

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))