for the fiscal year 1991. There are further authorized to be appropriated for each such fiscal year such additional sums as the Congress may determine to be necessary to carry out this section.

SEC. 305. COMPREHENSIVE REHABILITATION CENTERS

[305](a)(1) In order to provide a focal point in communities for the development and delivery of services designed primarily for persons with handicaps, the Commissioner may make grants to any designated State unit to establish and operate comprehensive rehabilitation centers. The centers shall be established in order to provide a broad range of services to individuals with handicaps, including information and referral services, counseling services, and job placement, health, educational, social, and recreational services, as well as to provide facilities for recreational activities.

[305-a](2) To the maximum extent practicable, such centers shall provide, upon request, to local governmental units and other public and private nonprofit entities located in the area such information and technical assistance (including support personnel such as interpreters for the deaf) as may be necessary to assist those entities in complying with this Act, particularly the requirements of section 504.

[305](b) No grant may be made under this section unless an application therefor has been submitted to and approved by the Commissioner. The Commissioner may not approve an application for a grant unless the application--

[305-b](1) contains assurances that the designated State unit will use funds provided by such grant in accordance with subsections (c) and (d); and

[305-b](2) contains such other information, and is submitted in such form and in accordance with such procedures, as the Commissioner may require.

[305](c)(1) The designated State unit may--

[305-c-1](A) in accordance with subsection (e) make grants to units of general purpose local government or to other public or nonprofit private agencies or organizations and may make contracts with any agency or organization to pay not to exceed 80 percent of the cost of--

[305-c-1-A](i) leasing facilities to serve as comprehensive rehabilitation centers;

[305-c-1-A](ii) expanding, remodeling, or altering facilities to the extent necessary to adapt them to serve as comprehensive rehabilitation centers;

[305-c-1-A](iii) operating such centers; or

[305-c-1-A](iv) carrying out any combination of the activities specified in this subparagraph; and

[305-c-1](B) directly carry out the activities described in subparagraph (A), except that not more than 80 percent of the costs of providing any comprehensive rehabilitation center may be provided from funds under

this section.

[305-c](2) Funds made available to any designated State unit under this section for the purpose of assisting in the operation of a comprehensive rehabilitation center may be used to compensate professional and technical personnel required to operate the center and to deliver services in the center, and to provide equipment for the center.

[305](d)(1) The designated State unit may approve a grant or enter into a contract under subsection (c) only if the application for such grant or contract meets the requirements specified in paragraphs (1),(2),(4), and (5) of section 306(b) and if the application contains assurances that any facility assisted by such grant or contract shall be in reasonably close proximity to the majority of individuals eligible to use the comprehensive rehabilitation center.

[305-d](2) Any designated State unit which directly provides for comprehensive rehabilitation centers under subsection (c)(1)(B) shall use funds under this section in the same manner as any other grant recipient is required to use such funds.

[305](e) If within 20 years after the completion of any construction project for which funds have been paid under this section--

[305-e](1) the owner of the facility ceases to be a public or nonprofit private agency or organization, or

[305-e](2) the facility ceases to be used for the purposes for which it was leased or constructed (unless the Commissioner determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to do so).

the United States shall be entitled to recover from the grant recipient or other owner of the facility an amount which bears the same ratio to the value of the facility (or so much thereof as constituted an approved project or projects) at the time the United States seeks recovery as the amount of such Federal funds bore to the cost of renovating the facility under subsection (c)(1)(A)(ii). Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated.

[305](f) The requirements of section 306 shall not apply to funds allotted under this section, except that subsections (g) and (h) of such section shall be applicable with respect to such funds.

[305](g) There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.

SEC. 306. GENERAL GRANT AND CONTRACT REQUIREMENTS

[306](a) The provisions of this section shall apply to all projects approved and assisted under this title, except as otherwise provided in section 305(f). The Commissioner shall insure compliance with this section prior to making any grant or entering into any contract or agreement under this title, except projects authorized under section 302.

[306](b) To be approved, an application for assistance for a construction project, or for a project which involves construction, under this title must--

[306-b](1) contain or be supported by reasonable assurance that

[306-b-1](A) for a period of not less than twenty years after completion of construction of the project it will be used as a public or nonprofit facility,

[306-b-1](B) sufficient funds will be available to meet the non-Federal share of the cost of construction of the project, and

[306-b-1](C) sufficient funds will be available, when construction of the project is completed, for its effective use for its intended purpose;

[306-b](2) provide that Federal funds provided to any agency or organization

under this title will be used only for the purposes for which provided and in accordance with the applicable provisions of this section and the section under which such funds are provided;

[306-b](3) provide that the agency or organization receiving Federal funds under this title will make an annual report to the Commissioner, which the Commissioner shall submit to the Secretary for inclusion (in summarized form) in the annual report submitted to the Congress under section 13;

[306-b](4) be accompanied or supplemented by plans and specifications which have been approved by the Board established by section 502, in which due consideration shall be given to excellence of architecture and design, and to the inclusion of works of art (not representing more than 1 per centum of the cost of the project), and which comply with regulations prescribed by the Commissioner relating to minimum standards of construction and equipment (promulgated with particular emphasis on securing compliance with the requirements of the Architectural Barriers Act of 1968 (Public Law 90-480)), and with regulations of the Secretary of Labor relating to occupational health and safety standards for rehabilitation facilities; and

[306-b](5) contain or be supported by reasonable assurance that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction aided by payments pursuant to any grant under this section will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a--276a-5); and the Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 2 of the Act of June 13, 1934, as amended (42 U.S.C. 276c).

[306](c) Upon approval of any application for a grant or contract for a project under this title, the Commissioner shall reserve, from any appropriation available therefore, the amount of such grant or contract determined under this title. In case an amendment to an approved application is approved, or the estimated cost of a project is revised upward, any additional payment with respect thereto may be made from the appropriation from which the original reservation was made or the appropriation for the fiscal year in which such amendment or revision is approved.

[306](d) If, within twenty years after completion of any construction project for which funds have been paid under this title, the facility shall cease to be a public or nonprofit facility, the United States shall be entitled to recover from the applicant or other owner of the facility the amount bearing the same ratio to the then value (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated) of the facility, as the amount of the Federal participation bore to the cost of construction of such facility.

[306](e) Payment of assistance or reservation of funds made pursuant to this title may be made (after necessary adjustment on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Commissioner may determine.

[306](f) A project for construction of a rehabilitation facility which is primarily a workshop may, where approved by the Commissioner as necessary to the effective operation of the facility, include such construction as may be necessary to provide residential accommodations for use in connection with the rehabilitation of individuals with handicaps.

[306](g) No funds provided under this title may be used to assist in the construction of any facility which is or will be used for religious worship or any sectarian activity.

[306](h) When, in any State, funds provided under this title will be used for

providing direct services to individuals with handicaps or for establishing facilities which will provide such services, such services must be carried out in a manner not inconsistent with the State plan approved pursuant to section 101.

[306](i) Prior to making any grant or entering into any contract under this title, the Commissioner shall afford reasonable opportunity to the appropriate State agency or agencies designated pursuant to section 101 to comment on such grant or contract.

PART B--Special Projects and Supplementary Services.

SEC. 310. AUTHORIZATION OF APPROPRIATIONS

[310](a) For the purpose of carrying out this part (other than sections 311(d), 311(e), and 316), there are authorized to be appropriated \$15,860,000 for fiscal year 1987, \$16,790,000 for fiscal year 1988, \$17,800,000 for fiscal year 1989, \$18,900,000 for fiscal year 1990, and \$19,675,000 for fiscal year 1991.

[310](b) Of the amounts appropriated for any fiscal year under subsection (a), 5 percent of such amount shall be available in such fiscal year only for the purpose of making grants under section 312. There is further authorized to be appropriated for each such fiscal year such additional amount as may be necessary to equal, when added to the amount made available for the purpose of making grants under section 312, an amount of \$5,000,000 for each such fiscal year.

SEC. 311. SPECIAL DEMONSTRATION PROGRAMS

[311](a) Subject to the provisions of section 306, the Commissioner may make grants to States and to public or nonprofit agencies and organizations to pay part or all of the costs of special projects and demonstrations (including related research and evaluation) for--

[311-a](1) establishing programs and, where appropriate, constructing facilities for providing, vocational rehabilitation services, which hold promise of expanding or otherwise improving rehabilitation services to individuals with handicaps (especially those with the most severe handicaps), including blind or deaf individuals, irrespective of age or vocational potential, who can benefit from comprehensive services;

[311-a](2) applying new types or patterns of services or devices for individuals with handicaps (including programs for providing individuals with handicaps, or other individuals in programs servicing individuals with handicaps, with opportunities for new careers);

[311-a](3) operating programs and, where appropriate, renovating and constructing facilities to demonstrate methods of making recreational activities fully accessible to individuals with handicaps; and

[311-a](4) operating programs to meet the special needs of isolated populations of individuals with handicaps, particularly among American Indians residing on or outside of reservations.

The Director of the National Institute on Disability and Rehabilitation Research may make grants to States and public or nonprofit agencies and organizations to pay part or all of the costs of special projects and demonstrations for spinal cord injuries.

[311](b) Any project or demonstration assisted by a grant under this section which provides services to individuals with spinal cord injuries shall--

[311-b](1) establish, on an appropriate regional basis, a multidisciplinary system of providing vocational and other rehabilitation services, specifically designed to meet the special needs of individuals with spinal cord injuries, including acute care as well as periodic inpatient or outpatient followup and services;

[311-b](2) demonstrate and evaluate the benefits to individuals with spinal

cord injuries served in, and the degree of cost effectiveness of such a regional system;

[311-b](3) demonstrate and evaluate existing, new, and improved methods and equipment essential to the care, management, and rehabilitation of individuals with spinal cord injuries; and

[311-b](4) demonstrate and evaluate methods of community outreach for individuals with spinal cord injuries and community education in connection with the problems of such individuals in areas such as housing, transportation, recreation, employment, and community activities.

The Director of the National Institute on Disability and Rehabilitation Research shall coordinate each grant made under this subsection with the commissioner.

[311](c)(1) The Commissioner may make grants to public and nonprofit agencies and organizations to pay part or all of the costs of special projects and demonstrations including research and evaluation for youths with handicaps to provide job training and prepare them for entry into the labor force. Such projects shall be designed to demonstrate cooperative efforts between local educational agencies, business and industry, vocational rehabilitation programs, and organizations representing labor and organizations responsible for promoting or assisting in local economic development.

[311-c](2) Services under this subsection may include--

[311-c-2](A) jobs search assistance;

[311-c-2](B) on-the-job training;

[311-c-2](C) job development including work site modification and use of advance learning technology for skills training;

[311-c-2](D) dissemination of information on program activities to business and industry; and

[311-c-2](E) follow-up services for individuals placed in employment.

[311-c](3) The Commissioner shall assure that projects shall be coordinated with other projects assisted under section 626 of the Education of the Handicapped Act.

[311](d)(1)(A) The Commissioner may make grants to public and non-profit rehabilitation facilities, designated State units, and other public and private agencies and organizations for the cost of developing special projects and demonstrations providing supported employment.

[311-d-1](B) Not less than one such grant shall be nationwide in scope. The grant shall---

[311-d-1-B](i) identify community-based models that can be replicated,

[311-d-1-B](ii) identify impediments to the development of supported employment programs (including funding and cost considerations), and

[311-d-1-B](iii) develop a mechanism to explore the use of existing community-based rehabilitation facilities as well as other community-based programs.

[311-d](2)(A) The Commissioner may make grants to public agencies and non-profit private organizations for the cost of providing technical assistance to States in implementing part C of title VI of this Act.

[311-d-2](B) Not less than one such grant shall be nationwide in scope. Each eligible applicant must have experience in training and provision of supported employment services.

[311-d](3)(A) On June 1, 1988, and on each subsequent June 1, the Commissioner shall submit a report to Congress on activities assisted under paragraph (1) for the preceding fiscal year which includes---

[311-d-3-A](i) a list of the grants awarded under this subsection;

[311-d-3-A](ii) the number of individuals with severe handicaps served by each grant recipient, the average cost to provide support services to each such individual, and the average wage paid to each such

individual; and

[311-d-3-A](iii) the recommendations of the projects under paragraph (1)(B).

[311-d-3](B) Each such report shall also include activities assisted under paragraph (2) for the preceding fiscal year, including---

[311-d-3-B](i) a list of the grants awarded under paragraph (2),

[311-d-3-B](ii) the nature of the technical assistance activities undertaken, and

[311-d-3-B](iii) recommended areas where additional technical assistance is necessary.

[311-d](4) There are authorized to be appropriated to carry out the provisions of this subsection \$9,000,000 for the fiscal year 1987, \$9,520,000 for the fiscal year 1988, \$10,000,000 for the fiscal year 1989, \$10,690,000 for the fiscal year 1990, and \$11,128,000 for the fiscal year 1991.

[311](e)(1) The Commissioner, subject to the provision of section 306, shall make grants in accordance with the provisions of this subsection for the purpose of developing, expanding, and disseminating model statewide transitional planning services for youths with severe handicaps. In order to facilitate similar model transitional programs, each grantee under this subsection shall---

[311-e-1](A) collect data documenting the effectiveness of the project, including data on the outcomes of the individuals served; and

[311-e-1](B) disseminate the information to other States.

[311-e](2) No grant may be made under this subsection unless an application is submitted to the Commissioner at such time, in such form, and in accordance with such procedures as the Commissioner may require.

[311-e](3)(A) One grant under this subsection shall be made to a public agency in a predominantly urban state in New England for an existing model statewide transitional planning services program.

[311-e-3](B) The application for the grant specified in subparagraph (A) shall---

[311-e-3-B](i) provide assurances that a single office or agency of the State has responsibility for managing the referral process assigned under the model program for which assistance is sought;

[311-e-3-B](ii) provide assurances that the schools involved, in consultation with families, will initiate a referral at least two years prior to the anticipated date on which each such student will finish courses of study at the school;

[311-e-3-B](iii) provide assurances that individualized transition plans will be developed by the schools and adult providers working cooperatively;

[311-e-3-B](iv) provide assurances that case management responsibilities, together with appropriate tracking of each case designed to report on the progress of the individual with handicaps, will be a part of the responsibility of the office or agency designated under clause (i); and

[311-e-3-B](v) contain such other assurances as the Commissioner may reasonably require.

[311-e](4)(A)(i) A second grant authorized by this subsection shall be made to a public agency in a predominantly rural western State.

[311-e-4-A](ii) A third grant authorized by this subsection shall be made to a public agency or a non-profit private organization in a predominantly rural southwestern State.

[311-e-4](B) Each application for a grant submitted pursuant to subparagraph (A) of this paragraph shall describe model transitional planning services for both youths with severe handicaps and youths with mild handicaps designed to develop procedures, strategies, and techniques

which may be replicated successfully in other rural States.

[311-e](5) There are authorized to be appropriated \$450,000 for fiscal year 1987, \$475,830 for fiscal year 1988, \$504,427 for fiscal year 1989, \$535,550 for fiscal year 1990, and \$557,000 for fiscal year 1991 to carry out the provisions of this subsection.

SEC. 312. MIGRATORY WORKERS

The Commissioner, subject to the provisions of section 306, is authorized to make grants to any State agency designated pursuant to a State plan approved under section 101, or to any local agency participating in the administration of such a plan, to pay up to 90 per centum of the cost of projects or demonstrations for the provision of vocational rehabilitation services to individuals with handicaps, as determined in accordance with rules prescribed by the Secretary of Labor, who are migratory agricultural workers or seasonal farmworkers, and to members of their families (whether or not such family members are individuals with handicaps) who are with them, including maintenance and transportation of such individuals and members of their families where necessary to the rehabilitation of such individuals. Maintenance payments under this section shall be consistent with any maintenance payments made to other individuals with handicaps in the State under this Act. Such grants shall be conditioned upon satisfactory assurance that in the provision of such services there will be appropriate cooperation between the grantee and other public or nonprofit agencies and organizations having special skills and experience in the provision of services to migratory agricultural workers, seasonal farmworkers, or their families. This section shall be administered in coordination with other programs serving migrant agricultural workers and seasonal farmworkers, including programs under title I of the Elementary and Secondary Education Act of 1965, section 311 of the Economic Opportunity Act of 1964, the Migrant Health Act, and the Farm Labor Contractor Registration Act of 1963.

SEC. 314. READER SERVICES FOR THE BLIND

[314](a) The Commissioner may award grants to States or to private nonprofit agencies or organizations of national scope (as so determined by the Commissioner) to--

- [314-a](1) provide reading services to blind persons who are not otherwise eligible for such services through other State or Federal programs; and
- [314-a](2) expand the quality and scope of reading services available to blind persons, and to assure to the maximum extent possible that the reading services provided under this Act will meet the reading needs of blind persons attending institutions providing elementary, secondary, or post-secondary education, and will be adequate to assist blind persons to obtain and continue in employment.

Any State which receives a grant under this section shall administer the reading services for which such grant is awarded through the designated State unit of the State.

[314](b) No grant shall be awarded under this section unless the applicant has submitted an application to the Secretary in such form, at such time, and containing such information as the Secretary may require.

[314](c) For purposes of this section, the term "reading services" mean--

- [314-c](1) the employment of persons who, by reading aloud, can afford blind persons ready access to printed information;
- [314-c](2) the transcription of printed information into braille or sound recordings if such transcription is performed pursuant to individual requests from blind persons for such services;
- [314-c](3) the storage and distribution of braille materials and sound recordings;

- [314-c](4) the purchase, storage, and distribution of equipment and materials necessary for the production, duplication, and reproduction of braille materials and sound recordings;
- [314-c](5) the purchase, storage, and distribution of equipment to blind persons to provide them with individual access to printed materials by mechanical or electronic means; and
- [314-c](6) radio reading services for blind persons.

SEC. 315. INTERPRETER SERVICES FOR THE DEAF

- [315](a) The Commissioner may make grants to designated State units to establish within each State a program of interpreter services (including interpreter referral services) which shall be made available to deaf individuals and to any public agency or private nonprofit organization involved in the delivery of assistance or services to deaf individuals.
- [315](b) No grant may be made under this section unless an application therefor is submitted to the Commissioner in such form, at such times, and in accordance with such procedures as the Commissioner may require. Such application shall--
- [315-b](1) provide assurances that the program to be conducted under this section will be operated in areas within the State which are specifically selected to provide convenient locations for the provision of services to the maximum number of deaf individuals feasible;
- [315-b](2) include a plan which describes, in sufficient detail, the manner in which interpreter referral services will be coordinated with the information and referral programs required under section 101(a)(22);
- [315-b](3) provide assurances that the program will seek to enter into contractual or other arrangements, to the extent appropriate, with private nonprofit organizations comprised of primarily hearing-impaired individuals (or private nonprofit organizations which have the primary purpose of providing assistance or services to hearing-impaired individuals) for the operation of such programs.
- [315-b](4) provide that an interpreter participating in the program shall be required to meet minimum standards established by the Commissioner; and
- [315-b](5) contain such other information as the Secretary may require.
- [315](c) Any designated State unit receiving funds under this section may provide interpreter services, without cost, for a period of not to exceed one year to any public agency or private nonprofit organization which provides assistance to deaf individuals. At the end of such period, agencies or organizations receiving such services through referrals shall reimburse the designated State unit for the costs of such services. Funds may also be used for the purchase or rental of equipment necessary to provide assistance or services to deaf individuals.
- [315](d) Funds provided to any designated State unit for any program under this section shall not be used for any administrative or related costs, nor shall such funds be used for assistance to deaf individuals who are receiving rehabilitation services under any other provision of this Act.

SEC. 316. SPECIAL RECREATIONAL PROGRAMS

- [316](a)(1) The Commissioner, subject to the provisions of section 306, shall make grants to States, public agencies and nonprofit private organizations for paying part or all of the cost of initiation of recreation programs to provide individuals with handicaps with recreational activities and related experiences to aid in the mobility, socialization, independence and community integration of such individuals. The programs authorized to be assisted under this section may include, but are not limited to, leisure education, leisure networking, leisure resource development, physical education and sports, scouting and camping, 4-H activities,

music, dancing, handicrafts, art, and homemaking. Whenever possible and appropriate, such programs and activities should be provided in settings with peers without handicaps. Programs and activities under this section shall be designed to demonstrate ways in which such programs assist in maximizing the independence and integration of individuals with handicaps.

[316-a](2) Each such grant shall be made for a minimum three-year period.

[316-a](3) No grant may be made under this section unless the agreement with respect to such grant contains provisions to assure that, to the extent possible, existing resources will be used to carry out the activities for which the grant is to be made, and that with respect to children the activities for which the grant is to be made will be conducted before or after school.

[316](b) There are authorized to be appropriated \$2,330,000 for fiscal year 1987, \$2,470,000 for fiscal year 1988, \$2,620,000 for fiscal year 1989, \$2,780,000 for fiscal year 1990, and \$2,894,000 for fiscal year 1991 to carry out this section.

TITLE IV -- NATIONAL COUNCIL ON DISABILITY

SEC. 400. ESTABLISHMENT OF NATIONAL COUNCIL ON DISABILITY

[400](a)(1) There is established within the Federal Government a National Council on Disability (hereinafter in this title referred to as the "National Council"), which shall be composed of fifteen members appointed by the President, by and with the advice and consent of the Senate. The members of the National Council shall be appointed so as to be representative of individuals with handicaps, national organizations concerned with individuals, providers and administrators of services to individuals with handicaps, individuals engaged in conducting medical or scientific research relating to individuals with handicaps, business concerns, and labor organizations. At least five members of the National Council shall be individuals with handicaps or parents or guardians of individuals with handicaps.

[400-a](2) The purpose of the National Council is to promote the full integration, independence, and productivity of individuals with handicaps in the community, schools, the workplace and all other aspects of American life.

[400](b)(1) Members of the National Council shall be appointed to serve for terms of three years, except that of the members first appointed--

[400-b-1](A) five shall serve for terms of one year,

[400-b-1](B) five shall serve for terms of two years, and

[400-b-1](C) five shall serve for terms of three years,

as designated by the President at the time of appointment.

[400-b](2) Members may be reappointed and may serve after the expiration of their terms until their successors have taken office.

[400-b](3) Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

[400](c) The President shall designate the Chairperson from among the members appointed to the National Council. The National Council shall meet at the call of the Chairperson but not less often than four times each year.

[400](d) Eight members of the National Council shall constitute a quorum and any vacancy in the National Council shall not affect its power to function.

SEC. 401. DUTIES OF NATIONAL COUNCIL

[401](a) The National Council shall--

[401-a](1) establish general policies for, and review the operation of, the National Institute on Disability and Rehabilitation Research;

[401-a](2) provide advice to the Commissioner with respect to the policies of and conduct of the Rehabilitation Services Administrator;

[401-a](3) advise the President, the Congress, the Commissioner, the appropriate Assistant Secretary of the Department of Education, and the Director of the National Institute on Disability and Rehabilitation Research on the development of the programs to be carried out under this Act;

[401-a](4) review and evaluate on a continuing basis--

[401-a-4](A) all policies, programs, and activities concerning individuals with handicaps and persons with disabilities conducted or assisted by Federal departments and agencies, including programs established or assisted under this Act or under the Developmental Disabilities Assistance and Bill of Rights Act; and

[401-a-4](B) all statutes pertaining to Federal programs which assist such individuals with handicaps and persons with disabilities; in order to assess the effectiveness of such policies, programs,

activities, and statutes in meeting the needs of individuals with disabilities;

- [401-a](5) assess the extent to which such policies, programs, and activities provide incentives or disincentives to the establishment of community-based services for individuals with handicaps, promote the full integration of such individuals in the community, in schools, and in the workplace, and contribute to the independence and dignity of such individuals;
- [401-a](6) make recommendations to the President, the Congress, the Secretary, and the Director of the National Institute on Disability and Rehabilitation Research respecting ways to improve research concerning individuals with handicaps, the administration of services for individuals with handicaps, and the methods of collecting and disseminating the findings of such research, and make recommendations for facilitating the implementation of programs based upon such findings;
- [401-a](7) submit not later than March 31 of each year (beginning in 1980) an annual report to the Congress, and the President, containing
- [401-a-7](A) a statement of the current status of research concerning individuals with handicaps in the United States,
- [401-a-7](B) a review of the activities of the Rehabilitation Services Administration and the National Institute on Disability and Rehabilitation Research, and
- [401-a-7](C) such recommendations respecting the items described in clauses (A) and (B) as the National Council considers appropriate; and
- [401-a](8) provide to the Congress on a continuing basis advice, recommendations, legislative proposals and any additional information which the Council or the Congress deems appropriate.
- [401](b)(1) Not later than January 30, 1988, and annually thereafter, the National Council shall issue a report to the President and the Congress on the progress that has been made in implementing the recommendations contained in the Council's January 30, 1986, report Toward Independence.
- [401-b](2) The reports issued pursuant to paragraph (1) shall present, as appropriate, available data on health, housing, employment, insurance, transportation, recreation, and education, and shall include appropriate information on the current status and trends in the status of individuals with disabilities.

SEC. 402. COMPENSATION OF NATIONAL COUNCIL MEMBERS

- [402](a) Members of the National Council shall be entitled to receive compensation at a rate equal to the rate of basic pay payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, including travel time, for each day they are engaged in the performance of their duties as members of the National Council.
- [402](b) Members of the National Council who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the National Council except for compensation for travel expenses as provided under subsection (c) of this section.
- [402](c) While away from their homes or regular places of business in the performance of services for the National Council, members of the National Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

SEC. 403. STAFF OF NATIONAL COUNCIL

- [403](a)(1) The National Council may appoint, without regard to the provisions of title 5, United States Code, governing appointments in

the competitive service, or the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates an Executive Director to assist the National Council to carry out its duties. The Executive Director shall be appointed from among individuals who are experienced in the planning or operation of programs for individuals with handicaps.

[403-a](2) The Executive Director is authorized to hire not to exceed 7 technical and professional employees to assist the National Council to carry out its duties.

[403](b)(1) The National Council may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code (but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay payable for grades GS-18 of the General Schedule under section 5332 of title 5, United States Code).

[403-b](2) The National Council may--

[403-b-2](A) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code;

[403-b-2](B) in the name of the Council, accept employ and dispose of, in furtherance of this Act, any money, or property, real or personal, or mixed, tangible or nontangible, received by gift, devise, bequest, or otherwise; and

[403-b-2](C) enter into contracts and cooperative agreements with Federal and State agencies, private firms, institutions, and individuals for the conduct of research and surveys, preparation of reports and other activities necessary to the discharge of the Council's duties and responsibilities.

[403-b](3) Not more than 10 per centum of the total amounts available to the National Council in each fiscal year may be used for official representation and reception.

[403](c) The Administrator of General Services shall provide to the National Council on a reimbursable basis such administrative support services as the Council may request.

SEC. 404. ADMINISTRATIVE POWERS OF NATIONAL COUNCIL

[404](a) The National council may prescribe such bylaws and rules as may be necessary to carry out its duties under this title.

[404](b) The National Council may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it deems advisable.

[404](c) The National Council may appoint advisory committees to assist the National Council in carrying out its duties. The members thereof shall serve without compensation.

[404](d) The National Council may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

SEC. 405. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to carry out this title such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.

TITLE V - MISCELLANEOUS

SEC. 500. EFFECT ON EXISTING LAW

[500](a) The Vocational Rehabilitation Act (29 U.S.C. 31 et seq.) is repealed ninety days after the date of enactment of this Act and references to such Vocational Rehabilitation Act in any other provision of law shall, ninety days after such date, be deemed to be references to the Rehabilitation Act of 1973. Unexpended appropriations for carrying out the Vocational Rehabilitation Act may be made available to carry out this Act, as directed by the President. Approved State plans for vocational rehabilitation, approved projects, and contractual arrangements authorized under the Vocational Rehabilitation Act will be recognized under comparable provisions of this Act so that there is no disruption of ongoing activities for which there is continuing authority.

[500](b) The authorizations of appropriations in the Vocational Rehabilitation Act are hereby extended at the level specified for the fiscal year 1972 for the fiscal year 1973.

SEC. 501. EMPLOYMENT OF HANDICAPPED INDIVIDUALS

[501](a) There is established within the Federal Government an Interagency Committee on Handicapped Employees (hereinafter in this section referred to as the "Committee"), comprised of such members as the President may select, including the following (or their designees whose positions are Executive Level IV or higher): the Chairman of the Equal Employment Opportunity Commission, (hereinafter in this section referred to as the 'Commission') the Administrator of Veterans' Affairs, and the Secretary of Labor, and Secretary of Education and the Secretary of Health and Human Services. The Secretary of Education and the Chairman of the Commission shall serve as co-chairpersons of the Committee. The resources of the President's Committees on Employment of People with Disabilities and on Mental Retardation shall be made fully available to the Committee. It shall be the purpose and function of the Committee

[501-a](1) to provide a focus for Federal and other employment of individuals with handicaps and to review, on a periodic basis, in cooperation with the Commission the adequacy of hiring, placement, and advancement practices with respect to individuals with handicaps by each department, agency, and instrumentality in the executive branch of Government, and to insure that the special needs of such individuals are being met; and

[501-a](2) to consult with the Commission to assist the Commission to carry out its responsibilities under subsections (b), (c), and (d) of this section. On the basis of such review and consultation, the Committee shall periodically make to the Commission such recommendations for legislative and administrative changes as it deems necessary or desirable. The Commission shall timely transmit to the appropriate committees of Congress any such recommendations.

[501](b) Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after the date of enactment of this Act, submit to the Equal Employment Opportunity Commission and to the Committee an affirmative action program plan for the hiring, placement, and advancement of individuals with handicaps in such department, agency, or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special needs of employees with handicaps are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Commission, if the Commission determines, after consultation with the Committee, that such plan provides sufficient

assurances, procedures, and commitments to provide adequate hiring, placement, and advancement opportunities for individuals with handicaps.

[501](c) The Equal Employment Opportunity Commission after consultation with the Committee, shall develop and recommend to the Secretary for referral to the appropriate State agencies, policies and procedures which will facilitate the hiring, placement, and advancement in employment of individuals who have received rehabilitation services under State vocational rehabilitation programs, veterans' programs, or any other program for individuals with handicaps including the promotion of job opportunities for such individuals. The Secretary shall encourage such State agencies to adopt and implement such policies and procedures.

[501](d) The Equal Employment Opportunity Commission after consultation with the Committee, shall, on June 30, 1974, and at the end of each subsequent fiscal year, make a complete report to the appropriate committees of the Congress with respect to the practices of and achievements in hiring, placement, and advancement of individuals with handicaps by each department, agency, and instrumentality and the effectiveness of the affirmative action programs required by subsection (b) of this section, together with recommendations as to legislation which have been submitted to the Equal Employment Opportunity Commission under subsection (a) of this section, or other appropriate action to insure the adequacy of such practices. Such report shall also include an evaluation by the Committee of the effectiveness of the activities of the Equal Employment Opportunity Commission under subsection (b) and (c) of this section.

[501](e) An individual who, as a part of an individualized written rehabilitation program under a state plan approved under this Act, participates in a program of unpaid work experience in a Federal agency, shall not, by reason thereof, be considered to be a Federal employee or to be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leaves, unemployment compensation, and Federal employee benefits.

[501](f)(1) The Secretary of Labor and the Secretary of Education are authorized and directed to cooperate with the President's Committee on Employment of the Handicapped in carrying out its functions.

[501-f](2) In selecting personnel to fill all positions on the President's Committee on Employment of People with Disabilities, special consideration shall be given to qualified individuals with handicaps.

SEC. 502. ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[502](a)(1) There is established within the Federal Government the Architectural and Transportation Barriers Compliance Board (hereinafter referred to as the "Board") which shall be composed as follows:

[502-a-1](A) Twelve members shall be appointed by the President from among members of the general public of whom six shall be individuals with handicaps

[502-a-1](B) The remaining members shall be the heads of each of the following departments or agencies (or their designees whose positions are executive level IV or higher):

- (i) Department of Health and Human Services
- (ii) Department of Transportation
- (iii) Department of Housing and Urban Development
- (iv) Department of Labor
- (v) Department of the Interior
- (vi) Department of Defense
- (vii) Department of Justice
- (viii) General Services Administration
- (ix) Veterans' Administration

- (x) United States Postal Service
- (xi) Department of Education.

The Chairperson and vice-chairperson of the Board shall be elected by majority vote of the members of the Board to serve for terms of one year. When the chairperson is a member of the general public, the vice-chairperson shall be a Federal official; and when the chairperson is a Federal official, the vice-chairperson shall be a member of the general public. Upon the expiration of the term as chairperson of a member who is a Federal official, the subsequent chairperson shall be a member of the general public; and vice versa.

[502-a](2)(A) The term of office of each appointed member of the Board shall be three years. Each year, the terms of office of four appointed members of the board shall expire.

[502-a](2)(B) A member whose term has expired may continue to serve until a successor has been appointed.

[502-a](2)(C) A member appointed to fill a vacancy shall serve for the remainder of the term to which that member's predecessor was appointed.

[502-a](3) If an appointed member of the Board becomes a Federal employee, such member may continue as a member of the Board for not longer than the sixty-day period beginning on the date the member becomes such an employee.

[502-a](4) No individual appointed under paragraph (1)(A) of this subsection who has served as a member of the Board may be reappointed to the Board more than once unless such individual has not served on the Board for a period of two years prior to the effective date of such individual's appointment.

[502-a](5)(A) Members of the Board who are not regular full-time employees of the United States shall, while serving on the business of the Board, be entitled to receive compensation at rates fixed by the President, but not to exceed the daily rate prescribed for GS-18 under section 5332 of title 5, United States Code, including travel time, for each day they are engaged in the performance of their duties as members of the Board; and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

[502-a-5](B) Members of the Board who are employed by the Federal Government shall serve without compensation, but shall be reimbursed for travel, subsistence, other necessary expenses incurred by them in carrying out their duties under this section.

[502-a](6)(A) The Board shall establish such bylaws and other rules as may be appropriate to enable the Board to carry out its functions under this Act.

[502-a-6](B) The bylaws shall include quorum requirements. The quorum requirements shall provide that

[502-a-6-B](i) a proxy may not be counted for purposes of establishing a quorum, and

[502-a-6-B](ii) not less than half the members required for a quorum shall be members of the general public appointed under paragraph (1)(A).

[502](b) It shall be the function of the Board to:

[502-b](1) insure compliance with the standards prescribed pursuant to the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968 (including the application of that Act to the United States Postal Service) including but not limited to enforcing all standards under that Act, and insuring that all waivers and modifications of standards are based upon findings of fact and are not inconsistent with the provisions of such Act and this section;

- [502-b](2) investigate and examine alternative approaches to the architectural, transportation, communication, and attitudinal barriers confronting individuals with handicaps, particularly with respect to telecommunications devices, public buildings and monuments, parks and parklands, public transportation (including air, water, and surface transportation, whether interstate, foreign, intrastate, or local), and residential and institutional housing;
- [502-b](3) determine what measures are being taken by Federal, state, and local governments and by other public or nonprofit agencies to eliminate the barriers described in clause (2) of this subsection;
- [502-b](4) promote the use of the International Accessibility Symbol in all public facilities that are in compliance with the standards prescribed by the Administrator of General Services, the Secretary of Defense, and the Secretary of Housing and Urban Development pursuant to the Architectural Barriers Act of 1968;
- [502-b](5) make to the President and to Congress reports which shall describe in detail the results of its investigations under clauses (2) and (3) of this subsection;
- [502-b](6) make to the President and to the Congress such recommendations for legislation and administration as it deems necessary or desirable to eliminate the barriers described in clause (2) of this subsection;
- [502-b](7) establish minimum guidelines and requirements for the standards issued pursuant to the Act of August 12, 1968, as amended, commonly known as the Architectural Barriers Act of 1968; and
- [502-b](8) insure that public conveyances, including rolling stock, are readily accessible to, and usable by, individuals with physical handicaps.
- [502](c) The Board shall also
- [502-c](1)(A) determine how and to what extent transportation barriers impede the mobility of individuals with handicaps and aged individuals with handicaps and consider ways in which travel expenses in connection with transportation to and from work for individuals with handicaps can be met or subsidized when such individuals are unable to use mass transit systems or need special equipment in private transportation, and
- [502-c-1](B) consider the housing needs of individuals with handicaps;
- [502-c](2) determine what measures are being taken, especially by public and other nonprofit agencies and groups having an interest in and a capacity to deal with such problems,
- [502-c-2](A) to eliminate barriers from public transportation systems (including vehicles used in such systems), and to prevent their incorporation in new or expanded transportation systems, and
- [502-c-2](B) to make housing available and accessible to individuals with handicaps or to meet sheltered housing needs; and
- [502-c](3) prepare plans and proposals for such further actions as may be necessary to the goals of adequate transportation and housing for individuals with handicaps including proposals for bringing together in a cooperative effort, agencies, organizations, and groups already working toward such goals or whose cooperation is essential to effective and comprehensive action.
- [502](d)(1) In carrying out its functions under this Act, the Board shall, directly or through grants to public or private nonprofit organizations or contracts with private nonprofit or for profit organizations, carry out its functions under subsections (b) and (c) of this section, and shall conduct investigations, hold public hearings, and issue such orders as it deems necessary to insure compliance with the provisions of the Acts cited in subsection (b). Except as provided in paragraph (3) of subsection (e), the provisions of subchapter II of chapter 5, and chapter

7 of title 5, United States Code, shall apply to procedures under this section, and an order of compliance issued by the Board shall be a final order for purposes of judicial review. Any such order affecting any Federal department, agency, or instrumentality of the United States shall be final and binding on such department, agency, or instrumentality. An order of compliance may include the withholding or suspension of Federal funds with respect to any building or public conveyance or rolling stock found not to be in compliance with standards enforced under this section. Pursuant to chapter 7 of title 5, United States Code, any complainant or participant in a proceeding under this subsection may obtain review of a final order issued in such proceeding.

[502-d](2) The Executive Director is authorized, at the direction of the Board--

[502-d-2](A) to bring a civil action in any appropriate United States district court to enforce, in whole or in part, any final order of the Board under this subsection; and

[502-d-2](B) to intervene, appear, and participate, or to appear as amicus curiae in any court of the United States or in any court of a State in civil actions that relate to this section or to the Architectural Barriers Act of 1968.

Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Executive Director may appear for and represent the Board in any civil litigation brought under this section.

[502-d](3) The Board, in consultation and coordination with other concerned Federal departments and agencies and agencies within the Department of Education shall develop standards and provide appropriate technical assistance to any public or private activity, person, or entity affected by regulations prescribed pursuant to this title with respect to overcoming architectural, transportation, and communication barriers. Any funds appropriated to any such department or agency for the purpose of providing such assistance may be transferred to the Board for the purpose of carrying out this paragraph. The Board may arrange to carry out its responsibilities under this paragraph through such other departments and agencies for such periods as the Board determines is appropriate. In carrying out its technical assistance responsibilities under this paragraph, the Board shall establish a procedure to insure separation of its compliance and technical assistance responsibilities under this section.

[502](e)(1) There shall be appointed by the Board an Executive Director and such other professional and clerical personnel as are necessary to carry out its functions under this Act. The Board is authorized to appoint as many hearing examiners as are necessary for proceedings required to be conducted under this section. The provisions applicable to hearing examiners appointed under section 3105 of title 5, United States Code, shall apply to hearing examiners appointed under this subsection.

[502-e](2) The Executive Director shall exercise general supervision over all personnel employed by the Board (other than hearing examiners and their assistants). The Executive Director shall have final authority on behalf of the Board, with respect to the investigation of alleged noncompliance and in the issuance of formal complaints before the Board, and shall have such other duties as the Board may prescribe.

[502-e](3) For the purpose of this section, an order of compliance issued by a hearing examiner shall be deemed to be an order of the Board and shall be the final order for the purpose of judicial review.

[502](f) The departments or agencies specified in subsection (a) of this section shall make available to the Board such technical, administrative,

or other assistance as it may require to carry out its functions under this section, and the Board may appoint such other advisers, technical experts, and consultants as it deems necessary to assist it in carrying out its functions under this section. Special advisory and technical experts and consultants appointed pursuant to this subsection shall, while performing their functions under this section, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the daily pay rate for a person employed as a GS-18 under section 5332 of title 5, United States Code, including travel time, and while serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

[502](g) The Board shall, at the end of each fiscal year, report its activities during the preceding fiscal year to the Congress. Such report shall include an assessment of the extent of compliance with the Acts cited in subsection (b) of this section, along with a description and analysis of investigations made and actions taken by the Board, and the reports and recommendations described in clauses (5) and (6) of subsection (b) of this section. The Board shall prepare two final reports of its activities under section (c). One such report shall be on its activities in the field of transportation barriers facing individuals with handicaps and the other such report shall be on its activities in the field of the housing needs of individuals with handicaps. The Board shall, not later than September 30, 1975, submit each such report, together with its recommendations, to the President and the Congress. The Board shall also prepare for such submissions an interim report of its activities in each such field within 18 months after the date of enactment of this Act. The Board shall prepare and submit two additional reports of its activities under subsection (c) of this section, one report on its activities in the field of transportation barriers facing individuals with handicaps and the other report on its activities in the field of the housing needs of individuals with handicaps. The two additional reports required by the previous sentence shall be submitted not later than February 1, 1988.

[502](h)(1) Within one year following the enactment of this subsection, the Board shall submit to the President and the Congress a report containing an assessment of the amounts required to be expended by States and by political subdivisions thereof to provide individuals with handicaps with full access to all programs and activities receiving Federal assistance.

(2) The Board may make grants to, or enter into contracts with, public or private organizations to carry out its duties under subsections (b) and (c). The Board may also make grants to any designated State unit for the purpose of conducting studies to provide the cost assessment required by paragraph (1). Before including in such report the findings of any study conducted for the Board under a grant or contract to provide the Board with such cost assessments, the Board shall take all necessary steps to validate the accuracy of any such findings.

[502-h-1](i) There are authorized to be appropriated for the purpose of carrying out the duties and functions of the Board under this section such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990, and 1991. but in no event shall the amount appropriated for any one fiscal year exceed \$3,000,000.

SEC. 503. EMPLOYMENT UNDER FEDERAL CONTRACTS

[503](a) Any contract in excess of \$2,500 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such

contract, the party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with handicaps as defined in section 7(8). The provisions of this section shall apply to any subcontract in excess of \$2,500 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after the date of enactment of this section.

[503](b) If any individual with handicaps believes any contractor has failed or refused to comply with the provisions of a contract with the United States, relating to employment of individuals with handicaps, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

[503](c) The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which the President shall prescribe, when the President determines that special circumstances in the national interest so require and states in writing the reasons for such determination.

SEC. 504. NONDISCRIMINATION UNDER FEDERAL GRANTS AND PROGRAMS

[504](a) No otherwise qualified individuals with handicaps in the United States, as defined in section 7(8) of this title, shall, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

[504](b) For the purposes of this section, the term "program or activity" means all of the operations of--

[504](b)(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

[504](b)(1)(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

[504](b)(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

[504](b)(2)(B) a local educational agency (as defined in section 1471(12) of title 20) system of vocational education, or other school system;

[504](b)(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship--

[504](b)(3)(A)(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

[504](b)(3)(A)(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

[504](b)(3)(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the

case of any other corporation, partnership, private organization, or sole proprietorship; or

[504](b)(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any party of which is extended Federal financial assistance.

[504](c) Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

SEC. 505. REMEDIES AND ATTORNEYS' FEES

[505](a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k)(42 U.S.C. 2000e-5(f) through (k)), shall be available, with respect to any complaint under section 501 of this Act, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

[505-a](2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 504 of this Act.

[505](b) In any action or proceeding to enforce or charge a violation of a provision of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

SEC. 506. SECRETARIAL RESPONSIBILITIES

[506](a) The Secretary may provide directly or by contract with State vocational rehabilitation agencies or experts or consultants or groups thereof, technical assistance--

[506-1](1) to persons operating rehabilitation facilities; and

[506-1](2) with the concurrence of the Board established by section 502, to any public or nonprofit agency, institution, or organization for the purpose of assisting such persons or entities in removing architectural, transportation, or communication barriers. Any concurrence of the Board under this paragraph shall reflect its consideration of the cost studies carried out by States under section 502(c)(1).

[506](b) Any such experts or consultants, while serving pursuant to such contracts, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the daily equivalent of the rate of basic pay payable for grade GS-18 of the General Schedule, under section 5332 of title 5, United States Code, including travel time, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

[506](c) The Secretary, with the concurrence of the Board and the President, may provide, directly or by contract, financial assistance to any public or nonprofit agency, institution, or organization for the purpose of

removing architectural, transportation, and communication barriers. No assistance may be provided under this paragraph until a study demonstrating the need for such assistance has been conducted and submitted under section 502(h)(2) of this title.

[506](d) In order to carry out this section, there are authorized to be appropriated such sums as may be necessary.

SEC. 507. INTERAGENCY COORDINATING COUNCIL

There shall be established an Interagency Coordinating Council (hereinafter referred to in this section as the "Council") composed of the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, the Assistant Secretary of the Interior for Indian Affairs, the Attorney General, the Chairperson of the Office of Personnel Management, the Chairperson of the Equal Employment Opportunity Commission, and the Chairperson of the Architectural and Transportation Barriers Compliance Board. The Council shall have the responsibility for developing and implementing agreements, policies, and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistencies among the operations, functions and jurisdictions of the various departments, agencies, and branches of the Federal Government responsible for the implementation and enforcement of the provisions of this title, and the regulations prescribed thereunder. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section. Nothing in this section shall impair any responsibilities assigned by any Executive Order to any Federal department, agency, or instrumentality to act as a lead Federal agency with respect to any provisions of this title.

SEC. 508. ELECTRONIC EQUIPMENT ACCESSIBILITY

[508](a)(1) The Secretary, through the Director of National Institute on Disability and Rehabilitation Research and the Administrator of General Services, in consultation with the electronics industry, shall develop and establish guidelines for electronic equipment accessibility designed to insure that individuals with handicaps may use electronic office equipment with or without special peripherals.

[508-a](2) The guidelines established pursuant to paragraph (1) shall be applicable with respect to electronic equipment, whether purchased or leased.

[508-a](3) The initial guidelines shall be established not later than October 1, 1987, and shall be periodically revised by the Director of the National Institute on Disability and Rehabilitation Research and the Administrator of General Services in Consultation with the electronics industry and the Interagency Committee for Computer Support of Handicapped Employees; and as technologies advance or change.

[508](b) Beginning after September 30, 1988, the Administrator of General Services shall adopt guidelines for electronic equipment accessibility established under subsection (a) for Federal procurement of electronic equipment. Each agency shall comply with the guidelines adopted under this subsection.

[508](c) For the purpose of this section, the term "special peripherals" means a special needs aid that provides access to electronic equipment that is otherwise inaccessible to an individual with handicaps.

TITLE VI -- EMPLOYMENT OPPORTUNITIES FOR
INDIVIDUALS WITH HANDICAPS.

SEC. 601. SHORT TITLE

This title may be cited as the "Employment Opportunities for Individuals with Handicaps Act".

PART A--Community Service Employment Pilot Programs for
Individuals with Handicaps.

SEC. 611. ESTABLISHMENT OF PILOT PROGRAM

[611](a) In order to promote useful opportunities in community service activities for individuals with handicaps who have poor employment prospects, the Secretary of Labor (hereinafter in this part referred to as the "Secretary") is authorized to establish a community service employment pilot program for individuals with handicaps. For purposes of this part, the term "eligible individuals" means persons who are individuals with handicaps (as defined in section 7(8) of this Act) and who are referred to programs under this part by designated State units.

[611](b)(1) The Secretary may enter into agreements with public or private nonprofit agencies or organizations, including national organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or tribal organizations in order to carry out the pilot program referred to in subsection (a). Such agreements may include provisions consistent with subsection (c) for the payment of the costs of projects developed by such organizations and agencies in cooperation with the Secretary. No payment shall be made by the Secretary toward the cost of any such project unless the Secretary determines that:

[611-b-1](A) Such project will provide employment only for eligible individuals, except that if eligible individuals are not available to serve as technical, administrative, or supervisory personnel for a project then such personnel may be recruited from among other individuals.

[611-b-1](B) Such project will provide employment for eligible individuals in the community in which such individuals reside, or in nearby communities.

[611-b-1](C) Such project will employ eligible individuals in services related to publicly owned and operated facilities and projects, or projects sponsored by organizations, other than political parties, exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, except for projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship.

[611-b-1](D) Such project will contribute to the general welfare of the community in which eligible individuals are employed under such project.

[611-b-1](E) Such project

[611-b-1-E](i) will result in an increase in employment opportunities over those opportunities which would otherwise be available,

[611-b-1-E](ii) will not result in any displacement of currently employed workers (including partial displacement, such as a reduction in the hours of nonovertime work or wages or employment benefits), and

[611-b-1-E](iii) will not impair existing contracts or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed.

[611-b-1](F) Such project will not employ any eligible individual to perform work which is the same or substantially the same as that performed by

- any other person who is on layoff from employment with the agency or organization sponsoring such project.
- [611-b-1](G) Such project will utilize methods of recruitment and selection (including the listing of job vacancies with the State agency units designated under section 101(a)(2)(A) to administer vocational rehabilitation services under this Act) which will assure that the maximum number of eligible individuals will have an opportunity to participate in the project.
- [611-b-1](H) Such project will provide for
- [611-b-1-H](i) such training as may be necessary to make the most effective use of the skills and talents of individuals who are participating in the project, and
- [611-b-1-H](ii) during the period of such training, a reasonable subsistence allowance for such individuals and the payment of any other reasonable expenses related to such training.
- [611-b-1](I) Such project will provide safe and healthy working conditions for any eligible individual employed under such project and will pay any such individual at a rate of pay not lower than the rate of pay described in paragraph (2).
- [611-b-1](J) Such project will be established or administered with the advice of
- [611-b-1-J](i) persons competent in the field of service in which employment is being provided, and
- [611-b-1-J](ii) persons who are knowledgeable with regard to the needs of individuals with handicaps.
- [611-b-1](K) Such project will pay any reasonable costs for work-related expenses, transportation, and attendant care incurred by eligible individuals employed under such project in accordance with regulations prescribed by the Secretary.
- [611-b-1](L) Such project will provide appropriate placement services for employees under the project to assist them in locating unsubsidized employment when the Federal assistance for the project terminates.
- [611-b](2) The rate of pay referred to in subparagraph (I) of paragraph (1) is the highest of the following:
- [611-b-2](A) The prevailing rate of pay for persons employed in similar occupations by the same employer.
- [611-b-2](B) The minimum wage which would be applicable to the employee under the fair Labor Standards Act of 1938 if such employee were not exempt from such Act under section 13 thereof.
- [611-b-2](C) The State or local minimum wage for the most nearly comparable covered employment.
- The Department of Labor shall not issue any certificate of exemption under section 14(c) of the Fair Labor Standards Act of 1938 with respect to any person employed in a project under this section.
- [611](c)(1) The Secretary may pay not to exceed 90 percent of the cost of any project which is the subject of an agreement entered into under subsection (b). Notwithstanding the preceding sentence the Secretary may pay all of the costs of any such project which is
- [611-c-1](A) an emergency or disaster project, or
- [611-c-1](B) a project located in an economically depressed area, as determined by the Secretary in consultation with the Secretary of Commerce and the Director of the Community Services Administration.
- [611-c](2) The non-Federal share of any project under this part may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to services and facilities contributed from non-Federal sources.
- [611](d) Payments under this part may be made in advance or by way of

reimbursement, and in such installments as the Secretary may determine.

SEC. 612. ADMINISTRATION

[612](a) In order to effectively carry out the provisions of this part, the Secretary shall, through the Commissioner of the Rehabilitation Services Administration, consult with any designated State unit with regard to--

[612-a](1) the localities in which community service projects of the type authorized by this part are most needed;

[612-a](2) the employment situations and types of skills possessed by eligible individuals in such localities; and

[612-a](3) potential projects suitable for funding in such localities.

[612](b) The Secretary shall coordinate the pilot program established under this part with the Job Training Partnership Act and the Community Services Block Grant Act. Appropriations under this part may not be used to carry out any program under the acts referred to in the preceding sentence.

[612](c) In carrying out this part, the Secretary may, with the consent of any other Federal, State, or local agency, use the services, equipment, personnel, and facilities of such agency with or without providing such agency with reimbursement and may use the services, equipment, and facilities of any other public or private entity on a similar basis.

[612](d) Within one hundred and eighty days after the effective date of this part, the Secretary shall issue and publish in the Federal Register such regulations as may be necessary to carry out this part.

[612](e) The Secretary shall not delegate any function of the Secretary under this part to any other department or agency of the Federal Government.

SEC. 613. PARTICIPANTS NOT FEDERAL EMPLOYEES

[613](a) Eligible individuals who are employed in any project funded under this part shall not be considered to be Federal employees as a result of such employment and shall not be subject to the provisions of part III of title 5, United States Code.

[613](b) No contract shall be entered into under this part with a contractor who is, or whose employees are, under State law, exempted from operation of any State workmen's compensation law generally applicable to employees, unless the contractor shall undertake to provide for persons to be employed under such contract, through insurance by a recognized carrier or by self-insurance authorized by State law, workmen's compensation coverage equal to that provided by law for covered employment.

[613](c) No part of the wages, allowances, or reimbursement for transportation and attendant care costs made available to an eligible individual employed in any project funded under this part shall be treated as income or benefits for the purpose of any other program or provision of State or Federal law, unless the Secretary makes a case by case determination that disallowance of such income or benefits is inequitable or does not carry out the purposes of this title.

SEC. 614. INTERAGENCY COOPERATION

[614](a) The Secretary shall consult with, and obtain the written views of, the Commissioner of the Rehabilitation Services Administration before establishing rules or general policy in the administration of this part.

[614](b) The Secretary shall consult and cooperate with the Director of the Community Services Administration, the Secretary of Health and Human Services, and the heads of other Federal agencies carrying out related programs, in order to achieve maximum coordination between such programs and the program established under this part. Each Federal agency shall cooperate with the Secretary in disseminating information relating to the availability of assistance under this part and identifying individuals eligible for

employment in projects assisted under this part.

SEC. 615. EQUITABLE DISTRIBUTION OF ASSISTANCE

[615](a)(1) Preference in awarding grants or contracts under this part shall be given to organizations of proven ability in providing employment services to individuals with handicaps under this program and similar programs. The Secretary, in awarding grants and contracts under this section, shall, to the extent feasible, assure an equitable distribution of activities under such grants and contracts among the States, taking into account the needs of underserved States and the needs of Indian tribes.

[615-a](2) The Secretary shall allot for projects within each State the sums appropriated for any fiscal year under section 617 so that each State will receive an amount which bears the same ratio to such sums as the population of the State bears to the population of all the States.

[615](b) The amount allotted for projects within any State under subsection (a) for any fiscal year which the Secretary determines will not be required for such year shall be reallocated, from time to time and on such dates during such year as the Secretary may fix, to projects within other States in proportion to the original allotments to projects within such States under subsection (a) for such year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates that projects within such State need and will be able to use for such year. The total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amount reallocated to a State under this subsection during a year shall be deemed part of its allotment under subsection (a) for such year.

[615](c) The amount apportioned for projects within each State under subsection (a) shall be apportioned among areas within each such State in an equitable manner, taking into consideration

[615-c](1) the proportion which eligible individuals in each such area bears to the total number of such individuals, respectively, in that State, and

[615-c](2) the relative distribution of such individuals residing in rural and urban areas within the State (including individuals residing on Indian reservations).

SEC. 616. DEFINITIONS

For purposes of this part--

[616](1) the term "community service" means social, health, welfare, and educational services, legal and other counseling services and assistance, including tax counseling and assistance and financial counseling, and library, recreational, and other similar services; conservation, maintenance, or restoration of natural resources; community betterment or beautification; antipollution and environmental quality efforts; economic development; and such other services essential and necessary to the community as the Secretary, by regulation, may prescribe;

[616](2) the term "pilot program" means the community service employment program for individuals with handicaps established under this part; and

[616](3) the term "attendant care" means interpreter services for the deaf, reader services for the blind, and services provided to assist mentally retarded individuals to perform duties of employment.

SEC. 617. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to carry out the provisions of this part such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990, AND 1991.

PART B--Projects With Industry and Business Opportunities
for Individuals with Handicaps.

SEC. 621. PROJECTS WITH INDUSTRY

[621](a)(1) The purpose of this title is to promote opportunities for competitive employment of individuals with handicaps, to provide appropriate placement resources, to engage the talent and leadership of private industry as partners in the rehabilitation process, to create practical settings for job readiness and training programs, and to secure the participation of private industry in identifying and providing job opportunities and the necessary skills and training to qualify individuals with handicaps for competitive employment.

[621-a](2) The Commissioner, in consultation with the Secretaries of Labor and Commerce and with designated State units may enter into agreements with individual employers, designated State units and other entities to establish jointly financed projects which--

[621-a-2](A) shall create and expand job opportunities for individuals with handicaps by providing for the establishment of appropriate job placement services;

[621-a-2](B) shall provide individuals with handicaps with training in a realistic work setting in order to prepare them for employment in the competitive market;

[621-a-2](C) shall provide individuals with handicaps with such supportive services as may be required to permit them to continue to engage in the employment for which they have received training under this section;

[621-a-2](D) shall, to the extent appropriate, expand job opportunities for individuals with handicaps by providing for

[621-a-2-D](i) the development and modification of jobs to accommodate the special needs of such individuals,

[621-a-2-D](ii) the distribution of special aids, appliances, or adapted equipment to such individuals, and

[621-a-2-D](iii) the modification of any facilities or equipment of the employer which are to be used primarily by individuals with handicaps; and

[621-a-2](E) shall provide for business advisory councils comprised of representatives of private industry, business concerns, and organized labor who will identify job availability within the community and the skills necessary to fill jobs identified, and prescribe training and programs tailored to their need.**

[621-a](3) Any agreement under this subsection shall be jointly developed by the Commissioner, the prospective employer, and to the extent practicable, the appropriate designated State unit and the individuals with handicaps involved. Such agreement shall specify the terms of training and employment under the project, provide for the payment by the Commissioner of part of the costs of the project (in accordance with subsection (c)), and contain the items required under subsection (b) and such other provisions as the parties to the agreement consider to be appropriate.

[621-a](4) Any agreement developed under this subsection shall include a description of an evaluation plan which at the end of each project year reflects at a minimum the following--

[621-a-4](A) the numbers and types of individuals with handicaps assisted;

[621-a-4](B) the types of assistance provided;

[621-a-4](C) the sources of funding;

[621-a-4](D) the percentage of resources committed to each type of assistance provided;

[621-a-4](E) the extent to which the employment status and earning power of

individuals with handicaps changed following assistance;
[621-a-4](F) the extent of capacity building activities, including
collaboration with other organizations, agencies, and institutions; and
[621-a-4](G) a comparison, when appropriate, of activities in prior years
with activities in the most recent year.
[621](b) No payment shall be made by the Commissioner under any agreement
with an employer entered into under subsection (a) unless such agreement--
[621-b](1) provides assurance that individuals with handicaps placed with
such employer shall receive at least the applicable minimum wage;

**The effective date for Clause (E) is one year from the date of the enactment
of P.L.99-506, the Rehabilitation Amendments of 1986.

[621-b](2) specifies that the Commissioner, together with the designated
State unit, has the right to review any termination of employment, and
that, in the event such termination occurs less than three years after
the date of the commencement of employment of the individual with
handicaps involved, the Commissioner shall be entitled to require the
repayment of a portion of the funds made available to the employer if
such termination is without reasonable cause, as determined by the
Commissioner in consultation with such designated State unit;
[621-b](3) provides assurance that any individual with handicaps placed with
such employer shall be afforded terms and benefits of employment equal to
those which are afforded to other employees of such employer, and that
such individuals with handicaps shall not be unreasonably segregated from
other employees; and
[621-b](4) provides assurance that an evaluation report containing data
specified under subsection (a)(4) shall be submitted to the Commissioner.
[621](c) Payments under this section with respect to any project may not
exceed 80 per centum of the costs of the project.
[621](d)(1) The Commissioner shall, not later than February 1, 1985, develop
and publish standards for evaluation consistent with the provisions in sub-
section (a)(4) to assist each recipient under the Projects With Industry
Program receiving assistance under this title to review and evaluate the
operation of its project. Such standards shall be revised as necessary,
subject to paragraph (4) of this subsection.
[621-d](2) The Commissioner shall, pursuant to section 14 of this Act,
conduct a comprehensive evaluation of the Projects With Industry Program
and submit a report on February 1, 1986, to Congress on the evaluation,
including recommendations for the improvement and continuation of each
recipient and for the support of new Projects with Industry recipients.
In conducting the comprehensive evaluation, the Commissioner shall apply
standards for evaluation criteria which are consistent with those
required in subsection (a)(4).
[621-d](3) In developing standards for evaluation to be used by the Projects
With Industry recipients, and in developing the standards for evaluation
to be used in the comprehensive evaluation, the Commissioner shall obtain
and consider recommendations for such standards from State Vocational
Rehabilitation Agencies, current Projects With Industry recipients,
professional organizations representing industry, organizations
representing individuals with handicaps, individuals assisted by Projects
With Industry recipients, and labor organizations.
[621-d](4) No standards may be established under this subsection unless the
standards are approved by the National Council on Disability. The
Council shall approve the standards within ninety days after receiving the
standards. If the Secretary of Education has not received notification of
approval or disapproval from the Council within ninety days, the standards
shall be deemed approved. A Council decision on such standards shall occur

at a regularly scheduled meeting of the Council, and shall be the result of a simple majority of those present at the meeting.

[621](e)(1) Subject to the availability of appropriations, an agreement for financial assistance under this section may be effective for a period not to exceed five years. Any subsequent agreement for financial assistance under this section may be effective for not more than five years. In making a determination concerning any subsequent agreement, the Commissioner shall consider performance under the previous agreement and evaluation reports submitted under subsection (b)(4).

[621-e](2) The Commissioner shall annually review each evaluation report submitted under subsection (b)(4) and make a determination concerning the termination, modification, or renewal of each agreement for financial assistance under this section.

[621](f)(1) By July 1, 1988, the Commissioner shall publish in the Federal Register in final form indicators of what constitutes minimum compliance consistent with the evaluation standards under subsection (d)(1).

[621-f](2) Each grantee shall report to the Commissioner at the end of each project year the extent to which the grantee is in compliance with the evaluation standards, beginning with fiscal year 1989.

[621-f](3) By the end of fiscal year 1991, the Commissioner shall have conducted on-site compliance reviews of at least one-third of the grantees receiving funding under this part in fiscal year 1987. The Commissioner shall conduct on-site compliance reviews of at least 15 percent of grantees annually in subsequent years. Selection of grantees for compliance reviews shall be on a random basis. The Commissioner shall use the indicators of the evaluation standards in determining compliance. At least one member of an on-site compliance review shall be a non-Federal employee with experience or expertise in conducting Projects With Industry.

[621-f](4) Beginning with the annual report to Congress for fiscal year 1990 and in subsequent years, the Commissioner shall include an analysis of the extent to which grantees have complied with the evaluation standards. The Commissioner may identify individual grantees in the analysis. In addition, the Commissioner shall report the results of on-site compliance reviews, identifying individual grantees.

[621](g) The Commissioner may provide, directly or by way of grant or contract, technical assistance to

[621-g](1) entities conducting Projects With Industry for the purpose of assisting such entities in the improvement of or in the development of relationships with private industry or labor, and

[621-g](2) entities planning the development of new Projects With Industry.

[621](h)(1)(A) From sums appropriated for the purposes of this section for fiscal year 1990, an amount which is 80 percent of the amount appropriated for fiscal year 1989 shall be available only for grantees receiving assistance in fiscal year 1989.

[621-h-1](B) The Secretary shall ensure that grants are made under subparagraph (A) only to Projects With Industry recipients that meet the evaluation standards and shall make a determination concerning the termination, modification, or renewal of each grant on the basis of such evaluation.

[621-h](2) To the extent funds are available under paragraph (1), the Secretary shall award grants to new Projects With Industry recipients located in unserved geographic areas. Grants to new recipients shall be awarded on a competitive basis.

[621-h](3) For fiscal year 1991 and for any subsequent fiscal year, new grant awards shall be made on a competitive basis and shall include consideration of past performance, where appropriate.

[621-h](4)(A) Each grant recipient receiving assistance under this section in fiscal year 1986 shall continue to receive assistance through September 30, 1987, unless the Commissioner determines that the grant recipient is not in compliance with the provisions of the approved application of the grant recipient.

[621-h-4](B) Grant recipients continuing to receive assistance on the basis of the review described in subparagraph (A) of this paragraph shall be evaluated by the Commissioner using standards described in subsection (d) and (f) of this section. Each such grant recipient shall continue to receive assistance for 3 years unless the Commissioner determines that the grantee is not substantially in compliance with such standards and with the provisions of the approved application of the grant recipient.

[621](i) In approving applications under this section, the Commissioner shall give priority to the geographic areas among the States which are currently not served or underserved by Projects With Industry.

SEC. 622. BUSINESS OPPORTUNITIES FOR INDIVIDUALS WITH HANDICAPS.

The Commissioner, in consultation with the Secretary of Labor and the Secretary of Commerce, may make grants to, or enter into contracts with, individuals with handicaps to enable them to establish or operate commercial or other enterprises to develop or market their products or services. Within ninety days after the effective date of this section, the Commissioner shall promulgate regulations to carry out this section, including regulations specifying [622](1) the maximum amount of money which may be provided under this section to any participant, and [622](2) procedures for certification, by designated State units, of individuals eligible to participate in any program under this section.

SEC. 623. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to carry out the provisions of section 621, \$16,070,000 for fiscal year 1987, \$17,010,000 for fiscal year 1988, \$18,030,000 for fiscal year 1989, \$19,149,000 for fiscal year 1990, and \$19,925,000 for fiscal year 1991, and for section 622 such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.

PART C--Supported Employment Services for Individuals with Severe Handicaps.

SEC. 631. PURPOSE

It is the purpose of this part to authorize grants (supplementary to grants for vocational rehabilitation services under title I) to assist States in developing collaborative programs with appropriate public agencies and private nonprofit organizations for training and traditionally time-limited, post-employment services leading to supported employment for individuals with severe handicaps.

SEC. 632. ELIGIBILITY

Services may be provided under this part to any individual with severe handicaps whose ability or potential to engage in a training program and whose ability to engage in a supported employment setting has been determined by an evaluation of rehabilitation potential as defined in section 7 of this Act.

SEC. 633. ALLOTMENTS

[633](a)(1) The Secretary shall allot the sums appropriated for each fiscal year under this section among the States on the basis of relative population of each State, except that no State shall receive less than \$250,000, or one-third of 1 percent of the sums made available for the

fiscal year for which the allotment is made, whichever is greater.

[633-a](2)(A) For the purposes of this subsection, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

[633-a-2](B) The jurisdictions described in subparagraph (A) shall be allotted not less than one-eighth of 1 percent of the amounts made available for purposes of this subpart for each such clause for the fiscal year for which the allotment is made.

[633](b) Whenever the Commissioner determines that any amount of an allotment to a State for any fiscal year will not be expended by such State to carry out the provisions of this part, the Commissioner shall make such amount available for carrying out the provisions of this part to one or more of the States which the Commissioner determines will be able to use additional amounts during such year for carrying out such provisions. Any amount made available to a State for any fiscal year pursuant to the preceding sentence shall, for the purposes of this section, be regarded as an increase in the State's allotment for such year.

[633](c)(1) In the first fiscal year in which appropriations are made pursuant to section 638, a State may, in lieu of receiving its allotment under this part, make an application for a planning grant for that fiscal year. The Secretary is authorized to approve the application of States which meet the requirements of this subsection.

[633-c](2)(A) The grant made under this subsection shall be used for planning activities designed to facilitate the State using its allotment under this part.

[633-c-2](B) No grant under this subsection may exceed a period of 18 months.

[633-c](3) No planning grant made under this subsection may exceed \$250,000.

SEC. 634. STATE PLAN

[634](a)(1) Except as provided in paragraph (2) to be eligible for grants under this part, a State shall submit to the Commissioner as part of the State plan under title I of this Act a State plan supplement for a three-year period for providing training and traditionally time-limited post-employment services leading to supported employment for individuals with severe handicaps. Each State shall make such annual revisions in the plan supplement as may be necessary.**

[634](a)(2) This subsection shall not apply in any fiscal year ending before October 1, 1990, in which amounts appropriated for this part do not equal or exceed \$5,000,000.

[634](b) Each such plan supplement shall--

[634-b](1) designate each agency of such State designated under section 101(a)(2)(B) of this Act as the agency to administer the program assisted under this part;

[634-b](2)(A) specify results of the needs assessment conducted as required by title I of this Act of individuals with severe handicaps as such assessment identifies the need for supported employment services, including the coordination and use of the information within the State relating to section 618(b)(3) of the Education of the Handicapped Act; and

[634-b-2](B) describe the quality, scope, and extent of supported employment services to be provided to individuals with severe handicaps under this part, and specify the State's goals and plans with respect to the distribution of funds received under section 635 of this part;

[634-b](3) provide assurances that--

[634-b-3](A) an evaluation for each individual describes training and traditionally time-limited post-employment services leading to

- supported employment;
- [634-b-3](B) an individualized written rehabilitation program as required by section 102 will be developed outlining the services to be provided;
- [634-b-3](C) such services will be provided in accordance with such program or a program specified under subparagraph (D) of this paragraph;
- [634-b-3](D) such services will be coordinated with the evaluation results, the individual written rehabilitation plan or education plan as required under section 102 of this Act, section 123 of the Developmental Disabilities Act of 1984, and sections 612(4) and 614(a)(5) of the Education of the Handicapped Act, respectively;
- [634-b-3](E) the State will conduct periodic reviews of the progress of individuals assisted under this part to determine whether services provided to such individuals should be continued, modified, or discontinued; and
- [634-b-3](F) the State will make maximum use of services from public agencies, private nonprofit organizations and other appropriate resources in the community to carry out this part;
- [634-b](4) demonstrate evidence of collaboration by and funding from relevant State agencies and private nonprofit organizations to assist in the provision of supported employment services;
- [634-b](5) provide assurances that all designated State agencies will expend not more than 5 percent of the State's allotment under this part for administrative costs for carrying out this part; and
- [634-b](6) contain such other information and be submitted in such form and in accordance with such procedures as the Commissioner may require.

SEC. 635. SERVICES: AVAILABILITY AND COMPARABILITY

- [635](a)(1) Services available under this part may include but are not limited to an evaluation of rehabilitation potential, the provision of skilled job trainers who accompany the worker for intensive on-the-job training, systematic training, job development, follow-up services (including regular contact with the employer, trainee, and the parent or guardian), and, consistent with subsection (b), regular observation or supervision of the

**Section 634(a) shall not apply in any fiscal year in which the appropriation for part C of Title VI of the Rehabilitation Act of 1973 does not equal or exceed \$5,000,000. This exclusion is repealed September 30, 1990. individual with severe handicaps at the training site and other services needed to support the individual in employment.

- [635-a](2) The evaluation of rehabilitation potential authorized by paragraph (1) of this subsection shall be supplementary to the evaluation of rehabilitation potential provided under title I of this Act.
- [635](b) Services authorized under this part are limited to training and traditionally time-limited post-employment services leading to supported employment. Extended supported employment services shall be provided by the relevant State agencies and private organizations as specified under section 634(b)(4) of this part or any other available source.
- [635](c) Services provided under this part shall be complementary to services provided under title I of this Act.

SEC. 636. RESTRICTION

Each designated State agency shall collect the client information required by section 13 of this Act separately for supported employment clients under this part and for supported employment clients under title I.

SEC. 637. SAVINGS PROVISION

Nothing in this Act shall be construed to prohibit a State from conducting or from carrying out training and traditionally time-limited post-employment services leading to supported employment in accordance with the State plan submitted under section 101 from its State allotment under section 110.

SEC. 638. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to carry out this part \$25,000,000 for the fiscal year 1987, \$26,470,000 for the fiscal year 1988, \$28,060,000 for the fiscal year 1989, \$29,730,000 for the fiscal year 1990, and \$30,949,000 for the fiscal year 1991.

TITLE VII -- COMPREHENSIVE SERVICES FOR INDEPENDENT LIVING
PART A--Comprehensive Services

SEC. 701. PURPOSE.

The purpose of this title is to authorize grants (supplementary to grants for vocational rehabilitation services under title I) to assist States in providing comprehensive services for independent living designed to meet the current and future needs of individuals whose disabilities are so severe that they do not presently have the potential for employment but may benefit from vocational rehabilitation services which will enable them to live and function independently.

SEC. 702. ELIGIBILITY

[702](a) Services may be provided under this title to any individual whose ability to engage or continue in employment, or whose ability to function independently in the family or community, is so limited by the severity of the disability that vocational or comprehensive rehabilitation services that are appreciably more costly and that are of appreciably greater duration than those vocational or comprehensive rehabilitation services required for the rehabilitation of an individual with handicaps are required to improve significantly either the ability to engage in employment or the ability to function independently in the family or community. Priority of services under this part shall be given to individuals not served by other provisions of this Act.

[702](b) For purposes of this title, the term "comprehensive services for independent living" means any appropriate vocational rehabilitation service (as defined under title I of this Act) and any other service that will enhance the ability of an individual with handicaps to live independently and function within his family and community and, if appropriate, secure and maintain appropriate employment. Such services may include any of the following: counseling services, including psychological, psychotherapeutic, and related services; housing incidental to the purpose of this section (including appropriate accommodations to and modification of any space to serve individuals with handicaps); appropriate job placement services; transportation; attendant care; physical rehabilitation; therapeutic treatment; needed prostheses and other appliances and devices; health maintenance; recreational services, services for children of preschool age, including physical therapy, development of language and communication skills, and child development services; and appropriate preventive services to decrease the needs of individuals assisted under the program for similar services in the future.

SEC. 703. ALLOTMENTS

[703](a)(1) From sums made available for each fiscal year for the purposes of allotments under this part, each State whose comprehensive services plan has been approved under section 705 shall be entitled to an allotment of an amount bearing the same ratio to such sums as the population of the State bears to the population of all states. Except as provided in paragraph (2), the allotment to any State under the preceding sentence shall be not less than \$200,000 or one-third of 1 percent of the sums made available for the fiscal year for which the allotment is made, whichever is greater, and the allotment of any State under this section for any fiscal year which is less than \$200,000 or one-third of 1 percent of such sums shall be increased to the greater of the two amounts.

[703-a](2) For the purposes of this subsection, Guam, American Samoa, the

Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands shall not be considered as States and shall each be allotted not less than one-eighth of 1 percent of the amounts made available for purposes of this part for the fiscal year for which the allotment is made.

[703](b) Amounts necessary to increase the allotments of States under paragraph (1) or to provide allotments under paragraph (2) shall be derived by proportionately reducing the allotments of the remaining States under paragraph (1), but with such adjustments as may be necessary to prevent the allotment of any such remaining States from being thereby reduced to less than the greater of \$200,000 or one-third of 1 percent of the sums made available for purposes of this part for the fiscal year for which the allotment is made.

[703](c) Whenever the Commissioner determines that any amount of an allotment to a State for any fiscal year will not be utilized by such State in carrying out the purposes of this title, the Commissioner shall make such amount available for carrying out the purposes of this section to one or more of the States which the Commissioner determines will be able to use additional amounts during such year for carrying out such purposes. Any amount made available to a State for any fiscal year pursuant to the preceding sentence shall, for the purposes of this section, be regarded as an increase in the State's allotment (as determined under the preceding provisions of this section) for such year.

SEC. 704. PAYMENTS TO STATES FROM ALLOTMENTS

[704](a) From each State's allotment for a fiscal year under section 703, the State shall be paid the Federal share of the expenditures incurred during such year under its State plan approved under section 705. Such payments may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement and in such installments and on such conditions as the Commissioner may determine.

[704](b)(1) The Federal share with respect to any State for any fiscal year shall be 90 percent of the expenditures incurred by the State during such year under its State plan approved under section 705.

[704-b](2) The non-Federal share of the cost of any project assisted by an allotment under this part may be provided in kind.

[704-b](3) For the purpose of determining the Federal share with respect to any State, expenditures by a political subdivision of such State shall, subject to regulations prescribed by the Commissioner, be regarded as expenditures by such State.

SEC. 705. STATE PLANS

[705](a) In order to be eligible for grants under this part, a State shall submit to the Commissioner a State plan for a three-year period for providing comprehensive services for independent living to individuals with severe handicaps and, upon request of the Commissioner, shall make such annual revisions in the plan as may be necessary. Each such plan shall--

[705-a](1) designate the designated State unit of such state as the agency to administer the programs funded under this part;

[705-a](2) demonstrate that the State has studied and considered a wide variety of methods for providing comprehensive services to individuals with severe handicaps (such as regional and community centers, halfway houses, and patient-release programs) and that the State will provide, to the maximum extent feasible, meaningful alternatives to institutionalization;

[705-a](3)(A) Describe the quality, scope, and extent of the comprehensive

services for independent living to be provided to individuals with handicaps under this part, and specify the state's goals and plans with respect to the distribution of funds received under part B of this title; and

[705-a-3](B) provide satisfactory assurances that facilities used in connection with the delivery of services assisted under this part and part B of this title will comply with the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968;

[705-a](4) provide assurances that

[705-a-4](A) an individualized written rehabilitation program meeting the requirements of section 102 will be developed for each individual with handicaps eligible for independent living services under this part;

[705-a-4](B) such services will be provided in accordance with such program; and

[705-a-4](C) that such program will be coordinated with the individualized written rehabilitation program, rehabilitation plan, or education program for such individual required under section 102 of this Act, the Developmental Disabilities Assistance and Bill of Rights Act, and sections 612 (4) and 614(a)(5) of the Education of the Handicapped Act respectively;

[705-a](5) provide assurances that the State will consider recommendations of the State independent living council in determining how independent living services will be expanded or modified.

[705-a](6) provide assurances that the State will conduct periodic reviews of the progress of individuals assisted under this title to determine whether services provided to such individuals should be continued, modified, or discontinued;

[705-a](7) provide assurances that special efforts will be undertaken to provide technical assistance to urban and rural poverty areas with respect to the provision of comprehensive services for individuals with severe handicaps and describe such efforts;

[705-a](8) provide assurances that individuals with handicaps shall have a substantial role in developing the State plan;

[705-a](9) provide assurances that not less than 20 percent of the funds received by a State under this part shall be used to make grants to local public agencies and private nonprofit organizations for the conduct of independent living services except that the Commissioner may waive the requirement of this clause if the Commissioner determines, on the basis of evidence submitted by the State, that such State cannot feasibly use the funds required to be expended under this section for the purposes of this clause; and

[705-a](10) contain such other information, and be submitted in such form and in accordance with such procedures, as the Commissioner may require.

[705](b) As soon as practicable after receiving a State plan submitted under subsection (a), the Commissioner shall approve or disapprove such plan. The Commissioner shall approve any State plan which the commissioner determines meets the requirements and purposes of this section. The provisions of subsection (b), (c), and (d) of section 101 of this Act shall apply to any State plan submitted to the Commissioner pursuant to this section, except that for purposes of this section, all references in such subsections to the Secretary shall be deemed to be references to the Commissioner.

SEC. 706. STATE INDEPENDENT LIVING COUNCIL

[706](a) There shall be established in each State receiving assistance under this title a State Independent Living Council (hereafter in this section referred to as the 'Council'). The Council shall--

[706-a](1) provide guidance for the development and expansion of independent

living programs and concepts on a statewide basis;

[706-a](2) provide guidance to State agencies and to local planning and administrative entities assisted under this title; and

[706-a](3) prepare and submit to the State agency designated under section 705(a)(1) a five-year plan addressing the long-term goals and recommendations for the need for independent living services and programs within the State.

[706](b)(1) The Council shall be composed of representatives of the principal State agencies, local agencies, and nongovernmental agencies and groups concerned with services to individuals with handicaps under this title; individuals with handicaps and parents or guardians of individuals with handicaps; directors of independent living centers; representatives from private business employing or interested in employing individuals with handicaps; representatives of other appropriate organizations and other appropriate individuals.

[706-b](2) A majority of the membership of the Council shall be individuals with handicaps and parents or guardians of individuals with handicaps.

[706-b](3) The members of the Council shall be appointed by the director of the State agency designated under section 705(a)(1).

[706](c) The chairperson of the Council shall be selected from among the membership and shall also serve as a member of any State advisory committee primarily concerned with the provision of rehabilitation services and any other appropriate State advisory committee concerned with services to individuals with handicaps.

[706](d) Any State in which there is a council which substantially meets the requirements of paragraphs (1) and (2) of subsection (b) and has the authority or will, promptly after the date of enactment of the Rehabilitation Act Amendments of 1986, have the authority to carry out the functions prescribed in subsection (a) shall be deemed to meet the requirements of this section.

PART B--Centers for Independent Living.

SEC. 711. GRANT PROGRAM ESTABLISHED

[711](a) The Commissioner may make grants to any designated State unit which administers the State plan under section 705 to provide for the establishment and operation of independent living centers, which shall be facilities offering the services described in subsection (c)(2).

[711](b) No grant may be made under this section unless an application therefor has been submitted to and approved by the Commissioner. The Commissioner may not approve an application for a grant unless the application--

[711-b](1) contains assurances that the designated State unit will use funds provided by such grant in accordance with subsection (c);

[711-b](2) contains such other information, and is submitted in such form and in accordance with such procedures, as the Commissioner may require; and

[711-b](3) contains assurances that each center will have a board which is composed of a majority of individuals with handicaps.**

[711](c) An application by a public or nonprofit agency or organization for such grant shall--

[711-c](1) provide assurances that individuals with handicaps will be substantially involved in policy direction and management of such center, and will be employed by such center;

[711-c](2) contain assurances that the independent living center to be assisted by such grant shall offer individuals with handicaps a combination of independent living services, including as appropriate--

[711-c-2](A) intake counseling to determine the client's need for specific

rehabilitation services;
[711-c-2](B) referral and counseling services with respect to attendant care;
[711-c-2](C) counseling and advocacy services with respect to legal and economic rights and benefits;
[711-c-2](D) independent living skills, counseling, and training, including such programs as training in the maintenance of necessary equipment and in jobseeking skills, counseling on therapy needs and programs, and special programs for the blind and deaf;
[711-c-2](E) housing, recreation, and transportation referral and assistance;
[711-c-2](F) surveys, directories, and other activities to identify appropriate housing, recreational opportunities, and accessible transportation, and other support services;
[711-c-2](G) health maintenance programs;
[711-c-2](H) peer counseling;
[711-c-2](I) community group living arrangements;
[711-c-2](J) education and training necessary for living in the community and participating in community activities;
[711-c-2](K) individual and group social and recreational services;
[711-c-2](L) other programs designed to provide resources, training, counseling, services, or other assistance of substantial benefit in promoting the

**This amendment shall take effect one year after the date of enactment of P.L. 99-506, the Rehabilitation Amendments of 1986.

independence, productivity, and quality of life of individuals with handicaps;
[711-c-2](M) attendant care and training or personnel to provide such care; and
[711-c-2](N) such other services as may be necessary and not inconsistent with the provisions of this title; and
[711-c](3) contain a description of an evaluation plan which at the end of each year of a funding cycle shall reflect at a minimum the following--
[711-c-3](A) the numbers and types of individuals with handicaps assisted;
[711-c-3](B) the extent to which individuals with varying handicapping conditions were served;
[711-c-3](C) the types of services provided;
[711-c-3](D) the sources of funding;
[711-c-3](E) the percentage of resources committed to each type of service provided;
[711-c-3](F) how services provided contributed to the maintenance of or the increased independence of individuals with handicaps assisted;
[711-c-3](G) the extent to which individuals with handicaps participate in management and decision making in the center;
[711-c-3](H) the extent of capacity building activities including collaboration with other agencies and organizations;
[711-c-3](I) the extent of catalytic activities to promote community awareness, involvement, and assistance;
[711-c-3](J) the extent of outreach efforts and the impact of such efforts; and
[711-c-3](K) a comparison, when appropriate, of prior year(s) activities with most recent year activities.
[711-c](4) contain such other information, and be submitted in such form and in accordance with such procedures, as the Commissioner may require.
[711](d) If, within three months after the date in each fiscal year on which the Commissioner begins to accept applications from designated State units under this section, a designated State unit in a State has not submitted such an application, the Commissioner may accept applications for grants

under this section from local public agencies or private nonprofit organizations within such State. After the receipt of such applications, the Commissioner may make grants to such agencies or organizations for the purpose of establishing independent living centers to provide the services described in subsection (c)(2).

[711](e)(1) The Commissioner shall, not later than February 1, 1985, develop and publish standards for evaluation consistent with the provisions in subparagraph (c)(3) to assist each independent living center receiving funding under this title to review and evaluate the operation of its center. Such standards shall be revised as necessary, subject to paragraph (4) of this subsection.

[711-e](2) The Commissioner shall, under the authority specified in section 14 of this Act, conduct a comprehensive evaluation of the Centers for Independent Living Grant Program, and submit a report no later than February 1, 1986, to Congress on the evaluation, including recommendations for the improvement and continuation of each grantee and for the support of new independent living centers. In conducting the comprehensive evaluation, the Commissioner shall apply standards for evaluation which are consistent with the standards required in paragraph (1).

[711-e](3) In developing standards for evaluation to be used by the grantees, and in developing the standards for evaluation to be used in the comprehensive evaluation, the Commissioner shall obtain and consider recommendations for such standards from national organizations representing individuals with handicaps and independent living programs; and from independent living centers, professionals serving individuals with handicaps, and individuals, associations, and organizations engaged in research in independent living.

[711-e](4) No standards may be established under this subsection unless the standards are approved by the National Council on Disability. The Council shall approve the standards within ninety days after receiving the standards. If the Secretary of Education has not received notification of approval or disapproval from the Council within the ninety days, the standards shall be deemed approved. A Council decision on such standards shall occur at a regularly scheduled meeting of the Council, and shall be the result of a simple majority of those present at the meeting.

[711](f)(1) By July 1, 1988, the Commissioner shall publish in the Federal Register in final form indicators of what constitutes minimum compliance consistent with the evaluation standards published under subsection (e)(1).

[711-f](2) Each grantee shall report to the Commissioner at the end of each project year the extent to which the grantee is in compliance with the evaluation standards, beginning with fiscal year 1989.

[711-f](3) By the end of fiscal year 1991, the Commissioner shall have conducted on-site compliance reviews of at least one-third of the grantees receiving funding under this part in fiscal year 1987. The Commissioner shall conduct on-site compliance review of at least 15 percent of grantees annually in subsequent years. Selection of grantees for compliance reviews shall be on a random basis. The Commissioner shall use the indicators of the evaluation standards in determining compliance. At least one member of an on-site compliance review shall be a non-Federal employee with experience or expertise in the provision of independent living services.

[711-f](4) Beginning with the annual report to Congress for fiscal year 1990 and in subsequent years, the Commissioner shall include an analysis of the extent to which grantees have complied with the evaluation standards. The Commissioner may identify individual grantees in the analysis. In addition, the Commissioner shall report the results of on-site compliance

reviews, identifying individual grantees.

[711](g)(1)(A) From sums appropriated for the purposes of this section for fiscal year 1990, an amount which is 90 percent of the amount appropriated for fiscal year 1989 shall be available only for grantees receiving assistance in fiscal year 1989.

[711-g-1](B) The Secretary shall ensure that grants are made under subparagraph (A) only to Centers that meet the evaluation standards and shall make a determination concerning the termination, modification, or renewal of each grant on the basis of such evaluation.

[711-g-1](C) A grant under subparagraph (A) may not be less than 80 percent or more than 100 percent of the grant to the Center for fiscal year 1989.

The Commissioner shall determine the amount of each grant on the basis of--

[711-g-1-C](i) the capacity of the recipient to obtain local resources to pay the non-Federal share of the cost of the Center; and

[711-g-1-C](ii) the economic conditions in the community to be served by the Center.

[711-g](2) To the extent funds are available under paragraph (1), the Secretary shall award grants to new Centers located in unserved geographic areas. Grants to new Centers shall be awarded on a competitive basis.

[711-g](3) For fiscal year 1991 and for any subsequent fiscal year, new grant awards shall be made on a competitive basis and shall include consideration of past performance, where appropriate.

[711-g](4)(A) Each grant recipient receiving assistance under this section in fiscal year 1986 shall continue to receive assistance through September 30, 1987, unless the Commissioner determines that the grant recipient is not in compliance with the provisions of the approved application of the grant recipient.

[711-g-4](B) Grant recipients continuing to receive assistance on the basis of the review described in subparagraph (A) of this paragraph shall be evaluated by the Commissioner using standards described in subsections (e) and (f) of this section. Each such grant recipient shall continue to receive assistance for 3 years unless the Commissioner determines that the grantee is not substantially in compliance with such standards and with the provisions of the approved application of the grant recipient.

[711](h) In approving applications under this section, the Commissioner shall give priority to geographic areas among the States which are currently underserved or not served by independent living centers.

PART C--Independent Living Services for Older Blind Individuals.

SEC. 721. SERVICE PROGRAM ESTABLISHED

[721](a) The Commissioner may make grants to any designated State unit to provide independent living services to older blind individuals. Such services shall be designed to assist an older blind individual to adjust to blindness by becoming more able to care for individual needs. Such services may include--

[721-a](1) services to help correct blindness such as

[721-a-1](A) outreach services,

[721-a-1](B) visual screening,

[721-a-1](C) surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions, and

[721-a-1](D) hospitalization related to such services;

[721-a](2) the provision of eyeglasses and other visual aids;

[721-a](3) the provision of services and equipment to assist an older blind

individual to become more mobile and more self-sufficient;
[721-a](4) mobility training, Braille instruction, and other services and equipment to help an older blind individual adjust to blindness;
[721-a](5) guide services, reader services, and transportation; and
[721-a](6) any other appropriate services designed to assist a blind individual in coping with daily living activities, including supportive services or rehabilitation teaching services.

[721](b) No grant may be made under this section unless an application therefor, containing such information as the Commissioner may require, has been submitted to and approved by the Commissioner. The Commissioner may not approve any application for a grant unless the application contains assurances that the designated State unit will seek to incorporate any new methods and approaches relating to the services described in subsection (a) into its State plan for independent living services under section 705 of this title.

[721](c) Funds received under this section by any designated State unit may be used to make grants to public or private nonprofit agencies or organizations to--

[721-c](1) conduct activities which will improve or expand services for older blind individuals and help improve public understanding of the problems of such individuals; and

[721-c](2) provide independent living services to older blind individuals in accordance with the provisions of subsection (a).

[721](d) For purposes of this section, the term "older blind individual" means an individual aged fifty-five or older whose severe visual impairment makes gainful employment extremely difficult to attain but for whom independent living goals are feasible.

PART D--General Provisions.

SEC. 731. PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

[731](a) The Commissioner may make grants to States to establish systems to protect and advocate the rights of individuals with severe handicaps. In order to be eligible for a grant under this section, a State shall provide the Commissioner with assurances that any system established with grants made under this section shall have the authority to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of such individuals receiving services under this title within the State. A State must provide that such system will be independent of any designated State unit that provides services under this part to such individuals.

[731](b) No grant may be made under this section unless an application therefor has been submitted to the Commissioner containing such information and in such form and in accordance with such procedures as the Commissioner may, by regulation, prescribe.

SEC. 732. EMPLOYMENT OF HANDICAPPED INDIVIDUALS

As a condition of providing assistance under this title, the Secretary shall require that each recipient of assistance take affirmative action to employ and advance in employment qualified individuals with handicaps on the same terms and conditions required with respect to the employment of such individuals under the provisions of this Act which govern employment [732](1) by State rehabilitation agencies and rehabilitation facilities, and [732](2) under Federal contracts and subcontracts.

PART E--Authorizations.

SEC. 741. AUTHORIZATION OF APPROPRIATIONS

[741](a) There are authorized to be appropriated to carry out part A of this title \$11,830,000 for fiscal year 1987, \$12,310,000 for fiscal year 1988,

\$13,050,000 for fiscal year 1989, \$13,860,000 for fiscal year 1990, and \$14,428,000 for fiscal year 1991.

[741](b) There are authorized to be appropriated to carry out part B of this title \$24,320,000 for fiscal year 1987, \$25,750,000 for fiscal year 1988, \$27,300,000 for fiscal year 1989, \$28,980,000 for fiscal year 1990, and \$30,168,000 for fiscal year 1991.

[741](c) There are authorized to be appropriated to carry out part C of this title \$5,290,000 for fiscal year 1987, \$5,600,000 for fiscal year 1988, \$5,930,000 for fiscal year 1989, \$6,300,000 for fiscal year 1990, and \$6,558,000 for fiscal year 1991.

[741](d)(1) There are authorized to be appropriated to carry out part D of this title such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.

[741-d](2) The provisions of section 1913 of title 18, United States Code, shall be applicable to all monies authorized under the provisions of this subsection.

OTHER LAWS

HELEN KELLER NATIONAL CENTER ACT

SEC. 202. CONGRESSIONAL FINDINGS

The Congress finds that--

[202](1) deaf-blindness is among the most severe of all forms of disabilities, and there is a great and continuing need for services and training to help deaf-blind individuals attain the highest possible level of development;

[202](2) due to the rubella epidemic of the 1960's and recent advances in medical technology that have sustained the lives of many severely disabled individuals, including deaf-blind individuals, who might not otherwise have survived, the need for services for deaf-blind individuals is even more pressing now than in the past;

[202](3) helping deaf-blind individuals to become self-sufficient, independent, and employable by providing the services and training necessary to accomplish that end will benefit the Nation, both economically and socially;

[202](4) the Helen Keller National Center for Deaf-Blind Youths and Adults is a vital national resource for meeting the needs of deaf-blind individuals and no State currently has the facilities or personnel to meet such needs;

[202](5) the Federal Government has invested approximately \$10,000,000 in capital, equipment, and operating funds for such Center since it was established; and

[202](6) it is in the national interest to continue to provide support for the Center, and it is a proper function of the Federal Government to be the primary source of such support.

SEC. 203. AUTHORIZATION FOR THE CONTINUED OPERATION OF THE HELEN KELLER NATIONAL CENTER FOR DEAF-BLIND YOUTHS AND ADULTS; REPEAL OF PRIOR AUTHORIZATION

[203](a) Section 313 of the Rehabilitation Act of 1973 (29 U.S.C. 777c) is repealed.

[203](b) The Secretary of Education shall continue to administer and support the Helen Keller National Center for Deaf-Blind Youths and Adults in the same manner as such Center was administered pursuant to section 313 of the Rehabilitation Act of 1973, to the extent such manner of administration is not inconsistent with any purpose described in subsection (c) or any other requirement of this title.

[203](c) The purposes of the Center are to--

[203-c](1) provide specialized intensive services, or any other services, at

the Center or anywhere else in the United States, which are necessary to encourage the maximum personal development of any deaf-blind individual;

[203-c](2) train professionals and allied personnel at the Center or anywhere else in the United States to provide services to deaf-blind individuals; and

[203-c](3) conduct applied research, development programs, and demonstrations with respect to communication techniques, teaching methods, aids and devices, and delivery of services.

SEC. 204. AUDIT; MONITORING AND EVALUATION

[204](a) The books and accounts of the Center shall be audited annually by an independent auditor in the manner prescribed by the Secretary and a report on each such audit shall be submitted by the auditor to the Secretary at such time as the Secretary shall prescribe.

[204](b)(1) The Secretary shall establish procedures for monitoring, on a regular basis, the services performed and the training conducted by the Center.

[204-b](2) The Secretary shall, in addition to the regular monitoring required under paragraph (1), conduct an evaluation of the operation of the Center at the end of each fiscal year. A written report of such evaluation shall be submitted to the President, the Clerk of the House of Representatives, and the Secretary of the Senate within one hundred and eighty days after the end of the fiscal year for which such evaluation was conducted. The first such report shall be submitted for fiscal year 1983.

SEC. 205. AUTHORIZATION OF APPROPRIATIONS

[205](a) There are authorized to be appropriated to carry out the provisions of this title such sums as may be necessary for each of the fiscal years 1987 through 1991. Such sums shall remain available until expended.

[205](b) Any appropriation Act containing any appropriation authorized by subsection (a) shall contain a statement of the specific amount being made available to the Center.

SEC. 206. DEFINITIONS

For purposes of this title--

[206](1) the terms "Helen Keller National Center for Deaf-Blind Youths and Adults" and "Center" mean the Helen Keller National Center for Deaf-Blind Youths and Adults, and its affiliated network, operated pursuant to section 313 of the Rehabilitation Act of 1973 and continued under this title;

[206](2) the term "deaf-blind individual" means any individual--

[206-2](A) who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or central acuity of 20/200 if there is a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees,

[206-2](B) who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, and

[206-2](C) for whom the combination of the impairments described in subparagraphs (A) and (B) causes extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation, and such term includes any other meaning the Secretary may prescribe by regulation; and

[206-2](3) the term "Secretary" means the Secretary of Education.

SEC. 207. CONSTRUCTION OF ACT; EFFECT ON AGREEMENTS

This title shall not be construed as modifying or affecting any agreement between the Department of Education or any other department or agency of the

United States and the Industrial Home for the Blind, Incorporated, or any successor to or assignee of such corporation, with respect to the Center.