

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

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2006 JUN 21 P 4:02

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Division of Rehabilitation Services TITLE NUMBER: 130

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §18-10A-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: CASE SERVICES

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 21, 2006 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Divison of Rehabilitation Services

PO Box 50890

State Capitol

Charleston WV 25305

Attn: TRACY CARR

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

w/o - \$3.40
w - \$67.00



STATE OF WEST VIRGINIA
DEPARTMENT OF EDUCATION AND THE ARTS
OFFICE OF THE CABINET SECRETARY
STATE CAPITOL BUILDING 5, ROOM 205
1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV 25305

JOE MANCHIN III
GOVERNOR

KAY GOODWIN
CABINET SECRETARY

June 13, 2006

Judy Cooper, Team Leader
Administrative Law Division
Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0770

Dear Ms. Cooper:

With this letter, I am granting approval to the Division of Rehabilitation Services to file the following legislative rule with the Office of the Secretary of State for public comment:

West Virginia Division of Rehabilitation Services Case Services
Title 130
Series 1.

Sincerely,

A handwritten signature in cursive script, reading "Kay Goodwin".

Kay Goodwin
Cabinet Secretary

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 130 CSR 1 Case Services

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Division of Rehabilitation Services

Address: PO Box 50890, State Capitol, Charleston WV 25305

Phone Number: 766-4997 Email: tracy.carr@wvdrs.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No Fiscal Impact

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title: 130 CSR 1 Case Services

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: 6/19/06

Signature of Agency Head or Authorized Representative

Deborah Lovely

**TITLE 130
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF REHABILITATION SERVICES**

**SERIES 1
CLIENT SERVICES**

§130-1-1. General.

1.1. Scope -- This rule is being filed pursuant to W. Va. Code §29A-3-1 et seq. and §18-10A-1 et seq. This rule references the Division of Rehabilitation Services' Client Services Manual which establishes the policies and procedures for the administration of the state/federal vocational rehabilitation program.

1.2. Authority. -- W. Va. Code §18-10A-1 et seq.

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5. Repeal and Replace -- This rule repeals and replaces the West Virginia Division of Vocational Rehabilitation Case Services Procedural Rule 130CSR1 with the West Virginia Division of Rehabilitation Services Client Services Legislative Rule.

§130-1-2. Description.

2.1. General Purpose. The West Virginia Division of Rehabilitation Services operates as the Designated State Unit for the administration of the vocational rehabilitation program as authorized by Title IV of the Workforce Investment Act of 1998 (PL 105-220) and governed by 34 CFR Part 361. The purpose of the West Virginia Division of Rehabilitation Services is to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that they may prepare for and engage in gainful employment.

2.2. Client Services Manual. The West Virginia Division of Rehabilitation Services maintains a Client Services Manual that establishes the policies and procedures for the administration of the state/federal vocational rehabilitation services program. Federal law requires the Division to maintain written policies covering the nature and scope of the vocational rehabilitation services provided for in the law. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's individualized plan for employment and the policies do not establish arbitrary limits on the nature and scope of services to be provided to the individual to achieve an employment outcome (Sections 12(c) and 101(a)(6)(A) of the Workforce Investment Act; 34 CFR 361.50).

§130-1-3. Incorporation by Reference.

3.1. Incorporation by Reference. The Client Services Manual maintained by the West Virginia Division of Rehabilitation Services is hereby incorporated by reference as a Legislative Rule. The Client Services Manual is available from the West Virginia Division of Rehabilitation Services.

**TITLE 130
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF REHABILITATION SERVICES**

**SERIES 1
CLIENT SERVICES**

Summary

The proposed rule repeals a current Procedural Rule and replaces it with a Legislative Rule. The proposed rule will replace a rule that is currently out of date. The proposed rule will reference the West Virginia Division of Rehabilitation Services' Client Services Manual that is presently incorporated into a Procedural Rule. The Division of Rehabilitation Services operates the state/federal vocational rehabilitation program and is required by federal law to maintain written policies and procedures governing the provision of services to its clients.

TITLE 130
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF REHABILITATION SERVICES

SERIES 1
CLIENT SERVICES

Statement of Need

Repealing and replacing the current Legislative Rule will enable the West Virginia Division of Rehabilitation Services to eliminate a rule that is dated and incompatible with the Division's current fee schedule. The Division is proposing a Legislative Rule that will reference the Division's Resources Manual in order to replace the outdated rule.



Federal Register

Wednesday,
January 17, 2001

Part VI

Department of Education

34 CFR Part 361
State Vocational Rehabilitation Services
Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 361

RIN 1820-AB50

State Vocational Rehabilitation Services Program

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

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the State Vocational Rehabilitation Services Program. These amendments implement changes to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1998 that were contained in Title IV of the Workforce Investment Act of 1998 (WIA), enacted on August 7, 1998, and as further amended in 1998 by technical amendments in the Reading Excellence Act and the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1998 (hereinafter collectively referred to as the 1998 Amendments).

DATES: These regulations are effective February 16, 2001. However, affected parties do not have to comply with the information collection requirements in §§ 361.10, 361.12, 361.13, 361.14, 361.15, 361.16, 361.17, 361.18, 361.19, 361.20, 361.21, 361.22, 361.23, 361.24, 361.25, 361.26, 361.27, 361.28, 361.29, 361.30, 361.31, 361.32, 361.34, 361.35, 361.36, 361.37, 361.38, 361.40, 361.41, 361.46, 361.47, 361.48, 361.49, 361.50, 361.51, 361.52, 361.53, 361.54, 361.55, 361.57, 361.60 and 361.62 until the Department of Education publishes in the *Federal Register* the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Beverlee Stafford, U.S. Department of Education, 400 Maryland Avenue, SW., room 3014, Mary E. Switzer Building, Washington, DC 20202-2531. Telephone (202) 205-8831. If you use a telecommunications device for the deaf (TDD), you may call (202) 205-5538.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director, Alternate Formats Center, U.S. Department of Education, 400 Maryland

Avenue, SW., room 1000, Mary E. Switzer Building, Washington, DC 20202-2531. Telephone (202) 260-9895. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The State Vocational Rehabilitation Services Program (VR program) is authorized by Title I of the Rehabilitation Act of 1973, as amended (Act) (29 U.S.C. 701-744). The VR program provides support to each State to assist it in operating a statewide comprehensive, coordinated, effective, efficient, and accountable State program, as an integral part of a statewide workforce investment system, to assess, plan, develop, and provide vocational rehabilitation (VR) services for individuals with disabilities so that those individuals may prepare for and engage in gainful employment consistent with their strengths, priorities, concerns, abilities, capabilities, interests, and informed choice.

On February 28, 2000, we published a notice of proposed rulemaking (NPRM) for this part in the *Federal Register* (65 FR 10620). In the preamble to the NPRM, we discussed on pages 10620 through 10630 the major changes proposed to the regulations in 34 CFR part 361 as a result of the 1998 Amendments. These included the following:

- Streamlining the regulatory requirements pertaining to the State plan for the VR program by changing several State plan descriptions or assurances to program requirements that need not be addressed in the State plan. These proposed changes were intended to reduce the paperwork burden associated with the development of the State plan.

- Amending the regulations to reflect the responsibilities of the designated state unit (DSU or State unit) as a required partner in the One-Stop service delivery system (One-Stop system) established under Title I of the WIA, Pub. L. 105-22. For example, we proposed amending § 361.4 to include among the regulations applicable to the VR program the One-Stop system requirements in 20 CFR part 662 and the civil rights requirements in 29 CFR part 37. In addition to these changes and, as noted later, amending other sections of the current regulations to reflect requirements in WIA, we discuss in some detail in the preamble to the NPRM (65 FR 10620 and 10621) the relationship between the VR program, the One-Stop system in general, and persons with disabilities. We suggest

that you refer to that discussion for additional guidance in coordinating between One-Stop system components.

- Amending § 361.5 to include a new definition of the term "fair hearing board," a revised definition of "physical or mental impairment," a new definition of the term "qualified and impartial mediator," and several new statutory definitions found in WIA, including "local workforce investment board," "State workforce investment board," and "Statewide workforce investment system."

- Amending § 361.10 to require that each State submit its State plan for the VR program on the same date that it submits either a State plan under section 112 of WIA or a State unified plan under section 501 of that Act.

- Amending § 361.13 to expand the list of activities that are the responsibility of the DSU.

- Amending § 361.18(c) to require, as appropriate, DSUs to address in a written plan their retraining, recruitment, hiring, and other strategies to ensure that their personnel meet the statutory standards related to the comprehensive system of personnel development.

- Amending § 361.22 to reflect new statutory requirements that foster the transition of students from educational to VR services.

- Amending § 361.23 to reflect both the VR program's responsibilities as a partner of the One-Stop system under WIA and the requirements in the 1998 Amendments related to interagency coordination between the VR program and other components of the statewide workforce investment system under WIA.

- Amending § 361.26 to reflect the authority of States to use geographically earmarked funds without requesting a waiver of statewideness.

- Amending § 361.29 to guide States in developing a required comprehensive, forward-thinking plan for administering and improving their VR programs.

- Conforming § 361.30 solely to the requirement in the Act that DSUs provide VR services to eligible American Indians to the same extent as other significant populations of individuals with disabilities.

- Amending § 361.31 to conform to the requirement in the Act that the DSU establish cooperative agreements with private nonprofit VR service providers.

- Removing § 361.33 of the current regulations (regarding the use, assessment, and support of community rehabilitation programs) since these requirements are addressed in other

regulatory sections and reserving this section for future use.

- Amending § 361.35 to reflect the requirement in section 101(a)(18) of the Act that the State reserve a portion of its allotment under section 110 of the Act to further innovation and expansion of its VR program.
- Amending § 361.36 to incorporate the requirement in the 1998 Amendments that individuals who do not meet the State's order of selection criteria for receiving services be provided access to the DSU's information and referral system under § 361.37.
- Amending § 361.37 to reflect new requirements in the Act for referring individuals, including eligible individuals who do not meet the State's order of selection criteria for receiving services, to those components of the statewide workforce investment system best suited to meet an individual's employment needs.
- Amending § 361.42 to implement new requirements in the Act regarding presumptive eligibility for Social Security recipients and beneficiaries and the use of trial work experiences as part of the assessment for determining eligibility, to revise regulatory requirements concerning extended evaluations, and to identify the type of personnel who must conduct eligibility determinations.
- Amending § 361.45 to implement new requirements in the Act that expand an eligible individual's options for developing the Individualized Plan for Employment (IPE), enable individuals to receive technical assistance in developing their IPEs, specify the information that the DSU must provide to the eligible individual during IPE development, and detail applicable procedural requirements.
- Amending § 361.47 to require the States to determine, with input from the State Rehabilitation Councils, the type of documentation that they will maintain for each applicant and eligible individual to meet the content items that must be included in each individual's record of services.
- Amending § 361.52 to implement the expanded authority in the Act requiring that applicants and eligible individuals be able to exercise informed choice throughout the rehabilitation process.
- Amending § 361.53 to require interagency agreements between the DSU and other appropriate public entities to ensure that eligible individuals with disabilities receive, in a timely manner, necessary services to which each party to the agreement has

an obligation, or the authority, to contribute.

- Amending § 361.54 to expand the list of VR services exempt from State financial needs tests to include interpreter services for individuals who are deaf or hard of hearing, reader services for individuals who are blind, and personal assistant services. Also, this section was amended to prohibit States from applying financial needs tests to individuals receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).
 - Re-titling and Amending § 361.56 to better reflect the requirements that must be met before the State unit can close the record of services for an individual who has achieved an employment outcome.
 - Amending § 361.57 to implement new requirements in the 1998 Amendments regarding mediation and administrative review of disputes regarding the provision of VR services to applicants or eligible individuals.
 - Amending § 361.60 to reflect the elimination of statutory authority for the innovation and expansion grant program and to implement new statutory provisions regarding the use of geographically limited earmarked funds as part of the State's non-Federal share.
- These final regulations contain several significant changes from the NPRM. We fully explain each of these changes in the Analysis of Comments and Changes in the appendix at the end of these final regulations.

Analysis of Comments and Changes

In response to our invitation in the NPRM, 109 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these final regulations.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes that the law does not authorize the Secretary to make.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

These regulations address the National Education Goal that every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and

exercise the rights and responsibilities of citizenship.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the final regulations justify the costs.

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

Summary of Potential Costs and Benefits

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM (65 FR 10630 and 10631) and throughout the section-by-section analysis (65 FR 10621 through 10630). Our analysis of potential costs and benefits generally remains the same as in the NPRM, although we include additional discussion of potential costs and benefits in the Appendix to these final regulations titled Analysis of Comments and Changes.

Intergovernmental Review

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

This document provides early notification of our specific plans and actions for this program.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications.

"Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government.

These regulations implement various statutory changes to the State Vocational Rehabilitation Services Program. We do not believe that these regulations have federalism implications as defined in Executive Order 13132 or that they preempt State law. Accordingly, the Secretary has determined that these regulations do not contain policies that have federalism implications.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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<http://ocfo.ed.gov/fedreg.htm>

<http://www.ed.gov/news.html>

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(Catalog of Federal Domestic Assistance Number: 84.126 State Vocational Rehabilitation Services Program)

List of Subjects in 34 CFR Part 361

Reporting and recordkeeping requirements, State-administered grant program—education, Vocational rehabilitation.

Dated: December 7, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by revising part 361 to read as follows:

PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.

- 361.1 Purpose.
- 361.2 Eligibility for a grant.
- 361.3 Authorized activities.
- 361.4 Applicable regulations.
- 361.5 Applicable definitions.

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

- 361.10 Submission, approval, and disapproval of the State plan.
- 361.11 Withholding of funds.

Administration

- 361.12 Methods of administration.
- 361.13 State agency for administration.
- 361.14 Substitute State agency.
- 361.15 Local administration.
- 361.16 Establishment of an independent commission or a State Rehabilitation Council.
- 361.17 Requirements for a State Rehabilitation Council.
- 361.18 Comprehensive system of personnel development.
- 361.19 Affirmative action for individuals with disabilities.
- 361.20 Public participation requirements.
- 361.21 Consultations regarding the administration of the State plan.
- 361.22 Coordination with education officials.
- 361.23 Requirements related to the statewide workforce investment system.
- 361.24 Cooperation and coordination with other entities.
- 361.25 Statewide.
- 361.26 Waiver of statewide.
- 361.27 Shared funding and administration of joint programs.
- 361.28 Third-party cooperative arrangements involving funds from other public agencies.
- 361.29 Statewide assessment; annual estimates; annual State goals and priorities; strategies; and progress reports.
- 361.30 Services to American Indians.
- 361.31 Cooperative agreements with private nonprofit organizations.
- 361.32 Use of profitmaking organizations for on-the-job training in connection with selected projects.
- 361.33 [Reserved.]
- 361.34 Supported employment State plan supplement.
- 361.35 Innovation and expansion activities.
- 361.36 Ability to serve all eligible individuals; order of selection for services.
- 361.37 Information and referral services.
- 361.38 Protection, use, and release of personal information.
- 361.39 State-imposed requirements.
- 361.40 Reports.

Provision and Scope of Services

- 361.41 Processing referrals and applications.
- 361.42 Assessment for determining eligibility and priority for services.

- 361.43 Procedures for ineligibility determination.
- 361.44 Closure without eligibility determination.
- 361.45 Development of the individualized plan for employment.
- 361.46 Content of the individualized plan for employment.
- 361.47 Record of services.
- 361.48 Scope of vocational rehabilitation services for individuals with disabilities.
- 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.
- 361.50 Written policies governing the provision of services for individuals with disabilities.
- 361.51 Standards for facilities and providers of services.
- 361.52 Informed choice.
- 361.53 Comparable services and benefits.
- 361.54 Participation of individuals in cost of services based on financial need.
- 361.55 Annual review of individuals in extended employment or other employment under special certificate provisions of the Fair Labor Standards Act.
- 361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.
- 361.57 Review of determinations made by designated State unit personnel.

Subpart C—Financing of State Vocational Rehabilitation Programs

- 361.60 Matching requirements.
- 361.61 Limitation on use of funds for construction expenditures.
- 361.62 Maintenance of effort requirements.
- 361.63 Program income.
- 361.64 Obligation of Federal funds and program income.
- 361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

Subpart D—[Reserved]

Subpart E—Evaluation Standards and Performance Indicators

- 361.80 Purpose.
- 361.81 Applicable definitions.
- 361.82 Evaluation standards.
- 361.84 Performance indicators.
- 361.86 Performance levels.
- 361.88 Reporting requirements.
- 361.89 Enforcement procedures.

Authority: 29 U.S.C. 709(c), unless otherwise noted.

Subpart A—General

§ 361.1 Purpose.

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

- (a) An integral part of a statewide workforce investment system; and
- (b) Designed to assess, plan, develop, and provide vocational rehabilitation

services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that they may prepare for and engage in gainful employment.

(Authority: Section 100(a)(2) of the Act; 29 U.S.C. 720(a)(2))

§ 361.2 Eligibility for a grant.

Any State that submits to the Secretary a State plan that meets the requirements of section 101(a) of the Act and this part is eligible for a grant under this Program.

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

§ 361.3 Authorized activities.

The Secretary makes payments to a State to assist in—

(a) The costs of providing vocational rehabilitation services under the State plan; and

(b) Administrative costs under the State plan.

(Authority: Section 111(a)(1) of the Act; 29 U.S.C. 731(a)(1))

§ 361.4 Applicable regulations.

The following regulations apply to this Program:

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

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations), with respect to subgrants to entities that are not State or local governments or Indian tribal organizations.

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except for § 80.24(a)(2).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(b) The regulations in this part 361.

(c) 20 CFR part 662 (Description of One-Stop Service Delivery System

under Title I of the Workforce Investment Act of 1998).

(d) 29 CFR part 37, to the extent programs and activities are being conducted as part of the One-Stop service delivery system under section 121(b) of the Workforce Investment Act of 1998.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

§ 361.5 Applicable definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Department

EDGAR

Fiscal year

Nonprofit

Private

Public

Secretary

(b) *Other definitions.* The following definitions also apply to this part:

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

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

(i) Quality assurance;

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

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

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

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

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

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

(viii) Operating and maintaining designated State unit facilities, equipment, and grounds;

(ix) Supplies;

(x) Administration of the comprehensive system of personnel development described in § 361.18, including personnel administration, administration of affirmative action plans, and training and staff development;

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

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

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

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

(Authority: Section 7(1) of the Act; 29 U.S.C. 705(1))

(3) *American Indian* means an individual who is a member of an Indian tribe.

(Authority: Section 7(19)(A) of the Act; 29 U.S.C. 705(19)(A))

(4) *Applicant* means an individual who submits an application for vocational rehabilitation services in accordance with § 361.41(b)(2).

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(5) *Appropriate modes of communication* means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(6) *Assessment for determining eligibility and vocational rehabilitation needs* means, as appropriate in each case—

(i)(A) A review of existing data—

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

(2) To assign priority for an order of selection described in § 361.36 in the States that use an order of selection; and

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

(ii) To the extent additional data are necessary to make a determination of the employment outcomes and the nature and scope of vocational

rehabilitation services to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment—

(A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan of employment of the eligible individual;

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

(1) Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in § 361.36 for the individual; and

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

(C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual; and

(D) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment;

(iii) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(iv) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including

experiences in which the individual is provided appropriate supports and training.

(Authority: Section 7(2) of the Act; 29 U.S.C. 705(2))

(7) *Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

(Authority: Section 7(3) of the Act; 29 U.S.C. 705(3))

(8) *Assistive technology service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including—

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

(ii) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

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

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

(v) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(vi) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(Authority: Sections 7(4) and 12(c) of the Act; 29 U.S.C. 705(4) and 709(c))

(9) *Community rehabilitation program*.

(i) *Community rehabilitation program* means a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

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

(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs.

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

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

(P) Personal assistance services.

(Q) Services similar to the services described in paragraphs (A) through (P) of this definition.

(ii) For the purposes of this definition, the word *program* means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.

(10) *Comparable services and benefits* means—

(i) Services and benefits that are—

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

(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with § 361.53; and

(C) Commensurate to the services that the individual would otherwise receive from the designated State vocational rehabilitation agency.

(ii) For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

(Authority: Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 709(c) and 721(a)(8))

(11) *Competitive employment* means work—

(i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(ii) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(Authority: Sections 7(11) and 12(c) of the Act; 29 U.S.C. 705(11) and 709(c))

(12) *Construction of a facility for a public or nonprofit community rehabilitation program means—*

- (i) The acquisition of land in connection with the construction of a new building for a community rehabilitation program;
- (ii) The construction of new buildings;
- (iii) The acquisition of existing buildings;
- (iv) The expansion, remodeling, alteration, or renovation of existing buildings;
- (v) Architect's fees, site surveys, and soil investigation, if necessary, in connection with the construction project;
- (vi) The acquisition of initial fixed or movable equipment of any new, newly acquired, newly expanded, newly remodeled, newly altered, or newly renovated buildings that are to be used for community rehabilitation program purposes; and
- (vii) Other direct expenditures appropriate to the construction project, except costs of off-site improvements.

(Authority: Sections 7(6) and 12(c) of the Act; 29 U.S.C. 705(6) and 709(c))

(13) *Designated State agency or State agency means the sole State agency, designated in accordance with § 361.13(a), to administer, or supervise the local administration of, the State plan for vocational rehabilitation services. The term includes the State agency for individuals who are blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of individuals who are blind.*

(Authority: Sections 7(8)(A) and 101(a)(2)(A) of the Act; 29 U.S.C. 705(8)(A) and 721(a)(2)(A))

(14) *Designated State unit or State unit means either—*

- (i) The State vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency, as required under § 361.13(b); or

(ii) The State agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

(Authority: Sections 7(8)(B) and 101(a)(2)(B) of the Act; 29 U.S.C. 705(8)(B) and 721(a)(2)(B))

(15) *Eligible individual means an applicant for vocational rehabilitation services who meets the eligibility requirements of § 361.42(a).*

(Authority: Sections 7(20)(A) and 102(a)(1) of the Act; 29 U.S.C. 705(20)(A) and 722(a)(1))

(16) *Employment outcome means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.*

(Authority: Sections 7(11), 12(c), 100(a)(2), and 102(b)(3)(A) of the Act; 29 U.S.C. 705(11), 709(c), 720(a)(2), and 722(b)(3)(A))

(17) *Establishment, development, or improvement of a public or nonprofit community rehabilitation program means—*

- (i) The establishment of a facility for a public or nonprofit community rehabilitation program as defined in paragraph (b)(18) of this section to provide vocational rehabilitation services to applicants or eligible individuals;

(ii) Staffing, if necessary to establish, develop, or improve a community rehabilitation program for the purpose of providing vocational rehabilitation services to applicants or eligible individuals, for a maximum period of 4 years, with Federal financial participation available at the applicable matching rate for the following levels of staffing costs:

- (A) 100 percent of staffing costs for the first year.
- (B) 75 percent of staffing costs for the second year.
- (C) 60 percent of staffing costs for the third year.
- (D) 45 percent of staffing costs for the fourth year; and

(iii) Other expenditures related to the establishment, development, or improvement of a community rehabilitation program that are necessary to make the program functional or increase its effectiveness in providing vocational rehabilitation services to applicants or eligible

individuals, but are not ongoing operating expenses of the program.

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

(18) *Establishment of a facility for a public or nonprofit community rehabilitation program means—*

- (i) The acquisition of an existing building and, if necessary, the land in connection with the acquisition, if the building has been completed in all respects for at least 1 year prior to the date of acquisition and the Federal share of the cost of acquisition is not more than \$300,000;

(ii) The remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building;

(iii) The expansion of an existing building, provided that—

(A) The existing building is complete in all respects;

(B) The total size in square footage of the expanded building, notwithstanding the number of expansions, is not greater than twice the size of the existing building;

(C) The expansion is joined structurally to the existing building and does not constitute a separate building; and

(D) The costs of the expansion do not exceed the appraised value of the existing building;

(iv) Architect's fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building; and

(v) The acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

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

(19) *Extended employment means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.*

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(20) *Extended services means ongoing support services and other appropriate services that are needed to support and*

maintain an individual with a most significant disability in supported employment and that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part and 34 CFR part 363 after an individual with a most significant disability has made the transition from support provided by the designated State unit.

(Authority: Sections 7(13) and 623 of the Act; 29 U.S.C. 705(13) and 7951)

(21) *Extreme medical risk* means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(Authority: Sections 12(c) and 101(a)(8)(A)(i)(III) of the Act; 29 U.S.C. 709(c) and 721(a)(8)(A)(i)(III))

(22) *Fair hearing board* means a committee, body, or group of persons established by a State prior to January 1, 1985 that—

(i) Is authorized under State law to review determinations made by personnel of the designated State unit that affect the provision of vocational rehabilitation services; and

(ii) Carries out the responsibilities of the impartial hearing officer in accordance with the requirements in § 361.57(j).

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(23) *Family member*, for purposes of receiving vocational rehabilitation services in accordance with § 361.48(i), means an individual—

(i) Who either—

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

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

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

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

(Authority: Sections 12(c) and 103(a)(17) of the Act; 29 U.S.C. 709(c) and 723(a)(17))

(24) *Governor* means a chief executive officer of a State.

(Authority: Section 7(15) of the Act; 29 U.S.C. 705(15))

(25) *Impartial hearing officer*.

(i) *Impartial hearing officer* means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Council for the designated State unit;

(C) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(D) Has knowledge of the delivery of vocational rehabilitation services, the State plan, and the Federal and State regulations governing the provision of services;

(E) Has received training with respect to the performance of official duties; and

(F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(ii) An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(Authority: Section 7(16) of the Act; 29 U.S.C. 705(16))

(26) *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: Section 7(19)(B) of the Act; 29 U.S.C. 705(19)(B))

(27) *Individual who is blind* means a person who is blind within the meaning of applicable State law. (Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(28) *Individual with a disability*, except as provided in § 361.5(b)(29), means an individual—

(i) Who has a physical or mental impairment;

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

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

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

(29) *Individual with a disability*, for purposes of §§ 361.5(b)(14), 361.13(a), 361.13(b)(1), 361.17(a), (b), (c), and (j), 361.18(b), 361.19, 361.20, 361.23(b)(2), 361.29(a) and (d)(5), and 361.51(b), means an individual—

(i) Who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Section 7(20)(B) of the Act; 29 U.S.C. 705(20)(B))

(30) *Individual with a most significant disability* means an individual with a significant disability who meets the designated State unit's criteria for an individual with a most significant disability. These criteria must be consistent with the requirements in § 361.36(d)(1) and (2).

(Authority: Sections 7(21)(E)(i) and 101(a)(5)(C) of the Act; 29 U.S.C. 705(21)(E)(i) and 721(a)(5)(C))

(31) *Individual with a significant disability* means an individual with a disability—

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

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

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: Section 7(21)(A) of the Act; 29 U.S.C. 705(21)(A))

(32) *Individual's representative* means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

(Authority: Sections 7(22) and 12(c) of the Act; 29 U.S.C. 705(22) and 709(c))

(33) *Integrated setting*.—

(i) With respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are

providing services to those applicants or eligible individuals;

(ii) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(34) *Local workforce investment board* means a local workforce investment board established under section 117 of the Workforce Investment Act of 1998.

(Authority: Section 7(25) of the Act; 29 U.S.C. 705(25))

(35) *Maintenance* means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(Authority: Sections 12(c) and 103(a)(7) of the Act; 29 U.S.C. 709(c) and 723(a)(7))

(i) *Examples:* The following are examples of expenses that would meet the definition of maintenance. The examples are illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

Example 1: The cost of a uniform or other suitable clothing that is required for an individual's job placement or job-seeking activities.

Example 2: The cost of short-term shelter that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual's home.

Example 3: The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

Example 4: The costs of an individual's participation in enrichment activities related to that individual's training program.

(ii) [Reserved]

(36) *Mediation* means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in

accordance with the requirements in § 361.57(d) by a qualified and impartial mediator as defined in § 361.5(b)(43).

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(37) *Nonprofit*, with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(Authority: Section 7(26) of the Act; 29 U.S.C. 705(26))

(38) *Ongoing support services*, as used in the definition of "Supported employment"

(i) Means services that are—

(A) Needed to support and maintain an individual with a most significant disability in supported employment;

(B) Identified based on a determination by the designated State unit of the individual's need as specified in an individualized plan for employment; and

(C) Furnished by the designated State unit from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

(ii) Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on—

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;

(iii) Consist of—

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in paragraph (b)(6)(ii) of this section;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and training;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in § 361.48; or

(I) Any service similar to the foregoing services.

(Authority: Sections 7(27) and 12(c) of the Act; 29 U.S.C. 705(27) and 709(c))

(39) *Personal assistance services* means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(Authority: Sections 7(28), 102(b)(3)(B)(i)(I), and 103(a)(9) of the Act; 29 U.S.C. 705(28), 722(b)(3)(B)(i)(I), and 723(a)(9))

(40) *Physical and mental restoration services* means—

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

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

(iii) Dentistry;

(iv) Nursing services;

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

(vi) Drugs and supplies;

(vii) Prosthetic and orthotic devices;

(viii) Eyeglasses and visual services, including visual training, and the

examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;

- (ix) Podiatry;
- (x) Physical therapy;
- (xi) Occupational therapy;
- (xii) Speech or hearing therapy;
- (xiii) Mental health services;
- (xiv) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

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

(xvi) Other medical or medically related rehabilitation services.

(Authority: Sections 12(c) and 103(a)(6) of the Act; 29 U.S.C. 709(c) and 723(a)(6))

(41) *Physical or mental impairment* means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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

(42) *Post-employment services* means one or more of the services identified in § 361.48 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 12(c) and 103(a)(18) of the Act; 29 U.S.C. 709(c) and 723(a)(18))

Note to paragraph (b)(42): Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet rehabilitation needs that do not require a

complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, e.g., the individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment; to regain employment, e.g., the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, e.g., the employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(43) *Qualified and impartial mediator.*

(i) *Qualified and impartial mediator* means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Council for the designated State unit;

(C) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(D) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;

(E) Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and

(F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings.

(ii) An individual serving as a mediator is not considered to be an employee of the designated State agency or designated State unit for the purposes of this definition solely because the individual is paid by the designated State agency or designated State unit to serve as a mediator.

(Authority: Sections 12(c) and 102(c)(4) of the Act; 29 U.S.C. 709(c) and 722(c)(4))

(44) *Rehabilitation engineering* means the systematic application of

engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

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

(45) *Rehabilitation technology* means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(Authority: Section 7(30) of the Act; 29 U.S.C. 705(30))

(46) *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 provisions of the Alaska Native Claims Settlement Act.

(Authority: Section 121(c) of the Act; 29 U.S.C. 741(c))

(47) *Sole local agency* means a unit or combination of units of general local government or one or more Indian tribes that has the sole responsibility under an agreement with, and the supervision of, the State agency to conduct a local or tribal vocational rehabilitation program, in accordance with the State plan.

(Authority: Section 7(24) of the Act; 29 U.S.C. 705(24))

(48) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Authority: Section 7(32) of the Act; 29 U.S.C. 705(32))

(49) *State workforce investment board* means a State workforce investment board established under section 111 of the Workforce Investment Act of 1998.

(Authority: Section 7(33) of the Act; 29 U.S.C. 705(33))

(50) *Statewide workforce investment system* means a system described in

section 111(d)(2) of the Workforce Investment Act of 1998.

(Authority: Section 7(34) of the Act; 29 U.S.C. 705(34))

(51) *State plan* means the State plan for vocational rehabilitation services submitted under § 361.10.

(Authority: Sections 12(c) and 101 of the Act; 29 U.S.C. 709(c) and 721)

(52) *Substantial impediment to employment* means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

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

(53) *Supported employment* means—

(i) Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities—

(A) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services from the designated State unit and extended services after transition as described in paragraph (b)(20) of this section to perform this work; or

(ii) Transitional employment, as defined in paragraph (b)(54) of this section, for individuals with the most significant disabilities due to mental illness.

(Authority: Section 7(35) of the Act; 29 U.S.C. 705(35))

(54) *Supported employment services* means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the designated State unit—

(i) For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment

outcome identified in the individualized plan for employment; and

(ii) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(Authority: Sections 7(36) and 12(c) of the Act; 29 U.S.C. 705(36) and 709(c))

(55) *Transition services* means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's individualized plan for employment.

(Authority: Section 7(37) and 103(a)(15) of the Act; 29 U.S.C. 705(37) and 723(a)(15))

(56) *Transitional employment*, as used in the definition of "Supported employment," means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

(Authority: Sections 7(35)(B) and 12(c) of the Act; 29 U.S.C. 705(35)(B) and 709(c))

(57) *Transportation* means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

(Authority: 103(a)(8) of the Act; 29 U.S.C. 723(a)(8))

(i) *Examples*: The following are examples of expenses that would meet the definition of transportation. The

examples are purely illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

Example 1: Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

Example 2: The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as modification would be considered a rehabilitation technology service.

Example 3: Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

(ii) [Reserved]

(58) *Vocational rehabilitation services*—

(i) If provided to an individual, means those services listed in § 361.48; and

(ii) If provided for the benefit of groups of individuals, also means those services listed in § 361.49.

(Authority: Sections 7(38) and 103(a) and (b) of the Act; 29 U.S.C. 705(38), 723(a) and (b)).

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

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

(a) *Purpose*. For a State to receive a grant under this part, the designated State agency must submit to the Secretary, and obtain approval of, a State plan that contains a description of the State's vocational rehabilitation services program, the plans and policies to be followed in carrying out the program, and other information requested by the Secretary, in accordance with the requirements of this part.

(b) *Separate part relating to the vocational rehabilitation of individuals who are blind*. If a separate State agency administers or supervises the administration of a separate part of the State plan relating to the vocational rehabilitation of individuals who are blind, that part of the State plan must separately conform to all requirements under this part that are applicable to a State plan.

(c) *State unified plan*. The State may choose to submit the State plan for vocational rehabilitation services as part of the State unified plan under section 501 of the Workforce Investment Act of 1998. The portion of the State unified plan that includes the State plan for vocational rehabilitation services must meet the State plan requirements in this part.

(d) *Public participation.* Prior to the adoption of any substantive policies or procedures governing the provision of vocational rehabilitation services under the State plan, including making any substantive amendment to those policies and procedures, the designated State agency must conduct public meetings throughout the State, in accordance with the requirements of § 361.20.

(e) *Duration.* The State plan remains in effect subject to the submission of modifications the State determines to be necessary or the Secretary may require based on a change in State policy, a change in Federal law, including regulations, an interpretation of the Act by a Federal court or the highest court of the State, or a finding by the Secretary of State noncompliance with the requirements of the Act or this part.

(f) *Submission of the State plan.* The State must submit the State plan for approval—

(1) To the Secretary on the same date that the State submits a State plan relating to the statewide workforce investment system under section 112 of the Workforce Investment Act of 1998;

(2) As part of the State unified plan submitted under section 501 of that Act; or

(3) To the Secretary on the same date that the State submits a State unified plan under section 501 of that Act that does not include the State plan under this part.

(g) *Annual submission.* (1) The State must submit to the Secretary for approval revisions to the State plan in accordance with paragraph (e) of this section and 34 CFR 76.140.

(2) The State must submit to the Secretary reports containing annual updates of the information required under §§ 361.18, 361.29, and 361.35 and any other updates of the information required under this part that are requested by the Secretary.

(3) The State is not required to submit policies, procedures, or descriptions required under this part that have been previously submitted to the Secretary and that demonstrate that the State meets the requirements of this part, including any policies, procedures, or descriptions submitted under this part that are in effect on August 6, 1998.

(h) *Approval.* The Secretary approves any State plan and any revisions to the State plan that conform to the requirements of this part and section 101(a) of the Act.

(i) *Disapproval.* The Secretary disapproves any State plan that does not conform to the requirements of this part and section 101(a) of the Act, in

accordance with the following procedures:

(1) *Informal resolution.* Prior to disapproving any State plan, the Secretary attempts to resolve disputes informally with State officials.

(2) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to disapprove the State plan and of the opportunity for a hearing.

(3) *State plan hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this Program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(4) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(5) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR part 81.

(6) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(7) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(8) *Judicial review.* A State may appeal the Secretary's decision to disapprove the State plan by filing a petition for review with the United States Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 101(a) and (b), and 107(d) of the Act; 20 U.S.C. 1231g(a); and 29 U.S.C. 721(a) and (b), and 727(d))

§ 361.11 Withholding of funds.

(a) *Basis for withholding.* The Secretary may withhold or limit payments under section 111 or 622(a) of the Act, as provided by section 107(c) and (d) of the Act, if the Secretary determines that—

(1) The State plan, including the supported employment supplement, has been so changed that it no longer conforms with the requirements of this part or 34 CFR part 363; or

(2) In the administration of the State plan, there has been a failure to comply substantially with any provision of that plan or a program improvement plan established in accordance with section 106(b)(2) of the Act.

(b) *Informal resolution.* Prior to withholding or limiting payments in accordance with this section, the

Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to withhold or limit payments and of the opportunity for a hearing.

(d) *Withholding hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this Program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(h) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(i) *Judicial review.* A State may appeal the Secretary's decision to withhold or limit payments by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 101(b), 107(c), and 107(d) of the Act; 29 U.S.C. 721(b), 727(c)(1) and (2), and 727(d))

Administration

§ 361.12 Methods of administration.

The State plan must assure that the State agency, and the designated State unit if applicable, employs methods of administration found necessary by the Secretary for the proper and efficient administration of the plan and for carrying out all functions for which the State is responsible under the plan and this part. These methods must include procedures to ensure accurate data collection and financial accountability.

(Authority: Sections 101(a)(6) and (a)(10)(A) of the Act; 29 U.S.C. 721(a)(6) and (a)(10)(A))

§ 361.13 State agency for administration.

(a) *Designation of 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 accordance with the following requirements:

(1) *General.* Except as provided in paragraphs (a)(2) and (3) of this section,

the State plan must provide that the designated State agency is one of the following types of agencies:

(i) A State agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities; or

(ii) A State agency that includes a vocational rehabilitation unit as provided in paragraph (b) of this section.

(2) *American Samoa.* In the case of American Samoa, the State plan must designate the Governor.

(3) *Designated State agency for individuals who are blind.* If a State commission or other agency that provides assistance or services to individuals who are blind is authorized under State law to provide vocational rehabilitation services to individuals who are blind, and this commission or agency is primarily concerned with vocational rehabilitation or includes a vocational rehabilitation unit as provided in paragraph (b) of this section, the State plan may designate that agency as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind or to supervise its administration in a political subdivision of the State by a sole local agency.

(b) *Designation of State unit.*

(1) If the designated State agency is not of the type specified in paragraph (a)(1)(i) of this section or if the designated State agency specified in paragraph (a)(3) of this section is not primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities, the State plan must assure that the agency (or each agency if two agencies are designated) includes a vocational rehabilitation bureau, division, or unit that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State agency's vocational rehabilitation program under the State plan;

(ii) Has a full-time director;

(iii) Has a staff, at least 90 percent of whom are employed full time on the rehabilitation work of the organizational unit; and

(iv) Is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency.

(2) In the case of a State that has not designated a separate State agency for individuals who are blind, as provided

for in paragraph (a)(3) of this section, the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided to individuals who are blind to one organizational unit of the designated State agency and may assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of paragraph (b)(1) of this section applying separately to each of these units.

(c) *Responsibility for administration.*

(1) At a minimum, the following activities are the responsibility of the designated State unit or the sole local agency under the supervision of the State unit:

(i) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services.

(ii) The determination to close the record of services of an individual who has achieved an employment outcome in accordance with § 361.56.

(iii) Policy formulation and implementation.

(iv) The allocation and expenditure of vocational rehabilitation funds.

(v) Participation as a partner in the One-Stop service delivery system under Title I of the Workforce Investment Act of 1998, in accordance with 20 CFR part 662.

(2) The responsibility for the functions described in paragraph (c)(1) of this section may not be delegated to any other agency or individual.

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

§ 361.14 Substitute State agency.

(a) *General provisions.*

(1) If the Secretary has withheld all funding from a State under § 361.11, the State may designate another agency to substitute for the designated State agency in carrying out the State's program of vocational rehabilitation services.

(2) Any public or nonprofit private organization or agency within the State or any political subdivision of the State is eligible to be a substitute agency.

(3) The substitute agency must submit a State plan that meets the requirements of this part.

(4) The Secretary makes no grant to a substitute agency until the Secretary approves its plan.

(b) *Substitute agency matching share.* The Secretary does not make any payment to a substitute agency unless it has provided assurances that it will contribute the same matching share as the State would have been required to

contribute if the State agency were carrying out the vocational rehabilitation program.

(Authority: Section 107(c)(3) of the Act; 29 U.S.C. 727(c)(3))

§ 361.15 Local administration.

(a) If the State plan provides for the administration of the plan by a local agency, the designated State agency must—

(1) Ensure that each local agency is under the supervision of the designated State unit and is the sole local agency as defined in § 361.5(b)(47) that is responsible for the administration of the program within the political subdivision that it serves; and

(2) Develop methods that each local agency will use to administer the vocational rehabilitation program, in accordance with the State plan.

(b) A separate local agency serving individuals who are blind may administer that part of the plan relating to vocational rehabilitation of individuals who are blind, under the supervision of the designated State unit for individuals who are blind.

(Authority: Sections 7(24) and 101(a)(2)(A) of the Act; 29 U.S.C. 705(24) and 721(a)(2)(A))

§ 361.16 Establishment of an independent commission or a state rehabilitation council.

(a) *General requirement.* Except as provided in paragraph (b) of this section, the State plan must contain one of the following two assurances:

(1) An assurance that the designated State agency is an independent State commission that—

(i) Is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State and is primarily concerned with vocational rehabilitation or vocational and other rehabilitation services, in accordance with § 361.13(a)(1)(i);

(ii) Is consumer-controlled by persons who—

(A) Are individuals with physical or mental impairments that substantially limit major life activities; and

(B) Represent individuals with a broad range of disabilities, unless the designated State unit under the direction of the commission is the State agency for individuals who are blind;

(iii) Includes family members, advocates, or other representatives of individuals with mental impairments; and

(iv) Conducts the functions identified in § 361.17(h)(4).

(2) An assurance that—

(i) The State has established a State Rehabilitation Council (Council) that meets the requirements of § 361.17;

(ii) The designated State unit, in accordance with § 361.29, jointly develops, agrees to, and reviews annually State goals and priorities and jointly submits to the Secretary annual reports of progress with the Council;

(iii) The designated State unit regularly consults with the Council regarding the development, implementation, and revision of State policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services;

(iv) The designated State unit transmits to the Council—

(A) All plans, reports, and other information required under this part to be submitted to the Secretary;

(B) All policies and information on all practices and procedures of general applicability provided to or used by rehabilitation personnel providing vocational rehabilitation services under this part; and

(C) Copies of due process hearing decisions issued under this part and transmitted in a manner to ensure that the identity of the participants in the hearings is kept confidential; and

(v) The State plan, and any revision to the State plan, includes a summary of input provided by the Council, including recommendations from the annual report of the Council, the review and analysis of consumer satisfaction described in § 361.17(h)(4), and other reports prepared by the Council, and the designated State unit's response to the input and recommendations, including explanations of reasons for rejecting any input or recommendation of the Council.

(b) *Exception for separate State agency for individuals who are blind.* In the case of a State that designates a separate State agency under § 361.13(a)(3) to administer the part of the State plan under which vocational rehabilitation services are provided to individuals who are blind, the State must either establish a separate State Rehabilitation Council for each agency that does not meet the requirements in paragraph (a)(1) of this section or establish one State Rehabilitation Council for both agencies if neither agency meets the requirements of paragraph (a)(1) of this section.

(Authority: Sections 101(a)(21) of the Act; 29 U.S.C. 721(a)(21))

§ 361.17 Requirements for a state rehabilitation council.

If the State has established a Council under § 361.16(a)(2) or (b), the Council must meet the following requirements:

(a) Appointment.

(1) The members of the Council must be appointed by the Governor or, in the case of a State that, under State law, vests authority for the administration of the activities carried out under this part in an entity other than the Governor (such as one or more houses of the State legislature or an independent board), the chief officer of that entity.

(2) The appointing authority must select members of the Council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities. In selecting members, the appointing authority must consider, to the greatest extent practicable, the extent to which minority populations are represented on the Council.

(b) Composition.

(1) *General.* Except as provided in paragraph (b)(3) of this section, the Council must be composed of at least 15 members, including—

(i) At least one representative of the Statewide Independent Living Council, who must be the chairperson or other designee of the Statewide Independent Living Council;

(ii) At least one representative of a parent training and information center established pursuant to section 682(a) of the Individuals with Disabilities Education Act;

(iii) At least one representative of the Client Assistance Program established under 34 CFR part 370, who must be the director of or other individual recommended by the Client Assistance Program;

(iv) At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member of the Council if employed by the designated State agency;

(v) At least one representative of community rehabilitation program service providers;

(vi) Four representatives of business, industry, and labor;

(vii) Representatives of disability groups that include a cross section of—

(A) Individuals with physical, cognitive, sensory, and mental disabilities; and

(B) Representatives of individuals with disabilities who have difficulty representing themselves or are unable due to their disabilities to represent themselves;

(viii) Current or former applicants for, or recipients of, vocational rehabilitation services;

(ix) In a State in which one or more projects are carried out under section 121 of the Act (American Indian Vocational Rehabilitation Services), at least one representative of the directors of the projects;

(x) At least one representative of the State educational agency responsible for the public education of students with disabilities who are eligible to receive services under this part and part B of the Individuals with Disabilities Education Act;

(xi) At least one representative of the State workforce investment board; and

(xii) The director of the designated State unit as an ex officio, nonvoting member of the Council.

(2) *Employees of the designated State agency.* Employees of the designated State agency may serve only as nonvoting members of the Council. This provision does not apply to the representative appointed pursuant to paragraph (b)(1)(iii) of this section.

(3) *Composition of a separate Council for a separate State agency for individuals who are blind.* Except as provided in paragraph (b)(4) of this section, if the State establishes a separate Council for a separate State agency for individuals who are blind, that Council must—

(i) Conform with all of the composition requirements for a Council under paragraph (b)(1) of this section, except the requirements in paragraph (b)(1)(vii), unless the exception in paragraph (b)(4) of this section applies; and

(ii) Include—

(A) At least one representative of a disability advocacy group representing individuals who are blind; and

(B) At least one representative of an individual who is blind, has multiple disabilities, and has difficulty representing himself or herself or is unable due to disabilities to represent himself or herself.

(4) *Exception.* If State law in effect on October 29, 1992 requires a separate Council under paragraph (b)(3) of this section to have fewer than 15 members, the separate Council is in compliance with the composition requirements in paragraphs (b)(1)(vi) and (b)(1)(viii) of this section if it includes at least one representative who meets the requirements for each of those paragraphs.

(c) Majority.

(1) A majority of the Council members must be individuals with disabilities who meet the requirements of § 361.5(b)(29) and are not employed by the designated State unit.

(2) In the case of a separate Council established under § 361.16(b), a majority

of the Council members must be individuals who are blind and are not employed by the designated State unit.

(d) *Chairperson.* The chairperson must be—

(1) Selected by the members of the Council from among the voting members of the Council, subject to the veto power of the Governor; or

(2) In States in which the Governor does not have veto power pursuant to State law, the appointing authority described in paragraph (a)(1) of this section must designate a member of the Council to serve as the chairperson of the Council or must require the Council to designate a member to serve as chairperson.

(e) *Terms of appointment.*

(1) Each member of the Council must be appointed for a term of no more than 3 years, and each member of the Council, other than a representative identified in paragraph (b)(1)(iii) or (ix) of this section, may serve for no more than two consecutive full terms.

(2) A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed must be appointed for the remainder of the predecessor's term.

(3) The terms of service of the members initially appointed must be, as specified by the appointing authority as described in paragraph (a)(1) of this section, for varied numbers of years to ensure that terms expire on a staggered basis.

(f) *Vacancies.*

(1) A vacancy in the membership of the Council must be filled in the same manner as the original appointment, except the appointing authority as described in paragraph (a)(1) of this section may delegate the authority to fill that vacancy to the remaining members of the Council after making the original appointment.

(2) No vacancy affects the power of the remaining members to execute the duties of the Council.

(g) *Conflict of interest.* No member of the Council shall cast a vote on any matter that would provide direct financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under State law.

(h) *Functions.* The Council must, after consulting with the State workforce investment board—

(1) Review, analyze, and advise the designated State unit regarding the performance of the State unit's responsibilities under this part, particularly responsibilities related to—

(i) Eligibility, including order of selection;

(ii) The extent, scope, and effectiveness of services provided; and
(iii) Functions performed by State agencies that affect or potentially affect the ability of individuals with disabilities in achieving employment outcomes under this part;

(2) In partnership with the designated State unit—

(i) Develop, agree to, and review State goals and priorities in accordance with § 361.29(c); and

(ii) Evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Secretary in accordance with § 361.29(e);

(3) Advise the designated State agency and the designated State unit regarding activities carried out under this part and assist in the preparation of the State plan and amendments to the plan, applications, reports, needs assessments, and evaluations required by this part;

(4) To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with—

(i) The functions performed by the designated State agency;

(ii) The vocational rehabilitation services provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Act; and

(iii) The employment outcomes achieved by eligible individuals receiving services under this part, including the availability of health and other employment benefits in connection with those employment outcomes;

(5) Prepare and submit to the Governor and to the Secretary no later than 90 days after the end of the Federal fiscal year an annual report on the status of vocational rehabilitation programs operated within the State and make the report available to the public through appropriate modes of communication;

(6) To avoid duplication of efforts and enhance the number of individuals served, coordinate activities with the activities of other councils within the State, including the Statewide Independent Living Council established under 34 CFR part 364, the advisory panel established under section 612(a)(21) of the Individuals with Disabilities Education Act, the State Developmental Disabilities Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, the State mental health planning council established under section 1914(a) of the Public Health Service Act, and the State workforce investment board;

(7) Provide for coordination and the establishment of working relationships between the designated State agency and the Statewide Independent Living Council and centers for independent living within the State; and

(8) Perform other comparable functions, consistent with the purpose of this part, as the Council determines to be appropriate, that are comparable to the other functions performed by the Council.

(i) *Resources.*

(1) The Council, in conjunction with the designated State unit, must prepare a plan for the provision of resources, including staff and other personnel, that may be necessary and sufficient for the Council to carry out its functions under this part.

(2) The resource plan must, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.

(3) Any disagreements between the designated State unit and the Council regarding the amount of resources necessary to carry out the functions of the Council must be resolved by the Governor, consistent with paragraphs (i)(1) and (2) of this section.

(4) The Council must, consistent with State law, supervise and evaluate the staff and personnel that are necessary to carry out its functions.

(5) Those staff and personnel that are assisting the Council in carrying out its functions may not be assigned duties by the designated State unit or any other agency or office of the State that would create a conflict of interest.

(j) *Meetings.* The Council must—

(1) Convene at least four meetings a year in locations determined by the Council to be necessary to conduct Council business. The meetings must be publicly announced, open, and accessible to the general public, including individuals with disabilities, unless there is a valid reason for an executive session; and

(2) Conduct forums or hearings, as appropriate, that are publicly announced, open, and accessible to the public, including individuals with disabilities.

(k) *Compensation.* Funds appropriated under Title I of the Act, except funds to carry out sections 112 and 121 of the Act, may be used to compensate and reimburse the expenses of Council members in accordance with section 105(g) of the Act.

(Authority: Section 105 of the Act; 29 U.S.C. 725)

§ 361.18 Comprehensive system of personnel development.

The State plan must describe the procedures and activities the State agency will undertake to establish and maintain a comprehensive system of personnel development designed to ensure an adequate supply of qualified rehabilitation personnel, including professionals and paraprofessionals, for the designated State unit. If the State agency has a State Rehabilitation Council, this description must, at a minimum, specify that the Council has an opportunity to review and comment on the development of plans, policies, and procedures necessary to meet the requirements of paragraphs (b) through (d) of this section. This description must also conform with the following requirements:

(a) *Data system on personnel and personnel development.* The State plan must describe the development and maintenance of a system by the State agency for collecting and analyzing on an annual basis data on qualified personnel needs and personnel development, in accordance with the following requirements:

(1) Data on qualified personnel needs must include—

(i) The number of personnel who are employed by the State agency in the provision of vocational rehabilitation services in relation to the number of individuals served, broken down by personnel category;

(ii) The number of personnel currently needed by the State agency to provide vocational rehabilitation services, broken down by personnel category; and

(iii) Projections of the number of personnel, broken down by personnel category, who will be needed by the State agency to provide vocational rehabilitation services in the State in 5 years based on projections of the number of individuals to be served, including individuals with significant disabilities, the number of personnel expected to retire or leave the field, and other relevant factors.

(2) Data on personnel development must include—

(i) A list of the institutions of higher education in the State that are preparing vocational rehabilitation professionals, by type of program;

(ii) The number of students enrolled at each of those institutions, broken down by type of program; and

(iii) The number of students who graduated during the prior year from each of those institutions with certification or licensure, or with the credentials for certification or licensure, broken down by the personnel category

for which they have received, or have the credentials to receive, certification or licensure.

(b) *Plan for recruitment, preparation, and retention of qualified personnel.*

The State plan must describe the development, updating, and implementation of a plan to address the current and projected needs for personnel who are qualified in accordance with paragraph (c) of this section. The plan must identify the personnel needs based on the data collection and analysis system described in paragraph (a) of this section and must provide for the coordination and facilitation of efforts between the designated State unit and institutions of higher education and professional associations to recruit, prepare, and retain personnel who are qualified in accordance with paragraph (c) of this section, including personnel from minority backgrounds and personnel who are individuals with disabilities.

(c) *Personnel standards.*

(1) The State plan must include the State agency's policies and describe the procedures the State agency will undertake to establish and maintain standards to ensure that all professional and paraprofessional personnel needed within the designated State unit to carry out this part are appropriately and adequately prepared and trained, including—

(i) Standards that are consistent with any national or State-approved or -recognized certification, licensing, or registration requirements, or, in the absence of these requirements, other comparable requirements (including State personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services; and

(ii) To the extent that existing standards are not based on the highest requirements in the State, the steps the State is currently taking and the steps the State plans to take to retrain or hire personnel to meet standards that are based on the highest requirements in the State, including measures to notify State unit personnel, the institutions of higher education identified under paragraph (a)(2)(i) of this section, and other public agencies of these steps and the timelines for taking each step. The steps taken by the State unit under this paragraph must be described in a written plan that includes—

(A) Specific strategies for retraining, recruiting, and hiring personnel;

(B) The specific time period by which all State unit personnel will meet the

standards described in paragraph (c)(1)(i) of this section;

(C) Procedures for evaluating the State unit's progress in hiring or retraining personnel to meet applicable personnel standards within the time period established under paragraph (c)(1)(ii)(B) of this section; and

(D) In instances in which the State unit is unable to immediately hire new personnel who meet the requirements in paragraph (c)(1)(i) of this section, the initial minimum qualifications that the designated State unit will require of newly hired personnel and a plan for training those individuals to meet applicable requirements within the time period established under paragraph (c)(1)(ii)(B) of this section.

(2) As used in this section—

(i) *Highest requirements in the State applicable to that profession or discipline* means the highest entry-level academic degree needed for any national or State-approved or -recognized certification, licensing, registration, or, in the absence of these requirements, other comparable requirements that apply to that profession or discipline. The current requirements of all State statutes and regulations of other agencies in the State applicable to that profession or discipline must be considered and must be kept on file by the designated State unit and available to the public.

(ii) *Profession or discipline* means a specific occupational category, including any paraprofessional occupational category, that—

(A) Provides rehabilitation services to individuals with disabilities;

(B) Has been established or designated by the State unit; and

(C) Has a specified scope of responsibility.

(d) *Staff development.*

(1) The State plan must include the State agency's policies and describe the procedures and activities the State agency will undertake to ensure that all personnel employed by the State unit receive appropriate and adequate training, including a description of—

(i) A system of staff development for rehabilitation professionals and paraprofessionals within the State unit, particularly with respect to assessment, vocational counseling, job placement, and rehabilitation technology; and

(ii) Procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated State unit significant knowledge from research and other sources.

(2) The specific training areas for staff development must be based on the

needs of each State unit and may include, but are not limited to—

(i) Training regarding the Workforce Investment Act of 1998 and the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1998;

(ii) Training with respect to the requirements of the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and Social Security work incentive programs, including programs under the Ticket to Work and Work Incentives Improvement Act of 1999, training to facilitate informed choice under this program, and training to improve the provision of services to culturally diverse populations; and

(iii) Activities related to—

(A) Recruitment and retention of qualified rehabilitation personnel;

(B) Succession planning; and

(C) Leadership development and capacity building.

(e) *Personnel to address individual communication needs.* The State plan must describe how the State unit—

(1) Includes among its personnel, or obtains the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and

(2) Includes among its personnel, or obtains the services of, individuals able to communicate with applicants and eligible individuals in appropriate modes of communication.

(f) *Coordination with personnel development under the Individuals with Disabilities Education Act.* The State plan must describe the procedures and activities the State agency will undertake to coordinate its comprehensive system of personnel development under the Act with personnel development under the Individuals with Disabilities Education Act.

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

§ 361.19 Affirmative action for individuals with disabilities.

The State plan must assure that the State agency takes affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as stated in section 503 of the Act.

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

§ 361.20 Public participation requirements.

(a) *Conduct of public meetings.* The State plan must assure that prior to the adoption of any substantive policies or

procedures governing the provision of vocational rehabilitation services under the State plan, including making any substantive amendments to the policies and procedures, the designated State agency conducts public meetings throughout the State to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures.

(b) *Notice requirements.* The State plan must assure that the designated State agency, prior to conducting the public meetings, provides appropriate and sufficient notice throughout the State of the meetings in accordance with—

(1) State law governing public meetings; or

(2) In the absence of State law governing public meetings, procedures developed by the designated State agency in consultation with the State Rehabilitation Council.

(c) *Summary of input of the State Rehabilitation Council.* The State plan must provide a summary of the input of the State Rehabilitation Council, if the State agency has a Council, into the State plan and any amendment to the plan, in accordance with § 361.16(a)(2)(v).

(d) *Special consultation requirements.* The State plan must assure that the State agency actively consults with the director of the Client Assistance Program, the State Rehabilitation Council, if the State agency has a Council, and, as appropriate, Indian tribes, tribal organizations, and native Hawaiian organizations on its policies and procedures governing the provision of vocational rehabilitation services under the State plan.

(e) *Appropriate modes of communication.* The State unit must provide to the public, through appropriate modes of communication, notices of the public meetings, any materials furnished prior to or during the public meetings, and the policies and procedures governing the provision of vocational rehabilitation services under the State plan.

(Authority: Sections 101(a)(16)(A) and 105(c)(3) of the Act; 29 U.S.C. 721(a)(16)(A), and 725(c)(3))

§ 361.21 Consultations regarding the administration of the state plan.

The State plan must assure that, in connection with matters of general policy arising in the administration of the State plan, the designated State agency takes into account the views of—

(a) Individuals and groups of individuals who are recipients of vocational rehabilitation services or, as

appropriate, the individuals' representatives;

(b) Personnel working in programs that provide vocational rehabilitation services to individuals with disabilities;

(c) Providers of vocational rehabilitation services to individuals with disabilities;

(d) The director of the Client Assistance Program; and

(e) The State Rehabilitation Council, if the State has a Council.

(Authority: Sections 101(a)(16)(B) of the Act; 29 U.S.C. 721(a)(16)(B))

§ 361.22 Coordination with education officials.

(a) *Plans, policies, and procedures.* (1) The State plan must contain plans, policies, and procedures for coordination between the designated State agency and education officials responsible for the public education of students with disabilities that are designed to facilitate the transition of students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitation services under the responsibility of the designated State agency.

(2) These plans, policies, and procedures in paragraph (a)(1) of this section must provide for the development and approval of an individualized plan for employment in accordance with § 361.45 as early as possible during the transition planning process but, at the latest, by the time each student determined to be eligible for vocational rehabilitation services leaves the school setting or, if the designated State unit is operating under an order of selection, before each eligible student able to be served under the order leaves the school setting.

(b) *Formal interagency agreement.* The State plan must include information on a formal interagency agreement with the State educational agency that, at a minimum, provides for—

(1) Consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;

(2) Transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of their individualized education programs (IEPs) under section 614(d) of the Individuals with Disabilities Education Act;

(3) The roles and responsibilities, including financial responsibilities, of

each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and

(4) Procedures for outreach to and identification of students with disabilities who are in need of transition services. Outreach to these students should occur as early as possible during the transition planning process and must include, at a minimum, a description of the purpose of the vocational rehabilitation program, eligibility requirements, application procedures, and scope of services that may be provided to eligible individuals.

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

§ 361.23 Requirements related to the statewide workforce investment system.

(a) *Responsibilities as a partner of the One-Stop service delivery system.* As a required partner in the One-Stop service delivery system (which is part of the statewide workforce investment system under Title I of the Workforce Investment Act of 1998), the designated State unit must carry out the following functions consistent with the Act, this part, Title I of the Workforce Investment Act of 1998, and the regulations in 20 CFR part 662:

(1) Make available to participants through the One-Stop service delivery system the core services (as described in 20 CFR 662.240) that are applicable to the Program administered by the designated State unit under this part.

(2) Use a portion of funds made available to the Program administered by the designated State unit under this part, consistent with the Act and this part, to—

(i) Create and maintain the One-Stop service delivery system; and

(ii) Provide core services (as described in 20 CFR 662.240).

(3) Enter into a memorandum of understanding (MOU) with the Local Workforce Investment Board under section 117 of the Workforce Investment Act of 1998 relating to the operation of the One-Stop service delivery system that meets the requirements of section 121(c) of the Workforce Investment Act and 20 CFR 662.300, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals.

(4) Participate in the operation of the One-Stop service delivery system consistent with the terms of the MOU and the requirements of the Act and this part.

(5) Provide representation on the Local Workforce Investment Board

under section 117 of the Workforce Investment Act of 1998.

(b) *Cooperative agreements with One-Stop partners.* (1) The State plan must assure that the designated State unit or the designated State agency enters into cooperative agreements with the other entities that are partners under the One-Stop service delivery system under Title I of the Workforce Investment Act of 1998 and replicates those agreements at the local level between individual offices of the designated State unit and local entities carrying out the One-Stop service delivery system or other activities through the statewide workforce investment system.

(2) Cooperative agreements developed under paragraph (b)(1) of this section may provide for—

(i) Intercomponent training and technical assistance regarding—

(A) The availability and benefits of, and information on eligibility standards for, vocational rehabilitation services; and

(B) The promotion of equal, effective and meaningful participation by individuals with disabilities in the One-Stop service delivery system and other workforce investment activities through the promotion of program accessibility consistent with the requirements of the Americans with Disabilities Act of 1990 and section 504 of the Act, the use of nondiscriminatory policies and procedures, and the provision of reasonable accommodations, auxiliary aids and services, and rehabilitation technology for individuals with disabilities;

(ii) The use of information and financial management systems that link all of the partners of the One-Stop service delivery system to one another and to other electronic networks, including nonvisual electronic networks, and that relate to subjects such as employment statistics, job vacancies, career planning, and workforce investment activities;

(iii) The use of customer service features such as common intake and referral procedures, customer databases, resource information, and human services hotlines;

(iv) The establishment of cooperative efforts with employers to facilitate job placement and carry out other activities that the designated State unit and the employers determine to be appropriate;

(v) The identification of staff roles, responsibilities, and available resources and specification of the financial responsibility of each partner of the One-Stop service delivery system with respect to providing and paying for necessary services, consistent with the requirements of the Act, this part, other

Federal requirements, and State law; and

(vi) The specification of procedures for resolving disputes among partners of the One-Stop service delivery system.

(Authority: Section 101(a)(11)(A) of the Act; 29 U.S.C. 721(a)(11)(A); Sections 121 and 134 of the Workforce Investment Act of 1998; 29 U.S.C. 2841 and 2864)

§ 361.24 Cooperation and coordination with other entities.

(a) *Interagency cooperation.* The State plan must describe the designated State agency's cooperation with and use of the services and facilities of Federal, State, and local agencies and programs, including programs carried out by the Under Secretary for Rural Development of the Department of Agriculture and State use contracting programs, to the extent that those agencies and programs are not carrying out activities through the statewide workforce investment system.

(b) *Coordination with the Statewide Independent Living Council and independent living centers.* The State plan must assure that the designated State unit, the Statewide Independent Living Council established under 34 CFR part 364, and the independent living centers established under 34 CFR part 366 have developed working relationships and coordinate their activities.

(c) *Cooperative agreement with recipients of grants for services to American Indians.*

(1) *General.* In applicable cases, the State plan must assure that the designated State agency has entered into a formal cooperative agreement with each grant recipient in the State that receives funds under part C of the Act (American Indian Vocational Rehabilitation Services).

(2) *Contents of formal cooperative agreement.* The agreement required under paragraph (a)(1) of this section must describe strategies for collaboration and coordination in providing vocational rehabilitation services to American Indians who are individuals with disabilities, including—

(i) Strategies for interagency referral and information sharing that will assist in eligibility determinations and the development of individualized plans for employment;

(ii) Procedures for ensuring that American Indians who are individuals with disabilities and are living near a reservation or tribal service area are provided vocational rehabilitation services; and

(iii) Provisions for sharing resources in cooperative studies and assessments,

joint training activities, and other collaborative activities designed to improve the provision of services to American Indians who are individuals with disabilities.

(d) *Reciprocal referral services between two designated State units in the same State.* If there is a separate designated State unit for individuals who are blind, the two designated State units must establish reciprocal referral services, use each other's services and facilities to the extent feasible, jointly plan activities to improve services in the State for individuals with multiple impairments, including visual impairments, and otherwise cooperate to provide more effective services, including, if appropriate, entering into a written cooperative agreement.

(Authority: Sections 12(c) and 101(a)(11)(C), (E), and (F) of the Act; 29 U.S.C. 709(c) and 721(a)(11) (C), (E), and (F))

§ 361.25 Statewide.

The State plan must assure that services provided under the State plan will be available in all political subdivisions of the State, unless a waiver of statewide is requested and approved in accordance with § 361.26.

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

§ 361.26 Waiver of statewide.

(a) *Availability.* The State unit may provide services in one or more political subdivisions of the State that increase services or expand the scope of services that are available statewide under the State plan if—

(1) The non-Federal share of the cost of these services is met from funds provided by a local public agency, including funds contributed to a local public agency by a private agency, organization, or individual;

(2) The services are likely to promote the vocational rehabilitation of substantially larger numbers of individuals with disabilities or of individuals with disabilities with particular types of impairments; and

(3) For purposes other than those specified in § 361.60(b)(3)(i) and consistent with the requirements in § 361.60(b)(3)(ii), the State includes in its State plan, and the Secretary approves, a waiver of the statewide requirement, in accordance with the requirements of paragraph (b) of this section.

(b) *Request for waiver.* The request for a waiver of statewide must—

(1) Identify the types of services to be provided;

(2) Contain a written assurance from the local public agency that it will make

available to the State unit the non-Federal share of funds;

(3) Contain a written assurance that State unit approval will be obtained for each proposed service before it is put into effect; and

(4) Contain a written assurance that all other State plan requirements, including a State's order of selection requirements, will apply to all services approved under the waiver.

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

§ 361.27 Shared funding and administration of joint programs.

(a) If the State plan provides for the designated State agency to share funding and administrative responsibility with another State agency or local public agency to carry out a joint program to provide services to individuals with disabilities, the State must submit to the Secretary for approval a plan that describes its shared funding and administrative arrangement.

(b) The plan under paragraph (a) of this section must include—

(1) A description of the nature and scope of the joint program;

(2) The services to be provided under the joint program;

(3) The respective roles of each participating agency in the administration and provision of services; and

(4) The share of the costs to be assumed by each agency.

(c) If a proposed joint program does not comply with the statewide requirement in § 361.25, the State unit must obtain a waiver of statewide, in accordance with § 361.26.

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

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

(a) The designated State unit may enter into a third-party cooperative arrangement for providing or administering vocational rehabilitation services with another State agency or a local public agency that is furnishing part or all of the non-Federal share, if the designated State unit ensures that—

(1) The services provided by the cooperating agency are not the customary or typical services provided by that agency but are new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a vocational rehabilitation focus;

(2) The services provided by the cooperating agency are only available to

applicants for, or recipients of, services from the designated State unit;

(3) Program expenditures and staff providing services under the cooperative arrangement are under the administrative supervision of the designated State unit; and

(4) All State plan requirements, including a State's order of selection, will apply to all services provided under the cooperative program.

(b) If a third party cooperative agreement does not comply with the statewide requirement in § 361.25, the State unit must obtain a waiver of statewide, in accordance with § 361.26.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

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

(a) *Comprehensive statewide assessment.* (1) The State plan must include—

(i) The results of a comprehensive, statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the State unit has a Council) every 3 years describing the rehabilitation needs of individuals with disabilities residing within the State, particularly the vocational rehabilitation services needs of—

(A) Individuals with the most significant disabilities, including their need for supported employment services;

(B) Individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program carried out under this part; and

(C) Individuals with disabilities served through other components of the statewide workforce investment system as identified by those individuals and personnel assisting those individuals through the components of the system; and

(ii) An assessment of the need to establish, develop, or improve community rehabilitation programs within the State.

(2) The State plan must assure that the State will submit to the Secretary a report containing information regarding updates to the assessments under paragraph (a) of this section for any year in which the State updates the assessments.

(b) *Annual estimates.* The State plan must include, and must assure that the State will annually submit a report to the Secretary that includes, State estimates of—

(1) The number of individuals in the State who are eligible for services under this part;

(2) The number of eligible individuals who will receive services provided with funds provided under part B of Title I of the Act and under part B of Title VI of the Act, including, if the designated State agency uses an order of selection in accordance with § 361.36, estimates of the number of individuals to be served under each priority category within the order; and

(3) The costs of the services described in paragraph (b)(1) of this section, including, if the designated State agency uses an order of selection, the service costs for each priority category within the order.

(c) Goals and priorities.

(1) *In general.* The State plan must identify the goals and priorities of the State in carrying out the program.

(2) *Council.* The goals and priorities must be jointly developed, agreed to, reviewed annually, and, as necessary, revised by the designated State unit and the State Rehabilitation Council, if the State unit has a Council.

(3) *Submission.* The State plan must assure that the State will submit to the Secretary a report containing information regarding revisions in the goals and priorities for any year in which the State revises the goals and priorities.

(4) *Basis for goals and priorities.* The State goals and priorities must be based on an analysis of—

(i) The comprehensive statewide assessment described in paragraph (a) of this section, including any updates to the assessment;

(ii) The performance of the State on the standards and indicators established under section 106 of the Act; and

(iii) Other available information on the operation and the effectiveness of the vocational rehabilitation program carried out in the State, including any reports received from the State Rehabilitation Council under § 361.17(h) and the findings and recommendations from monitoring activities conducted under section 107 of the Act.

(5) *Service and outcome goals for categories in order of selection.* If the designated State agency uses an order of selection in accordance with § 361.36, the State plan must identify the State's service and outcome goals and the time within which these goals may be achieved for individuals in each priority category within the order.

(d) *Strategies.* The State plan must describe the strategies the State will use to address the needs identified in the assessment conducted under paragraph

(a) of this section and achieve the goals and priorities identified in paragraph (c) of this section, including—

(1) The methods to be used to expand and improve services to individuals with disabilities, including how a broad range of assistive technology services and assistive technology devices will be provided to those individuals at each stage of the rehabilitation process and how those services and devices will be provided to individuals with disabilities on a statewide basis;

(2) Outreach procedures to identify and serve individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program;

(3) As applicable, the plan of the State for establishing, developing, or improving community rehabilitation programs;

(4) Strategies to improve the performance of the State with respect to the evaluation standards and performance indicators established pursuant to section 106 of the Act; and

(5) Strategies for assisting other components of the statewide workforce investment system in assisting individuals with disabilities.

(e) Evaluation and reports of progress.

(1) The State plan must include—

(i) The results of an evaluation of the effectiveness of the vocational rehabilitation program; and

(ii) A joint report by the designated State unit and the State Rehabilitation Council, if the State unit has a Council, to the Secretary on the progress made in improving the effectiveness of the program from the previous year. This evaluation and joint report must include—

(A) An evaluation of the extent to which the goals and priorities identified in paragraph (c) of this section were achieved;

(B) A description of the strategies that contributed to the achievement of the goals and priorities;

(C) To the extent to which the goals and priorities were not achieved, a description of the factors that impeded that achievement; and

(D) An assessment of the performance of the State on the standards and indicators established pursuant to section 106 of the Act.

(2) The State plan must assure that the designated State unit and the State Rehabilitation Council, if the State unit has a Council, will jointly submit to the Secretary an annual report that contains the information described in paragraph (e)(1) of this section.

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

§ 361.30 Services to American Indians.

The State plan must assure that the designated State agency provides vocational rehabilitation services to American Indians who are individuals with disabilities residing in the State to the same extent as the designated State agency provides vocational rehabilitation services to other significant populations of individuals with disabilities residing in the State.

(Authority: Sections 101(a)(13) and 121(b)(3) of the Act; 29 U.S.C. 721(a)(13) and 741(b)(3))

§ 361.31 Cooperative agreements with private nonprofit organizations.

The State plan must describe the manner in which cooperative agreements with private nonprofit vocational rehabilitation service providers will be established.

(Authority: Sections 101(a)(24)(B); 29 U.S.C. 721(a)(24)(B))

§ 361.32 Use of profitmaking organizations for on-the-job training in connection with selected projects.

The State plan must assure that the designated State agency has the authority to enter into contracts with for-profit organizations for the purpose of providing, as vocational rehabilitation services, on-the-job training and related programs for individuals with disabilities under the Projects With Industry program, 34 CFR part 379, if the designated State agency has determined that for-profit agencies are better qualified to provide needed vocational rehabilitation services than nonprofit agencies and organizations.

(Authority: Section 101(a)(24)(A) of the Act; 29 U.S.C. 721(a)(24)(A))

§ 361.33 [Reserved]

§ 361.34 Supported employment State plan supplement.

(a) The State plan must assure that the State has an acceptable plan under 34 CFR part 363 that provides for the use of funds under that part to supplement funds under this part for the cost of services leading to supported employment.

(b) The supported employment plan, including any needed annual revisions, must be submitted as a supplement to the State plan submitted under this part.

(Authority: Sections 101(a)(22) and 625(a) of the Act; 29 U.S.C. 721(a)(22) and 795(k))

§ 361.35 Innovation and expansion activities.

(a) The State plan must assure that the State will reserve and use a portion of the funds allotted to the State under section 110 of the Act—

(1) For the development and implementation of innovative

approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities, particularly individuals with the most significant disabilities, consistent with the findings of the comprehensive, statewide assessment of the rehabilitation needs of individuals with disabilities under § 361.29(a) and the State's goals and priorities under § 361.29(c); and

(2) To support the funding of—

(i) The State Rehabilitation Council, if the State has a Council, consistent with the resource plan identified in § 361.17(i); and

(ii) The Statewide Independent Living Council, consistent with the plan prepared under 34 CFR 364.21(i).

(b) The State plan must—

(1) Describe how the reserved funds will be used; and

(2) Include, on an annual basis, a report describing how the reserved funds were used during the preceding year.

(Authority: Section 101(a)(18) of the Act; 29 U.S.C. 721(a)(18))

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

(a) *General provisions.*

(1) The designated State unit either must be able to provide the full range of services listed in section 103(a) of the Act and § 361.48, as appropriate, to all eligible individuals or, in the event that vocational rehabilitation services cannot be provided to all eligible individuals in the State who apply for the services, include in the State plan the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services.

(2) The ability of the designated State unit to provide the full range of vocational rehabilitation services to all eligible individuals must be supported by a determination that satisfies the requirements of paragraph (b) or (c) of this section and a determination that, on the basis of the designated State unit's projected fiscal and personnel resources and its assessment of the rehabilitation needs of individuals with significant disabilities within the State, it can—

(i) Continue to provide services to all individuals currently receiving services;

(ii) Provide assessment services to all individuals expected to apply for services in the next fiscal year;

(iii) Provide services to all individuals who are expected to be determined eligible in the next fiscal year; and

(iv) Meet all program requirements.

(3) If the designated State unit is unable to provide the full range of vocational rehabilitation services to all eligible individuals in the State who

apply for the services, the State plan must—

(i) Show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;

(ii) Provide a justification for the order of selection;

(iii) Identify service and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order, as required under § 361.29(c)(5); and

(iv) Assure that—

(A) In accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and

(B) Individuals who do not meet the order of selection criteria will have access to services provided through the information and referral system established under § 361.37.

(b) *Basis for assurance that services can be provided to all eligible individuals.*

(1) For a designated State unit that determined, for the current fiscal year and the preceding fiscal year, that it is able to provide the full range of services, as appropriate, to all eligible individuals, the State unit, during the current fiscal and preceding fiscal year, must have in fact—

(i) Provided assessment services to all applicants and the full range of services, as appropriate, to all eligible individuals;

(ii) Made referral forms widely available throughout the State;

(iii) Conducted outreach efforts to identify and serve individuals with disabilities who have been unserved or underserved by the vocational rehabilitation system; and

(iv) Not delayed, through waiting lists or other means, determinations of eligibility, the development of individualized plans for employment for individuals determined eligible for vocational rehabilitation services, or the provision of services for eligible individuals for whom individualized plans for employment have been developed.

(2) For a designated State unit that was unable to provide the full range of services to all eligible individuals during the current or preceding fiscal year or that has not met the requirements in paragraph (b)(1) of this section, the determination that the designated State unit is able to provide the full range of vocational rehabilitation services to all eligible individuals in the next fiscal year must be based on—

(i) Circumstances that have changed that will allow the designated State unit to meet the requirements of paragraph (a)(2) of this section in the next fiscal year, including—

(A) An estimate of the number of and projected costs of serving, in the next fiscal year, individuals with existing individualized plans for employment;

(B) The projected number of individuals with disabilities who will apply for services and will be determined eligible in the next fiscal year and the projected costs of serving those individuals;

(C) The projected costs of administering the program in the next fiscal year, including, but not limited to, costs of staff salaries and benefits, outreach activities, and required statewide studies; and

(D) The projected revenues and projected number of qualified personnel for the program in the next fiscal year;

(ii) Comparable data, as relevant, for the current or preceding fiscal year, or for both years, of the costs listed in paragraphs (b)(2)(i)(A) through (C) of this section and the resources identified in paragraph (b)(2)(i)(D) of this section and an explanation of any projected increases or decreases in these costs and resources; and

(iii) A determination that the projected revenues and the projected number of qualified personnel for the program in the next fiscal year are adequate to cover the costs identified in paragraphs (b)(2)(i)(A) through (C) of this section to ensure the provision of the full range of services, as appropriate, to all eligible individuals.

(c) *Determining need for establishing and implementing an order of selection.*

(1) The designated State unit must determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection.

(2) If the designated State unit determines that it does not need to establish an order of selection, it must reevaluate this determination whenever changed circumstances during the course of a fiscal year, such as a decrease in its fiscal or personnel resources or an increase in its program costs, indicate that it may no longer be able to provide the full range of services, as appropriate, to all eligible individuals, as described in paragraph (a)(2) of this section.

(3) If a DSU establishes an order of selection, but determines that it does not need to implement that order at the beginning of the fiscal year, it must continue to meet the requirements of paragraph (a)(2) of this section, or it must implement the order of selection

by closing one or more priority categories.

(d) *Establishing an order of selection.*

(1) *Basis for order of selection.* An order of selection must be based on a refinement of the three criteria in the definition of "individual with a significant disability" in section 7(21)(A) of the Act and § 361.5(b)(31).

(2) *Factors that cannot be used in determining order of selection of eligible individuals.* An order of selection may not be based on any other factors, including—

- (i) Any duration of residency requirement, provided the individual is present in the State;
- (ii) Type of disability;
- (iii) Age, gender, race, color, or national origin;
- (iv) Source of referral;
- (v) Type of expected employment outcome;
- (vi) The need for specific services or anticipated cost of services required by an individual; or
- (vii) The income level of an individual or an individual's family.

(e) *Administrative requirements.* In administering the order of selection, the designated State unit must—

- (1) Implement the order of selection on a statewide basis;
- (2) Notify all eligible individuals of the priority categories in a State's order of selection, their assignment to a particular category, and their right to appeal their category assignment;
- (3) Continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and
- (4) Ensure that its funding arrangements for providing services under the State plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the designated State unit must renegotiate these funding arrangements so that they are consistent with the order of selection.

(f) *State Rehabilitation Council.* The designated State unit must consult with the State Rehabilitation Council, if the State unit has a Council, regarding the—

- (1) Need to establish an order of selection, including any reevaluation of the need under paragraph (c)(2) of this section;
- (2) Priority categories of the particular order of selection;
- (3) Criteria for determining individuals with the most significant disabilities; and

(4) Administration of the order of selection.

(Authority: Sections 12(d); 101(a)(5); 101(a)(12); 101(a)(15)(A), (B) and (C); 101(a)(21)(A)(ii); and 504(a) of the Act; 29 U.S.C. 709(d), 721(a)(5), 721(a)(12), 721(a)(15)(A), (B) and (C); 721(a)(21)(A)(ii), and 794(a))

§ 361.37 Information and referral services.

(a) *General provisions.* The State plan must assure that—

(1) The designated State agency will implement an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the agency's order of selection criteria for receiving vocational rehabilitation services if the agency is operating on an order of selection, are provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, or regaining employment; and

(2) The designated State agency will refer individuals with disabilities to other appropriate Federal and State programs, including other components of the statewide workforce investment system.

(b) *Criteria for appropriate referrals.* In making the referrals identified in paragraph (a)(2) of this section, the designated State unit must—

(1) Refer the individual to Federal or State programs, including programs carried out by other components of the statewide workforce investment system, best suited to address the specific employment needs of an individual with a disability; and

(2) Provide the individual who is being referred—

- (i) A notice of the referral by the designated State agency to the agency carrying out the program;
- (ii) Information identifying a specific point of contact within the agency to which the individual is being referred; and
- (iii) Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

(c) *Order of selection.* In providing the information and referral services under this section to eligible individuals who are not in the priority category or categories to receive vocational rehabilitation services under the State's order of selection, the State unit must identify, as part of its reporting under section 101(a)(10) of the Act and § 361.40, the number of eligible individuals who did not meet the

agency's order of selection criteria for receiving vocational rehabilitation services and did receive information and referral services under this section.

(Authority: Sections 101(a)(5)(D) and (20) and 101(a)(10)(C)(ii) of the Act; 29 U.S.C. 721(a)(5)(D) and (20) and (a)(10)(C)(ii))

§ 361.38 Protection, use, and release of personal information.

(a) *General provisions.*

(1) The State agency and the State unit must adopt and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that—

(i) Specific safeguards are established to protect current and stored personal information;

(ii) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

(iii) All applicants or their representatives are informed about the State unit's need to collect personal information and the policies governing its use, including—

(A) Identification of the authority under which information is collected;

(B) Explanation of the principal purposes for which the State unit intends to use or release the information;

(C) Explanation of whether providing requested information to the State unit is mandatory or voluntary and the effects of not providing requested information;

(D) Identification of those situations in which the State unit requires or does not require informed written consent of the individual before information may be released; and

(E) Identification of other agencies to which information is routinely released;

(iv) An explanation of State policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and

(v) These policies and procedures provide no fewer protections for individuals than State laws and regulations.

(2) The State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and must establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to applicants and eligible individuals.*

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by an applicant or eligible individual, the State unit must make all requested information in that individual's record of services accessible to and must release the information to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(4) An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the designated State unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services, consistent with § 361.47(a)(12).

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly

improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(e) *Release to other programs or authorities.*

(1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the State unit may release personal information to another agency or organization for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the State unit determines may be harmful to the individual may be released if the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The State unit must release personal information if required by Federal law or regulations.

(4) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(5) The State unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Act; 29 U.S.C. 709(c) and 721(a)(6)(A))

§ 361.39 State-imposed requirements.

The designated State unit must, upon request, identify those regulations and policies relating to the administration or operation of its vocational rehabilitation program that are State-imposed,

including any regulations or policy based on State interpretation of any Federal law, regulations, or guideline.

(Authority: Section 17 of the Act; 29 U.S.C. 714)

§ 361.40 Reports.

(a) The State plan must assure that the designated State agency will submit reports, including reports required under sections 13, 14, and 101(a)(10) of the Act—

(1) In the form and level of detail and at the time required by the Secretary regarding applicants for and eligible individuals receiving services under this part; and

(2) In a manner that provides a complete count (other than the information obtained through sampling consistent with section 101(a)(10)(E) of the Act) of the applicants and eligible individuals to—

(i) Permit the greatest possible cross-classification of data; and

(ii) Protect the confidentiality of the identity of each individual.

(b) The designated State agency must comply with any requirements necessary to ensure the accuracy and verification of those reports.

(Authority: Section 101(a)(10)(A) and (F) of the Act; 29 U.S.C. 721(a)(10)(A) and (F))

Provision and Scope of Services

§ 361.41 Processing referrals and applications.

(a) *Referrals.* The designated State unit must establish and implement standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through the One-Stop service delivery systems established under section 121 of the Workforce Investment Act of 1998. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(b) *Applications.*

(1) Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in One-Stop centers established under section 121 of the Workforce Investment Act of 1998, an eligibility determination must be made within 60 days, unless—

(i) Exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and

the individual agree to a specific extension of time; or

(ii) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with § 361.42(e) or, if appropriate, an extended evaluation is carried out in accordance with § 361.42(f).

(2) An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate—

(i)(A) Has completed and signed an agency application form;

(B) Has completed a common intake application form in a One-Stop center requesting vocational rehabilitation services; or

(C) Has otherwise requested services from the designated State unit;

(ii) Has provided to the designated State unit information necessary to initiate an assessment to determine eligibility and priority for services; and

(iii) Is available to complete the assessment process.

(3) The designated State unit must ensure that its application forms are widely available throughout the State, particularly in the One-Stop centers established under section 121 of the Workforce Investment Act of 1998.

(Authority: Sections 101(a)(6)(A) and 102(a)(6) of the Act; 29 U.S.C. 721(a)(6)(A) and 722(a)(6))

§ 361.42 Assessment for determining eligibility and priority for services.

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the State is operating under an order of selection), the designated State unit must conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

(a) *Eligibility requirements.*

(1) *Basic requirements.* The designated State unit's determination of an applicant's eligibility for vocational rehabilitation services must be based only on the following requirements:

(i) A determination by qualified personnel that the applicant has a physical or mental impairment,

(ii) A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.

(iii) A determination by a qualified vocational rehabilitation counselor

employed by the designated State unit that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(iv) A presumption, in accordance with paragraph (a)(2) of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(2) *Presumption of benefit.* The designated State unit must presume that an applicant who meets the eligibility requirements in paragraphs (a)(1)(i) and (ii) of this section can benefit in terms of an employment outcome unless it demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the applicant's disability.

(3) *Presumption of eligibility for Social Security recipients and beneficiaries.*

(i) Any applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act is—

(A) Presumed eligible for vocational rehabilitation services under paragraphs (a)(1) and (2) of this section; and

(B) Considered an individual with a significant disability as defined in § 361.5(b)(31).

(ii) If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under Title II or Title XVI of the Social Security Act (and, therefore, is presumed eligible for vocational rehabilitation services under paragraph (a)(3)(i)(A) of this section), but is unable to provide appropriate evidence, such as an award letter, to support that assertion, the State unit must verify the applicant's eligibility under Title II or Title XVI of the Social Security Act by contacting the Social Security Administration. This verification must be made within a reasonable period of time that enables the State unit to determine the applicant's eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with § 361.41(b)(2).

(4) *Achievement of an employment outcome.* Any eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits under Title II or Title XVI of the Social Security Act, must intend to achieve an

employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(i) The State unit is responsible for informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome.

(ii) The applicant's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome, and no additional demonstration on the part of the applicant is required for purposes of satisfying paragraph (a)(4) of this section.

(5) *Interpretation.* Nothing in this section, including paragraph (a)(3)(i), is to be construed to create an entitlement to any vocational rehabilitation service.

(b) *Interim determination of eligibility.*

(1) The designated State unit may initiate the provision of vocational rehabilitation services for an applicant on the basis of an interim determination of eligibility prior to the 60-day period described in § 361.41(b)(2).

(2) If a State chooses to make interim determinations of eligibility, the designated State unit must—

(i) Establish criteria and conditions for making those determinations;

(ii) Develop and implement procedures for making the determinations; and

(iii) Determine the scope of services that may be provided pending the final determination of eligibility.

(3) If a State elects to use an interim eligibility determination, the designated State unit must make a final determination of eligibility within 60 days of the individual submitting an application for services in accordance with § 361.41(b)(2).

(c) *Prohibited factors.*

(1) The State plan must assure that the State unit will not impose, as part of determining eligibility under this section, a duration of residence requirement that excludes from services any applicant who is present in the State.

(2) In making a determination of eligibility under this section, the designated State unit also must ensure that—

(i) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and

(ii) The eligibility requirements are applied without regard to the—

(A) Age, gender, race, color, or national origin of the applicant;

(B) Type of expected employment outcome;

(C) Source of referral for vocational rehabilitation services; and

(D) Particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

(d) *Review and assessment of data for eligibility determination.* Except as provided in paragraph (e) of this section, the designated State unit—

(1) Must base its determination of each of the basic eligibility requirements in paragraph (a) of this section on—

(i) A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, particularly information used by education officials, and determinations made by officials of other agencies; and

(ii) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and any other support services that are necessary to determine whether an individual is eligible; and

(2) Must base its presumption under paragraph (a)(3)(i) of this section that an applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act satisfies each of the basic eligibility requirements in paragraph (a) of this section on determinations made by the Social Security Administration.

(e) *Trial work experiences for individuals with significant disabilities.*

(1) Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, the designated State unit must conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations to determine whether or not there is clear and convincing evidence to support such a determination.

(2)(i) The designated State unit must develop a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences, which must be provided in the most integrated setting possible, consistent with the informed

choice and rehabilitation needs of the individual.

(ii) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic work settings.

(iii) Trial work experiences must be of sufficient variety and over a sufficient period of time for the designated State unit to determine that—

(A) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(B) There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.

(iv) The designated State unit must provide appropriate supports, including assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

(f) *Extended evaluation for certain individuals with significant disabilities.*

(1) Under limited circumstances if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the State unit is able to make the determinations described in paragraph (e)(2)(iii) of this section, the designated State unit must conduct an extended evaluation to make these determinations.

(2) During the extended evaluation period, vocational rehabilitation services must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

(3) During the extended evaluation period, the designated State unit must develop a written plan for providing services necessary to make a determination under paragraph (e)(2)(iii) of this section.

(4) During the extended evaluation period, the designated State unit provides only those services that are necessary to make the determinations described in paragraph (e)(2)(iii) of this section and terminates extended evaluation services when the State unit is able to make the determinations.

(g) *Data for determination of priority for services under an order of selection.* If the designated State unit is operating under an order of selection for services, as provided in § 361.36, the State unit must base its priority assignments on—

(1) A review of the data that was developed under paragraphs (d) and (e)

of this section to make the eligibility determination; and

(2) An assessment of additional data, to the extent necessary.

(Authority: Sections 7(2)(A), 7(2)(B)(ii)(I), 7(2)(C), 7(2)(D), 101(a)(12), 102(a)(1), 102(a)(2), 102(a)(3), 102(a)(4)(A), 102(a)(4)(B), 102(a)(4)(C), 103(a)(1), 103(a)(9), 103(a)(10) and 103(a)(14) of the Act; 29 U.S.C. 705(2)(A), 705(2)(B)(ii)(I), 705(2)(C), 705(2)(D), 721(a)(12), 722(a)(1), 722(a)(2), 722(a)(3), 722(a)(4)(A), 722(a)(4)(B), 722(a)(4)(C), 723(a)(1), 723(a)(9), 723(a)(10) and 723(a)(14))

Note to § 361.42: *Clear and convincing evidence* means that the designated State unit shall have a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The "clear and convincing" standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term *clear* means unequivocal. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of "clear and convincing evidence" must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. (S. Rep. No. 357, 102d Cong., 2d Sess. 37-38 (1992))

§ 361.43 Procedures for ineligibility determination.

If the State unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, the State unit must—

(a) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

(b) Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of State unit personnel determinations in accordance with § 361.57;

(c) Provide the individual with a description of services available from a

client assistance program established under 34 CFR part 370 and information on how to contact that program;

(d) Refer the individual to other training or employment-related programs that are part of the One-Stop service delivery system under the Workforce Investment Act; and

(e) Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the State, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

(Authority: Sections 102(a)(5) and 102(c) of the Act; 29 U.S.C. 722(a)(5) and 722(c))

§ 361.44 Closure without eligibility determination.

The designated State unit may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the State unit has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

§ 361.45 Development of the Individualized plan for employment.

(a) *General requirements.* The State plan must assure that—

(1) An individualized plan for employment (IPE) meeting the requirements of this section and § 361.46 is developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services or, if the designated State unit is operating under an order of selection in accordance with § 361.36, for each eligible individual to whom the State unit is able to provide services; and

(2) Services will be provided in accordance with the provisions of the IPE.

(b) *Purpose.*

(1) The designated State unit must conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual or, if the State is operating under an order of selection, for each eligible individual to whom the State is able to

provide services. The purpose of this assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the IPE.

(2) The IPE must—

(i) Be designed to achieve the specific employment outcome that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(ii) To the maximum extent appropriate, result in employment in an integrated setting.

(c) *Required information.* The State unit must provide the following information to each eligible individual or, as appropriate, the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual's representative:

(1) *Options for developing an IPE.*

Information on the available options for developing the IPE, including the option that an eligible individual or, as appropriate, the individual's representative may develop all or part of the IPE—

(i) Without assistance from the State unit or other entity; or

(ii) With assistance from—

(A) A qualified vocational rehabilitation counselor employed by the State unit;

(B) A qualified vocational rehabilitation counselor who is not employed by the State unit; or

(C) Resources other than those in paragraph (A) or (B) of this section.

(2) *Additional information.*

Additional information to assist the eligible individual or, as appropriate, the individual's representative in developing the IPE, including—

(i) Information describing the full range of components that must be included in an IPE;

(ii) As appropriate to each eligible individual—

(A) An explanation of agency guidelines and criteria for determining an eligible individual's financial commitments under an IPE;

(B) Information on the availability of assistance in completing State unit forms required as part of the IPE; and

(C) Additional information that the eligible individual requests or the State unit determines to be necessary to the development of the IPE;

(iii) A description of the rights and remedies available to the individual, including, if appropriate, recourse to the processes described in § 361.57; and

(iv) A description of the availability of a client assistance program established

under 34 CFR part 370 and information on how to contact the client assistance program.

(d) *Mandatory procedures.* The designated State unit must ensure that—

(1) The IPE is a written document prepared on forms provided by the State unit;

(2) The IPE is developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice, consistent with § 361.52, in selecting—

(i) The employment outcome, including the employment setting;

(ii) The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;

(iii) The entity or entities that will provide the vocational rehabilitation services; and

(iv) The methods available for procuring the services;

(3) The IPE is—

(i) Agreed to and signed by the eligible individual or, as appropriate, the individual's representative; and

(ii) Approved and signed by a qualified vocational rehabilitation counselor employed by the designated State unit;

(4) A copy of the IPE and a copy of any amendments to the IPE are provided to the eligible individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual's representative;

(5) The IPE is reviewed at least annually by a qualified vocational rehabilitation counselor and the eligible individual or, as appropriate, the individual's representative to assess the eligible individual's progress in achieving the identified employment outcome;

(6) The IPE is amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the State unit or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services;

(7) Amendments to the IPE do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative and by a qualified vocational rehabilitation counselor,

employed by the designated State unit; and

(8) An IPE for a student with a disability receiving special education services is developed—

(i) In consideration of the student's IEP; and

(ii) In accordance with the plans, policies, procedures, and terms of the interagency agreement required under § 361.22.

(e) *Standards for developing the IPE.* The designated State unit must establish and implement standards for the prompt development of IPEs for the individuals identified under paragraph (a) of this section, including timelines that take into consideration the needs of the individuals.

(f) *Data for preparing the IPE.*

(1) *Preparation without comprehensive assessment.* To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individual's IPE must be determined based on the data used for the assessment of eligibility and priority for services under § 361.42.

(2) *Preparation based on comprehensive assessment.*

(i) If additional data are necessary to determine the employment outcome and the nature and scope of services to be included in the IPE of an eligible individual, the State unit must conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual in accordance with the provisions of § 361.5(b)(6)(ii).

(ii) In preparing the comprehensive assessment, the State unit must use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the IPE, including—

(A) Information available from other programs and providers, particularly information used by education officials and the Social Security Administration;

(B) Information provided by the individual and the individual's family; and

(C) Information obtained under the assessment for determining the individual's eligibility and vocational rehabilitation needs.

(Authority: Sections 7(2)(B), 101(a)(9), 102(b)(1), 102(b)(2), 102(c) and 103(a)(1); 29

U.S.C. 705(2)(B), 721(a)(9), 722(b)(1), 722(b)(2), 722(c) and 723(a)(1))

§ 361.46 Content of the individualized plan for employment.

(a) *Mandatory components.*

Regardless of the approach in § 361.45(c)(1) that an eligible individual selects for purposes of developing the IPE, each IPE must include—

(1) A description of the specific employment outcome that is chosen by the eligible individual that—

(i) Is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice; and

(ii) To the maximum extent appropriate, results in employment in an integrated setting;

(2) A description of the specific rehabilitation services under § 361.48 that are—

(i) Needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal assistance services, including training in the management of those services; and

(ii) Provided in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual;

(3) Timelines for the achievement of the employment outcome and for the initiation of services;

(4) A description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services;

(5) A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome; and

(6) The terms and conditions of the IPE, including, as appropriate, information describing—

(i) The responsibilities of the designated State unit;

(ii) The responsibilities of the eligible individual, including—

(A) The responsibilities the individual will assume in relation to achieving the employment outcome;

(B) If applicable, the extent of the individual's participation in paying for the cost of services; and

(C) The responsibility of the individual with regard to applying for and securing comparable services and benefits as described in § 361.53; and

(iii) The responsibilities of other entities as the result of arrangements made pursuant to the comparable

services or benefits requirements in § 361.53.

(b) *Supported employment requirements.* An IPE for an individual with a most significant disability for whom an employment outcome in a supported employment setting has been determined to be appropriate must—

(1) Specify the supported employment services to be provided by the designated State unit;

(2) Specify the expected extended services needed, which may include natural supports;

(3) Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the IPE is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

(4) Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the IPE by the time of transition to extended services;

(5) Provide for the coordination of services provided under an IPE with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent that job skills training is provided, identify that the training will be provided on site; and

(7) Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

(c) *Post-employment services.* The IPE for each individual must contain, as determined to be necessary, statements concerning—

(1) The expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

(2) A description of the terms and conditions for the provision of any post-employment services; and

(3) If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in § 361.53.

(d) *Coordination of services for students with disabilities who are receiving special education services.* The IPE for a student with a disability who is receiving special education services must be coordinated with the

IEP for that individual in terms of the goals, objectives, and services identified in the IEP.

(Authority: Sections 101(a)(8), 101(a)(9), 102(b)(3), and 625(b)(6) of the Act; 29 U.S.C. 721(a)(8), 721(a)(9), 722(b)(3), and 795(k))

§ 361.47 Record of services.

(a) The designated State unit must maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(1) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements under § 361.42.

(2) If an applicant or eligible individual receiving services under an IPE has been determined to be ineligible, documentation supporting that determination in accordance with the requirements under § 361.43.

(3) Documentation that describes the justification for closing an applicant's or eligible individual's record of services if that closure is based on reasons other than ineligibility, including, as appropriate, documentation indicating that the State unit has satisfied the requirements in § 361.44.

(4) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation supporting that determination.

(5) If an individual with a significant disability requires an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work experiences or, as appropriate, an extended evaluation to determine whether the individual is an eligible individual, documentation supporting the need for, and the plan relating to, that exploration or, as appropriate, extended evaluation and documentation regarding the periodic assessments carried out during the trial work experiences or, as appropriate, the extended evaluation, in accordance with the requirements under § 361.42(e) and (f).

(6) The IPE, and any amendments to the IPE, consistent with the requirements under § 361.46.

(7) Documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding the provision of assessment services and the extent to which the eligible individual exercised informed choice in the development of the IPE with respect to the selection of the specific employment outcome, the specific vocational rehabilitation

services needed to achieve the employment outcome, the entity to provide the services, the employment setting, the settings in which the services will be provided, and the methods to procure the services.

(8) In the event that the IPE provides for services or an employment outcome in a non-integrated setting, a justification to support the non-integrated setting.

(9) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals in accordance with § 361.5(b)(11)(ii).

(10) In the event that an individual obtains an employment outcome in an extended employment setting in a community rehabilitation program or any other employment under section 14(c) of the Fair Labor Standards Act, documentation of the results of the annual reviews required under § 361.55, the individual's input into those reviews, and the individual's or, if appropriate, the individual's representative's acknowledgement that those reviews were conducted.

(11) Documentation concerning any action or decision resulting from a request by an individual under § 361.57 for a review of determinations made by designated State unit personnel.

(12) In the event that an applicant or eligible individual requests under § 361.38(c)(4) that documentation in the record of services be amended and the documentation is not amended, documentation of the request.

(13) In the event an individual is referred to another program through the State unit's information and referral system under § 361.37, including other components of the statewide workforce investment system, documentation on the nature and scope of services provided by the designated State unit to the individual and on the referral itself, consistent with the requirements of § 361.37.

(14) In the event an individual's record of service is closed under § 361.56, documentation that demonstrates the services provided under the individual's IPE contributed to the achievement of the employment outcome.

(15) In the event an individual's record of service is closed under § 361.56, documentation verifying that the provisions of § 361.56 have been satisfied.

(b) The State unit, in consultation with the State Rehabilitation Council if the State has a Council, must determine the type of documentation that the State unit must maintain for each applicant and eligible individual in order to meet the requirements in paragraph (a) of this section.

(Authority: Sections 101(a)(6), (9), (14), (20) and 102(a), (b), and (d) of the Act; 29 U.S.C. 721(a)(6), (9), (14), (20) and 722(a), (b), and (d))

§ 361.48 Scope of vocational rehabilitation services for individuals with disabilities.

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the designated State unit must ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

(a) Assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with § 361.42.

(b) Assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with § 361.45.

(c) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with § 361.52.

(d) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system, in accordance with §§ 361.23, 361.24, and 361.37, and to advise those individuals about client assistance programs established under 34 CFR part 370.

(e) In accordance with the definition in § 361.5(b)(40), physical and mental restoration services, to the extent that financial support is not readily available from a source other than the designated State unit (such as through health insurance or a comparable service or benefit as defined in § 361.5(b)(10)).

(f) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials,

except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

(g) Maintenance, in accordance with the definition of that term in § 361.5(b)(35).

(h) Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in § 361.5(b)(57).

(i) Vocational rehabilitation services to family members, as defined in § 361.5(b)(23), of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(j) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.

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

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

(m) Supported employment services in accordance with the definition of that term in § 361.5(b)(54).

(n) Personal assistance services in accordance with the definition of that term in § 361.5(b)(39).

(o) Post-employment services in accordance with the definition of that term in § 361.5(b)(42).

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

(q) Rehabilitation technology in accordance with the definition of that term in § 361.5(b)(45), including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(r) Transition services in accordance with the definition of that term in § 361.5(b)(55).

(s) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or

establishing a small business operation as an employment outcome.

(t) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

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

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

(a) The designated State unit may also provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:

(1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide vocational rehabilitation services that promote integration and competitive employment, including, under special circumstances, the construction of a facility for a public or nonprofit community rehabilitation program. Examples of "special circumstances" include the destruction by natural disaster of the only available center serving an area or a State determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

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

(3) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

(4) Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals with disabilities.

(5) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the designated State unit, including enterprises established under the Randolph-Sheppard program,

management services and supervision provided by the State unit along with the acquisition by the State unit of vending facilities or other equipment, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:

(i) "Management services and supervision" includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with significant disabilities. "Management services and supervision" may be provided throughout the operation of the small business enterprise.

(ii) "Initial stocks and supplies" includes those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed 6 months.

(iii) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which may not exceed 6 months.

(iv) If the designated State unit provides for these services, it must ensure that only individuals with significant disabilities will be selected to participate in this supervised program.

(v) If the designated State unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the State unit must maintain a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(6) Other services that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any one individual. Examples of those other services might include the purchase or lease of a bus to provide transportation to a group of applicants or eligible individuals or the purchase of equipment or instructional materials that would benefit a group of applicants or eligible individuals.

(7) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

(b) If the designated State unit provides for vocational rehabilitation services for groups of individuals, it must—

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

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

(Authority: Sections 12(c), 101(a)(6)(A), and 103(b) of the Act; 29 U.S.C. 709(c), 721(a)(6), and 723(b))

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

(a) *Policies.* The State unit must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in § 361.48 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's IPE and is consistent with the individual's informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:

(b) *Out-of-State services.*

(1) The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.

(2) The State unit may not establish policies that effectively prohibit the provision of out-of-State services.

(c) *Payment for services.*

(1) The State unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(2) The State unit may establish a fee schedule designed to ensure a

reasonable cost to the program for each service, if the schedule is—

(i) Not so low as to effectively deny an individual a necessary service; and
(ii) Not absolute and permits exceptions so that individual needs can be addressed.

(3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

(d) *Duration of services.*

(1) The State unit may establish reasonable time periods for the provision of services provided that the time periods are—

(i) Not so short as to effectively deny an individual a necessary service; and
(ii) Not absolute and permit exceptions so that individual needs can be addressed.

(2) The State unit may not establish absolute time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's individualized plan for employment.

(e) *Authorization of services.* The State unit must establish policies related to the timely authorization of services, including any conditions under which verbal authorization can be given.

(Authority: Sections 12(c) and 101(a)(6) of the Act and 29 U.S.C. 709(c) and 721(a)(6))

§ 361.51 Standards for facilities and providers of services.

(a) *Accessibility of facilities.* The State plan must assure that any facility used in connection with the delivery of vocational rehabilitation services under this part meets program accessibility requirements consistent with the requirements, as applicable, of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, section 504 of the Act, and the regulations implementing these laws.

(b) *Affirmative action.* The State plan must assure that community rehabilitation programs that receive assistance under part B of Title I of the Act take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as in section 503 of the Act.

(c) *Special communication needs personnel.* The designated State unit must ensure that providers of vocational rehabilitation services are able to communicate—

(1) In the native language of applicants and eligible individuals who have limited English speaking ability; and

(2) By using appropriate modes of communication used by applicants and eligible individuals.

(Authority: Sections 12(c) and 101(a)(6)(B) and (C) of the Act; 29 U.S.C. 709(c) and 721(a)(6)(B) and (C))

§ 361.52 Informed choice.

(a) *General provision.* The State plan must assure that applicants and eligible individuals or, as appropriate, their representatives are provided information and support services to assist applicants and eligible individuals in exercising informed choice throughout the rehabilitation process consistent with the provisions of section 102(d) of the Act and the requirements of this section.

(b) *Written policies and procedures.* The designated State unit, in consultation with its State Rehabilitation Council, if it has a Council, must develop and implement written policies and procedures that enable an applicant or eligible individual to exercise informed choice throughout the vocational rehabilitation process. These policies and procedures must provide for—

(1) Informing each applicant and eligible individual (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of the designated State unit), through appropriate modes of communication, about the availability of and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the vocational rehabilitation process;

(2) Assisting applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) Developing and implementing flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services and that afford eligible individuals meaningful choices among the methods used to procure vocational rehabilitation services;

(4) Assisting eligible individuals or, as appropriate, the individuals' representatives in acquiring information that enables them to exercise informed choice in the development of their IPEs with respect to the selection of the—

(i) Employment outcome;

(ii) Specific vocational rehabilitation services needed to achieve the employment outcome;

(iii) Entity that will provide the services;

(iv) Employment setting and the settings in which the services will be provided; and

(v) Methods available for procuring the services; and

(5) Ensuring that the availability and scope of informed choice is consistent with the obligations of the designated State agency under this part.

(c) *Information and assistance in the selection of vocational rehabilitation services and service providers.* In assisting an applicant and eligible individual in exercising informed choice during the assessment for determining eligibility and vocational rehabilitation needs and during development of the IPE, the designated State unit must provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the—

(1) Cost, accessibility, and duration of potential services;

(2) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;

(3) Qualifications of potential service providers;

(4) Types of services offered by the potential providers;

(5) Degree to which services are provided in integrated settings; and

(6) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

(d) *Methods or sources of information.* In providing or assisting the individual or the individual's representative in acquiring the information required under paragraph (c) of this section, the State unit may use, but is not limited to, the following methods or sources of information:

(1) Lists of services and service providers.

(2) Periodic consumer satisfaction surveys and reports.

(3) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers.

(4) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

(5) Opportunities for individuals to visit or experience various work and service provider settings.

(Authority: Sections 12(c), 101(a)(19); 102(b)(2)(B) and 102(d) of the Act; 29 U.S.C. 709(c), 721(a)(19); 722(b)(2)(B) and 722(d))

§ 361.53 Comparable services and benefits.

(a) *Determination of availability.* The State plan must assure that prior to providing any vocational rehabilitation services, except those services listed in paragraph (b) of this section, to an eligible individual, or to members of the individual's family, the State unit must determine whether comparable services and benefits, as defined in § 361.5(b)(10), exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay—

(1) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;

(2) An immediate job placement; or

(3) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

(b) *Exempt services.* The following vocational rehabilitation services described in § 361.48(a) are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section:

(1) Assessment for determining eligibility and vocational rehabilitation needs.

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

(3) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce investment system, if those services are not available under this part.

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

(5) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

(6) Post-employment services consisting of the services listed under paragraphs (b)(1) through (5) of this section.

(c) *Provision of services.*

(1) If comparable services or benefits exist under any other program and are

available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, the designated State unit must use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

(2) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, the designated State unit must provide vocational rehabilitation services until those comparable services and benefits become available.

(d) *Interagency coordination.*

(1) The State plan must assure that the Governor, in consultation with the entity in the State responsible for the vocational rehabilitation program and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between the designated State vocational rehabilitation unit and any appropriate public entity, including the State entity responsible for administering the State medicaid program, a public institution of higher education, and a component of the statewide workforce investment system, to ensure the provision of vocational rehabilitation services (other than those services listed in paragraph (b) of this section) that are included in the IPE, including the provision of those vocational rehabilitation services during the pendency of any interagency dispute in accordance with the provisions of paragraph (d)(3)(iii) of this section.

(2) The Governor may meet the requirements of paragraph (d)(1) of this section through—

(i) A State statute or regulation;

(ii) A signed agreement between the respective officials of the public entities that clearly identifies the responsibilities of each public entity for the provision of the services; or

(iii) Another appropriate mechanism as determined by the designated State vocational rehabilitation unit.

(3) The interagency agreement or other mechanism for interagency coordination must include the following:

(i) *Agency financial responsibility.* An identification of, or description of a method for defining, the financial responsibility of the public entity for providing the vocational rehabilitation services other than those listed in paragraph (b) of this section and a provision stating the financial

responsibility of the public entity for providing those services.

(ii) *Conditions, terms, and procedures of reimbursement.* Information specifying the conditions, terms, and procedures under which the designated State unit must be reimbursed by the other public entities for providing vocational rehabilitation services based on the terms of the interagency agreement or other mechanism for interagency coordination.

(iii) *Interagency disputes.* Information specifying procedures for resolving interagency disputes under the interagency agreement or other mechanism for interagency coordination, including procedures under which the designated State unit may initiate proceedings to secure reimbursement from other public entities or otherwise implement the provisions of the agreement or mechanism.

(iv) *Procedures for coordination of services.* Information specifying policies and procedures for public entities to determine and identify interagency coordination responsibilities of each public entity to promote the coordination and timely delivery of vocational rehabilitation services other than those listed in paragraph (b) of this section.

(e) *Responsibilities under other law.*

(1) If a public entity (other than the designated State unit) is obligated under Federal law (such as the Americans with Disabilities Act, section 504 of the Act, or section 188 of the Workforce Investment Act) or State law, or assigned responsibility under State policy or an interagency agreement established under this section, to provide or pay for any services considered to be vocational rehabilitation services (e.g., interpreter services under § 361.48(j)), other than those services listed in paragraph (b) of this section, the public entity must fulfill that obligation or responsibility through—

(i) The terms of the interagency agreement or other requirements of this section;

(ii) Providing or paying for the service directly or by contract; or

(iii) Other arrangement.

(2) If a public entity other than the designated State unit fails to provide or pay for vocational rehabilitation services for an eligible individual as established under this section, the designated State unit must provide or pay for those services to the individual and may claim reimbursement for the services from the public entity that failed to provide or pay for those services. The public entity must

reimburse the designated State unit pursuant to the terms of the interagency agreement or other mechanism described in paragraph (d) of this section in accordance with the procedures established in the agreement or mechanism pursuant to paragraph (d)(3)(ii) of this section.

(Authority: Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 709(c) and 721(a)(8))

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

(a) *No Federal requirement.* There is no Federal requirement that the financial need of individuals be considered in the provision of vocational rehabilitation services.

(b) *State unit requirements.*

(1) The State unit may choose to consider the financial need of eligible individuals or individuals who are receiving services through trial work experiences under § 361.42(e) or during an extended evaluation under § 361.42(f) for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (b)(3) of this section.

(2) If the State unit chooses to consider financial need—

(i) It must maintain written policies—

(A) Explaining the method for determining the financial need of an eligible individual; and

(B) Specifying the types of vocational rehabilitation services for which the unit has established a financial needs test;

(ii) The policies must be applied uniformly to all individuals in similar circumstances;

(iii) The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region; and

(iv) The policies must ensure that the level of an individual's participation in the cost of vocational rehabilitation services is—

(A) Reasonable;

(B) Based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and

(C) Not so high as to effectively deny the individual a necessary service.

(3) The designated State unit may not apply a financial needs test, or require the financial participation of the individual—

(i) As a condition for furnishing the following vocational rehabilitation services:

(A) Assessment for determining eligibility and priority for services

under § 361.48(a), except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences under § 361.42(e) or an extended evaluation under § 361.42(f).

(B) Assessment for determining vocational rehabilitation needs under § 361.48(b).

(C) Vocational rehabilitation counseling and guidance under § 361.48(c).

(D) Referral and other services under § 361.48(d).

(E) Job-related services under § 361.48(l).

(F) Personal assistance services under § 361.48(n).

(G) Any auxiliary aid or service (e.g., interpreter services under § 361.48(j), reader services under § 361.48(k)) that an individual with a disability requires under section 504 of the Act (29 U.S.C. 794) or the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*), or regulations implementing those laws, in order for the individual to participate in the VR program as authorized under this part; or

(ii) As a condition for furnishing any vocational rehabilitation service if the individual in need of the service has been determined eligible for Social Security benefits under Titles II or XVI of the Social Security Act.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

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

The State plan must assure that the designated State unit—

(a) Annually reviews and reevaluates the status of each individual with a disability served under the vocational rehabilitation program who has achieved an employment outcome either in an extended employment setting in a community rehabilitation program or in any other employment setting in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act for 2 years after the individual achieves the employment outcome (and thereafter if requested by the individual or, if appropriate, the individual's representative) to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment;

(b) Enables the individual or, if appropriate, the individual's

representative to provide input into the review and reevaluation and documents that input in the record of services, consistent with § 361.47(a)(10), with the individual's or, as appropriate, the individual's representative's signed acknowledgment that the review and reevaluation have been conducted; and

(c) Makes maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individuals identified in paragraph (a) of this section in engaging in competitive employment as defined in § 361.5(b)(11).

(Authority: Section 101(a)(14) of the Act; 29 U.S.C. 721(a)(14))

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

The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:

(a) *Employment outcome achieved.* The individual has achieved the employment outcome that is described in the individual's IPE in accordance with § 361.46(a)(1) and is—

(1) Consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and (2) In the most integrated setting possible, consistent with the individual's informed choice.

(b) *Employment outcome maintained.* The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.

(c) *Satisfactory outcome.* At the end of the appropriate period under paragraph (b) of this section, the individual and the qualified rehabilitation counselor employed by the designated State unit consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.

(d) *Post-employment services.* The individual is informed through appropriate modes of communication of the availability of post-employment services.

(Authority: Sections 12(c), 101(a)(6), and 106(a)(2) of the Act; 29 U.S.C. 711(c), 721(a)(6), and 726(a)(2))

§ 361.57 Review of determinations made by designated State unit personnel.

(a) *Procedures.* The designated State unit must develop and implement procedures to ensure that an applicant or eligible individual who is dissatisfied with any determination made by personnel of the designated State unit that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination. The procedures must be in accordance with paragraphs (b) through (k) of this section:

(b) *General requirements.*

(1) *Notification.* Procedures established by the State unit under this section must provide an applicant or eligible individual or, as appropriate, the individual's representative notice of—

(i) The right to obtain review of State unit determinations that affect the provision of vocational rehabilitation services through an impartial due process hearing under paragraph (e) of this section;

(ii) The right to pursue mediation under paragraph (d) of this section with respect to determinations made by designated State unit personnel that affect the provision of vocational rehabilitation services to an applicant or eligible individual;

(iii) The names and addresses of individuals with whom requests for mediation or due process hearings may be filed;

(iv) The manner in which a mediator or impartial hearing officer may be selected consistent with the requirements of paragraphs (d) and (f) of this section; and

(v) The availability of the client assistance program, established under 34 CFR part 370, to assist the applicant or eligible individual during mediation sessions or impartial due process hearings.

(2) *Timing.* Notice described in paragraph (b)(1) of this section must be provided in writing—

(i) At the time the individual applies for vocational rehabilitation services under this part;

(ii) At the time the individual is assigned to a category in the State's order of selection, if the State has established an order of selection under § 361.36;

(iii) At the time the IPE is developed; and

(iv) Whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated.

(3) *Evidence and representation.* Procedures established under this section must—

(i) Provide an applicant or eligible individual or, as appropriate, the individual's representative with an opportunity to submit during mediation sessions or due process hearings evidence and other information that supports the applicant's or eligible individual's position; and

(ii) Allow an applicant or eligible individual to be represented during mediation sessions or due process hearings by counsel or other advocate selected by the applicant or eligible individual.

(4) *Impact on provision of services.*

The State unit may not institute a suspension, reduction, or termination of vocational rehabilitation services being provided to an applicant or eligible individual, including evaluation and assessment services and IPE development, pending a resolution through mediation, pending a decision by a hearing officer or reviewing official, or pending informal resolution under this section unless—

(i) The individual or, in appropriate cases, the individual's representative requests a suspension, reduction, or termination of services; or

(ii) The State agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

(5) *Ineligibility.* Applicants who are found ineligible for vocational rehabilitation services and previously eligible individuals who are determined to be no longer eligible for vocational rehabilitation services pursuant to § 361.43 are permitted to challenge the determinations of ineligibility under the procedures described in this section.

(c) *Informal dispute resolution.* The State unit may develop an informal process for resolving a request for review without conducting mediation or a formal hearing. A State's informal process must not be used to deny the right of an applicant or eligible individual to a hearing under paragraph (e) of this section or any other right provided under this part, including the right to pursue mediation under paragraph (d) of this section. If informal resolution under this paragraph or mediation under paragraph (d) of this section is not successful in resolving the dispute within the time period established under paragraph (e)(1) of this section, a formal hearing must be conducted within that same time period, unless the parties agree to a specific extension of time.

(d) *Mediation.*

(1) The State must establish and implement procedures, as required under paragraph (b)(1)(ii) of this section, to allow an applicant or eligible individual and the State unit to resolve disputes involving State unit determinations that affect the provision of vocational rehabilitation services through a mediation process that must be made available, at a minimum, whenever an applicant or eligible individual or, as appropriate, the individual's representative requests an impartial due process hearing under this section.

(2) Mediation procedures established by the State unit under paragraph (d) must ensure that—

(i) Participation in the mediation process is voluntary on the part of the applicant or eligible individual, as appropriate, and on the part of the State unit;

(ii) Use of the mediation process is not used to deny or delay the applicant's or eligible individual's right to pursue resolution of the dispute through an impartial hearing held within the time period specified in paragraph (e)(1) of this section or any other rights provided under this part. At any point during the mediation process, either party or the mediator may elect to terminate the mediation. In the event mediation is terminated, either party may pursue resolution through an impartial hearing;

(iii) The mediation process is conducted by a qualified and impartial mediator, as defined in § 361.5(b)(43), who must be selected from a list of qualified and impartial mediators maintained by the State—

(A) On a random basis;

(B) By agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative; or

(C) In accordance with a procedure established in the State for assigning mediators, provided this procedure ensures the neutrality of the mediator assigned; and

(iv) Mediation sessions are scheduled and conducted in a timely manner and are held in a location and manner that is convenient to the parties to the dispute.

(3) Discussions that occur during the mediation process must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(4) An agreement reached by the parties to the dispute in the mediation process must be described in a written mediation agreement that is developed by the parties with the assistance of the qualified and impartial mediator and signed by both parties. Copies of the agreement must be sent to both parties.

(5) The costs of the mediation process must be paid by the State. The State is not required to pay for any costs related to the representation of an applicant or eligible individual authorized under paragraph (b)(3)(ii) of this section.

(e) *Impartial due process hearings.* The State unit must establish and implement formal review procedures, as required under paragraph (b)(1)(i) of this section, that provide that—

(1) A hearing conducted by an impartial hearing officer, selected in accordance with paragraph (f) of this section, must be held within 60 days of an applicant's or eligible individual's request for review of a determination made by personnel of the State unit that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of time;

(2) In addition to the rights described in paragraph (b)(3) of this section, the applicant or eligible individual or, if appropriate, the individual's representative must be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence;

(3) The impartial hearing officer must—

(i) Make a decision based on the provisions of the approved State plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements; and

(ii) Provide to the individual or, if appropriate, the individual's representative and to the State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing; and

(4) The hearing officer's decision is final, except that a party may request an impartial review under paragraph (g)(1) of this section if the State has established procedures for that review, and a party involved in a hearing may bring a civil action under paragraph (i) of this section.

(f) *Selection of impartial hearing officers.* The impartial hearing officer for a particular case must be selected—

(1) From a list of qualified impartial hearing officers maintained by the State

unit. Impartial hearing officers included on the list must be—

(i) Identified by the State unit if the State unit is an independent commission; or

(ii) Jointly identified by the State unit and the State Rehabilitation Council if the State has a Council; and

(2)(i) On a random basis; or

(ii) By agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative.

(g) *Administrative review of hearing officer's decision.* The State may establish procedures to enable a party who is dissatisfied with the decision of the impartial hearing officer to seek an impartial administrative review of the decision under paragraph (e)(3) of this section in accordance with the following requirements:

(1) A request for administrative review under paragraph (g) of this section must be made within 20 days of the mailing of the impartial hearing officer's decision.

(2) Administrative review of the hearing officer's decision must be conducted by—

(i) The chief official of the designated State agency if the State has established both a designated State agency and a designated State unit under § 361.13(b); or

(ii) An official from the office of the Governor.

(3) The reviewing official described in paragraph (g)(2)(i) of this section—

(i) Provides both parties with an opportunity to submit additional evidence and information relevant to a final decision concerning the matter under review;

(ii) May not overturn or modify the hearing officer's decision, or any part of that decision, that supports the position of the applicant or eligible individual unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to the approved State plan, the Act, Federal vocational rehabilitation regulations, or State regulations and policies that are consistent with Federal requirements;

(iii) Makes an independent, final decision following a review of the entire hearing record and provides the decision in writing, including a full report of the findings and the statutory, regulatory, or policy grounds for the decision, to the applicant or eligible individual or, as appropriate, the individual's representative and to the State unit within 30 days of the request

for administrative review under paragraph (g)(1) of this section; and

(iv) May not delegate the responsibility for making the final decision under paragraph (g) of this section to any officer or employee of the designated State unit.

(4) The reviewing official's decision under paragraph (g) of this section is final unless either party brings a civil action under paragraph (i) of this section.

(h) *Implementation of final decisions.* If a party brings a civil action under paragraph (h) of this section to challenge the final decision of a hearing officer under paragraph (e) of this section or to challenge the final decision of a State reviewing official under paragraph (g) of this section, the final decision of the hearing officer or State reviewing official must be implemented pending review by the court.

(i) *Civil action.*

(1) Any party who disagrees with the findings and decision of an impartial hearing officer under paragraph (e) of this section in a State that has not established administrative review procedures under paragraph (g) of this section and any party who disagrees with the findings and decision under paragraph (g)(3)(iii) of this section have a right to bring a civil action with respect to the matter in dispute. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(2) In any action brought under paragraph (i) of this section, the court—

(i) Receives the records related to the impartial due process hearing and the records related to the administrative review process, if applicable;

(ii) Hears additional evidence at the request of a party; and

(iii) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(j) *State fair hearing board.* A fair hearing board as defined in § 361.5(b)(22) is authorized to carry out the responsibilities of the impartial hearing officer under paragraph (e) of this section in accordance with the following criteria:

(1) The fair hearing board may conduct due process hearings either collectively or by assigning responsibility for conducting the hearing to one or more members of the fair hearing board.

(2) The final decision issued by the fair hearing board following a hearing under paragraph (j)(1) of this section

must be made collectively by, or by a majority vote of, the fair hearing board.

(3) The provisions of paragraphs (b)(1), (2), and (3) of this section that relate to due process hearings and of paragraphs (e), (f), (g), and (h) of this section do not apply to fair hearing boards under this paragraph (j).

(k) *Data collection.*

(1) The director of the designated State unit must collect and submit, at a minimum, the following data to the Commissioner of the Rehabilitation Services Administration (RSA) for inclusion each year in the annual report to Congress under section 13 of the Act:

(i) A copy of the standards used by State reviewing officials for reviewing decisions made by impartial hearing officers under this section.

(ii) The number of mediations held, including the number of mediation agreements reached.

(iii) The number of hearings and reviews sought from impartial hearing officers and State reviewing officials, including the type of complaints and the issues involved.

(iv) The number of hearing officer decisions that were not reviewed by administrative reviewing officials.

(v) The number of hearing decisions that were reviewed by State reviewing officials and, based on these reviews, the number of hearing decisions that were—

(A) Sustained in favor of an applicant or eligible individual;

(B) Sustained in favor of the designated State unit;

(C) Reversed in whole or in part in favor of the applicant or eligible individual; and

(D) Reversed in whole or in part in favor of the State unit.

(2) The State unit director also must collect and submit to the Commissioner of RSA copies of all final decisions issued by impartial hearing officers under paragraph (e) of this section and by State review officials under paragraph (g) of this section.

(3) The confidentiality of records of applicants and eligible individuals maintained by the State unit may not preclude the access of the RSA Commissioner to those records for the purposes described in this section.

(Authority: Section 102(c) of the Act; 29 U.S.C. 722(c))

Subpart C—Financing of State Vocational Rehabilitation Programs

§ 361.60 Matching requirements.

(a) *Federal share.*

(1) *General.* Except as provided in paragraph (a)(2) of this section, the

Federal share for expenditures made by the State under the State plan, including expenditures for the provision of vocational rehabilitation services and the administration of the State plan, is 78.7 percent.

(2) *Construction projects.* The Federal share for expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project.

(b) *Non-Federal share.*

(1) *General.* Except as provided in paragraph (b)(2) and (3) of this section, expenditures made under the State plan to meet the non-Federal share under this section must be consistent with the provisions of 34 CFR 80.24.

(2) *Third party in-kind contributions.* Third party in-kind contributions specified in 34 CFR 80.24(a)(2) may not be used to meet the non-Federal share under this section.

(3) *Contributions by private entities.* Expenditures made from contributions by private organizations, agencies, or individuals that are deposited in the account of the State agency or sole local agency in accordance with State law and that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the funds are earmarked for—

(i) Meeting in whole or in part the State's share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes;

(ii) Particular geographic areas within the State for any purpose under the State plan, other than those described in paragraph (b)(3)(i) of this section, in accordance with the following criteria:

(A) Before funds that are earmarked for a particular geographic area may be used as part of the non-Federal share, the State must notify the Secretary that the State cannot provide the full non-Federal share without using these funds.

(B) Funds that are earmarked for a particular geographic area may be used as part of the non-Federal share without requesting a waiver of statewideness under § 361.26.

(C) Except as provided in paragraph (b)(3)(i) of this section, all Federal funds must be used on a statewide basis consistent with § 361.25, unless a waiver of statewideness is obtained under § 361.26; and

(iii) Any other purpose under the State plan, provided the expenditures do not benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship,

or an individual, entity, or organization with whom the donor shares a financial interest. The Secretary does not consider a donor's receipt from the State unit of a grant, subgrant, or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the grant, subgrant, or contract is awarded under the State's regular competitive procedures.

(Authority: Sections 7(14), 101(a)(3), 101(a)(4) and 104 of the Act; 29 U.S.C. 706(14), 721(a)(3), 721(a)(4) and 724))

Example for paragraph (b)(3):

Contributions may be earmarked in accordance with § 361.60(b)(3)(iii) for providing particular services (e.g., rehabilitation technology services); serving individuals with certain types of disabilities (e.g., individuals who are blind), consistent with the State's order of selection, if applicable; providing services to special groups that State or Federal law permits to be targeted for services (e.g., students with disabilities who are receiving special education services), consistent with the State's order of selection, if applicable; or carrying out particular types of administrative activities permissible under State law. Contributions also may be restricted to particular geographic areas to increase services or expand the scope of services that are available statewide under the State plan in accordance with the requirements in § 361.60(b)(3)(ii).

§ 361.61 Limitation on use of funds for construction expenditures.

No more than 10 percent of a State's allotment for any fiscal year under section 110 of the Act may be spent on the construction of facilities for community rehabilitation program purposes.

(Authority: Section 101(a)(17)(A) of the Act; 29 U.S.C. 721(a)(17)(A))

§ 361.62 Maintenance of effort requirements.

(a) General requirements.

(1) The Secretary reduces the amount otherwise payable to a State for a fiscal year by the amount by which the total expenditures from non-Federal sources under the State plan for the previous fiscal year were less than the total of those expenditures for the fiscal year 2 years prior to the previous fiscal year.

Example: For fiscal year 2001, a State's maintenance of effort level is based on the amount of its expenditures from non-Federal sources for fiscal year 1999. Thus, if the State's non-Federal expenditures in 2001 are less than they were in 1999, the State has a maintenance of effort deficit, and the Secretary reduces the State's allotment in 2002 by the amount of that deficit.

(2) If, at the time the Secretary makes a determination that a State has failed to meet its maintenance of effort

requirements, it is too late for the Secretary to make a reduction in accordance with paragraph (a)(1) of this section, then the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(b) *Specific requirements for construction of facilities.* If the State provides for the construction of a facility for community rehabilitation program purposes, the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at least equal to the expenditures for those services for the second prior fiscal year. If a State fails to meet the requirements of this paragraph, the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(c) *Separate State agency for vocational rehabilitation services for individuals who are blind.* If there is a separate part of the State plan administered by a separate State agency to provide vocational rehabilitation services for individuals who are blind—

(1) Satisfaction of the maintenance of effort requirements under paragraphs (a) and (b) of this section are determined based on the total amount of a State's non-Federal expenditures under both parts of the State plan; and

(2) If a State fails to meet any maintenance of effort requirement, the Secretary reduces the amount otherwise payable to the State for that fiscal year under each part of the plan in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan in the previous fiscal year were less than they were for that part of the plan for the fiscal year 2 years prior to the previous fiscal year.

(d) Waiver or modification.

(1) The Secretary may waive or modify the maintenance of effort requirement in paragraph (a)(1) of this section if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that—

(i) Cause significant unanticipated expenditures or reductions in revenue that result in a general reduction of programs within the State; or

(ii) Require the State to make substantial expenditures in the vocational rehabilitation program for long-term purposes due to the one-time

costs associated with the construction of a facility for community rehabilitation program purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment.

(2) The Secretary may waive or modify the maintenance of effort requirement in paragraph (b) of this section or the 10 percent allotment limitation in § 361.61 if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster, that result in significant destruction of existing facilities and require the State to make substantial expenditures for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation program purposes in order to provide vocational rehabilitation services.

(3) A written request for waiver or modification, including supporting justification, must be submitted to the Secretary as soon as the State determines that an exceptional or uncontrollable circumstance will prevent it from making its required expenditures from non-Federal sources.

(Authority: Sections 101(a)(17) and 111(a)(2) of the Act; 29 U.S.C. 721(a)(17) and 731(a)(2))

§ 361.63 Program income.

(a) *Definition.* For purposes of this section, *program income* means gross income received by the State that is directly generated by an activity supported under this part.

(b) *Sources.* Sources of program income include, but are not limited to, payments from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes, payments received from workers' compensation funds, fees for services to defray part or all of the costs of services provided to particular individuals, and income generated by a State-operated community rehabilitation program.

(c) Use of program income.

(1) Except as provided in paragraph (c)(2) of this section, program income, whenever earned, must be used for the provision of vocational rehabilitation services and the administration of the State plan. Program income is considered earned when it is received.

(2) Payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes may also be used to carry out programs under part B of Title I of the Act (client assistance), part B of Title VI

of the Act (supported employment), and Title VII of the Act (independent living).

(3) The State is authorized to treat program income as—

(i) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2); or

(ii) A deduction from total allowable costs, in accordance with 34 CFR 80.25(g)(1).

(4) Program income cannot be used to meet the non-Federal share requirement under § 361.60.

(Authority: Section 108 of the Act; 29 U.S.C. 728; 34 CFR 80.25)

§ 361.64 Obligation of Federal funds and program income.

(a) Except as provided in paragraph (b) of this section, any Federal funds, including reallocated funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State by the beginning of the succeeding fiscal year and any program income received during a fiscal year that is not obligated by the State by the beginning of the succeeding fiscal year remain available for obligation by the State during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year remain available for obligation in the succeeding fiscal year only to the extent that the State met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: Section 19 of the Act; 29 U.S.C. 716)

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

(a) Allotment.

(1) The allotment of Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act, and payments are made to the State on a quarterly basis, unless some other period is established by the Secretary.

(2) If the State plan designates one State agency to administer, or supervise the administration of, the part of the plan under which vocational rehabilitation services are provided for individuals who are blind and another State agency to administer the rest of the plan, the division of the State's allotment is a matter for State determination.

(b) Reallotment.

(1) The Secretary determines not later than 45 days before the end of a fiscal

year which States, if any, will not use their full allotment.

(2) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the current or subsequent fiscal year, provided the State can meet the matching requirement by obligating the non-Federal share of any reallocated funds in the fiscal year for which the funds were appropriated.

(3) Funds reallocated to another State are considered to be an increase in the recipient State's allotment for the fiscal year for which the funds were appropriated.

(Authority: Sections 110 and 111 of the Act; 29 U.S.C. 730 and 731)

Subpart D—[Reserved]

Subpart E—Evaluation Standards and Performance Indicators

§ 361.80 Purpose.

The purpose of this subpart is to establish evaluation standards and performance indicators for the Program.

(Authority: 29 U.S.C. 726(a))

§ 361.81 Applicable definitions.

In addition to those definitions in § 361.5(b), the following definitions apply to this subpart:

Average hourly earnings means the average per hour earnings in the week prior to exiting the vocational rehabilitation (VR) program of an eligible individual who has achieved a competitive employment outcome.

Business Enterprise Program (BEP) means an employment outcome in which an individual with a significant disability operates a vending facility or other small business under the management and supervision of a designated State unit (DSU). This term includes home industry, farming, and other enterprises.

Exit the VR program means that a DSU has closed the individual's record of VR services in one of the following categories:

- (1) Ineligible for VR services.
- (2) Received services under an individualized plan for employment (IPE) and achieved an employment outcome.
- (3) Received services under an IPE but did not achieve an employment outcome.
- (4) Eligible for VR services but did not receive services under an IPE.

General or combined DSU means a DSU that does not serve exclusively individuals with visual impairments or blindness.

Individuals from a minority background means individuals who report their race and ethnicity in any of the following categories: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino.

Minimum wage means the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, 29 U.S.C. 206(a)(1), (i.e., the Federal minimum wage) or applicable State minimum wage law.

Non-minority individuals means individuals who report themselves exclusively as White, non-Hispanic.

Performance period is the reporting period during which a DSU's performance is measured. For Evaluation Standards 1 and 2, performance data must be aggregated and reported for each fiscal year beginning with fiscal year 1999. However, DSUs that exclusively serve individuals with visual impairments or blindness must report each year the aggregated data for the 2 previous years for Performance Indicators 1.1 through 1.6; the second year must coincide with the performance period for general or combined DSUs.

Primary indicators means Performance Indicators 1.3, 1.4, and 1.5, which are specifically designed to measure—

(1) The achievement of competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher, particularly by individuals with significant disabilities; and

(2) The ratio between the average hourly earnings of individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher and the State's average hourly earnings for all employed individuals.

RSA-911 means the Case Service Report that is submitted annually by a DSU as approved by the Office of Management and Budget (OMB).

Self-employment means an employment outcome in which the individual works for profit or fee in his or her own business, farm, shop, or office, including sharecroppers.

Service rate means the result obtained by dividing the number of individuals who exit the VR program after receiving one or more services under an IPE during any reporting period by the total number of individuals who exit the VR program (as defined in this section) during that reporting period.

State's average hourly earnings means the average hourly earnings of all persons in the State in which the DSU is located.

(Authority: 29 U.S.C. 726(a))

§ 361.82 Evaluation standards.

(a) The Secretary establishes two evaluation standards to evaluate the performance of each DSU that receives funds under this part. The evaluation standards assist the Secretary and each DSU to evaluate a DSU's performance in serving individuals with disabilities under the VR program.

(b) A DSU must achieve successful performance on both evaluation standards during each performance period.

(c) The evaluation standards for the VR program are—

(1) *Evaluation Standard 1—Employment outcomes.* A DSU must assist any eligible individual, including an individual with a significant disability, to obtain, maintain, or regain high-quality employment.

(2) *Evaluation Standard 2—Equal access to services.* A DSU must ensure that individuals from minority backgrounds have equal access to VR services. (Approved by the Office of Management and Budget under control number 1820-0508.)

(Authority: 29 U.S.C. 726(a))

§ 361.84 Performance indicators.

(a) The performance indicators establish what constitutes minimum compliance with the evaluation standards.

(b) The performance indicators require a DSU to provide information on a variety of factors to enable the

Secretary to measure compliance with the evaluation standards.

(c) The performance indicators are as follows:

(1) *Employment outcomes.*

(i) *Performance Indicator 1.1.* The number of individuals exiting the VR program who achieved an employment outcome during the current performance period compared to the number of individuals who exit the VR program after achieving an employment outcome during the previous performance period.

(ii) *Performance Indicator 1.2.* Of all individuals who exit the VR program after receiving services, the percentage who are determined to have achieved an employment outcome.

(iii) *Performance Indicator 1.3.* Of all individuals determined to have achieved an employment outcome, the percentage who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage.

(iv) *Performance Indicator 1.4.* Of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage, the percentage who are individuals with significant disabilities.

(v) *Performance Indicator 1.5.* The average hourly earnings of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings levels equivalent to at least the minimum wage as a ratio to the State's average hourly earnings for all individuals in the State who are employed (as derived from the Bureau of Labor Statistics report "State Average

Annual Pay" for the most recent available year).

(vi) *Performance Indicator 1.6.* Of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage, the difference between the percentage who report their own income as the largest single source of economic support at the time they exit the VR program and the percentage who report their own income as the largest single source of support at the time they apply for VR services.

(2) *Equal access to services.*

(i) *Performance Indicator 2.1.* The service rate for all individuals with disabilities from minority backgrounds as a ratio to the service rate for all non-minority individuals with disabilities.

(Approved by the Office of Management and Budget under control number 1820-0508.)

(Authority: 29 U.S.C. 726(a))

§ 361.86 Performance levels.

(a) *General.*

(1) Paragraph (b) of this section establishes performance levels for—

(i) General or combined DSUs; and
(ii) DSUs serving exclusively individuals who are visually impaired or blind.

(2) The Secretary may establish, by regulations, new performance levels.

(b) *Performance levels for each performance indicator.*

(1)(i) The performance levels for Performance Indicators 1.1 through 1.6 are—

Performance Indicator	Performance level by type of DSU	
	General/Combined	Blind
1.1	Equal or exceed previous performance period	Same.
1.2	55.8%	68.9%.
1.3	72.6%	35.4%.
1.4	62.4%	89.0%.
1.5	.52 (Ratio)	.59.
1.6	53.0 (Math. Difference)	30.4.

(ii) To achieve successful performance on Evaluation Standard 1 (Employment outcomes), a DSU must meet or exceed the performance levels established for four of the six performance indicators in the evaluation standard, including meeting or exceeding the performance levels for two of the three primary indicators (Performance Indicators 1.3, 1.4, and 1.5).

(2)(i) The performance level for Performance Indicator 2.1 is—

Performance indicator	Performance levels
2.1	.80 (Ratio).

(ii) To achieve successful performance on Evaluation Standard 2 (Equal access), DSUs must meet or exceed the performance level established for Performance Indicator 2.1 or meet the performance requirement in paragraph (2)(iii) of this section.

(iii) If a DSU's performance does not meet or exceed the performance level required for Performance Indicator 2.1, or if fewer than 100 individuals from a

minority population have exited the VR program during the reporting period, the DSU must describe the policies it has adopted or will adopt and the steps it has taken or will take to ensure that individuals with disabilities from minority backgrounds have equal access to VR services.

(Authority: 29 U.S.C. 726(a))

§ 361.88 Reporting requirements.

(a) The Secretary requires that each DSU report within 60 days after the end of each fiscal year the extent to which the State is in compliance with the

evaluation standards and performance indicators and include in this report the following RSA-911 data:

(1) The number of individuals who exited the VR program in each closure category as specified in the definition of "Exit the VR program" under § 361.81.

(2) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(3) The number of individuals with significant disabilities who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(4) The weekly earnings and hours worked of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(5) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at the time they applied for VR services was "personal income."

(6) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at closure was "personal income."

(7) The number of individuals exiting the VR program who are individuals from a minority background.

(8) The number of non-minority individuals exiting the VR program.

(9) The number of individuals from a minority background exiting the VR program after receiving services under an IPE.

(10) The number of non-minority individuals exiting the VR program after receiving services under an IPE.

(b) In lieu of the report required in paragraph (a) of this section, a DSU may submit its RSA-911 data on tape, diskette, or any alternative electronic format that is compatible with RSA's capability to process such an alternative, as long as the tape, diskette, or alternative electronic format includes the data that—

(1) Are required by paragraph (a)(1) through (10) of this section; and

(2) Meet the requirements of paragraph (c) of this section.

(c) Data reported by a DSU must be valid, accurate, and in a consistent format. If a DSU fails to submit data that are valid, accurate, and in a consistent format within the 60-day period, the DSU must develop a program improvement plan pursuant to § 361.89(a). (Approved by the Office of Management and Budget under control number 1820-0508.)

(Authority: 29 U.S.C. 726(b))

§ 361.89 Enforcement procedures.

(a) If a DSU fails to meet the established performance levels on both evaluation standards as required by § 361.82(b), the Secretary and the DSU must jointly develop a program improvement plan that outlines the specific actions to be taken by the DSU to improve program performance.

(b) In developing the program improvement plan, the Secretary considers all available data and information related to the DSU's performance.

(c) When a program improvement plan is in effect, review of the plan is conducted on a biannual basis. If necessary, the Secretary may request that a DSU make further revisions to the plan to improve performance. If the Secretary establishes new performance levels under § 361.86(a)(2), the Secretary and the DSU must jointly modify the program improvement plan based on the new performance levels. The Secretary continues reviews and requests revisions until the DSU sustains satisfactory performance based on the current performance levels over a period of more than 1 year.

(d) If the Secretary determines that a DSU with less than satisfactory performance has failed to enter into a program improvement plan or comply substantially with the terms and conditions of the program improvement plan, the Secretary, consistent with the procedures specified in § 361.11, reduces or makes no further payments to the DSU under this program until the DSU has met one of these two requirements or raised its subsequent performance to meet the current overall minimum satisfactory level on the compliance indicators.

(Approved by the Office of Management and Budget under control number 1820-0508.)

(Authority: 29 U.S.C. 726(b) and (c))

Appendix

Analysis of Comments and Changes

Note: The following appendix will not appear in the Code of Federal Regulations.

Section 361.4—Applicable Regulations

Comments: Several commenters requested clarification of proposed § 361.4(c) and (d) that made applicable to the VR program the regulations implementing the One-Stop system under Title I of the WIA. In particular, these commenters requested that the Secretary assure in this section that the regulations governing the One-Stop system do not conflict with the regulations in part 361 and that the One-Stop system requirements would not apply if conflicts between regulatory provisions arise.

Discussion: Proposed § 361.4(c) listed the regulations in 20 CFR part 662 (Description of One-Stop Service Delivery System under Title I of WIA) among the regulations applicable to the VR program. Similarly, proposed § 361.4(d) identified the civil rights protections under 29 CFR part 37 (Implementation of the Nondiscrimination and Equal Opportunity Provisions of WIA) as applicable to VR program activities that are conducted as part of the One-Stop system. Citing these parts of Federal regulations is intended solely as a means of notifying State units of their regulatory obligations as One-Stop system partners.

Moreover, both Title I of WIA and its implementing regulations specify that partner programs, such as the VR program, are to participate in applicable One-Stop system activities in a manner that is consistent with the Federal law authorizing the individual partner program (see e.g., section 121(b)(1)(A)(ii) of WIA; 20 CFR 662.230(d)). We interpret this requirement to mean that the DSU administering the VR program in the State must partner with the other components of the One-Stop system in accordance with the requirements of both Title I of the Rehabilitation Act of 1973 and these final regulations. Given that condition on One-Stop system participation, and the fact that these regulations generally govern State conduct, we do not consider it appropriate to include in the regulations the assurances sought by the commenters. However, we emphasize that we have worked closely with the U.S. Department of Labor to ensure that the One-Stop system regulations do not conflict with VR program requirements. Despite these efforts, we urge State units and others to inform us of any apparent conflicts between regulatory provisions that arise so that we, along with the Department of Labor, can address any inconsistencies that might remain.

Changes: None.

Section 361.5(b)—Applicable Definitions

• General

Comments: Several commenters asked that additional terms be defined in the final regulations. One commenter requested that a definition of "informed choice" be added to the regulations. Other commenters asked that separate definitions of the terms "qualified vocational rehabilitation counselor" and "qualified vocational rehabilitation counselor employed by the designated State unit" be included among the regulatory definitions. Finally, some commenters asked that "rehabilitation engineering" be defined in the final regulations since that term is used in the definition of "rehabilitation technology," while others suggested that "mediation" be defined in the final regulations in order to clarify the scope of the mediation process.

Discussion: We do not believe it is necessary to define "informed choice" in the final regulations. Section 361.52 of both the proposed and final regulations, which tracks section 102(d) of the Act, enumerates the critical aspects of informed choice and reflects the statutory emphasis that individuals participating in the VR program must be able to exercise informed choice

throughout the entire rehabilitation process. That section of the regulations also retains additional choice-related provisions from the current regulations, including, in § 361.52(c), the types of information that must be provided for an individual to exercise choice in selecting VR services and service providers. Thus, § 361.52, as a whole, contains a comprehensive list of requirements intended to ensure that individuals are given meaningful choices, and the opportunity to exercise those choices, in each aspect of their rehabilitation, as the Act intends.

For further discussion of our decision to not define "informed choice," please see the analysis of comments to § 361.52 in this appendix.

We agree that clarification is needed concerning the distinction between a "qualified vocational rehabilitation counselor" and a "qualified vocational rehabilitation counselor employed by the DSU." However, we do not believe that defining these terms would provide the necessary clarification since States can readily determine which counselors they employ. Rather, we think it would be more helpful to further explain the differences between the functions that must be performed by DSU and non-DSU counselors. That discussion can be found in the analysis of comments received under § 361.45.

We agree that retaining the current regulatory definition of "rehabilitation engineering" would be beneficial.

Finally, the 1998 Amendments introduced mediation as another means for individuals and State units to resolve disputes regarding the provision of VR services. Although mediation is new to the VR program, it has been used for years in other programs as a less adversarial process for resolving disputes than formal due process hearings or court litigation. The NPRM provided guidance to States in developing their systems of mediation by defining the statutory term "qualified and impartial mediator." However, we agree that defining "mediation" in the regulations would provide further clarification.

We believe it is important that the regulations give States sufficient flexibility to establish mediation procedures that best meet the needs of individuals with disabilities in the State and the needs of the State unit. At the same time, for efficiency purposes, we feel that the definition of "mediation" in the final regulations should allow for States to conduct mediations under the VR program in a manner that is consistent with those conducted by the State under similar programs. We believe that a definition that is based on relevant portions of the definition of "mediation" in the Federal regulations governing the Client Assistance Program (CAP) in 34 CFR 370.6(b) serves both of those purposes.

Changes: We have amended the proposed regulations to include definitions of the terms "mediation" and "rehabilitation engineering." These definitions are located in § 361.5(b)(36) and (b)(44), respectively, meaning that other definitions in the proposed regulations have been renumbered in the final regulations.

• *Administrative costs under the State plan*

Comments: One commenter asked why the listing of costs in the proposed definition of "administrative costs under the State plan" was preceded by the term "including," rather than "including, but not limited to," as in the current regulations. This same commenter also asked what is meant by "support services" to other entities, which was listed as an administrative cost under § 361.5(b)(2)(iv) of the proposed regulations.

Discussion: The proposed definition of "administrative costs under the State plan," which tracks the definition in section 7(1) of the Act, does not differ substantively from the previous regulatory definition. However, because we interpret the statutory definition to allow for "administrative costs" other than those listed in the Act, we agree with the commenter that the definition should specify that the scope of administrative costs is not limited to the costs listed in the definition.

"Support services to other State agencies, private nonprofit organizations, and businesses and industries," which is referenced in section 7(1)(D) of the Act, as well as in § 361.5(b)(2)(iv), can include activities such as training the staff of the One-Stop system on disability issues, providing organizations with materials and advice on auxiliary aids and services and other accessibility issues, reviewing employers' workplace policies and hiring practices, and other activities that would facilitate and promote the employment of individuals with disabilities. The scope of support services that a State unit may provide would differ depending upon the circumstances in that State.

Changes: We have amended the definition of "administrative costs under the State plan" to clarify that the scope of administrative costs under the program includes, but is not limited to, the costs listed in the definition.

• *Appropriate modes of communication*

Comments: Several commenters requested that we amend the proposed definition of "appropriate modes of communication" to include additional communication modes that are available for individuals who are deaf or hard of hearing.

Discussion: The definition of "appropriate modes of communication" in the proposed regulations, which was the same as the previous regulatory definition, was not intended as a comprehensive list of communication modes used by persons with disabilities. Accordingly, the definition specified that the scope of appropriate modes was not limited to the identified examples and allowed for other modes as they are needed.

Changes: None.

• *Assessment for determining eligibility and vocational rehabilitation needs*

Comments: One commenter asked that this proposed definition be amended to ensure that the information used in assessing eligibility, order of selection category, and vocational rehabilitation needs of an individual with a disability is provided by professionals with expertise in the individual's disabling condition or conditions. This commenter also asked that

we revise the proposed regulations to require that appropriate modes of communication are used in the course of conducting assessments.

Discussion: The points made by the commenter relate to important elements of the assessment process. However, we believe those points are sufficiently addressed by other requirements in the regulations. For example, § 361.42(a) of both the proposed and final regulations requires that determinations of eligibility be made by qualified personnel. Similarly, § 361.18(e) requires that the State unit be able to communicate with applicants, as well as eligible individuals, through appropriate modes of communication. Because these requirements apply to the State unit as it conducts assessments and fulfills its other functions, we do not consider it necessary to amend the proposed definition as the commenter requested.

Changes: None.

• *Comparable services and benefits*

Comments: One commenter asked that the proposed definition be revised to specifically exclude the personal resources of the eligible individual from the scope of "comparable services and benefits" that the State unit must use before expending program funds in support of VR services.

In addition, a number of commenters asked whether a "ticket" issued to an individual with a disability under the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106-170 (TWWIA) constitutes a comparable service or benefit. Several other commenters stated that a Plan for Achieving Self-Support (PASS) issued by the Social Security Administration (SSA) should not be treated as a comparable service or benefit.

Discussion: The proposed regulatory definition of comparable services and benefits—services and benefits that are provided or paid for by other Federal, State or local public agencies, by health insurance, or by employee benefits—did not include the eligible individual's personal resources. Nonetheless, an individual may be asked to participate in the costs of certain VR services to the extent that the State unit uses a financial needs test that is consistent with the requirements in § 361.54 of the regulations.

Because Social Security recipients with disabilities are issued "tickets" under TWWIA in order to receive training and employment-related services from an employment network as defined in that act, we believe that the ticket constitutes a comparable service and benefit under the VR program. Thus, to the extent that a ticket holder is receiving services from another entity that is serving as that individual's employment network, the DSU need not expend VR program funds on services that are comparable to the services the individual is already receiving. On the other hand, if the individual initially chooses the DSU as its employment network under TWWIA, or otherwise transfers his or her ticket to the DSU, then the individual would be served solely by the DSU, and the ticket would not be considered a comparable service and benefit.

On a related point, we note that DSUs must accept a ticket as sufficient evidence that the

ticket holder has a disability, is receiving Social Security benefits, and therefore is presumptively eligible under the VR program (see § 361.42(a)(3) of the final regulations).

Finally, we agree with the commenters' assertion that a PASS does not constitute a comparable service or benefit. Simply stated, a PASS is a mechanism made available to SSDI beneficiaries under the Social Security Act that enables its holder to conserve certain amounts of his or her own income or resources for purposes of supporting himself or herself in the future. Thus, because a PASS is not a source of support for VR services, we do not view it as a comparable benefit that the DSU can look to as an alternative to expending VR program funds.

Changes: None.

• **Competitive employment**

Comments: One commenter questioned the basis for the requirement that "competitive employment" be limited to employment outcomes in integrated settings. A second commenter asked that we broaden the definition of "competitive employment" in the proposed regulations to include employment under the Javits-Wagner-O'Day (JWOD) program if that employment is chosen by the eligible individual.

Discussion: The proposed definition of "competitive employment" was the same as that found in the previous regulations. Although the term is not defined in the Act, section 7(11), the statutory definition of "employment outcome" does refer to competitive employment in the integrated labor market. On that basis, and in light of the great emphasis that the Act places on maximizing the integration into society of persons with disabilities, it has been our longstanding policy to define "competitive employment" to mean employment in an integrated setting (at or above minimum wage). For further information on the integrated setting (and wage) components of the "competitive employment" definition, please refer to the relevant discussion in the preamble to the previous regulations (62 FR 6310 through 6311).

Whether an employment outcome meets the regulatory definition of "competitive employment" is to be determined on case-by-case basis. If a particular job, including a job secured under the JWOD program, is integrated (*i.e.*, the individual with a disability interacts with non-disabled persons to the same extent that non-disabled individuals in comparable positions interact with other persons; § 361.5(b)(33)(ii) of the final regulations) and the individual is compensated at or above the minimum wage (and not less than the customary wage and benefit level paid by the employer for the same or similar work performed by individuals who are not disabled; § 361.5(b)(11)(ii) of the final regulations), then that position would be considered competitive employment. In fact, we expect that many jobs secured under JWOD service contracts would meet these criteria. On the other hand, employment in a non-integrated setting such as a sheltered workshop would not qualify as competitive employment regardless of whether the position is obtained under a JWOD contract or another program or arrangement.

Changes: None.

• **Employment outcome**

Comments: A number of commenters recommended that we expand the definition of "employment outcome" in the proposed regulations (*i.e.*, entering or retaining full- or part-time competitive, supported, or other employment) to include "advancing in" appropriate employment. This change, the commenters believe, would encourage DSUs to look beyond entry-level employment options for eligible individuals.

Another commenter asked that we define "part-time employment" in the final regulations. This commenter expressed concern about DSUs expending resources on individuals who might work very few hours in the course of a week or a month.

Discussion: The chief purpose of the VR program is to assist eligible individuals with disabilities to achieve high-quality employment outcomes consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Because that standard is reflected in the definition of the term "employment outcome," we believe that the regulations sufficiently support the commenters' point that individuals with disabilities who are currently employed should be able to receive VR services in order to advance in their careers.

Additionally, the availability of VR services for purposes of "advancing in" employment is addressed in other parts of the regulations. For example, § 361.46(a)(1)(i) of the final regulations also specifies that the employment outcome identified in the individualized plan for employment, *i.e.*, the employment goal the individual must pursue with the assistance of the State unit, must be consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice. That section requires that States look beyond options in entry-level employment for VR program participants who are capable of more challenging work. Specifically, the eligible individual should be assisted in pursuing the job that reflects his or her strengths, resources, abilities, and other employment factors previously listed. We suggest that you consult Rehabilitation Services Administration (RSA) Policy Directive 97-04 for a more complete discussion of the scope and selection of employment outcomes for eligible individuals.

We have not defined "part-time employment" as used in the proposed definition of "employment outcome." We note that most employers generally consider any job of less than 35 hours per week to be part-time. Yet, we do not believe that it would be appropriate to require a minimum number of hours for part-time work secured through the VR program.

Although we think that instances in which eligible individuals work only a handful of hours per week are limited, we do not want to discourage State units from serving potential part-time workers who, with the State unit's support, may increase their hours or even become employed full-time at a later date.

Changes: None.

• **Fair Hearing Board**

Comments: One commenter suggested modifying the proposed regulations to require a State's fair hearing board to include at least one individual with a disability.

Discussion: By defining "fair hearing board" in the proposed regulations, we intended to clarify past confusion about the scope of the fair hearing board exception to the due process requirements under section 102(c)(6)(A) of the Act. In particular, the proposed regulations specified in § 361.57(j) that for a State's pre-1985 fair hearing board to qualify under the exception, that board must be comprised of a group of persons that acts collectively when issuing final decisions to resolve disputes concerning the provision of VR services to applicants or eligible individuals.

These proposed requirements were intended to address instances in which some States had misinterpreted the exception as enabling a single administrative law judge or other official of a State office of hearing examiners to carry out hearings under § 361.57 without following the procedural requirements in that section. In response, we modeled the proposed definition after the actual State fair hearing board that served as the catalyst for the statutory exception in the 1986 Amendments to the Rehabilitation Act. Because those few States with hearing boards that qualify under the exception have long followed this authorized State process for resolving individual disputes under the VR program, we do not believe it is necessary or prudent to impose special membership requirements on those boards through regulations. We do, however, encourage the few fair hearing board States to consider qualified individuals with disabilities when vacancies on these boards arise.

Changes: None.

• **Maintenance**

Comments: Several commenters objected to the use of examples following this definition, stating that the information included in the examples should be placed in sub-regulatory guidance. Other commenters supported the use of the examples in the proposed regulations.

In addition, one commenter asked that we clarify the types of "enrichment activities" that would fall under the fourth example to the proposed definition, while another asked that we eliminate that example altogether.

Discussion: As we have stated in preambles to prior versions of the VR program regulations, we believe that the limited use of examples following the regulatory definition of "maintenance" is helpful in understanding the types of services that maintenance may include. The examples are purely illustrative and are not meant to limit or exclude other types of services that could be considered maintenance.

The fourth example to both the proposed and previous regulatory definition stated that maintenance can include the costs of an individual's "participation in enrichment activities" related to the individual's training. This example was added to the previous regulations in 1997 in response to the requests of public commenters who noted that some DSUs establish limits in

maintenance budgets that preclude individuals from participating in enrichment activities (e.g., student trips, visits to museums, supplemental lectures, etc.) that are often important components of a student's training program. The "enrichment" example was intended to encourage DSUs to factor in these extra costs when developing an individualized plan for employment (IPE) for a student so that the individual can take advantage of supplemental enrichment activities as appropriate.

Changes: None.

• *Personal assistance services*

Comments: One commenter questioned the point at which a State unit can provide personal assistance services to an individual with a disability.

Discussion: The proposed definition, which was the same as that in the previous regulations, specified that "personal assistance services" (i.e., services designed to assist persons with disabilities in daily living activities) must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other VR services. As long as those conditions are met, personal assistance services, as defined in § 361.5(b)(39) of the regulations, can be made available at any stage in the VR process, including during the assessment for determining the individual's eligibility and priority for VR services.

Changes: None.

• *Physical and mental restoration services*

Comments: One commenter asked us to require that all services listed in the proposed definition of "physical and mental restoration services" be provided by personnel who are qualified in accordance with applicable State licensure laws. Another commenter asked that the definition in the final regulations specifically refer to "assistive listening and alerting devices." Finally, one commenter asked that the regulations prohibit a State unit from providing physical or mental restoration services if other resources are available.

Discussion: The proposed regulations followed the scope of physical and mental restoration services specified in section 103(a)(6) of the Act, and we do not believe that it would be appropriate to apply, solely through regulations, State licensure requirements on the provision of additional restoration services. However, a State may, if it has not done so already, choose to establish licensure or other qualified personnel requirements for providers of physical and mental restoration services. Those States would need to address those requirements in its written policies on the nature and scope of services developed under § 361.50.

We do not believe it is necessary to list additional restoration services in the final regulatory definition. Additional medical or medically related services that an individual needs in order to achieve an employment outcome are authorized under § 361.5(b)(40)(xvi).

Similarly, the commenter's concerns about using other resources before expending VR funds in support of restoration services is fully addressed elsewhere in the regulations. Section 361.48(e) of both the proposed and

final regulations, under which restoration services are authorized, specifies that those services can be made available only to the extent that financial support for the services is not available from other sources. The application of the more general comparable services and benefit requirements in § 361.53 produces the same result.

Changes: None.

• *Physical or mental impairment*

Comments: Several commenters questioned the proposed revision to the previous regulatory definition of "physical or mental impairment" to mirror the definition used in the regulations implementing section 504 of the Act (section 504) (34 CFR 104.3) and the Americans with Disabilities Act (ADA). The commenters stated that using the ADA or section 504 definition may create confusion, conflict with existing definitions in State law, and weaken the eligibility criteria of the VR program. Several other commenters supported the revised definition, stating that consistency across Federal disability laws leads to more effective administration of the VR and other programs.

Discussion: As noted in the preamble discussion of the changes to the definition of "physical or mental impairment" proposed in the NPRM (65 FR 10622), the revised definition does not impact on the employment-related eligibility criteria under the VR program. The changes to the definition in the previous regulations were proposed in an effort to make the VR program regulations more consistent with other Federal disability laws that define "physical or mental impairment." We agree with those commenters who indicated that consistency with the definition used in the ADA and section 504 regulations increases efficiency and actually lessens confusion by eliminating the need to duplicate efforts in assessing whether an individual has an impairment. Again, the changes address only whether an impairment exists; eligibility for VR services remains dependent on whether an individual also satisfies the eligibility criteria that are focused on employment (i.e., the impairment results in a substantial impediment to employment and the other criteria in § 361.42(a)).

Also, we do not believe that the proposed definition restricted the scope of physical or mental impairments that satisfied the previous regulatory definition or that the proposed definition conflicted with definitions of the same term in State law. If such a conflict exists, we ask that the State seek technical assistance from RSA in modifying its requirements in order to ensure that the State does not employ additional or more restrictive eligibility criteria for individuals to receive VR services as compared to the criteria specified in these final regulations.

Changes: None.

• *Post-employment services*

Comments: One commenter requested that the proposed regulations be modified to eliminate the availability of post-employment services for purposes of "advancing" in employment.

Discussion: Although the term "post-employment services" is not defined in the Act, section 103(a)(18) of the Act specifically

authorizes post-employment services that are necessary to assist an individual with a disability to retain, regain, or advance in employment. The proposed definition, which followed the definition in the previous regulations, supported the use of post-employment services to enable persons to "advance" in employment. As in the previous regulations, the note that followed the proposed definition offered additional guidance regarding the provision of post-employment services.

Changes: None.

• *Qualified and impartial mediator*

Comments: We received many comments on the proposed definition of "qualified and impartial mediator." First, several commenters stated that requiring mediators to be "trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements" * * * establishes too restrictive a standard for mediators. Others sought additional guidance on how to implement this requirement if the State has not established applicable certification or other requirements. In addition, several commenters asked whether the prohibition on public agency employees serving as mediators under the proposed definition applies to those from a State Office of Dispute Resolution who conduct mediations across multiple State programs.

Aside from those issues, some commenters asked that we clarify whether a qualified and impartial mediator could also serve as an impartial hearing officer in resolving individual disputes that arise under the VR program. Other commenters voiced support for the proposed definition and for the emphasis given to mediation in the proposed regulations.

Discussion: In establishing the general guidelines that govern mediations, section 102(c)(4) of the Act requires that mediations be conducted by a "qualified and impartial mediator who is trained in effective mediation techniques." We defined "qualified and impartial mediator" in the proposed regulations as a means of providing guidance to the States in identifying or training available mediators.

As indicated previously, we are aware that many States already use mediation to resolve disputes arising under other authorities (e.g., the Individuals with Disabilities Education Act (IDEA) or family law statutes) and that education, experience, or other qualification standards for mediators may vary from State to State. Thus, the proposed requirement that mediators under the VR program be trained consistent with applicable certification or other requirements was intended to ensure that mediators of disputes arising under the VR program are sufficiently qualified and that the State unit is able to use its State's existing pool of qualified mediators.

We fully agree that mediators in a State Office of Dispute Resolution or other similar office should be able to conduct mediations under the VR program, and we have modified the proposed definition to accommodate that situation. This change is analogous to the provision that enables administrative law judges and hearing examiners in the State to

serve as impartial hearing officers even though those individuals are public employees (see the definition of "impartial hearing officer" in § 361.5(b)(25)).

In addition, although we believe that it is not generally the case, if there are no recognized credentialing or qualification standards for mediators in the State, then the Act and these final regulations require only that the State unit ensure that its mediators are trained in effective mediation techniques and meet the other components of the definition in § 361.5(b)(43).

It is critical that qualified and impartial mediators be neutral in facilitating the resolution of disputes regarding the provision of services to applicants or eligible individuals under the VR program. Therefore, we modeled the impartiality requirements in the proposed definition of "qualified and impartial mediator" after similar requirements in the previous definition of "impartial hearing officer." Nevertheless, we realize that many States, particularly rural States with relatively small populations, have difficulty maintaining an appropriate pool of individuals to serve as hearing officers. It is not unusual in these or other States for hearing officers also to be trained as mediators, and we interpret the Act as allowing individuals to serve as both mediators and hearing officers under the VR program, provided they meet the applicable qualifications for each position. However, we also interpret the statutory requirement that mediators and hearing officers be impartial (see section 102(c)(4)(B)(iii) of the Act in reference to mediators and sections 7(16) and 102(c)(5) of the Act in reference to hearing officers) to preclude the same individual from serving as both mediator and hearing officer in the same case.

Changes: We have revised the definition of "qualified and impartial mediator" to allow employees of a State office of mediators or similar office to serve as qualified and impartial mediators under the VR program.

• **Substantial impediment to employment**

Comments: One commenter suggested that "communication" be listed among the attendant factors in the definition that could indicate the existence of a "substantial impediment to employment," since communication plays a critical role in the individual's ability to function in the workplace. Other commenters requested that the proposed definition be revised to include examples of how the attendant medical factors are applied if medical measures are taken and result in mitigating functional limitations.

Discussion: We agree that communication competence is crucial to success in the workplace. Although the proposed and previous regulations stated explicitly that a "substantial impediment to employment" could be measured in terms of "other factors," we agree that "communication" should be added to the specific factors listed in the final regulatory term.

We suspect that those commenters who suggested that the final regulations explain how attendant medical factors indicating the existence of a "substantial impediment to employment" are assessed if medical measures that mitigate functional limitations

(also referred to as "mitigating measures") are taken are questioning the application to the VR program of recent Supreme Court case law interpreting the ADA. The relevant cases require that any mitigating measures (e.g., medication) that an individual is using to lessen the effects of that person's impairment be taken into account in determining whether the individual has a disability under the ADA (i.e., an impairment that substantially limits one or more major life activities).

It is not clear, however, that the Court's decisions apply to the VR program eligibility criterion that an individual's impairment constitutes a substantial impediment to employment, since that provision and ADA language in question are not identical. Moreover, the purpose of the ADA, which is a civil rights statute, differs from that of the VR program, which provides Federal funding to assist individuals with disabilities enter into employment. We are not aware of any instances in which States, based on these cases, have altered their processes for assessing an individual's eligibility for the VR program; nor would we encourage them to do so.

Changes: None.

• **Supported employment**

Comments: Some commenters requested clarification of what it means to be "working toward competitive employment" for purposes of meeting the definition of "supported employment" in the proposed regulations. These commenters also asked whether the fact that an individual in supported employment is working toward competitive employment affects the 18-month limit on supported employment services provided by the State unit.

Discussion: The 1998 Amendments expanded the prior statutory definition of "supported employment" ("competitive work in an integrated setting with ongoing supports") to also include "employment in integrated settings in which individuals are working toward competitive work" in order to cover persons who are working in supported employment settings but are making less than the minimum wage. "Competitive employment," which we have long viewed as synonymous with the term "competitive work" used in the supported employment definition, generally refers to employment that is performed in an integrated setting for which the individual is compensated at or above the minimum wage. Thus, as long as an individual receiving ongoing support services while working in an integrated setting is also progressing or moving toward the minimum wage level, then the individual's job is considered "supported employment." We note, however, that an individual in supported employment working toward competitive employment would not be considered to have achieved a "competitive employment" outcome until the individual is earning at least the minimum wage consistent with the definition of "competitive employment" in § 361.5(b)(11).

We also note that the change to the statutory definition of "supported employment" does not affect the 18-month period for which the DSU can provide supported employment services. Once that

18 months has passed (and unless the special circumstances warrant an extension), ongoing services, if needed, must be provided by a provider of extended services (see § 361.5(b)(20) of the final regulations) regardless of whether the individual has yet to receive at least the minimum wage.

Changes: None.

• **Transportation**

Comments: Five commenters asked that the examples following the proposed definition of "transportation" be deleted. Another commenter supported specifically the example stating that the modification of a vehicle is a rehabilitation technology, rather than a transportation service. Another commenter asked that we include in the final regulations specific authority for DSUs to pay for the repair and maintenance of vehicles.

Discussion: We have found that the examples following the previous regulatory definition of "transportation," which were largely the same as those included in the proposed regulations, were helpful to State agency personnel, individuals with disabilities, and others in clarifying the scope of transportation services authorized under the VR program. As we have always maintained, these examples are purely illustrative and are not meant to provide a comprehensive set of allowable transportation services.

Thus, because other authorized "transportation" services exist, and should be considered in light of the needs of the individual, we do not believe it is necessary to specify additional transportation costs in the regulations. We do note, however, that the second example to the proposed definition identifies the "purchase and repair" of vehicles as an example of an authorized transportation expense. We view the vehicle "repair and maintenance" expense identified by the commenter as covered by that example and, therefore, authorized. We would also instruct each DSU to include in its written policies governing the nature and scope of services under § 361.50(a) any additional transportation expenses that the DSU generally provides.

Changes: None.

Section 361.10 Submission, Approval, and Disapproval of the State Plan

Comments: Commenters expressed concern that the proposed regulations would require the State unit to hold public meetings throughout the State prior to adopting any new substantive policy or procedure concerning the provision of VR services or substantively amending an existing service-related policy or procedure. Consequently, many commenters viewed the provision as both burdensome and costly. Some of these commenters suggested that the State unit be permitted to adopt new policies and procedures (and make any amendments to existing policies) initially in accordance with applicable State laws and later invite public comment and input on those additions or changes during the State's public meetings on the State plan. Other commenters sought clarification of what constituted a "substantive" policy, procedure, or amendment and asked who would determine whether a policy is "substantive."

Additional comments on this section of the proposed regulations reflected concerns about the different dates that govern the submission of the VR State plan. These commenters recommended that all States be required to submit updates and revisions to their State plans by the same date.

Discussion: Section 101(a)(16)(A) of the Act requires the State to hold public meetings prior to adopting policies or procedures governing the provision of services under the State plan. This requirement is essentially the same as the statutory requirements concerning public meetings that preceded the 1998 Amendments. Thus, we interpret the requirement in section 101(a)(16)(A) of the Act in the same manner as we have historically, i.e., the public is to be given the opportunity to comment on the State plan prior to the State unit adopting substantive policies and procedures (and any amendments thereto) governing the provision of vocational rehabilitation services under the plan. Typically, a State unit fulfills this requirement by taking comment on new policies during public meetings on State plan revisions and updates. Regardless of the timing of the State's public meetings, however, section 101(a)(16)(A) clearly requires that these meetings for receiving public input be held prior to States adopting new or revised policies affecting the provision of VR services. Implementing new policies in advance of the public meetings is not permitted.

We also note that section 101(a)(16)(B) of the Act and § 361.21 of both the previous and the proposed regulations required the designated State agency to consult with certain groups on matters of general policy arising in the administration of the State plan. In addition, a State unit that has a State Rehabilitation Council (Council), in accordance with section 101(a)(21)(A)(ii)(II) of the Act and § 361.16(a) of the regulations (again, both previous and proposed), must consult with the Council regarding the development, implementation, and revision of State policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services. Each of the public comment or consultation requirements specified in the proposed regulations, and the resulting burden, was imposed by the Act, and each was intended to ensure that the State unit accounts for the diverse needs of its State's disability population before modifying its service-provision practices.

Nonetheless, in an effort to reduce the burden on the States, we incorporated into both the proposed and final regulations the term "substantive" to clarify that States need not hold public meetings on policy or procedural changes that are merely technical or do not affect the provision of VR services in any substantive manner. Longstanding RSA guidance (see PD-90-08 and PAC-90-05) provides additional information on the scope of this requirement. We note that the determination of whether a specific policy or procedure is sufficiently "substantive" to warrant public input is made by the State unit. Yet, we strongly urge State units to consult with their Councils in assessing

whether proposed policy changes are "substantive" or in developing evaluative criteria for the State unit to use in making that assessment.

Section 101(a)(1)(A) of the Act requires the State to submit its State plan for the VR program on the same date that it submits its plan under section 112 of WIA. In addition, section 501 of WIA authorizes the State to submit a State unified plan in place of both a WIA section 112 plan and separate State plans for those WIA partner programs, including the VR program. We believe that in order to foster collaboration and cooperation between the VR program and other components of the One-Stop service delivery system, a State plan for the VR program that is not included in the State's unified plan should be submitted on the same date as that unified plan. That view is reflected in § 361.10(f)(3) of the proposed and the final regulations.

Changes: None

Section 361.16 Establishment of an Independent Commission or a State Rehabilitation Council

Comments: One commenter expressed concern that the proposed regulations failed to require the State unit to provide documents to the Council in alternative formats and in a timely manner. As a result, this commenter stated that Council members who are blind will not have sufficient opportunity to review and respond to information provided by the State unit.

Discussion: This section of the proposed regulations made only technical changes to the previous regulations in order to conform to statutory changes in the 1998 Amendments to the Act. We do not believe that a regulatory change to this provision is warranted based on the comment received. Providing information in appropriate formats to Council members with disabilities falls under the State unit's general responsibility under section 504(a) of the Act to not exclude, on the basis of disability, any individual from participating in programs or activities receiving Federal financial assistance. Moreover, Federal regulations at 34 CFR 104.4(b)(1)(vi) specify that a recipient's responsibility under section 504 of the Act extends to the participation of individuals with disabilities on advisory boards. Thus, as in many other instances in which it distributes written materials, the State unit must ensure that Council members who are blind or otherwise disabled are able to review information that the State unit transmits to the Council, as well as participate generally in Council activities.

Changes: None.

Section 361.17 Requirements for a State Rehabilitation Council

Comments: We received several comments regarding the composition requirements of the Council. One commenter requested clarification as to whether an entity that is a required member of the Council could select someone other than a member of that entity as its representative to the Council.

Several commenters suggested that the regulations specify that the "nonvoting" membership status of Council members who

are employees of the designated State agency does not apply to the representative of the CAP. This change, the commenters assert, is necessary since the CAPs in some States are components of the designated State agency that administers the VR program. The commenters raised questions regarding the required Council membership of a representative of the directors of the American Indian VR services projects authorized under section 121 of the Act. Some of these commenters indicated that the Council should include members from each of the section 121 projects and that a single representative of all the directors could not adequately represent all American Indian VR service projects in the State. Other commenters described situations in which a section 121 project is "headquartered" in one State but has a service area that extends across State lines into another State and asked whether that project must be represented on the Council of each State that it serves.

One commenter questioned whether a Council member could be appointed to the State Workforce Investment Board (SWIB) under section 111 of WIA in order to satisfy the requirement in the proposed regulations that the Council include a member of the SWIB. This commenter stated that otherwise this requirement would be difficult to meet given the limited pool of persons interested in serving on the Council as evidenced by the difficulty Councils experience in filling vacancies as they occur.

Finally, we received several comments indicating that the proposed regulations failed to incorporate the new statutory requirement that the majority of members to a Council for a State agency for the blind must be individuals who are blind.

Discussion: Section 105(b) of the Act contains the membership requirements for the Council to ensure that various constituencies of the VR program have a voice in the conduct of the VR program in the State. Section 105(b)(3) requires that the Governor, after soliciting recommendations from organizations representing individuals with disabilities, appoint members to the Council in accordance with the membership criteria in section 105(b)(1) of the Act.

The question as to whether an entity can be represented on the Council by someone other than one of its own members or employees has been raised in the past. With few exceptions, the Council membership requirements in section 105(b)(1) of the Act state that a "representative" of an identified entity must serve on the Council. The Act does not require that the "representative" be an employee or member of the required entity. Thus, we interpret section 105(b) of the Act and § 361.17(b) of the regulations to allow an entity that is required to be represented on the Council to be represented by someone who is not an employee or member of that organization. Recommendations of appropriate representatives can be made by the organizations themselves, although final appointment authority rests with the Governor. Moreover, we would expect that such a Council member would be closely affiliated with and knowledgeable about the

organization or entity whose interests the individual is charged with representing.

We agree that the non-voting status of State agency or State unit employees under § 361.17(b)(2) of the proposed regulations does not apply to Council members representing the State's CAP pursuant to proposed § 361.17(b)(1)(iii).

Questions regarding Council representation of the section 121 project directors have been raised frequently since the passage of the 1998 Amendments to the Act. Moreover, the commenters' concerns as to whether one project director can sufficiently represent the interests of several independent projects serving different populations of American Indians have generated the most debate. Yet, the requirement in proposed § 361.17(b)(1)(ix) enabling one person to represent all section 121 project directors in the State came directly from section 105(b)(1)(ix) of the Act. This requirement appears to reflect an intent of Congress to minimize the burden on States and to ensure that the size of the Councils not be so large as to become unmanageable. Nevertheless, we urge the directors of section 121 projects in the same State to collaborate more extensively than they may have in the past and to work to ensure that their collective views are represented on the Council. We also note that neither the Act nor regulations prohibit the Governor from appointing to the Council more than one representative of the State's section 121 projects (or other groups) if warranted as long as the remaining composition requirements in the Act and regulations (e.g., the requirement that a majority of Council members be individuals with disabilities) are met. As for section 121 projects that are "headquartered" in one State but serve those in another State, it is our understanding that to the extent this occurs, affected projects primarily serve American Indians with disabilities in the State in which the project is located and serve only a relatively small area in a neighboring State. We do not believe that the Council must include a representative of a section 121 project serving American Indians with disabilities in the State if that project is primarily located, and serves those, in another State. In that instance, § 361.17(b)(1)(ix) of the final regulations would apply only to the State in which the project is located. The Governor, however, always has the discretion to appoint to the Council a representative of an out-of-State project that also serves American Indians with disabilities in the Governor's State.

Since the time that the Council requirements came into effect, questions regarding whether the same individual can fulfill more than one role on the Council have been raised often. In response, we consistently have taken the position that an individual may represent only one entity on the Council even though that same individual may qualify under more than one of the composition requirements. We recognize that some States have difficulty maintaining a sufficient pool of qualified individuals to serve on statewide Councils and that the 1998 Amendments to the Act added three new required members to the Council. Nevertheless, section 105(b) of the

Act establishes a minimum number of members for the Council, each of whom represents a specific component of the disability community. Because each member represents a different interest, sometimes one that is divergent from that of other members, we maintain that each organizational requirement must be met separately. Thus, a Council member who serves on the SWIB cannot represent both the SWIB and another organization on the Council.

We agree with the commenters who pointed out the discrepancy between the Act and the regulations regarding the membership requirements that apply to a Council for a separate State agency that administers the VR program for individuals who are blind. These commenters correctly noted that the proposed regulations did not specify, as does the statute, that the majority of members of these Councils must be individuals who are blind. This omission was inadvertent, and we agree that it needs to be corrected in the final regulations.

Changes: We have revised § 361.17(b)(2) of the proposed regulations to clarify that the CAP representative is, in all instances, a voting member of the Council. In addition, we have modified § 361.17(c) to reflect the requirement in section 105(b)(4)(B) of the Act that a majority of the members on a Council for a separate State agency for the blind must be individuals who are blind.

Section 361.18(c) Comprehensive System of Personnel Development—Personnel Standards

Comments: Some commenters expressed concern with the indication in the preamble to the NPRM that statewide "multi-tiered" personnel standards could be used by the State unit in establishing standards for its rehabilitation personnel. Other commenters suggested that the proposed regulations be revised to require that all rehabilitation counselors obtain a Master's degree consistent with the national certification standards for rehabilitation counselors.

In addition, a number of commenters sought waiver or "grandfather" provisions in the final regulations that would exempt current rehabilitation counselors and other professionals from the State's personnel standards. On a related point, some commenters asked whether currently employed rehabilitation counselors who do not meet the State unit's personnel standards can continue to serve as counselors while training to meet the standard.

Additionally, several commenters viewed the requirement in the proposed regulations that the State unit develop a written plan for retraining, recruiting, and hiring staff to meet applicable personnel standards as unduly burdensome. Other commenters supported this requirement and suggested that the written plan be developed with input from the Council.

Finally, several commenters suggested that RSA define the professional and paraprofessional disciplines for which a State unit must establish personnel standards, while others asked what standards the State unit should apply to professions or paraprofessions for which no certification or similar criteria exist.

Discussion: The preamble discussion in the NPRM concerning the ability of State units to use the same multi-tiered personnel standards as those applied by other State agencies to its rehabilitation staff was intended to clarify the level of flexibility the proposed regulations give State units in ensuring that its personnel are qualified within the meaning of the Act. Typically, multi-tiered certification systems require rehabilitation counselors to reach a certain academic level depending on the amount of experience the individual has had in that field. As we indicated in the NPRM (65 FR 10623), because the Act clearly allows State units to base their personnel standards on applicable State standards, it is permissible for a DSU to apply the multi-tiered counselor certification criteria of, for example, the State Workers' Compensation program to DSU counselors if the counselors of both agencies perform similar functions. The Act gives State units that discretion, and that same discretion also prohibits requiring by Federal regulations that all State unit counselors obtain a Master's degree consistent with the national rehabilitation counselor certification standards as sought by some commenters. Nonetheless, as we stressed in the preamble to the NPRM, we encourage each State unit to ensure that its personnel standards promote quality among its counselors and other staff, and we caution State units not to employ minimally qualified individuals by routinely substituting "equivalent experience" for higher-level degree criteria.

The Act does not authorize "grandfathering" or the waiving of personnel standards for current staff. Rather, section 101(a)(7)(B)(ii) of the Act compels the State unit, if its current personnel does not meet the "highest requirements in the State" (i.e., the highest entry-level academic degree needed for the applicable State or national certification, licensing, or registration requirements—see § 361.18(b)(2)(i) of the final regulations), to retrain existing staff, as well as recruit new employees, to meet the personnel standards applicable to each profession.

The written plan under § 361.18(c)(ii) that describes the retraining, recruitment, and other efforts of a State unit whose current personnel standards do not conform to the highest requirements in the State is based on the requirement in the Act that directs the State to provide this information in its State plan. More importantly, however, we believe that the limited components of the written plan (e.g., retraining, recruiting, and hiring steps, timelines for those efforts, procedures for evaluating progress, etc.) are essential to ensuring that the State unit employs a fully qualified staff that is best able to meet the diverse needs of individuals with disabilities. Any burden associated with developing the plan, we believe, is caused by the intent of the Act. The narrow scope of required plan components is expected to provide States with a helpful framework for fulfilling their personnel development responsibilities and improving their service delivery capacity.

As we have stated in the past, we recognize the many constraints faced by State agencies in securing a fully qualified staff, not the least of which is the time that it takes to

retrain existing staff. Thus, current counselors who, pursuant to the State unit's plan under § 361.18(c)(1)(ii), are working toward applicable qualification standards can continue to perform their counselor functions. The Act establishes an expectation that rehabilitation counselors and other staff will become qualified consistent with the highest applicable personnel standards in the State. Accordingly, the requirements in the regulations are intended to ensure that the State unit can continue to serve persons with disabilities while it progresses as rapidly as possible toward the point at which all of its staff, both current and new hires, meet the highest qualifications that the State applies to their professions.

We also emphasize the importance of the role of the Council in the area of personnel development. Section 361.18(a) of the final regulations requires that the Council, if it exists, have an opportunity to review and comment on the development of all plans, policies, and procedures necessary to meet the State unit's obligations under the comprehensive system of personnel development (CSPD). As with each of the Council's functions, we view the Council's input into the development of the State unit's personnel policies, procedures, and standards as vital toward ensuring that those efforts result in a State unit workforce that is fully capable of meeting the training and employment needs of persons with disabilities in the State.

We decline to define the professional and paraprofessional disciplines for which a State unit must establish personnel standards, as some commenters requested. While a State unit must apply to its staff the highest personnel requirements that exist in the State and that apply to each profession, determining the types of professionals and paraprofessionals needed to effectively administer its VR program and establishing the scope of functions for each job are the responsibility of the State unit. It is the State unit that can best judge its staffing needs and establish staffing arrangements that meet the particular needs of that agency's service recipients. In the preamble to the NPRM, however, we did provide some guidance on the categories of professional and paraprofessional disciplines most closely associated with the VR program for which the State unit should give priority in developing both specific job criteria and appropriate qualification standards. Those professions include rehabilitation counselors, vocational evaluators, job coaches for individuals in supported employment or transitional employment, job development and job placement specialists, and personnel who provide medical or psychological services to individuals with disabilities.

As a final matter, we note that if there are no State or national licensing, certification, or registration requirements for a given profession established by the State unit, then both the Act and the final regulations require the State to use other "comparable requirements" (such as State personnel requirements) for that profession or discipline. The scope of these "comparable requirements" (e.g., degree criteria, work experience, etc.) that are applied to jobs for

which no licensing or similar requirements exist is left to the reasonable judgement of the State unit.

Changes: None.

Section 361.22 Coordination With Education Officials

Comments: Some commenters opposed the requirement in the proposed regulations that the State unit complete the IPE for students eligible for VR services before they leave school. These commenters stated, for example, that the proposed requirement would be impracticable for State units to fulfill, would lead to rashly formulated IPEs, or would exceed applicable statutory requirements. Other commenters supported requiring completion of the IPE before the student leaves school and viewed the requirement in the proposed regulations as essential if transition planning is to prove effective.

In addition, one commenter requested that the proposed regulations be revised to require that the formal interagency agreement between the State unit and educational agencies specify both the manner and the time in which State unit staff will participate in transition planning for students with disabilities. Another commenter suggested that each agreement include provisions for resolving disputes regarding the agencies' financial responsibilities in paying for transition services and for enabling students to retain assistive technology provided by schools that the student needs following transition.

Discussion: The proposed requirement that State units provide for the development and completion of the IPE before students who are eligible for VR services leave the school setting was carried over from the previous regulations. As we have indicated from the time the previous regulations were published in 1997, we believe that requiring IPE completion before eligible students with disabilities leave school is entirely consistent with the emphasis on transition in both the Act and its legislative history (see Senate Report 102-357). That emphasis was only heightened by the requirement in the 1998 Amendments that State units increase their participation in transition planning and related activities. More importantly, requiring the IPE to be in place before the student exits school is essential toward ensuring a smooth transition process, one in which students do not suffer unnecessary delays in services and can continue the progress toward employment that they began making while in school. In fact, it is in support of that effort that we have made two clarifications in these final regulations: (1) that designated State agencies should be involved in the transition planning process as early as possible; and (2) that the IPE must be "approved" (i.e., agreed to and signed by the individual and the DSU) prior to the student leaving school, as opposed to simply "completed" as stated in the proposed regulations.

We have determined it necessary to clarify in the final regulations steps that the designated State agency must take, at a minimum, when conducting the statutorily required outreach to students with

disabilities. It is essential for the designated State agency to inform these students of the purpose of the VR program, the application procedures, the eligibility requirements, and the potential scope of services that may be available. This information should be provided as early as possible during the transition planning process in order to enable students with disabilities to make an informed choice on whether to apply for VR services while still in school.

We are not aware that State units have had great difficulty in completing IPEs for students. As before, the final regulations require that if the State is operating under an order of selection, only the IPEs of those students that the State unit can serve under the order must be developed before the student leaves school. Moreover, we believe that State units will be even better prepared to fulfill this requirement as they become more active in transition planning for special education and other students with disabilities (e.g., those students receiving services pursuant to section 504 of the Act or the IDEA) and in generally coordinating with school officials.

We believe, as did some commenters, that the extent to which the State unit should be involved in transition planning for individual students with disabilities should be based on the needs of the student. However, we also believe that it is important for the designated State agency to participate actively throughout the transition planning process, not just when the student is nearing graduation. Early involvement by the designated State agency can be very beneficial in terms of assisting the student to make the transition from school to employment. For this reason, these final regulations clarify that the designated State agency should become involved in the transition planning process as early as possible. The designated State agency and the State education agency should negotiate more specific provisions, as part of their interagency agreement, to ensure that the students' needs are met in a timely manner. Congress clearly envisioned that that approach be followed in developing the terms of the State's interagency agreement (see e.g., Conference Report 105-659, page 354). Also left to local discretion is the scope of components, other than those limited components specified in the Act and clarified previously, that should be included in the agreement. Some of the additional agreement items identified by commenters may be considered in that regard.

However, in response to the commenter's suggestion that each agreement should include provisions for resolving disputes in paying for transition services, we note that State units are authorized to pay for only transition services for students who have been determined eligible under the VR program and who have an approved IPE. Thus, as long as those criteria have been met, and the IPE specifies those transition services necessary for the successful implementation of the IPE, we anticipate that disputes of the type raised by the commenter will not be prevalent.

Changes: We have amended § 361.22(a) of the proposed regulations to clarify that the

IPE for a student determined to be eligible for vocational rehabilitation services must be developed and approved before the student leaves the school setting and as early as possible during the transition planning process. In addition, we have amended § 361.22(b)(4) of the proposed regulations to clarify information that must be provided by the designated State agency, at a minimum, when conducting outreach to students with disabilities, and we have clarified that outreach should begin as early as possible during the transition planning process.

Section 361.23 Requirements Related to the Statewide Workforce Investment System

Comments: We received a great many comments on this section of the proposed regulations that raise important policy issues and questions of interpretation that relate not only to the proposed regulations, but also to WIA and the regulations in 20 CFR part 662.

Most commenters requested more detail in the final regulations that elaborates on how the VR program is to fulfill the requirements in proposed § 361.23(a). For example, several commenters asked that we specify in the final regulations those core services under WIA that the VR program is expected to provide in accordance with proposed § 361.23(a)(1), while others asked that we explain which activities related to "creating and maintaining" the One-Stop system under § 361.23(a)(2) are allowable under the VR program.

Some of the commenters on this proposed section also urged us to identify in the final regulations certain restrictions in the Act (e.g., the order of selection requirements under section 101(a)(5)) that may affect the extent to which State units can contribute to the cost of One-Stop system services or other One-Stop system activities. Of critical importance to the final regulations, most commenters stressed, is the need to address the responsibility of all WIA partner programs to serve individuals with disabilities.

Other commenters asked that we add to the One-Stop system responsibilities listed in proposed § 361.23(a) other items that are necessary for DSUs to effectively participate with other partner programs of the One-Stop system, including methods for allocating costs between programs, methods for ensuring proportionality between the partner's financial participation in the One-Stop system and the resulting benefits it receives, and methods for resolving disputes regarding funding that may arise between partner programs.

Several other commenters identified additional components that they suggested be included in the required cooperative agreements between the designated State agency and those entities administering other One-Stop system partner programs. In addition, some commenters asked whether the requirement that State units, through the cooperative agreements, promote participation by individuals with disabilities in the One-Stop system also requires that State units pay the cost of reasonable accommodations at the One-Stop system center or other locations.

Discussion: As we discussed at some length in the preamble to the NPRM (65 FR

10620, 10621, and 10624), we restated in § 361.23(a) of the proposed regulations the responsibilities of One-Stop system partners, including the VR program, that are described in the regulations implementing Title I of WIA (20 CFR part 662). That effort was intended solely to inform State units of the One-Stop system responsibilities to which they are subject under WIA. We also asked that commenters raise specific interpretive or policy questions related to these One-Stop system responsibilities so that we may address, through appropriate guidance, those most pressing matters that DSUs face as they participate in the One-Stop service delivery system. Most of the comments received on this section of the proposed regulations focus on those types of questions.

Although we anticipate addressing in future guidance materials, and in cooperation with other appropriate Federal agencies, the workforce policy questions posed by the commenters, we do note that many of the issues raised are impacted by a number of key One-Stop system principles embedded in WIA, its implementing regulations, and these final regulations.

First, participation by DSUs in the One-Stop system must be performed in a manner that is consistent with the legal requirements applicable to the VR program (i.e., the Act and these final regulations). Thus, the DSUs' participation in the cost of core services or any other One-Stop system activities cannot, for example, result in expenditures for services to individuals who do not meet the priority for services in the order of selection under which a DSU is currently operating (although the DSU can participate, as appropriate, in the cost of intake and other expenditures that would normally be borne by the DSU prior to determining eligibility and the individual's priority category under the State's order of selection; see the discussion in the following section of this analysis of comments for further information on the relationship between order of selection requirements and participation in One-Stop system activities.) The fact that DSUs must comply with the Act and the VR program regulations in the course of participating in the One-Stop system, we believe, was made clear in the proposed regulations, as it is in Title I of WIA and the regulations implementing that title.

Compliance with the ADA and section 504 of the Act represents another key issue that directly impacts the One-Stop system. In sum, those laws obligate One-Stop system centers and their partners to make their services accessible to individuals with disabilities. Thus, we, along with the Department of Labor and many of the commenters, have emphasized that the legal responsibility for assisting persons with disabilities does not fall to the DSU alone. Consequently, individuals with disabilities are likely to receive services through a variety of arrangements (e.g., through the One-Stop system center, through a combination of core services at the One-Stop system center and specialized VR services from the DSU, etc.) depending on the configuration and structure of the local One-Stop system. Nonetheless, because the universal access principles reflected in the

ADA and section 504 relate to the responsibilities of non-DSU entities and because these final regulations establish requirements for designated State agencies and designated State units administering VR programs, we do not believe this section should be revised to address the application of the ADA and section 504 to the One-Stop system generally. Those responsibilities are fully addressed in WIA, particularly in section 188 of that act and its implementing regulations, 29 CFR part 37, which establish the civil rights protections that must be provided by the State and local workforce development systems.

Many of the commenters also raised important issues related to collaboration between the DSU and its One-Stop system partners. In response, we note that those issues can, and should, be addressed through the development of the memorandum of understanding (MOU) governing the operation of the One-Stop system referred to in § 361.23(a)(3) or through the cooperative agreements developed between these same parties under § 361.23(b). In fact, some of the suggested items, including the methods for funding One-Stop system costs among partner programs, are addressed in the regulations implementing title I of WIA (see MOU requirements in 20 CFR 662.300). Rather than specifying additional MOU or cooperative agreement components in these final regulations, we would urge DSUs and their One-Stop system partners to determine which components, other than those specified in the MOU requirements in 20 CFR part 662 and the agreement components in § 361.23(b) of these final regulations, would be most appropriate to address given State and local circumstances.

We do believe it is necessary, however, to clarify one technical item related to the cooperative agreement under § 361.23(b) that some commenters raised. The commenters appeared to interpret § 361.23(b)(2)(i)(B) as requiring DSUs to pay for reasonable accommodations, auxiliary aids, and other services for persons with disabilities participating in the One-Stop system. Yet, that proposed section, which comes directly from section 101(a)(11)(A)(i)(II) of the Act, states only that DSUs, in promoting meaningful participation by persons with disabilities in One-Stop system and other workforce investment activities through program accessibility, may provide training and technical assistance to its One-Stop system partners on how to provide reasonable accommodations and auxiliary aids and services. Neither the relevant statutory provision nor the proposed regulatory section questioned by commenters instructs DSUs to pay the costs of providing individuals with disabilities access to the One-Stop system. In fact, as previously noted, that responsibility falls to the One-Stop system pursuant to the ADA and section 504.

Changes: None.

Section 361.31 Cooperative Agreements With Private Nonprofit Organizations

Comments: None.

Discussion: We wish to clarify the relationship between these final regulations

and potential agreements that DSUs may enter into with employment networks authorized under the recently enacted TWWIA. In particular, we note that neither the Act nor the regulations, including the requirement in section 101(a)(24)(B) of the Act and § 361.31 of the regulations that the DSU enter into cooperative agreements under the VR program with private nonprofit VR service providers, are intended to limit or prohibit the establishment of a fee-for-service or other reimbursement type agreement between DSUs and employment networks. Typically, fee-for-service arrangements enable private service providers to purchase from the DSU services that are needed by an individual with a disability who is not a VR program participant.

On a related note, we also emphasize that nothing in the Act or these regulations would affect the ability of a DSU to serve as an employment network as authorized under TWWIA.

Changes: None.

Section 361.36 Ability To Serve All Eligible Individuals; Order of Selection for Services

Comments: One commenter suggested that this section of the proposed regulations be strengthened to ensure that States preserve resources and provide needed services to individuals with significant disabilities, particularly as the State unit becomes more closely linked to, and participates in, the One-Stop system under WIA.

Discussion: As we discussed in the previous section, we agree that the policy behind the order of selection requirements in the Act and regulations—to preserve the fiscal and personnel resources of the DSU so that those with the most significant disabilities can receive the full range of VR services that they need to become appropriately employed—must be safeguarded. However, we believe those safeguards are in place. As a required partner in the One-Stop system, the State unit must participate toward the development and maintenance of an effective One-Stop system at the local level. Moreover, Title I of WIA and the regulations implementing that title clearly condition that participation on compliance with the Rehabilitation Act and these regulations. Thus, the order of selection requirements in section 101(a)(5) of the Act and these regulations, or any other statutory or regulatory requirement applicable to the VR program, must be followed in the course of participating in One-Stop system activities. If the State is operating on an order of selection because it cannot serve all eligible individuals given its current level of VR program resources, then the State unit can pay only for services (i.e., services beyond intake and assessment that are necessary to determine whether an individual is eligible under the program and, if so, to determine the individual's priority category under the order of selection) for the individuals who qualify for services under that order, regardless of whether those services are provided within or apart from the One-Stop system center. The severity of an individual's disability or the cost of the individual's program of services can have no bearing on the scope of services the individual receives.

Changes: We have made one clarifying change to § 361.36(c) of the proposed regulations that was not based on public comment. This proposed section has been revised to clarify that a DSU that has developed but not implemented an order of selection must continue to provide the full range of services, as appropriate, to all eligible individuals.

Section 361.42 Assessment for Determining Eligibility and Priority for Services

Comments: Several commenters recommended requiring in this section of the final regulations a written assessment for determining eligibility and priority for services by a qualified VR counselor employed by the DSU, as a means of emphasizing the importance of the professional opinion of the VR counselor. These commenters also proposed that this written assessment be included with the information given to the eligible individual during IPE development.

Some commenters opposed the eligibility provisions stated in proposed § 361.42(a)(i) and (ii) (i.e., determinations by qualified personnel that the applicant has a physical or mental impairment and the impairment constitutes or results in a substantial impediment to employment) on the basis that neither provision required that the applicable determination be made by a qualified employee of the DSU. These commenters stated that all eligibility-related determinations should be made by the DSU.

Several commenters opposed § 361.42(a)(3) of the proposed regulations, which implemented the statutory requirements regarding presumptive VR program eligibility for individuals receiving SSI or SSDI under the Social Security Act. These commenters stated that a categorical presumption of eligibility for this group of individuals could be misconstrued as creating an entitlement to VR services, could lead to efforts to extend presumptive eligibility inappropriately to other groups with common characteristics, and may undermine the individualized nature of the VR program. Some of the commenters asserted that a presumption of eligibility should be able to be rebutted by a showing that an individual receiving SSI or SSDI does not meet one or more of the eligibility criteria. Other commenters suggested that presumptive eligibility for these individuals should apply to only those Social Security recipients or beneficiaries seeking to earn wages as opposed to those intending to become homemakers.

On the other hand, several commenters supported the proposed requirements regarding presumptive VR program eligibility for individuals receiving SSI or SSDI. Some noted that the relevant statutory provision, section 102(a)(3) of the Act, already has been effective in reducing the time expended on eligibility determinations, thereby allowing counselors and individuals to focus on IPE development and initiating needed services.

Many commenters opposed the manner in which the proposed regulations implemented the passage in section 102(a)(3)(ii) of the Act that states that Social Security recipients are presumed eligible under the VR program "provided that the individual intends to

achieve an employment outcome." Specifically, these commenters believed that completion of the application process, as described in the proposed regulations, is insufficient evidence of the individual's intent to achieve an employment outcome. They urged that the applicable paragraph in the proposed regulations be stricken on the basis that DSUs make eligibility-related decisions not only at the time of application but throughout the VR process.

Several commenters opposed authorizing DSUs, under § 361.42(b) of the proposed regulations, to make interim determinations of eligibility. Most of these commenters questioned the statutory authority for the proposed section or viewed the provision as unnecessary since all eligibility determinations must be completed within 60 days from the time the individual applies for VR services. On the other hand, many commenters supported the proposed interim eligibility authority and the fact that using it rests with the discretion of the DSU.

Several commenters supported proposed § 361.42(c)(1) that the DSU will not impose, as part of the eligibility determination process, a duration of residence requirement that excludes from services any applicant who is present in the State. Two commenters suggested that the proposed language more closely track the Act by applying the prohibition not only to applicants but to any individual who is present in the State. Other commenters supported retaining specific language stating that a requirement for an applicant to be present in the State cannot be used to circumvent an individual's choice of an out-of-State service provider.

We received many comments on proposed § 361.42(e), which implemented new statutory requirements regarding the use of trial work experiences as part of the process for determining eligibility for VR services. Several commenters responded to our request in the preamble to the NPRM that they identify examples of trial work experiences, other than supported employment and on-the-job training, that DSUs might employ. Suggestions included contract or production work in the individual's own home, internships, unpaid work experiences, on-the-job evaluations, job shadowing, structured volunteer experiences in real work settings, and community-based work assessments with supports, among others.

Many commenters suggested that the final regulations authorize a DSU to consider trial work that the individual performed previously, and that is documented, for purposes of meeting the requirement that it assess the individual's capacity to perform trial work before the individual is determined too severely disabled to achieve an employment outcome (and, therefore, ineligible). These commenters also recommended that the final regulations clarify that trial work experiences need not be used for all individuals with significant disabilities or in instances in which an individual's ability to achieve an employment outcome is not in question.

A number of commenters opposed the requirement in proposed § 361.42(e)(2)(i) that the DSU develop a written plan to assess the individual's capacity to perform in realistic

work settings. These commenters noted that the Act does not require a written plan and that the proposed provision could have the unintended effect of delaying services to the individual. Other commenters expressed concern that the trial work assessment for an individual appeared open-ended and, therefore, recommended that the regulations apply a specific time limit to the use of trial work for purposes of determining eligibility.

One commenter questioned the authority for the proposed regulatory requirement that DSUs provide appropriate supports, including assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of an individual while performing trial work. In contrast, another commenter stated that it is vital for DSUs to provide the supports and assistive technology that are needed for an individual during the trial work period.

Several commenters recommended deleting proposed § 361.42(h), which authorized the continued use of extended evaluations in instances in which trial work experience options have been exhausted or cannot be used by the individual. These same commenters suggested that the 18-month time limit that applied to extended evaluation under the current regulations be applied to trial work experience options. Some of the commenters also questioned the authority for keeping the extended evaluation option in the regulations, while others suggested that since trial work experiences were available to most individuals with significant disabilities, the extended evaluation authority is no longer necessary or is inconsistent with the Act's preference for finding most applicants eligible for the VR program. In contrast, a number of commenters supported retaining the extended evaluation requirements.

Discussion: We agree that the professional opinion of the VR counselor is critical in assessing an individual's eligibility and priority for services. Both the Act and the regulations specify that qualified personnel must conduct assessments under the VR program. Although we suspect that most States develop written assessments, we do not think it is necessary to require by rulemaking that the assessment itself be in writing. Thus, State units may continue to require written eligibility assessments, or otherwise attest to an individual's eligibility and priority of service category under an existing order of selection, as they deem appropriate. We do note, however, that the DSU is required to document, in some fashion, support for determinations of eligibility as part of the record of services required under § 361.47 of the regulations. Whether that documentation is the assessment itself or some other combination of information, again, lies with the discretion of the DSU.

We believe that proposed § 361.42(a)(1)(i) and (ii) and the references to "qualified personnel" in each of the provisions are consistent with the Act. We interpret the requirements in section 103(a)(1) of the Act (requiring assessments for determining eligibility and rehabilitation to be conducted by "qualified personnel") and section 102(a)(6) of the Act (requiring eligibility

determinations to be conducted by the designated State unit) the same as we have historically since neither statutory provision changed in the 1998 Amendments. Specifically, the Act authorizes qualified professionals, both DSU and non-DSU employees, to determine the existence of an impairment and to determine whether the impairment results in a substantial impediment to employment (*i.e.*, whether the first two eligibility criteria have been met.) The requirement in section 102(a)(4)(B) of the Act regarding the use of determinations made by officials of other agencies also supports this position. Assuming the DSU can confirm that a qualified professional has determined that the individual has met those criteria, the DSU counselor then assesses whether the individual requires VR services to obtain and retain work in the individual's chosen field that is appropriate to his or her abilities (*i.e.*, the third criterion of eligibility.) The individual is presumed to have met the fourth criterion—that the individual can benefit from VR services under § 361.42(a)(1)(iv). This framework, which we believe is required by the Act, is intended to ensure that the DSU controls the eligibility process at the same time that it facilitates more timely assessments that allow for existing information from other sources to be taken into account.

The 1998 Amendments specify that those who qualify for SSI or SSDI are presumed eligible for the VR program. As we discussed extensively in the preamble to NPRM (65 FR 10625 and 10626), we believe that this change was adopted in the 1998 Amendments to streamline eligibility and expedite necessary VR services for those Social Security recipients since each category of recipients already has met stringent disability criteria under the Social Security Act and clearly needs VR services in order to achieve appropriate employment. We do not believe that this presumption will be misconstrued as changing the nature of the VR program to a program under which individuals are entitled to services without pursuing a job. In fact, section 102(a)(3)(B) of the Act and § 361.42(a)(5) of these final regulations specify that nothing in the presumptive eligibility requirement creates an entitlement to VR services, meaning that individuals with disabilities are not automatically entitled to VR services but, rather, must expect to achieve an employment outcome as a result of receiving those services. The final regulations implement that expectation by ensuring that all applicants, including those receiving SSI or SSDI, are informed of the employment-related nature of the VR program during the application process.

We also disagree with the assertion that a categorical presumption of eligibility for individuals receiving SSI or SSDI will lead to categorical eligibility for other groups and undermine the individualized nature of the VR program. Prior to the 1998 Amendments, disabled SSI recipients were statutorily presumed to have a physical or mental impairment that constituted a substantial impediment to employment (*i.e.*, were presumed to have met the first two eligibility criteria in § 361.42(a)(1) of the regulations),

as well as a severe disability. Section 102(a)(3) of the 1998 reauthorized Act expanded this presumption by giving presumptive VR program eligibility (*i.e.*, a presumption that individuals meet all of the eligibility criteria under the VR program) to this same population. The presumption applies only to these persons and is not written to broadly cover other groups that do not qualify under the stringent disability-related criteria applied by the Social Security Administration. Also, the individualized nature of the VR program (*i.e.*, that services are provided under an IPE to meet an individual's rehabilitation needs and assist an individual to achieve an employment outcome) is unaffected by this requirement that only addresses eligibility for services.

As section 102(a)(3)(A)(ii) of the Act makes clear, a DSU can rebut the presumption that an SSI or SSDI recipient is eligible under the VR program if it can demonstrate by clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the individual's disability. In response to the commenter's contentions, we maintain that a presumption of eligibility can be rebutted only on this basis.

We also do not believe that presumptive eligibility for SSI or SSDI recipients should be restricted to those seeking certain types of employment outcomes. As we have long required, eligibility requirements are not to be applied with regard to the type of expected employment outcome that the applicant seeks (see § 361.42(c)(2)(ii)(B) of these final regulations). Thus, whether an individual seeks a self-employment, another wage-earning employment, a homemaker, or other outcome cannot be used as a factor in determining the individual's eligibility for VR services or affect the presumptive eligibility of an individual receiving SSI or SSDI.

We believe that completion of the application process after the DSU has informed the individual that he or she must seek an employment outcome to receive VR services is sufficient evidence that any individual, including SSI and SSDI recipients, "intends to achieve an employment outcome," as section 102(a)(3)(ii) specifies. While we understand that some commenters are concerned that disabled Social Security recipients in particular will seek VR services without intending to work, we find that concern unfounded. We referred in the preamble to the NPRM to an obvious fact—that all applicants for VR services, not only those who qualify for SSI or SSDI, must intend to work to receive VR services. Thus, ensuring that the DSU explains the employment-related nature of the VR program as part of the application process ensures that applicants understand what is expected of them before participating in the program. Thus, the proposed regulatory method of ensuring an individual's intent to work fulfills an expectation that applies to all applicants for VR services and streamlines, rather than hinders, the eligibility process for SSI and SSDI recipients, as the Act intends.

Additionally, we disagree with the contention that an individual's intent to

achieve an employment outcome constitutes an additional eligibility-related criterion that must be applied throughout the VR process. Eligibility is assessed at the outset of the rehabilitation process, at a point when the final regulations require that the DSU apprise individuals of the nature of the program. As always, if an individual becomes too severely disabled to achieve an employment outcome (as supported by clear and convincing evidence) or, for whatever reason, stops participating in the VR program, then the DSU need not continue serving that individual. That approach applies no less to SSI recipients or SSDI beneficiaries than it does to any other participant in the VR program. Yet, as long as the individual continues to participate in the program, there exists a presumption that the individual intends to work.

We agree with those commenters who supported proposed § 361.42(b) that would allow DSUs to make interim determinations of eligibility for individuals who the DSU reasonably believes will be eligible for VR services at the end of the statutory 60-day period for making eligibility decisions. We emphasize that this provision is an option for DSUs to expedite further the delivery of services to individuals while the DSU awaits information to permit a final eligibility determination. DSUs are not required to implement provisions for interim determinations of eligibility.

We also agree with the commenters who stressed the importance of language in section 101(a)(12) of the Act that prohibits a State from establishing any residence requirement that excludes from services any individual who is present in the State. However, we believe that the proposed regulatory language sufficiently tracks the statutory requirement that was not changed by the 1998 Amendments. Again, we believe it is important to clarify, as explained in the Senate Committee Report on the Rehabilitation Act Amendments of 1998, that the requirement for an individual to be present in the State in order to be eligible to receive services should not be interpreted in any way to circumvent an individual's choice of an out-of-State provider (Senate Report 105-166, p. 13). The committee further stated that, with regard to out-of-State placements, the requirement that an individual be present in the State must be imposed at the time of the eligibility determination and may not be used as a means of denying the continuation of services that are being provided in an out-of-State setting.

As we explained more fully in the preamble to the NPRM (65 FR 10626 and 10627), the Act specifies that DSUs must explore an individual's abilities, capabilities, and capacity to perform in work settings through the use of trial work experiences before it can demonstrate that an individual is too severely disabled to benefit from VR services in terms of an employment outcome and, consequently, is ineligible under the program. We believe that this requirement establishes the fairest standard for assessing whether an individual with a significant disability is in fact capable of achieving employment. We also appreciate the trial work examples that commenters shared and

note that these types of work options (e.g., supported employment, on-the-job training, internships, job shadowing, structured volunteer experiences in real work settings, and community-based work assessments with appropriate supports) should be considered by others as they seek to expand the scope of trial work experiences available to applicants with significant disabilities. Nevertheless, we believe that § 361.42(e)(2)(ii) of the regulations is sufficiently broad to encompass each of these examples and that a change to that provision is not necessary.

In addition, we interpret the Act to clearly require DSUs to give individuals trial work experiences before deciding that an individual is ineligible under the VR program due to the severity of the individual's disability. Accordingly, a DSU cannot meet the requirement that it use trial work to assess eligibility by simply securing documentation that addresses the individual's success in performing work previously. Using documentation in that regard runs the risk of violating the scope of the mandate in section 102(a)(2)(B) of the Act, specifically that trial work options be sufficiently varied and take place over a sufficient period of time for the DSU to either conclude that the individual is eligible for VR services or (based on clear and convincing evidence) that the individual is incapable of benefiting from the provision of VR services in terms of an employment outcome. Given the State units' expertise in conducting assessments, and without knowing the validity of the documentation that exists or the circumstances that might have changed since the time the individual previously worked, we believe that it is appropriate to require that, before determining that an individual cannot benefit from VR services, the DSU give the individual a variety of trial work options regardless of the individual's past work history or assessments.

We do not believe that the written plan for providing trial work experiences as required in § 361.42(e)(2)(i) of the regulations is inconsistent with the Act or will cause delays in service delivery. On the contrary, we believe that requiring a written plan to assess an individual's abilities, capabilities, and capacities to perform in realistic work settings is a logical means of fulfilling the requirements in section 102(a)(2)(B) of the Act. The written plan will ensure that the assessment process is conducted in a deliberate and well-formulated manner, thus giving an individual a full opportunity to demonstrate his or her capabilities and enabling the DSU to accurately gauge whether the individual can achieve employment. Also, we feel that any burden or minor delay associated with developing the written plan is clearly justified given that the individual risks being found ineligible, and precluded from receiving services altogether, if trial work options are not well-planned and prove unsuccessful.

We recognize the concerns of those commenters who requested that time limits be included in the regulations to ensure that trial work opportunities do not extend beyond a reasonable length. Yet, we believe

the timeframes that are the most reasonable and appropriate already were built into the proposed regulations. Specifically, § 361.42(e)(2)(iii) of the regulations requires that the DSU assess the individual's capacity to work in realistic work settings through the use of trial work experiences that are provided over a sufficient period of time for the DSU to determine either that the individual is eligible for VR services or that there exists clear and convincing evidence that the individual cannot benefit from VR services in terms of an employment outcome due to the severity of the individual's disability. Because trial work is intended to result in either a determination of eligibility or a determination of ineligibility that is sufficiently supported, trial work opportunities must be provided until the point that the DSU can reach one of these two conclusions. Thus, specific time periods that would serve to discontinue trial work requirements before the DSU has reached either result would serve to undermine the purpose behind those very same requirements.

We do not believe that the requirement in § 361.42(e)(2)(iv) of the regulations that the DSU provide individuals with appropriate support services, such as assistive technology devices and services and personal assistance services, during trial work falls beyond the scope of the Act. Section 102(a)(2)(B) of the Act states explicitly that trial work experiences are to be afforded "with appropriate supports provided by the designated State unit." Clearly, assistive technology devices and services and personal assistance services are authorized services available to individuals pursuing employment, including supported employment, through the VR program (see e.g., section 102(b)(3)(B)(i)(I) of the Act). Accordingly, we believe it is entirely appropriate to interpret the DSU's responsibility to provide "necessary supports" during the trial work period to cover these same services.

We also disagree that the authority concerning extended evaluations should be deleted in the final regulations. Although the Act clearly places a priority on using trial work experiences in the course of assessments, Congress recognized the need to allow for extended evaluations in those limited instances in which a real work test is impossible or the State unit has exhausted its trial work options without reaching a determination of eligibility. That point is reflected in the legislative history to the trial work provisions in the Act, specifically in Senate Report 105-166, pages 9 and 10.

Changes: None.

Section 361.45 Development of the Individualized Plan for Employment

Comments: Several commenters recommended that the final regulations clarify that the DSU is not required to pay for the costs of technical assistance in IPE development that is provided by sources other than DSU personnel. On the other hand, other commenters suggested that the DSU be required to pay for the costs of the technical assistance provided by non-DSU sources, asserting that such a requirement

would be consistent with the individual's opportunity to exercise informed choice in selecting DSU or non-DSU assistance for purposes of developing the individual's IPE.

Many commenters sought more explanatory information in the final regulations that details the role of the qualified VR counselor employed by the DSU in developing and approving the IPE and IPE amendments and in reviewing the IPE annually. These commenters indicated that the "diminished role for the DSU counselor" in the proposed regulations was inconsistent with the Act and other regulatory requirements. The commenters also stated that a DSU-employed counselor must conduct the required annual review of the IPE and assess the individual's progress toward achieving the identified employment outcome since the DSU is responsible for the proper delivery of services and the outcome of the individual's participation in the program. Other commenters suggested that we distinguish between the roles of the "qualified vocational rehabilitation counselor" and the "qualified vocational rehabilitation counselor employed by the designated State unit" by defining each term in the final regulations.

Some commenters suggested that this section of the proposed regulations be revised to prohibit VR counselors employed, or previously employed, by an agency or organization that may provide services under an individual's IPE from assisting the individual in developing the IPE. These commenters urged that a prohibition of this type be implemented in order to guard against conflicts of interest on the part of the counselor that could otherwise jeopardize the individual's ability to exercise informed choice in selecting services and service providers included in the IPE.

In addition, a number of commenters opposed § 361.45(e) of the proposed regulations, which required the DSU to establish and implement standards, including timelines, for the prompt development of IPEs. These commenters viewed this proposed section as beyond the scope of the Act. Other commenters recommended either requiring by regulations a specific time period governing IPE development and implementation (e.g., 30 days from the date eligibility is determined) or defining the term "timely" as it applies to IPE development.

Discussion: Pursuant to section 102(b) of the Act and § 361.45(c) of the final regulations, the DSU must inform eligible individuals of the range of available options in obtaining assistance for purposes of developing the IPE (e.g., developing the IPE with DSU assistance, with non-DSU assistance, or on one's own). Since IPE development assistance from non-DSU sources is authorized, the regulations do not prohibit the DSU from supporting the costs of that assistance. At the same time, however, we agree that the DSU need not pay the costs of assistance provided by non-DSU sources if it so chooses. Thus, it falls within the discretion of the DSU to determine whether, and under what circumstances, it will pay for technical assistance in IPE development from sources other than the DSU.

We believe that the proposed regulations accurately reflected the scope of functions that the Act reserves to the DSU, as well as the broad authority for non-DSU counselors to assist in the development and review of IPEs at the individual's discretion. As some commenters pointed out, a qualified VR counselor who is employed by the DSU must approve and sign the IPE and any amendments to the IPE (see section 102(b)(2)(C)(ii) and (b)(2)(E) of the Act). The proposed regulations followed the framework established by the Act, i.e., by enabling individuals to receive assistance in IPE development from whichever source (if any) that they choose and ensuring that the DSU maintains final IPE approval authority as the Act requires. We do not believe that additional regulatory provisions in this area, including definitions, are needed.

While we note, as we did in the preamble to the NPRM, that the DSU also is responsible for ensuring that the individual's IPE is reviewed annually, we do not agree that that review must necessarily be conducted by a DSU counselor. As discussed in greater detail in the NPRM preamble (65 FR 10626 and 10627), Congress intended to distinguish between IPE functions that must be performed by a qualified VR counselor employed by the DSU and related functions that may be performed by a qualified VR counselor or other person who is not employed by the State unit. Thus, in addition to enabling individuals to secure assistance from outside the DSU in developing the IPE and IPE amendments, the DSU can meet its responsibility to ensure that the IPE is reviewed at least annually with the individual by conducting the review itself or, at the individual's discretion, by approving the results of a review appropriately conducted by a qualified VR counselor from outside the DSU.

At the same time, however, we do appreciate the commenters' concerns regarding the potential conflicts of interest, including potential limits on the exercise of informed choice, that may arise if the counselor or other person assisting the individual in developing (or amending) the IPE is employed or otherwise affiliated with an organization that may provide services to the individual under that IPE. However, without information indicating whether that problem exists or the resulting effects that an existing problem has on participants in the program, we are not inclined to restrict, through these final regulations, the individual's choice of assistants in developing the IPE. Nonetheless, we emphasize that DSUs must ensure that individuals are given full opportunities to exercise informed choice in the selection of services and service providers consistent with the requirements of section 102(d) of the Act and § 361.52 of these final regulations. Accordingly, we would expect DSUs to address any situation, if it arises, in which it believes that a counselor employed by a service provider is unduly influencing an individual during IPE development to obtain services through that counselor's employer without providing the individual with sufficient choices.

We maintain that requirements in § 361.45(e) regarding DSU standards,

including timelines, for the prompt development of IPEs are entirely consistent with the Act. In particular, section 101(a)(9) of the Act requires that the individual's IPE be developed and implemented "in a timely manner" subsequent to the determination of eligibility. In fact, both this regulatory requirement and the statutory provision on which it is based precede the 1998 Amendments. We continue to believe that the regulatory standards and timelines called for under § 361.45(e) of the regulations are necessary to guard against delays in service delivery that are, in turn, caused by delays in the IPE development process. We emphasize that DSUs need not meet this requirement by establishing an arbitrary time limit to apply to the development of all IPEs. Instead, State units are expected to develop general standards to guide the timely development of IPEs and, as part of those standards, flexible timelines that take into account the specific needs of the individual.

Changes: None.

Section 361.47 Record of Services

Comments: Some commenters generally supported the modifications to record of services requirements that we proposed in the NPRM. One commenter supported the new flexibility given to DSUs in determining the sources of documentation it will use to meet the required components of the record of services, but asked that RSA identify minimum documentation types in the final regulations. Several commenters opposed the expansion of the service record requirements beyond those in the previous regulations.

Several other commenters asked that we clarify the scope of § 361.47(a)(7) of the proposed regulations, which required documentation in the service record describing the extent to which the applicant or eligible individual exercised informed choice regarding assessment services and regarding the employment outcome, VR services, and other components of the IPE. Some commenters suggested that this proposed requirement be replaced by a provision requiring simply that the DSU document that the individual was provided an opportunity to exercise informed choice. Other commenters stated that it would be difficult to meet the proposed requirement in instances in which the DSU is not directly involved in the development of the IPE.

Many commenters opposed the newly proposed § 361.47(b), which would require that the DSU consult with the State Rehabilitation Council in determining the type of documentation that it will maintain for each applicant and eligible individual. These commenters believed that the proposed provision would expand the functions of the Council beyond those functions required by the Act. Due to the voluntary nature of the Council, the commenters asserted, it would be inappropriate to expect members of the Council to be involved in the DSU's day-to-day operations, including the setting of documentation requirements. Other commenters supported requiring the Council to be involved in establishing the DSU's documentation requirements.

Discussion: We revised § 361.47(a) of the previous regulations to identify minimum

documentation standards that will enable DSUs to demonstrate that certain service delivery requirements, as they apply to applicants and eligible individuals participating in the VR program, have been met. While we identified in this proposed section those critical service delivery requirements that must be documented, we sought to provide greater flexibility to DSUs in determining the manner in which they would comply (*i.e.*, determining the types of documentation each would use to comply) with the stated requirements. We believe that the proposed regulations provided that flexibility, while identifying only those requirements of the rehabilitation process that are most necessary to address in the record of services. Those proposed requirements that were not drawn from the previous regulations represented important aspects of the 1998 Amendments that we believe the DSU, and we, must monitor to ensure the proper implementation of the program.

In addition, we believe that § 361.47(a)(7) of the proposed regulations established an appropriate standard for DSUs to meet in documenting compliance with a most critical aspect of the VR program—giving individuals the opportunity to exercise informed choice throughout the rehabilitation process. Accordingly, we do not believe that a simple statement that the applicant or eligible individual was provided an opportunity to exercise informed choice reflects either the scope or the importance of the choice-related requirements in the Act. Among those requirements, section 102(d) of the Act and § 361.52 of the final regulations specify that applicants and eligible individuals must be given opportunities to exercise informed choice in selecting assessment services and in selecting an employment outcome, the VR services needed to achieve that outcome, the entities providing services, and the methods used to secure the services. Thus, given the emphasis accorded choice under the Act, we believe it is appropriate and prudent to require documentation describing the extent to which the applicant or eligible individual exercised informed choice in accordance with the Act's requirements. As for those instances in which an individual elects to develop an IPE without the DSU's assistance, we would expect the DSU to inform individuals about the availability and opportunities to exercise informed choice (as it is required to do under section 102(d)(1) of the Act), obtain information from the individual on the extent to which he or she exercised choice during IPE development, and supplement that information with additional information available to the DSU in order to meet the documentation requirement in § 361.47(a)(7).

As we stated in the preamble to the NPRM, we think it is necessary that the DSU consult with the Council, if it has a Council, in determining the type of documentation that the DSU will maintain in the record of services for each applicant and eligible individual. Section 101(a)(16)(B)(v) of the Act requires the State unit to take into account, in connection with matters of general policy arising in the administration of the State plan, the views of the Council

and other specified groups. The document types that will comprise the records of services maintained by the DSU relate directly to the DSU's ability to demonstrate its compliance with important service provision requirements in the law, as well as its ability to justify its decisions (*e.g.*, eligibility determinations) regarding the individual's participation under the VR program. We maintain, therefore, that the DSU's documentation standards for fulfilling the record of services requirements in this section of the regulations constitute a policy of general applicability on which the Council's input is required. Moreover, we do not believe that the consultation required under this section of the regulations expands the Council's functions beyond the scope of the statute, particularly the broad scope of review, analysis, and advisory functions carried out by the Council under section 105(c)(1) of the Act.

Changes: None.

Section 361.48 Scope of Vocational Rehabilitation Services for Individuals With Disabilities

Comments: Several commenters requested that we revise § 361.48(j) of the proposed regulations to more clearly describe the type of interpreter and other communication access services that are authorized under the program. Other commenters requested clarification regarding the scope of assistance for eligible individuals seeking self-employment, telecommuting, or business ownership outcomes that is authorized under proposed § 361.48(s). One of these commenters requested guidance on how these services relate to the entrepreneurial services available through the State workforce investment system.

Discussion: We agree with the suggestion that the scope of authorized interpreter services under proposed § 361.48(j) needs to be clarified in the final regulations. In particular, we believe that we need to clarify that sign language interpreter and oral interpreter services are authorized under that section.

Regarding § 361.48(s), we have received several inquiries, in addition to the noted comments, asking us to clarify the scope of resources that are authorized to be provided through the statewide workforce investment system in order to clarify the extent of the State unit's obligation under proposed § 361.48(s). This provision restates section 103(a)(13) of the Act.

Section 112 of Title I of WIA requires that each participating State submit to the Department of Labor a State plan that describes its statewide workforce investment system and the employment and training activities that it will support with WIA Title I funds. The specific employment and training activities included in the plan are determined individually by each State, depending on the needs and economic conditions in that State. Therefore, the scope of resources authorized under the VR program for self-employed persons, telecommuters, and small business owners will depend on the extent to which the State's workforce development system, as described in the State plan under section 112

of WIA, provides support to individuals pursuing that type of work. Given the variances in workforce investment systems across the States, we do not believe that it is practical to revise the language in proposed § 361.48(s) that aligned the resources authorized under the VR program with those that the State makes available under WIA.

Finally, we believe it is important to note that the list of authorized services in this section of the regulations is not exhaustive and that § 361.48(t) specifically authorizes "other goods and services" that the DSU and individual determine to be necessary for the individual to achieve an employment outcome.

Changes: We have revised § 361.48(j) of the proposed regulations by referring specifically to sign language interpreter and oral interpreter services as included within the scope of authorized services for individuals who are deaf or hard of hearing.

Section 361.50 Written Policies Governing the Provision of Services for Individuals With Disabilities

Comments: One commenter requested changes to § 361.50(b)(1) of the proposed regulations, which authorized States to establish preferences for in-State services under certain conditions. The commenter contends that this provision, which was included in the previous regulations, has been subject to misuse and misinterpretation. In response, the commenter suggests restricting DSU preferences for in-State services to instances in which the in-State service is equivalent to and likely to have the same results as an out-of-State service.

Discussion: Section 361.50(b)(1) authorizes a DSU to establish a preference for in-State services in instances in which necessary services are available both within and outside the State. The preference (*i.e.*, the State not taking responsibility for the costs of an out-of-State service that exceeds the costs of the same service provided in-State) is dependent on the in-State service meeting the individual's rehabilitation needs. For that reason, we believe that the provision establishes an appropriate standard, one that has the same effect as that of requiring equivalency between in-State and out-of-State services.

Changes: None.

Section 361.51 Standards for Facilities and Providers of Services

Comments: Many commenters expressed concern about the omission in the proposed regulations of the designated State unit's current regulatory responsibility to issue minimum standards for facilities and service providers. The commenters believed that omitting these requirements from the final regulations will have the effect of holding community providers and facilities to a lower standard than that which must be met by the State agency administering the VR program. The concern was that VR program participants receiving services from private providers would be adversely affected. These commenters encouraged us to maintain the current regulatory standards in the final regulations.

The commenters on this section were concerned mostly about the proposed

removal of the previous regulatory provisions requiring providers of vocational rehabilitation services to use qualified personnel. For example, one party stated that financial constraints on community facilities may reduce a facility's capacity to maintain the same qualified personnel standards that section 101(a)(7) of the Act imposes on State agencies; nevertheless, this commenter believed that regulatory requirements should be developed to ensure a reasonable level of professional qualifications at provider facilities. Other commenters stated that individuals who are blind or visually impaired in particular, and all individuals with disabilities generally, must be assured that private facilities and providers of services under the VR program have proper qualifications beyond native language skills and the ability to use appropriate modes of communication (two current standards that were retained in the proposed regulations). In addition, many of the commenters expressed concern that the proposed regulations, unlike the previous regulations, did not require VR service providers to have adequate and appropriate policies and procedures to prevent fraud, waste, and abuse.

Discussion: We had proposed to remove the regulatory requirements governing personnel and other standards for providers of VR services on the basis that the explicit statutory authority supporting those requirements was removed by the 1998 Amendments. Specifically, the 1998 Amendments removed provisions previously contained in section 12(e) of the Act that had required the Secretary to promulgate regulations pertaining to the selection of VR services and VR service providers. In accordance with the prior Act, § 361.51 of the previous regulations included procedures to prevent fraud, waste, and abuse among service providers and procedures to ensure that service providers complied with applicable standards, such as those related to qualified personnel. The requirements in § 361.51 of the proposed regulations that were retained from the previous regulations relating to the accessibility of facilities, affirmative action for qualified individuals with disabilities, and special communication needs personnel also were retained in the 1998 Amendments.

We have interpreted Congress' removal of standards governing personnel and fraud, waste, and abuse from the Act as intended to give States greater discretion in determining how best to ensure that service providers used by the DSU are capable of providing necessary VR services and meeting the needs of VR program participants. In other words, Congress determined that States could ensure the quality of personnel and administrative efficiency among the service providers it uses by following applicable State rules. We want to emphasize that removing this particular requirement from the final regulations does not absolve State units from ensuring that entities providing services under the VR program meet applicable State laws that impose personnel standards and other safeguards on parties providing services under State-administered programs. We believe that this responsibility of the DSU, as well as the DSU's general responsibilities

under OMB Circular A-87 and the Education Department General Administrative Regulations (EDGAR) to administer the VR program and the expenditure of VR program funds efficiently and effectively, ensures that the removal of previous regulatory standards for service providers will not have an adverse impact on the program.

Changes: None.

Section 361.52 Informed Choice

Comments: As with proposed § 361.5(b) discussed previously, a number of commenters requested that we define the term "informed choice" in this section of the final regulations.

Another commenter suggested that this section of the proposed regulations be revised to ensure that participants in the VR program are able to exercise informed choice in selecting their vocational rehabilitation counselor. Specifically, the commenter suggested that participants, prior to selecting a counselor, be given a list of counselors in the local office of the State unit, a statement of the counselors' qualifications, and the opportunity to interview a number of counselors.

Other commenters suggested that DSUs make available to individuals information concerning the outcomes that individuals achieve in working with specific service providers. The commenters asked that this information be included in the scope of information that DSUs must provide individuals under § 361.52(c). Other commenters proposed revisions to § 361.52(d), which identifies sample methods or sources of information that the DSU may use to make available required information on services and service providers. Specifically, one commenter requested that DSUs make available to individuals information on nationwide services and service providers, as well as service-related information issued by national consumer groups.

Discussion: We have long been asked to define the term "informed choice" in regulations and have refrained on the basis that the current regulations establish appropriate guidelines governing the informed choice process, while leaving some discretion to DSUs, in conjunction with their Councils, if they have Councils, to determine how best to secure information and make that information available to participants so that they may exercise choice. The 1998 Amendments give even greater emphasis to informed choice, specifically in section 102(d), which identifies each of the stages at which choices must be given (essentially all stages of the rehabilitation process), requires the DSU to inform individuals about the availability of and the opportunity to exercise informed choice, and requires that the DSU assist individuals as is necessary so that they may make informed choices. We believe that this proposed section of the regulations sufficiently reflected the significant scope of the choice provisions in the Act and retained a number of key portions from the previous regulations that serve to guide DSUs in developing their choice-related policies. We again emphasize the crucial role that the Council must play in that regard.

Although we maintain that, at this point, defining "informed choice" in the regulations would not be appropriate, we have established additional guidance materials designed to facilitate the choice process, most notably as part of the RSA Monitoring Guide for FY 2000. We intend to develop additional policy directives that will also assist in that effort.

Section 361.45 of the regulations, which implements section 102(b)(1) of the Act, specifies the range of options available to individuals in securing assistance in developing their IPEs, including assistance provided by DSU or non-DSU counselors or from other sources. However, neither that provision nor the broad choice requirements in section 102(d) of the Act establish a basis for requiring DSUs to provide individuals with their choice of VR counselors. At the same time, we note that the Act and the final regulations do not prevent a State from giving individuals the opportunity to exercise informed choice in selecting counselors. RSA guidance to the States (Program Assistance Circular 88-03, dated June 7, 1988) underscores the importance of an effective counseling relationship between the applicant or eligible individual and the DSU counselor. Thus, we would urge DSUs, taking into account caseload levels and other staffing considerations, to assign counselors to individuals in a manner that they believe will result in a most effective match. Given the obvious effect that that match has on the successful rehabilitation of the individual, we also indicate in the guidance that, if an individual requests a change in counselor and the request is denied, the individual can appeal the determination through the DSU's due process procedures.

Section 361.52(c) of the proposed regulations listed the minimum scope of information that State units were required to provide to individuals, or assist the individual in acquiring, to enable the individual to make informed choices about the services, service providers, and outcome identified in the IPE. We agree with the commenter that the minimum information related to services and service providers specified in this section (e.g., cost, consumer satisfaction, qualifications, degree of integration, etc.) also should mention the types of outcomes that individuals have achieved in working with certain providers.

Section 361.52(d) identifies specific methods and sources of information that the DSU may use to provide individuals with sufficient information about services and service providers. Since this provision is not a comprehensive listing of methods and sources, we note that DSUs and individuals may use any other methods and sources of information that are available to enable the individual to exercise choice. We agree that participants and State units may benefit greatly by securing information from national consumer groups or other national organizations with specialized expertise in particular disabilities, rehabilitation methods, and services. In addition, methods involving experiences that participants may use to gain information about types of employment outcomes, services, and service providers may prove helpful. We encourage

DSUs to assist individuals in obtaining useful information from many other appropriate sources.

Changes: We have revised § 361.52(c) of the proposed regulations to clarify that information and assistance provided under that section also must assist individuals in exercising informed choice among assessment services. In addition, we have included service provider outcomes in the scope of information relating to the selection of vocational rehabilitation services and service providers. We have deleted the terms "local" and "state and regional" from § 361.52(d) and have added references to methods involving visiting or experiencing various settings to the list of potential methods or sources of obtaining information.

Section 361.53 Comparable Services and Benefits

Comments: One commenter expressed concern that the requirement in the proposed regulations that DSUs provide services to an individual while waiting for identified comparable services and benefits to become available may serve as a disincentive for individuals to pursue the alternative benefits or services at the appropriate time. The commenter recommended that DSUs be able to discontinue services if an individual refuses to pursue the comparable benefits or services.

Another commenter noted that the proposed regulations did not include the statutory exemption in section 101(a)(8)(A)(ii) of the Act that states that awards and scholarships based on merit are not considered comparable services and benefits under the program.

Discussion: Both section 102(b)(3)(E)(ii) of the Act and § 361.46(a)(6)(ii)(C) of the regulations require that the IPE identify the individual's responsibilities with regard to applying for and securing comparable services and benefits. Thus, the law anticipates that State units and individuals will work out the extent of those responsibilities through the IPE development process. For that reason, we do not believe that § 361.53(c)(2), which is unchanged from the previous regulations, would create the disincentive envisioned by the commenter as long as the individual is fully apprised of, and is assisted in fulfilling, his or her responsibilities in securing other services once they become available.

We recognize that this section of the proposed regulations did not refer to the statutory exception to comparable services and benefits for scholarships and awards based on merit. However, this exemption is addressed in the definition of the term "comparable services and benefits" in § 361.5(b)(10). We think the exception is best addressed in the definition itself since it is the definition that specifies the scope of comparable services and benefits under the program.

Changes: None.

Section 361.54 Participation of Individuals in Cost of Services Based on Financial Need

Comments: Many commenters supported the proposed expansion of those services that would be exempt from State financial needs

tests, meaning that individuals could not be required to contribute to the cost of those services. One commenter suggested that the proposed exemption of interpreter services, reader services, and personal assistance services from financial needs tests be limited to the provision of those services during the assessment phase of the VR process. Another commenter supporting the proposal asked that we also emphasize that the DSU still must seek and use comparable services and benefits to pay for exempted services.

In addition, in response to our request for comments on the appropriate scope of services that should be exempted from financial needs tests, a number of commenters requested that the proposed listing be expanded to specifically include assistive communication devices, rehabilitation engineering services, and other access-type services.

Other commenters strongly opposed the proposed expansion of the list of services exempted from financial needs tests under the prior regulations. Some of these commenters stated that the proposed expansion would undermine the DSU's longstanding option of considering the financial need of program participants and would weaken the DSU's ability to conserve VR program funds.

In addition, many commenters supported the proposed prohibition in the NPRM on applying financial needs tests to eligible individuals receiving SSI or SSDI. Other commenters supported prohibiting the application of financial needs tests only to individuals receiving SSI since SSI eligibility is based on the individual's financial need as opposed to SSDI beneficiaries who may have assets that they could contribute to the cost of vocational rehabilitation services.

A significant number of commenters opposed the proposed exemption of SSI recipients and SSDI beneficiaries from the DSU's financial needs assessments on the basis that DSUs often consider the resources of the individual's entire household, as opposed to those of the individual only, in determining the level of resources the individual must contribute to the program of VR services. While these commenters agreed that DSUs could disregard an individual's actual SSI or SSDI cash payment, the commenters recommended that DSUs be able to consider the overall financial status of the individual and the individual's household when assessing the individual's financial need under the VR program.

Discussion: In the NPRM, we proposed to expand the scope of services exempt from State financial needs tests under the prior regulations to include certain services (*i.e.*, interpreter, reader, and personal assistance services) needed to participate in the VR program, as well as any service needed by a recipient of SSI or SSDI.

The purpose of the proposal to exempt from State financial needs tests interpreter, reader, and personal assistance services was to ensure access to the VR program. As we discussed in the preamble to the NPRM (65 FR 10629), the additional services that we proposed excluding from State financial needs tests enable individuals to participate in training or employment-related services

that they are seeking through the VR program. Typically, individuals do not apply, nor are they determined eligible, under the VR program solely to receive these access-type services. Rather, these services are provided in conjunction with employment and training services sought by the individual participating in the VR program. In fact, the distinguishing feature of these access services is that participation in the VR program is not possible without these services being afforded. Thus, placing an additional burden on the individual to participate in the cost of accessing the VR program, in our view, is inappropriate and contrary to both the purpose of the VR program and the principles in section 504 of the Act and the ADA, which safeguard participation by persons with disabilities in federally funded (under section 504) or public (under the ADA) programs.

As many of the commenters pointed out, we realize that access-type services other than the three additional services that the NPRM would have exempted from financial needs tests (*i.e.*, interpreter, reader, and personal assistance services) clearly exist and that individuals might need those services in order to participate in the VR program. In light of the extensive public comment we received on that point, and the fact that the limited scope of exempted services in the proposed regulations would not ensure that persons with certain disabilities are able to participate in the VR program, we have modified the proposed regulations to more clearly reflect the DSU's responsibility to ensure that all persons with disabilities do not incur the disability-related costs of accessing the VR program. Specifically, the final regulations prohibit the application of State financial needs tests to the provision of any auxiliary aid or service that would be necessary under section 504 of the Act or the ADA in order for an individual with a disability to participate in the VR program. Thus, the final regulations, in effect, ensure that individuals are able to receive, at no additional cost to themselves, aids and services to which they are already entitled under section 504 or the ADA.

We note that interpreter and reader services—two services proposed to be exempt from financial needs tests in the NPRM—generally would be covered under the section 504- and ADA-based standard in the final regulations if those services are needed in order for the individual to access other VR services. In addition, the final regulations, like the NPRM, identify personal assistance services as a separate category of services exempt from financial needs tests. While personal assistance services, as defined in the VR program regulations, might not necessarily be provided by public programs under section 504 or the ADA, those services are often critical for individuals with significant disabilities to be able to access employment and training under the VR program. As we indicated in the preamble to the NPRM, we believe it is important to exempt these services from financial needs tests as well. We also believe that retaining from the NPRM the exemption for personal assistance services will remove a significant disincentive toward pursuing

employment for those with the most significant disabilities.

We also note, however, that the final regulations do not alter the State unit's responsibility to seek comparable services and benefits that can meet the individual's interpreter, reader, personal assistant, or other access needs. Nor does it affect entities outside of the DSU from meeting their responsibilities under section 504 of the Act, the ADA, or other laws. In fact, we expect that some of those entities are likely to be public agencies with which the State unit is required to enter into an interagency agreement in order for both parties to fulfill their responsibilities toward individuals with disabilities (see § 361.53(d) of the final regulations).

With regard to the proposed prohibition on applying financial needs tests to individuals who receive SSI or SSDI, we continue to believe that it is appropriate to exempt those persons from DSU financial needs tests given the Act's emphasis on streamlining access to VR services for disabled Social Security recipients. Moreover, as we discussed in the preamble to the NPRM (65 FR 10629), this change to the prior regulations facilitates the primary goal behind referring SSI recipients and SSDI beneficiaries to the VR program—supporting their efforts (and reducing disincentives) to pursue gainful employment and no longer require Social Security support.

Our rationale for exempting individuals receiving SSI benefits, or a combination of SSI and SSDI benefits, from State-imposed financial needs tests is further supported by the fact that these persons already have gone through a rigorous, federally mandated financial needs test that is typically more restrictive than those tests employed at the State level. To qualify for SSI, individual recipients must have very limited, if any, monthly income—individual or household—or other assets. These individuals generally live at or below the federally established poverty level. Consequently, SSI recipients clearly have a limited ability to contribute to the costs of VR services. Requiring these same persons to undergo an additional financial needs test at the State level would serve only to unnecessarily delay the provision of VR services.

On the other hand, the rationale behind exempting from DSU financial needs tests individuals receiving SSDI benefits alone is based on three critical points. First, SSA, as a matter of policy, has deemed it necessary to award SSDI beneficiaries monthly cash assistance due to their inability to work. While it is true that SSDI benefits are awarded on the basis of earnings and years worked as opposed to extreme financial need, SSA has determined that these individuals can no longer work due to their disabilities and, therefore, cannot earn income to support themselves or their families. SSDI payments are intended to cover a person's living expenses. Once a person achieves an employment outcome earning sufficient wages, as determined by SSA, the individual would be removed from the SSDI rolls.

Second, many State and Federal agencies currently are working to remove as many

disincentives as possible for individuals with disabilities, including individuals with significant disabilities receiving Social Security benefits, to return to work. For example, Congress has adopted changes to Social Security laws not to penalize persons (i.e., not to eliminate or reduce Social Security benefits, including health care coverage) for working since individual's wages are often insufficient to cover costly medical and other living expenses. Previously, many individuals with disabilities chose to remain on SSDI, at Federal expense, rather than risk losing health care coverage. Imposing a financial needs test on this same population that is seeking VR services in order to achieve an employment outcome, in effect, creates an additional disincentive to work and could adversely affect the results sought through the revised Social Security laws and other reforms.

Third, it is important to note that SSA reimburses State VR agencies for the costs incurred in serving an SSI or SSDI recipient when that individual achieves an employment outcome (i.e., substantial gainful activity under Social Security laws) for a specified period of time. Thus, as far as those SSI and SSDI recipients who successfully achieve employment outcomes under the VR program are concerned, there is ultimately little financial burden on the DSU in serving these persons to justify transferring that burden to individuals.

Changes: We have amended the proposed regulations to exempt from DSU financial needs tests any service that constitutes an auxiliary aid or service afforded the individual under section 504 of the Act or the ADA in order for the individual to participate in the VR program.

Section 361.56 Requirements for Closing the Record of Services of an Individual Who Has Achieved an Employment Outcome

Comments: Several commenters expressed concern about proposed § 361.56(a), which required, as a condition of closing the individual's record of services, that the employment outcome achieved by the individual be the same as that described in the individual's IPE. These commenters viewed the provision as inappropriate since amending the IPE to specify a new employment outcome is not always possible, for example when the individual is unavailable to sign an amended IPE.

Other commenters questioned § 361.56(c) of the proposed regulations, which required an agreement between the individual and the DSU counselor that the employment outcome is satisfactory and that the individual is performing well in the employment before the DSU can close the individual's record of services. These commenters suggested that the proposed provision might lead to differences of opinion between the counselor and the individual as to whether the outcome is "satisfactory" and thus preclude the State unit from appropriately closing the service record.

Discussion: We agree that in very limited instances it may be impractical for the DSU and the individual, together, to amend the individual's IPE to reflect the ultimate

employment outcome that the individual obtains while participating in the VR program. Yet, we believe that in most instances necessary amendments to the IPE can be accomplished since the DSU and the individual need not approve and sign the amended IPE simultaneously. Moreover, the required consistency between the IPE and the individual's outcome, in our view, is warranted in order to preserve the usefulness of the IPE development process.

With respect to the comments on proposed § 361.56(c), we note that this provision in the NPRM was substantially the same as the previous regulatory provision. In addition, we are not aware of any reported problems regarding the implementation of this provision through RSA monitoring activities, referrals to the Client Assistance Program, or due process hearings. More importantly, given that employee and counselor satisfaction is a critical factor toward assessing the stability of the individual's job, we believe that the provision should be retained in the final regulations.

Changes: None

Section 361.57 Review of Determinations Made by Designated State Unit Personnel

Comments: One commenter suggested revising § 361.57(a) of the proposed regulations to require the State unit to provide in writing all agency decisions that result in a suspension, termination, or denial of services. This commenter explained that requiring written notification of service denials would be consistent with procedural safeguards in other Federal programs.

We received several comments regarding proposed § 361.57(b), the general requirements governing State due process procedures. Specifically, commenters expressed dissatisfaction with proposed § 361.57(b)(3)(ii) regarding representation during mediation sessions and formal due process hearings. One commenter suggested revising that paragraph to exclude the use of attorneys during mediation and to require the use of attorneys during the formal hearing process. The commenter expressed concern that the use of attorneys during mediation would alter the informal nature of that process. Conversely, the commenter explained, individuals who are not represented by attorneys during the formal hearing are at a distinct disadvantage since the State unit, in general, is represented in hearings by an attorney.

At least one commenter questioned whether mediation should be voluntary on the part of the State unit. The commenter suggested revising proposed § 361.57(d)(2)(i) to require the State unit to participate in good faith in the mediation process whenever mediation is requested by the individual.

Commenters suggested that § 361.57(d)(2)(ii) of the proposed regulations be modified to allow the mediator, in addition to the parties to the mediation, to terminate the mediation process. The commenters stated that it is common practice to give mediators that authority.

A few commenters raised concerns about proposed § 361.57(d)(2)(iii), which governs the manner in which mediators are assigned to a particular case and lists of qualified and

impartial mediators are maintained. One commenter described the meticulous and thoughtful steps used in one State to assign the mediator who is most appropriate to each case. Another commenter suggested that the regulations require that the State unit and the Council agree to the list of mediators as they do for impartial hearing officers.

The final set of comments regarding the proposed mediation procedures pertain to the requirements governing mediation agreements under proposed § 361.57(d)(4). One commenter stated that mediators do not "issue" mediation agreements as that provision suggests. Several commenters urged us to make mediation agreements binding on all parties in order to create greater incentive to pursue mediation.

We received many comments regarding the requirement in proposed § 361.57(e)(1) that hearings generally be conducted within 45 days of an individual's request for review of a State unit decision that affects the provision of services to the individual. With one exception, all commenters indicated that it is overly burdensome to require the State unit to conduct informal reviews, mediation, and the formal hearing within the same 45-day period. Some suggested that the 45-day clock not begin until after an informal review and, if applicable, the mediation process are completed. Others suggested that the time period be extended by a certain number of days (e.g., 10 days) to allow for mediation to occur. Still others suggested that the regulations allow separate time periods for each phase of dispute resolution and that the time periods run consecutively.

Several commenters suggested that § 361.57(g)(3)(iii) of the proposed regulations be modified to eliminate the 30-day deadline by which a reviewing official must render a decision.

Finally, we received several comments asking that the final regulations include a time limit (e.g., 30 days) for the filing of civil actions under § 361.57(i) of the proposed regulations.

Discussion: The issue concerning requiring that all agency decisions that result in a suspension, termination, or denial of services be provided in writing has been brought to our attention many times since the adoption of the 1998 Amendments. Section 361.57(a) conforms to the statutory requirements in section 102(c) of the Act. The Act does not require a written decision in order for an individual to initiate an appeal under this section. An individual may appeal "any determination." Therefore, we do not require designated State unit personnel to issue decisions pertaining to the provision of services in writing, but we encourage the use of written decisions whenever practicable.

With respect to the comments pertaining to legal representation, we share the concern that individuals sometimes are at a disadvantage if they are not represented by an attorney during the formal hearing process, especially if the designated State unit is represented by an attorney. However, we do not share the concern that attorneys used during the mediation process necessarily change the nature of mediation. Nonetheless, the proposed requirements regarding representation during the

mediation and hearing stages reflect the broad authority in section 102(c)(3)(B) of the Act for individuals to select the representative of their choice.

The 1998 Amendments to the Act added mediation as a new method of resolving disputes between individuals and the State unit. Thus, it is not surprising that many commenters sought further clarification of the requirements in the proposed regulations that impact the States' implementation of mediation procedures.

Section 361.57(d)(2)(i) conforms to the statutory language of section 102(c)(4)(B)(i) of the Act, which requires that the DSU's mediation procedures ensure that the mediation process "is voluntary on the part of the parties. . . ." (emphasis added). Therefore, Congress intended the mediation process to be voluntary on the part of both parties rather than giving only the individual the discretion to participate in mediation as one commenter suggested. We also believe that allowing mediation to be voluntary on the part of both parties is necessary since mediation is successful only if both parties participate willingly in an effort to resolve their dispute. We do note, however, that the State unit's decision to agree to pursue mediation should be made on a case-by-case basis. It is neither appropriate nor consistent with the intent of the Act for a DSU to follow a general policy of never participating in mediation.

Our intent behind § 361.57(d)(2)(ii) of the proposed regulations was to ensure that either party may change its mind about participating in mediation, even after the mediation process has begun, and at that point pursue a due process hearing. We sought to ensure that individuals in particular are never locked into a less formal dispute resolution process that they believe to be futile. Consistent with this approach, we also agree with the suggestion that mediators should be allowed to terminate the mediation process and that amending the regulations to reflect that point would not alter the intended effect of this proposed section.

We proposed a process in § 361.57(d)(2)(iii) of the proposed regulations that is similar to that which the Act applies to the selection of impartial hearing officers. In particular, we sought to ensure the same neutrality on the part of the mediators that exists for hearing officers. However, we believe that States with established processes for assigning mediators to a case should be allowed to continue appointing mediators in that fashion, provided that the process used ensures neutrality.

In response to the comments on proposed § 361.57(d)(2)(iii) and the development of the State's list of available mediators, we note that section 102(c)(4)(C) of the Act does not require the State to develop the list of mediators through the joint efforts of the State unit and the Council. Many States have developed an "Office of Dispute Resolution" or similar office to handle all mediations across multiple State agencies. These offices typically employ mediators or contract with private mediators to conduct mediations involving State-administered programs. The proposed regulations were intended to give

States as much flexibility as possible in establishing mediation policies and using existing mediation processes.

Many individuals representing CAPs and DSUs have urged us to interpret section 102(c)(4) of the Act to require that a mediation agreement be binding on all parties. We believe that, if the outcome of mediation (i.e., a mediation agreement) were binding, then conceivably neither party could pursue a formal hearing afterward. That type of restriction would be contrary to the scope of due process procedures that are available under the Act.

In light of the overwhelming support for extending the 45-day period for holding due process hearings under proposed § 361.57(e)(1), we agree that the period should be extended to 60 days in the final regulations. We do not believe that the time period should be extended any longer since section 102(c) of the Act clearly envisions a due process system that is timely, quick, and equitable.

We believe that the 30-day period for an appropriate official to review a hearing officer's decision under proposed § 361.57(g)(3)(iii) is reasonable. This is the same time period that applied to the review of hearing decisions by the State unit director under the previous regulations. Although State-level review of hearing decisions, if established by the State, now must be conducted by an official of an entity overseeing the DSU, we see no reason for modifying the current time period.

We consider it inappropriate for us to establish a time limit for the filing of civil actions in disputes arising under the VR program. The State's Rules of Civil Procedure or the Federal Rules of Civil Procedure, depending on the appropriate forum, dictate the applicable deadline for filing an action in civil court.

Changes: We have made the following modifications to proposed § 361.57(d): authorizing mediators to terminate mediations (§ 361.57(d)(2)(ii)); authorizing States with an established method of assigning mediators to use that process in assigning mediators for the VR program provided the process ensures neutrality on the part of mediators (§ 361.57(d)(2)(iii)); and, in adopting a technical but important revision suggested by some commenters, clarifying that mediators assist in developing rather than "issue" mediation agreements (§ 361.57(d)(4)). We also have modified proposed § 361.57(e)(1) to require that hearings be conducted within 60, rather than 45, days from the individual's request for review of a DSU decision.

Section 361.60 Matching Requirements

Comments: One commenter wrote in support of the proposed change in § 361.60(b)(3)(ii) that would authorize a State to use funds that are earmarked for a particular geographic area within the State as part of its non-Federal share without obtaining a waiver of statewide share if the State determines and informs the RSA Commissioner that it cannot provide the full amount of its non-Federal share without using the earmarked funds. This commenter indicated that the provision was needed

since many State legislatures appropriate most, but not all, of the funds needed to match the full amount of Federal funds available under the program.

Discussion: Although section 101(a)(4)(B) of the Act is intended to assist some States in meeting their matching obligations, we wish to reemphasize that statewideness requirements still apply to the Federal VR program funds that the State receives in return for contributing geographically limited earmarked funds to its non-Federal share. For further discussion of the effect of this change from the previous regulations, please refer to the preamble to the NPRM (65 FR 10630).

Changes: None.

Sections 361.80–361.89 Evaluation Standards and Performance Indicators

Comments: None.

Discussion: The Evaluation Standards and Performance Indicators for the VR program were published in the *Federal Register* on June 5, 2000 (65 FR 35792) and became effective on July 5, 2000. Because these performance measures are part of the regulations implementing the VR program (34 CFR 361), we have added the measures and their corresponding requirements to the final regulations in this publication. The Evaluation Standards and Performance Indicators are located in §§ 361.80 through

361.89 of Subpart E. For guidance in implementing the performance measures, we suggest you consult the preamble to the prior *Federal Register* publication of the measures (65 FR 35792).

Changes: We have amended the proposed regulations to include Subpart E, "Evaluation Standards and Performance Indicators," and the corresponding provisions in §§ 361.80 through 361.89 that were previously published. The requirements in these sections are the same as those published in the *Federal Register* on June 5, 2000.

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TITLES I and II
of the
REHABILITATION ACT
VOLUME 1 of 2

State Department of Education and the Arts
Division of Rehabilitation Services
James S. Jeffers, Director



NOTICE

***This document includes the text of Titles I and II
of the Rehabilitation Act of 1973, as amended.***

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***It is not intended to be and should not be relied on as an
authoritative reference for litigation or for other legal matters.***

***Persons desiring to consult or cite an authoritative reference
should obtain the advice of a qualified attorney.***

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FINDINGS; PURPOSE; POLICY

Sec. 2. (a) Findings

Congress finds that--

(1) millions of Americans have one or more physical or mental disabilities and the number of Americans with such disabilities is increasing;

(2) individuals with disabilities constitute one of the most disadvantaged groups in society;

(3) disability is a natural part of the human experience and in no way diminishes the right of individuals to--

(A) live independently;

(B) enjoy self-determination;

(C) make choices;

(D) contribute to society;

(E) pursue meaningful careers; and

(F) enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society;

(4) increased employment of individuals with disabilities can be achieved through implementation of statewide workforce investment systems under title I of the Workforce Investment Act of 1998 that provide meaningful and effective participation for individuals with disabilities in workforce investment activities and activities carried out under the vocational rehabilitation program established under title I, and through the provision of independent living services, support services, and meaningful opportunities for employment in integrated work settings through the provision of reasonable accommodations;

(5) individuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services; and

(6) the goals of the Nation properly include the goal of providing individuals with disabilities with the tools necessary to--

(A) make informed choices and decisions; and

(B) achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency, for such individuals.

(b) Purpose

The purposes of this Act are--

(1) to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society, through--

(A) statewide workforce investment systems implemented in accordance with title I of the Workforce Investment Act of 1998 that include, as integral components, comprehensive and coordinated state-of-the-art programs of vocational rehabilitation;

(B) independent living centers and services;

(C) research;

(D) training;

(E) demonstration projects; and

(F) the guarantee of equal opportunity; and

(2) to ensure that the Federal Government plays a leadership role in promoting the employment of individuals with disabilities, especially individuals with significant disabilities, and in assisting States and providers of services in fulfilling the aspirations of such individuals with disabilities for meaningful and gainful employment and independent living.

(c) Policy

It is the policy of the United States that all programs, projects, and activities receiving assistance under this Act shall be carried out in a manner consistent with the principles of--

(1) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;

(2) respect for the privacy, rights, and equal access (including the use of accessible formats), of the individuals;

(3) inclusion, integration, and full participation of the individuals;

(4) support for the involvement of an individual's representative if an individual with a disability requests, desires, or needs such support; and

(5) support for individual and systemic advocacy and community involvement.

REHABILITATION SERVICES ADMINISTRATION

Sec. 3. (a) There is established in the Office of the Secretary a Rehabilitation Services Administration which shall be headed by a Commissioner (hereinafter in this Act referred to as the 'Commissioner') appointed by the President by and with the advice and consent of the Senate. Except for titles IV and V and as otherwise specifically provided in this Act, such Administration shall be the principal agency, and the Commissioner shall be the principal officer, of such Department for carrying out this Act. The Commissioner shall be an individual with substantial experience in rehabilitation and in rehabilitation program management. In the performance of the functions of the office, the Commissioner shall be directly responsible to the Secretary or to the Under Secretary or an appropriate Assistant Secretary of such Department, as designated by the Secretary. The functions of the Commissioner shall not be delegated to any officer not directly responsible, both with respect to program operation and administration, to the Commissioner. Any reference in this Act to duties to be carried out by the Commissioner shall be considered to be a reference to duties to be carried out by the Secretary acting through the Commissioner. In carrying out any of the functions of the office under this Act, the Commissioner shall be guided by general policies of the National Council on Disability established under title IV of this Act.

(b) The Secretary shall take whatever action is necessary to ensure that funds appropriated pursuant to this Act are expended only for the programs, personnel, and administration of programs carried out under this Act.

ADVANCE FUNDING

Sec. 4. (a) For the purpose of affording adequate notice of funding available under this Act, appropriations under this Act are authorized to be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

(b) In order to effect a transition to the advance funding method of timing appropriation action, the authority provided by subsection (a) of this section shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

JOINT FUNDING

Sec. 5. Pursuant to regulations prescribed by the President, and to the extent consistent with the other provisions of this Act, where funds are provided for a single project by more than one Federal agency to an agency or organization assisted under this Act, the Federal agency principally involved may be designated to act for all in administering the funds provided, and, in such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each agency. When the principal agency involved is the Rehabilitation Services Administration, it may waive any grant or contract requirement (as defined by such regulations) under or pursuant to any law other than this Act, which requirement is inconsistent with the similar requirements of the administering agency under or pursuant to this Act.

DEFINITIONS

Sec. 7. For the purposes of this Act:

(1) Administrative costs

The term "administrative costs" means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program carried out under title I, including expenses related to program planning, development, monitoring, and evaluation, including expenses for--

(A) quality assurance;

(B) budgeting, accounting, financial management, information systems, and related data processing;

(C) providing information about the program to the public;

(D) technical assistance and support services to other State agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in section 103(b)(5);

(E) the State Rehabilitation Council and other advisory committees;

(F) professional organization membership dues for designated State unit employees;

(G) the removal of architectural barriers in State vocational rehabilitation agency offices and State operated rehabilitation facilities;

(H) operating and maintaining designated State unit facilities, equipment, and grounds;

(I) supplies;

(J) administration of the comprehensive system of personnel development described in section 101(a)(7), including personnel administration, administration of affirmative action plans, and training and staff development;

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

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

(M) costs incurred in conducting reviews of rehabilitation counselor or coordinator determinations under section 102(c); and

(N) legal expenses required in the administration of the program.

(2) Assessment for determining eligibility and vocational rehabilitation needs

The term "assessment for determining eligibility and vocational rehabilitation needs" means, as appropriate in each case--

(A)(i) a review of existing data--

(I) to determine whether an individual is eligible for vocational rehabilitation services; and

(II) to assign priority for an order of selection described in section 101(a)(5)(A) in the States that use an order of selection pursuant to section 101(a)(5)(A); and

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

(B) to the extent additional data is necessary to make a determination of the employment outcomes, and the objectives, nature, and scope of vocational rehabilitation services, to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual, which comprehensive assessment--

(i) is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;

(ii) uses, as a primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements--

(I) existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in section 101(a)(5)(A) for the individual; and

(II) such information as can be provided by the individual and, where appropriate, by the family of the individual;

(iii) may include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual; and

(iv) may include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment;

(C) referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(D) an exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which shall be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(3) Assistive technology device

The term "assistive technology device" has the meaning given such term in section 3(2) of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2202(2)), except that the reference in such section to the term "individuals with disabilities" shall be deemed to mean more than one individual with a disability as defined in paragraph (20)(A).

(4) Assistive technology service

The term "assistive technology service" has the meaning given such term in section 3(3) of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2202(3)), except that the reference in such section--

(A) to the term "individual with a disability" shall be deemed to mean an individual with a disability, as defined in paragraph (20)(A); and

(B) to the term "individuals with disabilities" shall be deemed to mean more than one such individual.

(5) Community rehabilitation program

The term "community rehabilitation program" means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement--

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

(B) testing, fitting, or training in the use of prosthetic and orthotic devices;

(C) recreational therapy;

(D) physical and occupational therapy;

(E) speech, language, and hearing therapy;

(F) psychiatric, psychological, and social services, including positive behavior management;

(G) assessment for determining eligibility and vocational rehabilitation needs;

(H) rehabilitation technology;

(I) job development, placement, and retention services;

(J) evaluation or control of specific disabilities;

(K) orientation and mobility services for individuals who are blind;

(L) extended employment;

(M) psychosocial rehabilitation services;

(N) supported employment services and extended services;

(O) services to family members when necessary to the vocational rehabilitation of the individual;

(P) personal assistance services; or

(Q) services similar to the services described in one of subparagraphs (A) through (P).

(6) Construction; cost of construction

(A) Construction

The term "construction" means--

- (i) the construction of new buildings;
- (ii) the acquisition, expansion, remodeling, alteration, and renovation of existing buildings; and
- (iii) initial equipment of buildings described in clauses (i) and (ii).

(B) Cost of construction

The term "cost of construction" includes architects' fees and the cost of acquisition of land in connection with construction but does not include the cost of offsite improvements.

(7) Criminal act

The term "criminal act" means any crime, including an act, omission, or possession under the laws of the United States or a State or unit of general local government, which poses a substantial threat of personal injury, notwithstanding that by reason of age, insanity, or intoxication or otherwise the person engaging in the act, omission, or possession was legally incapable of committing a crime.

(8) Designated state agency; designated state unit

(A) Designated state agency

The term "designated State agency" means an agency designated under section 101(a)(2)(A).

(B) Designated state unit

The term "designated State unit" means--

- (i) any State agency unit required under section 101(a)(2)(B)(ii); or
- (ii) in cases in which no such unit is so required, the State agency described in section 101(a)(2)(B)(i).

(9) Disability

The term "disability" means--

(A) except as otherwise provided in subparagraph (B), a physical or mental impairment that constitutes or results in a substantial impediment to employment; or

(B) for purposes of sections 2, 14, and 15, and titles II, IV, V, and VII, a physical or mental impairment that substantially limits one or more major life activities.

(10) Drug and illegal use of drugs

(A) Drug

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(B) Illegal use of drugs

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(11) Employment outcome

The term "employment outcome" means, with respect to an individual--

(A) entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market;

(B) satisfying the vocational outcome of supported employment; or

(C) satisfying any other vocational outcome the Secretary may determine to be appropriate (including satisfying the vocational outcome of self-employment, telecommuting, or business ownership), in a manner consistent with this Act.

(12) Establishment of a community rehabilitation program

The term "establishment of a community rehabilitation program" includes the acquisition, expansion, remodeling, or alteration of existing buildings necessary to adapt them to community rehabilitation program purposes or to increase their effectiveness for such purposes (subject, however, to such limitations as the Secretary may determine, in accordance with regulations the Secretary shall prescribe, in order to prevent impairment of the objectives of, or duplication of, other Federal laws providing Federal assistance in the construction of facilities for community

rehabilitation programs), and may include such additional equipment and staffing as the Commissioner considers appropriate.

(13) Extended services

The term "extended services" means ongoing support services and other appropriate services, needed to support and maintain an individual with a most significant disability in supported employment, that--

(A) are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment;

(B) are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; and

(C) are provided by a State agency, a nonprofit private organization, employer, or any other appropriate resource, after an individual has made the transition from support provided by the designated State unit.

(14) Federal share

(A) In general

Subject to subparagraph (B), the term "Federal share" means 78.7 percent.

(B) Exception

The term "Federal share" means the share specifically set forth in section 111(a)(3), except that with respect to payments pursuant to part B of title I to any State that are used to meet the costs of construction of those rehabilitation facilities identified in section 103(b)(2) in such State, the Federal share shall be the percentages determined in accordance with the provisions of section 111(a)(3) applicable with respect to the State.

(C) Relationship to expenditures by a political subdivision

For the purpose of determining the non-Federal share with respect to a State, expenditures by a political subdivision thereof or by a local agency shall be regarded as expenditures by such State, subject to such limitations and conditions as the Secretary shall by regulation prescribe.

(15) Governor

The term "Governor" means a chief executive officer of a State.

(16) Impartial hearing officer

(A) In general

The term "impartial hearing officer" means an individual--

(i) who is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(ii) who is not a member of the State Rehabilitation Council described in section 105;

(iii) who has not been involved previously in the vocational rehabilitation of the applicant or client;

(iv) who has knowledge of the delivery of vocational rehabilitation services, the State plan under section 101, and the Federal and State rules governing the provision of such services and training with respect to the performance of official duties; and

(v) who has no personal or financial interest that would be in conflict with the objectivity of the individual.

(B) Construction

An individual shall not be considered to be an employee of a public agency for purposes of subparagraph (A)(i) solely because the individual is paid by the agency to serve as a hearing officer.

(17) Independent living core services

The term "independent living core services" means--

(A) information and referral services;

(B) independent living skills training;

(C) peer counseling (including cross-disability peer counseling); and

(D) individual and systems advocacy.

(18) Independent living services

The term "independent living services" includes--

(A) independent living core services; and

(B)(i) counseling services, including psychological, psychotherapeutic, and related services;

(ii) services related to securing housing or shelter, including services related to community group living, and supportive of the purposes of this Act and of the titles of this Act, and adaptive housing services (including appropriate accommodations to and modifications of any space used to serve, or occupied by, individuals with disabilities);

(iii) rehabilitation technology;

(iv) mobility training;

(v) services and training for individuals with cognitive and sensory disabilities, including life skills training, and interpreter and reader services;

(vi) personal assistance services, including attendant care and the training of personnel providing such services;

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

(viii) consumer information programs on rehabilitation and independent living services available under this Act, especially for minorities and other individuals with disabilities who have traditionally been unserved or underserved by programs under this Act;

(ix) education and training necessary for living in a community and participating in community activities;

(x) supported living;

(xi) transportation, including referral and assistance for such transportation and training in the use of public transportation vehicles and systems;

(xii) physical rehabilitation;

(xiii) therapeutic treatment;

(xiv) provision of needed prostheses and other appliances and devices;

(xv) individual and group social and recreational services;

(xvi) training to develop skills specifically designed for youths who are individuals with disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

(xvii) services for children;

(xviii) services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance, of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with disabilities;

(xix) appropriate preventive services to decrease the need of individuals assisted under this Act for similar services in the future;

(xx) community awareness programs to enhance the understanding and integration into society of individuals with disabilities; and

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

(19) Indian; american indian; indian american; indian tribe

(A) In general

The terms "Indian", "American Indian", and "Indian American" mean an individual who is a member of an Indian tribe.

(B) Indian tribe

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

(20) Individual with a disability

(A) In general

Except as otherwise provided in subparagraph (B), the term "individual with a disability" means any individual who--

(i) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and

(ii) can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to title I, III, or VI.

(B) Certain programs; limitations on major life activities

Subject to subparagraphs (C), (D), (E), and (F), the term "individual with a disability" means, for purposes of sections 2, 14, and 15, and titles II, IV, V, and VII of this Act, any person who--

(i) has a physical or mental impairment which substantially limits one or more of such person's major life activities;

(ii) has a record of such an impairment; or

(iii) is regarded as having such an impairment.

(C) Rights and advocacy provisions

(i) In general; exclusion of individuals engaging in drug use

For purposes of title V, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

(ii) Exception for individuals no longer engaging in drug use

Nothing in clause (i) shall be construed to exclude as an individual with a disability an individual who--

(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(III) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

(iii) Exclusion for certain services

Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under titles I, II, and III, an individual shall not be excluded from the benefits

of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

(iv) Disciplinary action

For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student who is an individual with a disability and who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities. Furthermore, the due process procedures at section 104.36 of title 34, Code of Federal Regulations (or any corresponding similar regulation or ruling) shall not apply to such disciplinary actions.

(v) Employment; exclusion of alcoholics

For purposes of sections 503 and 504 as such sections relate to employment, the term "individual with a disability" does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

(D) Employment; exclusion of individuals with certain diseases or infections

For the purposes of sections 503 and 504, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

(E) Rights provisions; exclusion of individuals on basis of homosexuality or bisexuality

For the purposes of sections 501, 503, and 504--

(i) for purposes of the application of subparagraph (B) to such sections, the term "impairment" does not include homosexuality or bisexuality; and

(ii) therefore the term "individual with a disability" does not include an individual on the basis of homosexuality or bisexuality.

(F) Rights provisions; exclusion of individuals on basis of certain disorders

For the purposes of sections 501, 503, and 504, the term "individual with a disability" does not include an individual on the basis of--

(i) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) compulsive gambling, kleptomania, or pyromania; or

(iii) psychoactive substance use disorders resulting from current illegal use of drugs.

(G) Individuals with disabilities

The term "individuals with disabilities" means more than one individual with a disability.

(21) Individual with a significant disability

(A) In general

Except as provided in subparagraph (B) or (C), the term "individual with a significant disability" means an individual with a disability--

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

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

(iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental 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, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs described in subparagraphs (A) and (B) of paragraph (2) to cause comparable substantial functional limitation.

(B) Independent living services and centers for independent living

For purposes of title VII, the term "individual with a significant disability" means an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment, respectively.

(C) Research and training

For purposes of title II, the term "individual with a significant disability" includes an individual described in subparagraph (A) or (B).

(D) Individuals with significant disabilities

The term "individuals with significant disabilities" means more than one individual with a significant disability.

(E) Individual with a most significant disability

(i) In general

The term "individual with a most significant disability", used with respect to an individual in a State, means an individual with a significant disability who meets criteria established by the State under section 101(a)(5)(C).

(ii) Individuals with the most significant disabilities

The term "individuals with the most significant disabilities" means more than one individual with a most significant disability.

(22) Individual's representative; applicant's representative

The terms "individual's representative" and "applicant's representative" mean a parent, a family member, a guardian, an advocate, or an authorized representative of an individual or applicant, respectively.

(23) Institution of higher education

The term "institution of higher education" has the meaning given the term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(24) Local agency

The term "local agency" means an agency of a unit of general local government or of an Indian tribe (or combination of such units or tribes) which has an agreement with the designated State agency to conduct a vocational rehabilitation program under the supervision of such State agency in accordance with the State plan approved under section 101. Nothing in the preceding sentence of this paragraph or in section 101 shall be construed to prevent the local agency from arranging to utilize another local public or nonprofit agency to provide vocational rehabilitation services if such an arrangement is made part of the agreement specified in this paragraph.

(25) Local workforce investment board

The term "local workforce investment board" means a local workforce investment board established under section 117 of the Workforce Investment Act of 1998.

(26) Nonprofit

The term "nonprofit", when used with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(27) Ongoing support services

The term "ongoing support services" means services--

(A) provided to individuals with the most significant disabilities;

(B) provided, at a minimum, twice monthly--

(i) to make an assessment, regarding the employment situation, at the worksite of each such individual in supported employment, or, under special circumstances, especially at the request of the client, off site; and

(ii) based on the assessment, to provide for the coordination or provision of specific intensive services, at or away from the worksite, that are needed to maintain employment stability; and

(C) consisting of--

(i) a particularized assessment supplementary to the comprehensive assessment described in paragraph (2)(B);

(ii) the provision of skilled job trainers who accompany the individual for intensive job skill training at the worksite;

(iii) job development, job retention, and placement services;

(iv) social skills training;

(v) regular observation or supervision of the individual;

(vi) followup services such as regular contact with the employers, the individuals, the individuals' representatives, and other appropriate individuals, in order to reinforce and stabilize the job placement;

(vii) facilitation of natural supports at the worksite;

(viii) any other service identified in section 103; or

(ix) a service similar to another service described in this subparagraph.

(28) Personal assistance services

The term "personal assistance services" means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(29) Public or nonprofit

The term "public or nonprofit", used with respect to an agency or organization, includes an Indian tribe.

(30) Rehabilitation technology

The term "rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(31) Secretary

The term "Secretary", except when the context otherwise requires, means the Secretary of Education.

(32) State

The term "State" includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(33) State workforce investment board

The term "State workforce investment board" means a State workforce investment board established under section 111 of the Workforce Investment Act of 1998.

(34) Statewide workforce investment system

The term "statewide workforce investment system" means a system described in section 111(d)(2) of the Workforce Investment Act of 1998.

(35) Supported employment

(A) In general

The term "supported employment" means competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities--

(i)(I) for whom competitive employment has not traditionally occurred; or

(II) for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(ii) who, because of the nature and severity of their disability, need intensive supported employment services for the period, and any extension, described in paragraph (36)(C) and extended services after the transition described in paragraph (13)(C) in order to perform such work.

(B) Certain transitional employment

Such term includes transitional employment for persons who are individuals with the most significant disabilities due to mental illness.

(36) Supported employment services

The term "supported employment services" means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment, that--

(A) are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual to achieve competitive employment;

(B) are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; and

(C) are provided by the designated State unit for a period of time not to extend beyond 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator involved jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the individualized plan for employment.

(37) Transition services

The term "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(38) Vocational rehabilitation services

The term "vocational rehabilitation services" means those services identified in section 103 which are provided to individuals with disabilities under this Act.

(39) Workforce investment activities

The term "workforce investment activities" means workforce investment activities, as defined in section 101 of the Workforce Investment Act of 1998, that are carried out under that Act.

ALLOTMENT PERCENTAGE

Sec. 8. (a)(1) For purposes of section 110, the allotment percentage for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that--

(A) the allotment percentage shall in no case be more than 75 per centum or less than 33 1/3 per centum; and

(B) the allotment percentage for the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be 75 per centum.

(2) The allotment percentages shall be promulgated by the Secretary between October 1 and December 31 of each even-numbered year, on the basis of the average of the per capita incomes of the States and of the United States for the three most recent consecutive years for which

satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning on the October 1 next succeeding such promulgation.

(3) The term "United States" means (but only for purposes of this subsection) the fifty States and the District of Columbia.

(b) The population of the several States and of the United States shall be determined on the basis of the most recent data available, to be furnished by the Department of Commerce by October 1 of the year preceding the fiscal year for which funds are appropriated pursuant to statutory authorizations.

NON DUPLICATION

Sec. 10. In determining the amount of any State's Federal share of expenditures for planning, administration, and services incurred by it under a State plan approved in accordance with section 101, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds provided under any other provision of law, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds. No payment may be made from funds provided under one provision of this Act relating to any cost with respect to which any payment is made under any other provision of this Act, except that this section shall not be construed to limit or reduce fees for services rendered by community rehabilitation programs.

APPLICATION OF OTHER LAWS

Sec. 11. The provisions of the Act of December 5, 1974 (Public Law 93-510) and of title V of the Act of October 15, 1977 (Public Law 95-134) shall not apply to the administration of the provisions of this Act or to the administration of any program or activity under this Act.

ADMINISTRATION OF THE ACT

Sec. 12. (a) In carrying out the purposes of this Act, the Commissioner may--

(1) provide consultative services and technical assistance to public or nonprofit private agencies and organizations, including assistance to enable such agencies and organizations to facilitate meaningful and effective participation by individuals with disabilities in workforce investment activities;

(2) provide short-term training and technical instruction, including training for the personnel of community rehabilitation programs, centers for independent living, and other providers of services (including job coaches);

(3) conduct special projects and demonstrations;

(4) collect, prepare, publish, and disseminate special educational or informational materials, including reports of the projects for which funds are provided under this Act; and

(5) provide monitoring and conduct evaluations.

(b)(1) In carrying out the duties under this Act, the Commissioner may utilize the services and facilities of any agency of the Federal Government and of any other public or nonprofit agency or organization, in accordance with agreements between the Commissioner and the head thereof, and may pay therefor, in advance or by way of reimbursement, as may be provided in the agreement.

(2) In carrying out the provisions of this Act, the Commissioner shall appoint such task forces as may be necessary to collect and disseminate information in order to improve the ability of the Commissioner to carry out the provisions of this Act.

(c) The Commissioner may promulgate such regulations as are considered appropriate to carry out the Commissioner's duties under this Act.

(d) The Secretary shall promulgate regulations regarding the requirements for the implementation of an order of selection for vocational rehabilitation services under section 101(a)(5)(A) if such services cannot be provided to all eligible individuals with disabilities who apply for such services.

(e) Not later than 180 days after the date of enactment of the Rehabilitation Act Amendments of 1998, the Secretary shall receive public comment and promulgate regulations to implement the amendments made by the Rehabilitation Act Amendments of 1998.

(f) In promulgating regulations to carry out this Act, the Secretary shall promulgate only regulations that are necessary to administer and ensure compliance with the specific requirements of this Act.

(g) There are authorized to be appropriated to carry out this section such sums as may be necessary.

REPORTS

Sec. 13. (a) Not later than one hundred and eighty days after the close of each fiscal year, the Commissioner shall prepare and submit to the President and to the Congress a full and complete report on the activities carried out under this Act, including the activities and staffing of the information clearinghouse under section 15.

(b) The Commissioner shall collect information to determine whether the purposes of this Act are being met and to assess the performance of programs carried out under this Act. The Commissioner shall take whatever action is necessary to assure that the identity of each individual for which information is supplied under this section is kept confidential, except as otherwise required by law (including regulation).

(c) In preparing the report, the Commissioner shall annually collect and include in the report information based on the information submitted by States in accordance with section 101(a)(10), including information on administrative costs as required by section 101(a)(10)(D). The Commissioner shall, to the maximum extent appropriate, include in the report all information that is required to be submitted in the reports described in section 136(d) of the Workforce Investment Act of 1998 and that pertains to the employment of individuals with disabilities.

EVALUATION

Sec. 14. (a) For the purpose of improving program management and effectiveness, the Secretary, in consultation with the Commissioner, shall evaluate all the programs authorized by this Act, their general effectiveness in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services, using appropriate methodology and evaluative research designs. The Secretary shall establish and use standards for the evaluations required by this subsection. Such an evaluation shall be conducted by a person not immediately involved in the administration of the program evaluated.

(b) In carrying out evaluations under this section, the Secretary shall obtain the opinions of program and project participants about the strengths and weaknesses of the programs and projects.

(c) The Secretary shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with Federal funds under this Act shall become the property of the United States.

(d) Such information as the Secretary may determine to be necessary for purposes of the evaluations conducted under this section shall be made available upon request of the Secretary, by the departments and agencies of the executive branch.

(e)(1) To assess the linkages between vocational rehabilitation services and economic and noneconomic outcomes, the Secretary shall continue to conduct a longitudinal study of a national sample of applicants for the services.

(2) The study shall address factors related to attrition and completion of the program through which the services are provided and factors within and outside the program affecting results. Appropriate comparisons shall be used to contrast the experiences of similar persons who do not obtain the services.

(3) The study shall be planned to cover the period beginning on the application of individuals with disabilities for the services, through the eligibility determination and provision of services for the individuals, and a further period of not less than 2 years after the termination of services.

(f)(1) The Commissioner shall identify and disseminate information on exemplary practices concerning vocational rehabilitation.

(2) To facilitate compliance with paragraph (1), the Commissioner shall conduct studies and analyses that identify exemplary practices concerning vocational rehabilitation, including studies in areas relating to providing informed choice in the rehabilitation process, promoting consumer satisfaction, promoting job placement and retention, providing supported employment, providing services to particular disability populations, financing personal assistance services, providing assistive technology devices and assistive technology services, entering into cooperative agreements, establishing standards and certification for community rehabilitation programs, converting from nonintegrated to integrated employment, and providing caseload management.

(g) There are authorized to be appropriated to carry out this section such sums as may be necessary.

INFORMATION CLEARINGHOUSE

Sec. 15. (a) The Secretary shall establish a central clearinghouse for information and resource availability for individuals with disabilities which shall provide information and data regarding--

(1) the location, provision, and availability of services and programs for individuals with disabilities, including such information and data provided by State workforce investment boards regarding such services and programs authorized under title I of such Act;

(2) research and recent medical and scientific developments bearing on disabilities (and their prevention, amelioration, causes, and cures); and

(3) the current numbers of individuals with disabilities and their needs. The clearinghouse shall also provide any other relevant information and data which the Secretary considers appropriate.

(b) The Commissioner may assist the Secretary to develop within the Department of Education a coordinated system of information and data retrieval, which will have the capacity and responsibility to provide information regarding the information and data referred to in subsection (a) of this section to the Congress, public and private agencies and organizations, individuals with disabilities and their families, professionals in fields serving such individuals, and the general public.

(c) The office established to carry out the provisions of this section shall be known as the "Office of Information and Resources for Individuals with Disabilities".

(d) There are authorized to be appropriated to carry out this section such sums as may be necessary.

TRANSFER OF FUNDS

Sec. 16. (a) Except as provided in subsection (b) of this section, no funds appropriated under this Act for any program or activity may be used for any purpose other than that for which the funds were specifically authorized.

(b) No more than 1 percent of funds appropriated for discretionary grants, contracts, or cooperative agreements authorized by this Act may be used for the purpose of providing non-Federal panels of experts to review applications for such grants, contracts, or cooperative agreements.

STATE ADMINISTRATION

Sec. 17. The application of any State rule or policy relating to the administration or operation of programs funded by this Act (including any rule or policy based on State interpretation of any Federal law, regulation, or guideline) shall be identified as a State imposed requirement.

REVIEW OF APPLICATIONS

Sec. 18. Applications for grants in excess of \$100,000 in the aggregate authorized to be funded under this Act, other than grants primarily for the purpose of conducting dissemination or conferences, shall be reviewed by panels of experts which shall include a majority of non-Federal members. Non-Federal members may be provided travel, per diem, and consultant fees not to exceed the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code.

CARRYOVER

Sec. 19. (a) In General

Except as provided in subsection (b), and notwithstanding any other provision of law --

(1) any funds appropriated for a fiscal year to carry out any grant program under part B of title I, section 509 (except as provided in section 509(b)), part B of title VI, part B or C of chapter 1 of title VII, or chapter 2 of title VII (except as provided in section 752(b)), including any funds reallocated under any such grant program, that are not obligated and expended by recipients prior to the beginning of the succeeding fiscal year; or

(2) any amounts of program income, including reimbursement payments under the Social Security Act (42 U.S.C. 301 et seq.), received by recipients under any grant program specified in

paragraph (1) that are not obligated and expended by recipients prior to the beginning of the fiscal year succeeding the fiscal year in which such amounts were received, shall remain available for obligation and expenditure by such recipients during such succeeding fiscal year.

(b) Non-Federal Share

Such funds shall remain available for obligation and expenditure by a recipient as provided in subsection (a) only to the extent that the recipient complied with any Federal share requirements applicable to the program for the fiscal year for which the funds were appropriated.

CLIENT ASSISTANCE INFORMATION

Sec. 20. All programs, including community rehabilitation programs, and projects, that provide services to individuals with disabilities under this Act shall advise such individuals who are applicants for or recipients of the services, or the applicants' representatives or individuals' representatives, of the availability and purposes of the client assistance program under section 112, including information on means of seeking assistance under such program.

TRADITIONALLY UNDERSERVED POPULATIONS

Sec. 21. (a) Findings

With respect to the programs authorized in titles II through VII, the Congress finds as follows:

(1) Racial profile

The racial profile of America is rapidly changing. While the rate of increase for white Americans is 3.2 percent, the rate of increase for racial and ethnic minorities is much higher: 38.6 percent for Latinos, 14.6 percent for African-Americans, and 40.1 percent for Asian-Americans and other ethnic groups. By the year 2000, the Nation will have 260,000,000 people, one of every three of whom will be either African-American, Latino, or Asian-American.

(2) Rate of disability

Ethnic and racial minorities tend to have disabling conditions at a disproportionately high rate. The rate of work-related disability for American Indians is about one and one-half times that of the general population. African-Americans are also one and one-half times more likely to be disabled than whites and twice as likely to be significantly disabled.

(3) Inequitable treatment

Patterns of inequitable treatment of minorities have been documented in all major junctures of the vocational rehabilitation process. As compared to white Americans, a larger percentage of

African-American applicants to the vocational rehabilitation system is denied acceptance. Of applicants accepted for service, a larger percentage of African-American cases is closed without being rehabilitated. Minorities are provided less training than their white counterparts. Consistently, less money is spent on minorities than on their white counterparts.

(4) Recruitment

Recruitment efforts within vocational rehabilitation at the level of preservice training, continuing education, and in-service training must focus on bringing larger numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of vocational rehabilitation.

(b) Outreach to Minorities

(1) In general

For each fiscal year, the Commissioner and the Director of the National Institute on Disability and Rehabilitation Research (referred to in this subsection as the "Director") shall reserve 1 percent of the funds appropriated for the fiscal year for programs authorized under titles II, III, VI, and VII to carry out this subsection. The Commissioner and the Director shall use the reserved funds to carry out 1 or more of the activities described in paragraph (2) through a grant, contract, or cooperative agreement.

(2) Activities

The activities carried out by the Commissioner and the Director shall include 1 or more of the following:

(A) Making awards to minority entities and Indian tribes to carry out activities under the programs authorized under titles II, III, VI, and VII.

(B) Making awards to minority entities and Indian tribes to conduct research, training, technical assistance, or a related activity, to improve services provided under this Act, especially services provided to individuals from minority backgrounds.

(C) Making awards to entities described in paragraph (3) to provide outreach and technical assistance to minority entities and Indian tribes to promote their participation in activities funded under this Act, including assistance to enhance their capacity to carry out such activities.

(3) Eligibility

To be eligible to receive an award under paragraph (2)(C), an entity shall be a State or a public or private nonprofit agency or organization, such as an institution of higher education or an Indian tribe.

(4) Report

In each fiscal year, the Commissioner and the Director shall prepare and submit to Congress a report that describes the activities funded under this subsection for the preceding fiscal year.

(5) Definitions

In this subsection:

(A) Historically black college or university: The term "historically Black college or university" means a part B institution, as defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)).

(B) Minority entity: The term "minority entity" means an entity that is a historically Black college or university, a Hispanic-serving institution of higher education, an American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent.

(c) Demonstration

In awarding grants, or entering into contracts or cooperative agreements under titles I, II, III, VI, and VII, and section 509, the Commissioner and the Director, in appropriate cases, shall require applicants to demonstrate how the applicants will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

TITLE I--VOCATIONAL REHABILITATION SERVICES

Part A--General Provisions

Sec. 100. Declaration of Policy; Authorization of Appropriations

(a) Findings; Purpose; Policy

(1) Findings

Congress finds that--

(A) work--

(i) is a valued activity, both for individuals and society; and

(ii) fulfills the need of an individual to be productive, promotes independence, enhances self-esteem, and allows for participation in the mainstream of life in the United States;

(B) as a group, individuals with disabilities experience staggering levels of unemployment and poverty;

(C) individuals with disabilities, including individuals with the most significant disabilities, have demonstrated their ability to achieve gainful employment in integrated settings if appropriate services and supports are provided;

(D) reasons for significant numbers of individuals with disabilities not working, or working at levels not commensurate with their abilities and capabilities, include--

(i) discrimination;

(ii) lack of accessible and available transportation;

(iii) fear of losing health coverage under the medicare and medicaid programs carried out under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq. and 1396 et seq.) or fear of losing private health insurance; and

(iv) lack of education, training, and supports to meet job qualification standards necessary to secure, retain, regain, or advance in employment;

(E) enforcement of title V and of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) holds the promise of ending discrimination for individuals with disabilities;

(F) the provision of workforce investment activities and vocational rehabilitation services can enable individuals with disabilities, including individuals with the most significant disabilities, to pursue meaningful careers by securing gainful employment commensurate with their abilities and capabilities; and

(G) linkages between the vocational rehabilitation programs established under this title and other components of the statewide workforce investment systems are critical to ensure effective and meaningful participation by individuals with disabilities in workforce investment activities.

(2) Purpose

The purpose of this title is to assist States in operating statewide comprehensive, coordinated, effective, efficient, and accountable programs of vocational rehabilitation, each of which is--

(A) an integral part of a statewide workforce investment system; and

(B) designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individuals may prepare for and engage in gainful employment.

(3) Policy

It is the policy of the United States that such a program shall be carried out in a manner consistent with the following principles:

(A) Individuals with disabilities, including individuals with the most significant disabilities, are generally presumed to be capable of engaging in gainful employment and the provision of individualized vocational rehabilitation services can improve their ability to become gainfully employed.

(B) Individuals with disabilities must be provided the opportunities to obtain gainful employment in integrated settings.

(C) Individuals who are applicants for such programs or eligible to participate in such programs must be active and full partners in the vocational rehabilitation process, making meaningful and informed choices--

(i) during assessments for determining eligibility and vocational rehabilitation needs; and

(ii) in the selection of employment outcomes for the individuals, services needed to achieve the outcomes, entities providing such services, and the methods used to secure such services.

(D) Families and other natural supports can play important roles in the success of a vocational rehabilitation program, if the individual with a disability involved requests, desires, or needs such supports.

(E) Vocational rehabilitation counselors that are trained and prepared in accordance with State policies and procedures as described in section 101(a)(7)(B) (referred to individually in this title as a 'qualified vocational rehabilitation counselor'), other qualified rehabilitation personnel, and other qualified personnel facilitate the accomplishment of the employment outcomes and objectives of an individual.

(F) Individuals with disabilities and the individuals' representatives are full partners in a vocational rehabilitation program and must be involved on a regular basis and in a meaningful manner with respect to policy development and implementation.

(G) Accountability measures must facilitate the accomplishment of the goals and objectives of the program, including providing vocational rehabilitation services to, among others, individuals with the most significant disabilities.

(b) Authorization of Appropriations

(1) In general

For the purpose of making grants to States under part B to assist States in meeting the costs of vocational rehabilitation services provided in accordance with State plans under section 101, there are authorized to be appropriated such sums as may be necessary for fiscal years 1999 through 2003, except that the amount to be appropriated for a fiscal year shall not be less than the amount of the appropriation under this paragraph for the immediately preceding fiscal year, increased by the percentage change in the Consumer Price Index determined under subsection (c) for the immediately preceding fiscal year.

(2) Reference

The reference in paragraph (1) to grants to States under part B shall not be considered to refer to grants under section 112.

(c) Consumer Price Index

(1) Percentage change

No later than November 15 of each fiscal year (beginning with fiscal year 1979), the Secretary of Labor shall publish in the Federal Register the percentage change in the Consumer Price Index published for October of the preceding fiscal year and October of the fiscal year in which such publication is made.

(2) Application

(A) Increase

If in any fiscal year the percentage change published under paragraph (1) indicates an increase in the Consumer Price Index, then the amount to be appropriated under subsection (b)(1) for the subsequent fiscal year shall be at least the amount appropriated under subsection (b)(1) for the fiscal year in which the publication is made under paragraph (1) increased by such percentage change.

(B) No increase or decrease

If in any fiscal year the percentage change published under paragraph (1) does not indicate an increase in the Consumer Price Index, then the amount to be appropriated under subsection (b)(1) for the subsequent fiscal year shall be at least the amount appropriated under subsection (b)(1) for the fiscal year in which the publication is made under paragraph (1).

(3) Definition

For purposes of this section, the term 'Consumer Price Index' means the Consumer Price Index for All Urban Consumers, published monthly by the Bureau of Labor Statistics.

(d) Extension

(1) In general

(A) Authorization or duration of program

Unless the Congress in the regular session which ends prior to the beginning of the terminal fiscal year--

(i) of the authorization of appropriations for the program authorized by the State grant program under part B of this title; or

(ii) of the duration of the program authorized by the State grant program under part B of this title;

has passed legislation which would have the effect of extending the authorization or duration (as the case may be) of such program, such authorization or duration is automatically extended for 1 additional year for the program authorized by this title.

(B) Calculation

The amount authorized to be appropriated for the additional fiscal year described in subparagraph (A) shall be an amount equal to the amount appropriated for such program for fiscal year 2003, increased by the percentage change in the Consumer Price Index determined under subsection (c) for the immediately preceding fiscal year, if the percentage change indicates an increase.

(2) Construction

(A) Passage of legislation

For the purposes of paragraph (1)(A), Congress shall not be deemed to have passed legislation unless such legislation becomes law.

(B) Acts or determinations of commissioner

In any case where the Commissioner is required under an applicable statute to carry out certain acts or make certain determinations which are necessary for the continuation of the program authorized by this title, if such acts or determinations are required during the terminal year of such program, such acts and determinations shall be required during any fiscal year in which the extension described in that part of paragraph (1) that follows clause (ii) of paragraph (1)(A) is in effect.

Sec. 101. State Plans

(a) Plan Requirements

(1) In general

(A) Submission

To be eligible to participate in programs under this title, a State shall submit to the Commissioner a State plan for vocational rehabilitation services that meets the requirements of this section, on the same date that the State submits a State plan under section 112 of the Workforce Investment Act of 1998.

(B) Nonduplication

The State shall not be required to submit, in the State plan for vocational rehabilitation services, policies, procedures, or descriptions required under this title that have been previously submitted to the Commissioner and that demonstrate that such State meets the requirements of this title, including any policies, procedures, or descriptions submitted under this title as in effect on the day before the effective date of the Rehabilitation Act Amendments of 1998.

(C) Duration

The State plan shall remain in effect subject to the submission of such modifications as the State determines to be necessary or as the Commissioner may require based on a change in State policy, a change in Federal law (including regulations), an interpretation of this Act by a Federal court or the highest court of the State, or a finding by the Commissioner of State noncompliance with the requirements of this Act, until the State submits and receives approval of a new State plan.

(2) Designated state agency; designated state unit

(A) Designated state agency

The State plan shall designate a State agency as the sole State agency to administer the plan, or to supervise the administration of the plan by a local agency, except that--

(i) where, under State law, the State agency for individuals who are blind or another agency that provides assistance or services to adults who are blind is authorized to provide vocational rehabilitation services to individuals who are blind, that agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind (or to supervise the administration of such part by a local agency) and a separate State agency may be designated as the sole State agency to administer or supervise the administration of the rest of the State plan;

(ii) the Commissioner, on the request of a State, may authorize the designated State agency to share funding and administrative responsibility with another agency of the State or with a local agency in order to permit the agencies to carry out a joint program to provide services to individuals with disabilities, and may waive compliance, with respect to vocational rehabilitation services furnished under the joint program, with the requirement of paragraph (4) that the plan be in effect in all political subdivisions of the State; and

(iii) in the case of American Samoa, the appropriate State agency shall be the Governor of American Samoa.

(B) Designated state unit

The State agency designated under subparagraph (A) shall be--

(i) a State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities; or

(ii) if not such an agency, the State agency (or each State agency if 2 are so designated) shall include a vocational rehabilitation bureau, division, or other organizational unit that--

(I) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities, and is responsible for the vocational rehabilitation program of the designated State agency;

(II) has a full-time director;

(III) has a staff employed on the rehabilitation work of the organizational unit all or substantially all of whom are employed full time on such work; and

(IV) is located at an organizational level and has an organizational status within the designated State agency comparable to that of other major organizational units of the designated State agency.

(C) Responsibility for services for the blind

If the State has designated only 1 State agency pursuant to subparagraph (A), the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided for individuals who are blind to an organizational unit of the designated State agency and assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of subparagraph (B) applying separately to each of the designated State units.

(3) Non-federal share

The State plan shall provide for financial participation by the State, or if the State so elects, by the State and local agencies, to provide the amount of the non-Federal share of the cost of carrying out part B.

(4) Statewideness

The State plan shall provide that the plan shall be in effect in all political subdivisions of the State, except that--

(A) in the case of any activity that, in the judgment of the Commissioner, is likely to assist in promoting the vocational rehabilitation of substantially larger numbers of individuals with disabilities or groups of individuals with disabilities, the Commissioner may waive compliance with the requirement that the plan be in effect in all political subdivisions of the State to the extent and for such period as may be provided in accordance with regulations prescribed by the Commissioner, but only if the non-Federal share of the cost of the vocational rehabilitation services involved is met from funds made available by a local agency (including funds contributed to such agency by a private agency, organization, or individual); and

(B) in a case in which earmarked funds are used toward the non-Federal share and such funds are earmarked for particular geographic areas within the State, the earmarked funds may be used in such areas if the State notifies the Commissioner that the State cannot provide the full non-Federal share without such funds.

(5) Order of selection for vocational rehabilitation services

In the event that vocational rehabilitation services cannot be provided to all eligible individuals with disabilities in the State who apply for the services, the State plan shall--

(A) show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;

(B) provide the justification for the order of selection;

(C) include an assurance that, in accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and

(D) provide that eligible individuals, who do not meet the order of selection criteria, shall have access to services provided through the information and referral system implemented under paragraph (20).

(6) Methods for administration

(A) In general

The State plan shall provide for such methods of administration as are found by the Commissioner to be necessary for the proper and efficient administration of the plan.

(B) Employment of individuals with disabilities

The State plan shall provide that the designated State agency, and entities carrying out community rehabilitation programs in the State, who are in receipt of assistance under this title shall take affirmative action to employ and advance in employment qualified individuals with disabilities covered under, and on the same terms and conditions as set forth in, section 503.

(C) Facilities

The State plan shall provide that facilities used in connection with the delivery of services assisted under the State plan shall comply with the Act entitled "An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped", approved on August 12, 1968 (commonly known as the "Architectural Barriers Act of 1968"); with section 504; and with the Americans with Disabilities Act of 1990.

(7) Comprehensive system of personnel development

The State plan shall--

(A) include a description (consistent with the purposes of this Act) of a comprehensive system of personnel development, which shall include--

(i) a description of the procedures and activities the designated State agency will undertake to ensure an adequate supply of qualified State rehabilitation professionals and paraprofessionals for the designated State unit, including the development and maintenance of a system for determining, on an annual basis--

(I) the number and type of personnel that are employed by the designated State unit in the provision of vocational rehabilitation services, including ratios of qualified vocational rehabilitation counselors to clients; and

(II) the number and type of personnel needed by the State, and a projection of the numbers of such personnel that will be needed in 5 years, based on projections of the number of individuals to be served, the number of such personnel who are expected to retire or leave the vocational rehabilitation field, and other relevant factors;

(ii) where appropriate, a description of the manner in which activities will be undertaken under this section to coordinate the system of personnel development with personnel development activities under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

(iii) a description of the development and maintenance of a system of determining, on an annual basis, information on the programs of institutions of higher education within the State that are preparing rehabilitation professionals, including--

(I) the numbers of students enrolled in such programs; and

(II) the number of such students who graduated with certification or licensure, or with credentials to qualify for certification or licensure, as a rehabilitation professional during the past year;

(iv) a description of the development, updating, and implementation of a plan that--

(I) will address the current and projected vocational rehabilitation services personnel training needs for the designated State unit; and

(II) provides for the coordination and facilitation of efforts between the designated State unit, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel who are individuals with disabilities; and

(v) a description of the procedures and activities the designated State agency will undertake to ensure that all personnel employed by the designated State unit are appropriately and adequately trained and prepared, including--

(I) a system for the continuing education of rehabilitation professionals and paraprofessionals within the designated State unit, particularly with respect to rehabilitation technology; and
(II) procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated State unit significant knowledge from research and other sources, including procedures for providing training regarding the amendments to this Act made by the Rehabilitation Act Amendments of 1998;

(B) set forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel, including rehabilitation professionals and paraprofessionals, needed within the designated State unit to carry out this part are appropriately and adequately prepared and trained, including--

(i) the establishment and maintenance of standards that are consistent with any national or State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing vocational rehabilitation services; and

(ii) to the extent that such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel within the designated State unit that meet appropriate professional requirements in the State; and

(C) contain provisions relating to the establishment and maintenance of minimum standards to ensure the availability of personnel within the designated State unit, to the maximum extent feasible, trained to communicate in the native language or mode of communication of an applicant or eligible individual.

(8) Comparable services and benefits

(A) Determination of availability

(i) In general

The State plan shall include an assurance that, prior to providing any vocational rehabilitation service to an eligible individual, except those services specified in paragraph (5)(D) and in paragraphs (1) through (4) and (14) of section 103(a), the designated State unit will determine whether comparable services and benefits are available under any other program (other than a program carried out under this title) unless such a determination would interrupt or delay--

- (I) the progress of the individual toward achieving the employment outcome identified in the individualized plan for employment of the individual in accordance with section 102(b);
- (II) an immediate job placement; or
- (III) the provision of such service to any individual at extreme medical risk.

(ii) Awards and scholarships

For purposes of clause (i), comparable benefits do not include awards and scholarships based on merit.

(B) Interagency agreement

The State plan shall include an assurance that the Governor of the State, in consultation with the entity in the State responsible for the vocational rehabilitation program and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between any appropriate public entity, including the State entity responsible for administering the State medicaid program, a public institution of higher education, and a component of the statewide workforce investment system, and the designated State unit, in order to ensure the provision of vocational rehabilitation services described in subparagraph (A) (other than those services specified in paragraph (5)(D), and in paragraphs (1) through (4) and (14) of section 103(a)), that are included in the individualized plan for employment of an eligible individual, including the provision of such vocational rehabilitation services during the pendency of any dispute described in clause (iii). Such agreement or mechanism shall include the following:

(i) Agency financial responsibility

An identification of, or a description of a method for defining, the financial responsibility of such public entity for providing such services, and a provision stating the financial responsibility of such public entity for providing such services.

(ii) Conditions, terms, and procedures of reimbursement

Information specifying the conditions, terms, and procedures under which a designated State unit shall be reimbursed by other public entities for providing such services, based on the provisions of such agreement or mechanism.

(iii) Interagency disputes

Information specifying procedures for resolving interagency disputes under the agreement or other mechanism (including procedures under which the designated State unit may initiate proceedings to secure reimbursement from other public entities or otherwise implement the provisions of the agreement or mechanism).

(iv) Coordination of services procedures

Information specifying policies and procedures for public entities to determine and identify the interagency coordination responsibilities of each public entity to promote the coordination and

timely delivery of vocational rehabilitation services (except those services specified in paragraph (5)(D) and in paragraphs (1) through (4) and (14) of section 103(a)).

(C) Responsibilities of other public entities

(i) Responsibilities under other law

Notwithstanding subparagraph (B), if any public entity other than a designated State unit is obligated under Federal or State law, or assigned responsibility under State policy or under this paragraph, to provide or pay for any services that are also considered to be vocational rehabilitation services (other than those specified in paragraph (5)(D) and in paragraphs (1) through (4) and (14) of section 103(a)), such public entity shall fulfill that obligation or responsibility, either directly or by contract or other arrangement.

(ii) Reimbursement

If a public entity other than the designated State unit fails to provide or pay for the services described in clause (i) for an eligible individual, the designated State unit shall provide or pay for such services to the individual. Such designated State unit may claim reimbursement for the services from the public entity that failed to provide or pay for such services. Such public entity shall reimburse the designated State unit pursuant to the terms of the interagency agreement or other mechanism described in this paragraph according to the procedures established in such agreement or mechanism pursuant to subparagraph (B)(ii).

(D) Methods

The Governor of a State may meet the requirements of subparagraph (B) through--

(i) a State statute or regulation;

(ii) a signed agreement between the respective officials of the public entities that clearly identifies the responsibilities of each public entity relating to the provision of services; or

(iii) another appropriate method, as determined by the designated State unit.

(9) Individualized plan for employment

(A) Development and implementation

The State plan shall include an assurance that an individualized plan for employment meeting the requirements of section 102(b) will be developed and implemented in a timely manner for an individual subsequent to the determination of the eligibility of the individual for services under this title, except that in a State operating under an order of selection described in paragraph (5),

the plan will be developed and implemented only for individuals meeting the order of selection criteria of the State.

(B) Provision of services

The State plan shall include an assurance that such services will be provided in accordance with the provisions of the individualized plan for employment.

(10) Reporting requirements

(A) In general

The State plan shall include an assurance that the designated State agency will submit reports in the form and level of detail and at the time required by the Commissioner regarding applicants for, and eligible individuals receiving, services under this title.

(B) Annual reporting

In specifying the information to be submitted in the reports, the Commissioner shall require annual reporting on the eligible individuals receiving the services, on those specific data elements described in section 136(d)(2) of the Workforce Investment Act of 1998 that are determined by the Secretary to be relevant in assessing the performance of designated State units in carrying out the vocational rehabilitation program established under this title.

(C) Additional data

In specifying the information required to be submitted in the reports, the Commissioner shall require additional data with regard to applicants and eligible individuals related to--

(i) the number of applicants and the number of individuals determined to be eligible or ineligible for the program carried out under this title, including--

(I) the number of individuals determined to be ineligible because they did not require vocational rehabilitation services, as provided in section 102(a); and

(II) the number of individuals determined, on the basis of clear and convincing evidence, to be too severely disabled to benefit in terms of an employment outcome from vocational rehabilitation services;

(ii) the number of individuals who received vocational rehabilitation services through the program, including--

(I) the number who received services under paragraph (5)(D), but not assistance under an individualized plan for employment;

(II) of those recipients who are individuals with significant disabilities, the number who received assistance under an individualized plan for employment consistent with section 102(b); and

(III) of those recipients who are not individuals with significant disabilities, the number who received assistance under an individualized plan for employment consistent with section 102(b);

(iii) of those applicants and eligible recipients who are individuals with significant disabilities--

(I) the number who ended their participation in the program carried out under this title and the number who achieved employment outcomes after receiving vocational rehabilitation services; and

(II) the number who ended their participation in the program and who were employed 6 months and 12 months after securing or regaining employment, or, in the case of individuals whose employment outcome was to retain or advance in employment, who were employed 6 months and 12 months after achieving their employment outcome, including--

(aa) the number who earned the minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or another wage level set by the Commissioner, during such employment; and

(bb) the number who received employment benefits from an employer during such employment; and

(iv) of those applicants and eligible recipients who are not individuals with significant disabilities--

(I) the number who ended their participation in the program carried out under this title and the number who achieved employment outcomes after receiving vocational rehabilitation services; and

(II) the number who ended their participation in the program and who were employed 6 months and 12 months after securing or regaining employment, or, in the case of individuals whose employment outcome was to retain or advance in employment, who were employed 6 months and 12 months after achieving their employment outcome, including--

(aa) the number who earned the minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or another wage level set by the Commissioner, during such employment; and

(bb) the number who received employment benefits from an employer during such employment.

(D) Costs and results

The Commissioner shall also require that the designated State agency include in the reports information on--

(i) the costs under this title of conducting administration, providing assessment services, counseling and guidance, and other direct services provided by designated State agency staff,

providing services purchased under individualized plans for employment, supporting small business enterprises, establishing, developing, and improving community rehabilitation programs, providing other services to groups, and facilitating use of other programs under this Act and title I of the Workforce Investment Act of 1998 by eligible individuals; and

(ii) the results of annual evaluation by the State of program effectiveness under paragraph (15)(E).

(E) Additional information

The Commissioner shall require that each designated State unit include in the reports additional information related to the applicants and eligible individuals, obtained either through a complete count or sampling, including--

(i) information on--

(I) age, gender, race, ethnicity, education, category of impairment, severity of disability, and whether the individuals are students with disabilities;

(II) dates of application, determination of eligibility or ineligibility, initiation of the individualized plan for employment, and termination of participation in the program;

(III) earnings at the time of application for the program and termination of participation in the program;

(IV) work status and occupation;

(V) types of services, including assistive technology services and assistive technology devices, provided under the program;

(VI) types of public or private programs or agencies that furnished services under the program; and

(VII) the reasons for individuals terminating participation in the program without achieving an employment outcome; and

(ii) information necessary to determine the success of the State in meeting--

(I) the State performance measures established under section 136(b) of the Workforce Investment Act of 1998, to the extent the measures are applicable to individuals with disabilities; and

(II) the standards and indicators established pursuant to section 106.

(F) Completeness and confidentiality

The State plan shall include an assurance that the information submitted in the reports will include a complete count, except as provided in subparagraph (E), of the applicants and eligible individuals, in a manner permitting the greatest possible cross-classification of data and that the identity of each individual for which information is supplied under this paragraph will be kept confidential.

(11) Cooperation, collaboration, and coordination

(A) Cooperative agreements with other components of statewide workforce investment systems

The State plan shall provide that the designated State unit or designated State agency shall enter into a cooperative agreement with other entities that are components of the statewide workforce investment system of the State, regarding the system, which agreement may provide for--

(i) provision of intercomponent staff training and technical assistance with regard to--

(I) the availability and benefits of, and information on eligibility standards for, vocational rehabilitation services; and

(II) the promotion of equal, effective, and meaningful participation by individuals with disabilities in workforce investment activities in the State through the promotion of program accessibility, the use of nondiscriminatory policies and procedures, and the provision of reasonable accommodations, auxiliary aids and services, and rehabilitation technology, for individuals with disabilities;

(ii) use of information and financial management systems that link all components of the statewide workforce investment system, that link the components to other electronic networks, including nonvisual electronic networks, and that relate to such subjects as employment statistics, and information on job vacancies, career planning, and workforce investment activities;

(iii) use of customer service features such as common intake and referral procedures, customer databases, resource information, and human services hotlines;

(iv) establishment of cooperative efforts with employers to--

(I) facilitate job placement; and

(II) carry out any other activities that the designated State unit and the employers determine to be appropriate;

(v) identification of staff roles, responsibilities, and available resources, and specification of the financial responsibility of each component of the statewide workforce investment system with regard to paying for necessary services (consistent with State law and Federal requirements); and

(vi) specification of procedures for resolving disputes among such components.

(B) Replication of cooperative agreements

The State plan shall provide for the replication of such cooperative agreements at the local level between individual offices of the designated State unit and local entities carrying out activities through the statewide workforce investment system.

(C) Interagency cooperation with other agencies

The State plan shall include descriptions of interagency cooperation with, and utilization of the services and facilities of, Federal, State, and local agencies and programs, including programs carried out by the Under Secretary for Rural Development of the Department of Agriculture and State use contracting programs, to the extent that such agencies and programs are not carrying out activities through the statewide workforce investment system.

(D) Coordination with education officials

The State plan shall contain plans, policies, and procedures for coordination between the designated State agency and education officials responsible for the public education of students with disabilities, that are designed to facilitate the transition of the students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitation services under this title, including information on a formal interagency agreement with the State educational agency that, at a minimum, provides for--

(i) consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;

(ii) transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of their individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (as added by section 101 of Public Law 105-17);

(iii) the roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and

(iv) procedures for outreach to and identification of students with disabilities who need the transition services.

(E) Coordination with statewide independent living councils and independent living centers

The State plan shall include an assurance that the designated State unit, the Statewide Independent Living Council established under section 705, and the independent living centers

described in part C of title VII within the State have developed working relationships and coordinate their activities.

(F) Cooperative agreement with recipients of grants for services to american indians

In applicable cases, the State plan shall include an assurance that the State has entered into a formal cooperative agreement with each grant recipient in the State that receives funds under part C. The agreement shall describe strategies for collaboration and coordination in providing vocational rehabilitation services to American Indians who are individuals with disabilities, including--

(i) strategies for interagency referral and information sharing that will assist in eligibility determinations and the development of individualized plans for employment;

(ii) procedures for ensuring that American Indians who are individuals with disabilities and are living near a reservation or tribal service area are provided vocational rehabilitation services; and

(iii) provisions for sharing resources in cooperative studies and assessments, joint training activities, and other collaborative activities designed to improve the provision of services to American Indians who are individuals with disabilities.

(12) Residency

The State plan shall include an assurance that the State will not impose a residence requirement that excludes from services provided under the plan any individual who is present in the State.

(13) Services to American Indians

The State plan shall include an assurance that, except as otherwise provided in part C, the designated State agency will provide vocational rehabilitation services to American Indians who are individuals with disabilities residing in the State to the same extent as the designated State agency provides such services to other significant populations of individuals with disabilities residing in the State.

(14) Annual review of individuals in extended employment or other employment under special certificate provisions of the fair labor standards act of 1938

The State plan shall provide for--

(A) an annual review and reevaluation of the status of each individual with a disability served under this title who has achieved an employment outcome either in an extended employment setting in a community rehabilitation program or any other employment under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)) for 2 years after the achievement of the outcome

(and thereafter if requested by the individual or, if appropriate, the individual's representative), to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment;

(B) input into the review and reevaluation, and a signed acknowledgment that such review and reevaluation have been conducted, by the individual with a disability, or, if appropriate, the individual's representative; and

(C) maximum efforts, including the identification and provision of vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individuals described in subparagraph (A) in engaging in competitive employment.

(15) Annual state goals and reports of progress

(A) Assessments and estimates

The State plan shall--

(i) include the results of a comprehensive, statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the State has such a Council) every 3 years, describing the rehabilitation needs of individuals with disabilities residing within the State, particularly the vocational rehabilitation services needs of--

(I) individuals with the most significant disabilities, including their need for supported employment services;

(II) individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program carried out under this title; and

(III) individuals with disabilities served through other components of the statewide workforce investment system (other than the vocational rehabilitation program), as identified by such individuals and personnel assisting such individuals through the components;

(ii) include an assessment of the need to establish, develop, or improve community rehabilitation programs within the State; and

(iii) provide that the State shall submit to the Commissioner a report containing information regarding updates to the assessments, for any year in which the State updates the assessments.

(B) Annual estimates

The State plan shall include, and shall provide that the State shall annually submit a report to the Commissioner that includes, State estimates of--

(i) the number of individuals in the State who are eligible for services under this title;

(ii) the number of such individuals who will receive services provided with funds provided under part B and under part B of title VI, including, if the designated State agency uses an order of selection in accordance with paragraph (5), estimates of the number of individuals to be served under each priority category within the order; and

(iii) the costs of the services described in clause (i), including, if the designated State agency uses an order of selection in accordance with paragraph (5), the service costs for each priority category within the order.

(C) Goals and priorities

(i) In general

The State plan shall identify the goals and priorities of the State in carrying out the program. The goals and priorities shall be jointly developed, agreed to, and reviewed annually by the designated State unit and the State Rehabilitation Council, if the State has such a Council. Any revisions to the goals and priorities shall be jointly agreed to by the designated State unit and the State Rehabilitation Council, if the State has such a Council. The State plan shall provide that the State shall submit to the Commissioner a report containing information regarding revisions in the goals and priorities, for any year in which the State revises the goals and priorities.

(ii) Basis

The State goals and priorities shall be based on an analysis of--

(I) the comprehensive assessment described in subparagraph (A), including any updates to the assessment;

(II) the performance of the State on the standards and indicators established under section 106; and

(III) other available information on the operation and the effectiveness of the vocational rehabilitation program carried out in the State, including any reports received from the State Rehabilitation Council, under section 105(c) and the findings and recommendations from monitoring activities conducted under section 107.

(iii) Service and outcome goals for categories in order of selection

If the designated State agency uses an order of selection in accordance with paragraph (5), the State shall also identify in the State plan service and outcome goals and the time within which these goals may be achieved for individuals in each priority category within the order.

(D) Strategies

The State plan shall contain a description of the strategies the State will use to address the needs identified in the assessment conducted under subparagraph (A) and achieve the goals and priorities identified in subparagraph (C), including--

(i) the methods to be used to expand and improve services to individuals with disabilities, including how a broad range of assistive technology services and assistive technology devices will be provided to such individuals at each stage of the rehabilitation process and how such services and devices will be provided to such individuals on a statewide basis;

(ii) outreach procedures to identify and serve individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program;

(iii) where necessary, the plan of the State for establishing, developing, or improving community rehabilitation programs;

(iv) strategies to improve the performance of the State with respect to the evaluation standards and performance indicators established pursuant to section 106; and

(v) strategies for assisting entities carrying out other components of the statewide workforce investment system (other than the vocational rehabilitation program) in assisting individuals with disabilities.

(E) Evaluation and reports of progress

The State plan shall--

(i) include the results of an evaluation of the effectiveness of the vocational rehabilitation program, and a joint report by the designated State unit and the State Rehabilitation Council, if the State has such a Council, to the Commissioner on the progress made in improving the effectiveness from the previous year, which evaluation and report shall include--

(I) an evaluation of the extent to which the goals identified in subparagraph (C) were achieved;

(II) a description of strategies that contributed to achieving the goals;

(III) to the extent to which the goals were not achieved, a description of the factors that impeded that achievement; and

(IV) an assessment of the performance of the State on the standards and indicators established pursuant to section 106; and

(ii) provide that the designated State unit and the State Rehabilitation Council, if the State has such a Council, shall jointly submit to the Commissioner an annual report that contains the information described in clause (I).

(16) Public comment

The State plan shall--

(A) provide that the designated State agency, prior to the adoption of any policies or procedures governing the provision of vocational rehabilitation services under the State plan (including making any amendment to such policies and procedures), shall conduct public meetings throughout the State, after providing adequate notice of the meetings, to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures, and actively consult with the Director of the client assistance program carried out under section 112, and, as appropriate, Indian tribes, tribal organizations, and Native Hawaiian organizations on the policies or procedures; and

(B) provide that the designated State agency (or each designated State agency if 2 agencies are designated) and any sole agency administering the plan in a political subdivision of the State, shall take into account, in connection with matters of general policy arising in the administration of the plan, the views of--

(i) individuals and groups of individuals who are recipients of vocational rehabilitation services, or in appropriate cases, the individuals' representatives;

(ii) personnel working in programs that provide vocational rehabilitation services to individuals with disabilities;

(iii) providers of vocational rehabilitation services to individuals with disabilities;

(iv) the director of the client assistance program; and

(v) the State Rehabilitation Council, if the State has such a Council.

(17) Use of funds for construction of facilities

The State plan shall provide that if, under special circumstances, the State plan includes provisions for the construction of facilities for community rehabilitation programs--

(A) the Federal share of the cost of construction for the facilities for a fiscal year will not exceed an amount equal to 10 percent of the State's allotment under section 110 for such year;

(B) the provisions of section 306 (as in effect on the day before the date of enactment of the Rehabilitation Act Amendments of 1998) shall be applicable to such construction and such provisions shall be deemed to apply to such construction; and

(C) there shall be compliance with regulations the Commissioner shall prescribe designed to assure that no State will reduce its efforts in providing other vocational rehabilitation services (other than for the establishment of facilities for community rehabilitation programs) because the plan includes such provisions for construction.

(18) Innovation and expansion activities

The State plan shall--

(A) include an assurance that the State will reserve and use a portion of the funds allotted to the State under section 110--

(i) for the development and implementation of innovative approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities under this title, particularly individuals with the most significant disabilities, consistent with the findings of the statewide assessment and goals and priorities of the State as described in paragraph (15); and

(ii) to support the funding of--

(I) the State Rehabilitation Council, if the State has such a Council, consistent with the plan prepared under section 105(d)(1); and

(II) the Statewide Independent Living Council, consistent with the plan prepared under section 705(e)(1);

(B) include a description of how the reserved funds will be utilized; and

(C) provide that the State shall submit to the Commissioner an annual report containing a description of how the reserved funds will be utilized.

(19) Choice

The State plan shall include an assurance that applicants and eligible individuals or, as appropriate, the applicants' representatives or individuals' representatives, will be provided information and support services to assist the applicants and individuals in exercising informed choice throughout the rehabilitation process, consistent with the provisions of section 102(d).

(20) Information and referral services

(A) In general

The State plan shall include an assurance that the designated State agency will implement an information and referral system adequate to ensure that individuals with disabilities will be provided accurate vocational rehabilitation information and guidance, using appropriate modes

of communication, to assist such individuals in preparing for, securing, retaining, or regaining employment, and will be appropriately referred to Federal and State programs (other than the vocational rehabilitation program carried out under this title), including other components of the statewide workforce investment system in the State.

(B) Referrals

An appropriate referral made through the system shall--

(i) be to the Federal or State programs, including programs carried out by other components of the statewide workforce investment system in the State, best suited to address the specific employment needs of an individual with a disability; and

(ii) include, for each of these programs, provision to the individual of--

(I) a notice of the referral by the designated State agency to the agency carrying out the program;

(II) information identifying a specific point of contact within the agency carrying out the program; and

(III) information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

(21) State independent consumer-controlled commission; state rehabilitation council

(A) Commission or council

The State plan shall provide that either--

(i) the designated State agency is an independent commission that--

(I) is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State;

(II) is consumer-controlled by persons who--

(aa) are individuals with physical or mental impairments that substantially limit major life activities; and

(bb) represent individuals with a broad range of disabilities, unless the designated State unit under the direction of the commission is the State agency for individuals who are blind;

(III) includes family members, advocates, or other representatives, of individuals with mental impairments; and

(IV) undertakes the functions set forth in section 105(c)(4); or

(ii) the State has established a State Rehabilitation Council that meets the criteria set forth in section 105 and the designated State unit--

(I) in accordance with paragraph (15), jointly develops, agrees to, and reviews annually State goals and priorities, and jointly submits annual reports of progress with the Council;

(II) regularly consults with the Council regarding the development, implementation, and revision of State policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services;

(III) includes in the State plan and in any revision to the State plan, a summary of input provided by the Council, including recommendations from the annual report of the Council described in section 105(c)(5), the review and analysis of consumer satisfaction described in section 105(c)(4), and other reports prepared by the Council, and the response of the designated State unit to such input and recommendations, including explanations for rejecting any input or recommendation; and

(IV) transmits to the Council--

(aa) all plans, reports, and other information required under this title to be submitted to the Secretary;

(bb) all policies, and information on all practices and procedures, of general applicability provided to or used by rehabilitation personnel in carrying out this title; and

(cc) copies of due process hearing decisions issued under this title, which shall be transmitted in such a manner as to ensure that the identity of the participants in the hearings is kept confidential.

(B) More than 1 designated state agency

In the case of a State that, under section 101(a)(2), designates a State agency to administer the part of the State plan under which vocational rehabilitation services are provided for individuals who are blind (or to supervise the administration of such part by a local agency) and designates a separate State agency to administer the rest of the State plan, the State shall either establish a State Rehabilitation Council for each of the 2 agencies that does not meet the requirements in subparagraph (A)(i), or establish 1 State Rehabilitation Council for both agencies if neither agency meets the requirements of subparagraph (A)(i).

(22) Supported employment state plan supplement

The State plan shall include an assurance that the State has an acceptable plan for carrying out part B of title VI, including the use of funds under that part to supplement funds made available under part B of this title to pay for the cost of services leading to supported employment.

(23) Annual updates

The plan shall include an assurance that the State will submit to the Commissioner reports containing annual updates of the information required under paragraph (7) (relating to a comprehensive system of personnel development) and any other updates of the information required under this section that are requested by the Commissioner, and annual reports as provided in paragraphs (15) (relating to assessments, estimates, goals and priorities, and reports

of progress) and (18) (relating to innovation and expansion), at such time and in such manner as the Secretary may determine to be appropriate.

(24) Certain contracts and cooperative agreements

(A) Contracts with for-profit organizations

The State plan shall provide that the designated State agency has the authority to enter into contracts with for-profit organizations for the purpose of providing, as vocational rehabilitation services, on-the-job training and related programs for individuals with disabilities under part A of title VI, upon a determination by such agency that such for-profit organizations are better qualified to provide such rehabilitation services than nonprofit agencies and organizations.

(B) Cooperative agreements with private nonprofit organizations

The State plan shall describe the manner in which cooperative agreements with private nonprofit vocational rehabilitation service providers will be established.

(b) Approval; Disapproval of the State Plan

(1) Approval

The Commissioner shall approve any plan that the Commissioner finds fulfills the conditions specified in this section, and shall disapprove any plan that does not fulfill such conditions.

(2) Disapproval

Prior to disapproval of the State plan, the Commissioner shall notify the State of the intention to disapprove the plan and shall afford the State reasonable notice and opportunity for a hearing.

Sec. 102. Eligibility and Individualized Plan for Employment

(a) Eligibility

(1) Criterion for eligibility

An individual is eligible for assistance under this title if the individual--

(A) is an individual with a disability under section 7(20)(A); and

(B) requires vocational rehabilitation services to prepare for, secure, retain, or regain employment.

(2) Presumption of benefit

(A) Demonstration

For purposes of this section, an individual shall be presumed to be an individual that can benefit in terms of an employment outcome from vocational rehabilitation services under section 7(20)(A), unless the designated State unit involved can demonstrate by clear and convincing evidence that such individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual.

(B) Methods

In making the demonstration required under subparagraph (A), the designated State unit shall explore the individual's abilities, capabilities, and capacity to perform in work situations, through the use of trial work experiences, as described in section 7(2)(D), with appropriate supports provided through the designated State unit, except under limited circumstances when an individual can not take advantage of such experiences. Such experiences shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual or to determine the existence of clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual.

(3) Presumption of eligibility

(A) In general

For purposes of this section, an individual who has a disability or is blind as determined pursuant to title II or title XVI of the Social Security Act (42 U.S.C. 401 et seq. and 1381 et seq.) shall be--

(i) considered to be an individual with a significant disability under section 7(21)(A); and

(ii) presumed to be eligible for vocational rehabilitation services under this title (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless the designated State unit involved can demonstrate by clear and convincing evidence that such individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual in accordance with paragraph (2).

(B) Construction

Nothing in this paragraph shall be construed to create an entitlement to any vocational rehabilitation service.

(4) Use of existing information

(A) In general

To the maximum extent appropriate and consistent with the requirements of this part, for purposes of determining the eligibility of an individual for vocational rehabilitation services under this title and developing the individualized plan for employment described in subsection (b) for the individual, the designated State unit shall use information that is existing and current (as of the date of the determination of eligibility or of the development of the individualized plan for employment), including information available from other programs and providers, particularly information used by education officials and the Social Security Administration, information provided by the individual and the family of the individual, and information obtained under the assessment for determining eligibility and vocational rehabilitation needs.

(B) Determinations by officials of other agencies

Determinations made by officials of other agencies, particularly education officials described in section 101(a)(11)(D), regarding whether an individual satisfies 1 or more factors relating to whether an individual is an individual with a disability under section 7(20)(A) or an individual with a significant disability under section 7(21)(A) shall be used, to the extent appropriate and consistent with the requirements of this part, in assisting the designated State unit in making such determinations.

(C) Basis

The determination of eligibility for vocational rehabilitation services shall be based on--

(i) the review of existing data described in section 7(2)(A)(i); and

(ii) to the extent that such data is unavailable or insufficient for determining eligibility, the provision of assessment activities described in section 7(2)(A)(ii).

(5) Determination of ineligibility

If an individual who applies for services under this title is determined, based on the review of existing data and, to the extent necessary, the assessment activities described in section 7(2)(A)(ii), not to be eligible for the services, or if an eligible individual receiving services under an individualized plan for employment is determined to be no longer eligible for the services--

(A) the ineligibility determination involved shall be made only after providing an opportunity for full consultation with the individual or, as appropriate, the individual's representative;

(B) the individual or, as appropriate, the individual's representative, shall be informed in writing (supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual) of the ineligibility determination, including--

(i) the reasons for the determination; and

(ii) a description of the means by which the individual may express, and seek a remedy for, any dissatisfaction with the determination, including the procedures for review by an impartial hearing officer under subsection (c);

(C) the individual shall be provided with a description of services available from the client assistance program under section 112 and information on how to contact that program; and

(D) any ineligibility determination that is based on a finding that the individual is incapable of benefiting in terms of an employment outcome shall be reviewed--

(i) within 12 months; and

(ii) thereafter, if such a review is requested by the individual or, if appropriate, by the individual's representative.

(6) Timeframe for making an eligibility determination

The designated State unit shall determine whether an individual is eligible for vocational rehabilitation services under this title within a reasonable period of time, not to exceed 60 days, after the individual has submitted an application for the services unless--

(A) exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and the individual agree to a specific extension of time; or

(B) the designated State unit is exploring an individual's abilities, capabilities, and capacity to perform in work situations under paragraph (2)(B).

(b) Development of an Individualized Plan for Employment

(1) Options for developing an individualized plan for employment

If an individual is determined to be eligible for vocational rehabilitation services as described in subsection (a), the designated State unit shall complete the assessment for determining eligibility and vocational rehabilitation needs, as appropriate, and shall provide the eligible individual or the individual's representative, in writing and in an appropriate mode of communication, with information on the individual's options for developing an individualized plan for employment, including--

(A) information on the availability of assistance, to the extent determined to be appropriate by the eligible individual, from a qualified vocational rehabilitation counselor in developing all or part of the individualized plan for employment for the individual, and the availability of technical assistance in developing all or part of the individualized plan for employment for the individual;

(B) a description of the full range of components that shall be included in an individualized plan for employment;

(C) as appropriate--

(i) an explanation of agency guidelines and criteria associated with financial commitments concerning an individualized plan for employment;

(ii) additional information the eligible individual requests or the designated State unit determines to be necessary; and

(iii) information on the availability of assistance in completing designated State agency forms required in developing an individualized plan for employment; and

(D)(i) a description of the rights and remedies available to such an individual including, if appropriate, recourse to the processes set forth in subsection (c); and

(ii) a description of the availability of a client assistance program established pursuant to section 112 and information about how to contact the client assistance program.

(2) Mandatory procedures

(A) Written document

An individualized plan for employment shall be a written document prepared on forms provided by the designated State unit.

(B) Informed choice

An individualized plan for employment shall be developed and implemented in a manner that affords eligible individuals the opportunity to exercise informed choice in selecting an

employment outcome, the specific vocational rehabilitation services to be provided under the plan, the entity that will provide the vocational rehabilitation services, and the methods used to procure the services, consistent with subsection (d).

(C) Signatories

An individualized plan for employment shall be--

(i) agreed to, and signed by, such eligible individual or, as appropriate, the individual's representative; and

(ii) approved and signed by a qualified vocational rehabilitation counselor employed by the designated State unit.

(D) Copy

A copy of the individualized plan for employment for an eligible individual shall be provided to the individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, of the individual's representative.

(E) Review and amendment

The individualized plan for employment shall be--

(i) reviewed at least annually by--

(I) a qualified vocational rehabilitation counselor; and

(II) the eligible individual or, as appropriate, the individual's representative; and

(ii) amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the designated State agency or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the service providers of the services (which amendments shall not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative, and by a qualified vocational rehabilitation counselor employed by the designated State unit).

(3) Mandatory components of an individualized plan for employment

Regardless of the approach selected by an eligible individual to develop an individualized plan for employment, an individualized plan for employment shall, at a minimum, contain mandatory components consisting of--

(A) a description of the specific employment outcome that is chosen by the eligible individual, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual, and, to the maximum extent appropriate, results in employment in an integrated setting;

(B)(i) a description of the specific vocational rehabilitation services that are--

(I) needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices and assistive technology services, and personal assistance services, including training in the management of such services; and

(II) provided in the most integrated setting that is appropriate for the service involved and is consistent with the informed choice of the eligible individual; and

(ii) timelines for the achievement of the employment outcome and for the initiation of the services;

(C) a description of the entity chosen by the eligible individual or, as appropriate, the individual's representative, that will provide the vocational rehabilitation services, and the methods used to procure such services;

(D) a description of criteria to evaluate progress toward achievement of the employment outcome;

(E) the terms and conditions of the individualized plan for employment, including, as appropriate, information describing--

(i) the responsibilities of the designated State unit;

(ii) the responsibilities of the eligible individual, including--

(I) the responsibilities the eligible individual will assume in relation to the employment outcome of the individual;

(II) if applicable, the participation of the eligible individual in paying for the costs of the plan; and

(III) the responsibility of the eligible individual with regard to applying for and securing comparable benefits as described in section 101(a)(8); and

(iii) the responsibilities of other entities as the result of arrangements made pursuant to comparable services or benefits requirements as described in section 101(a)(8);

(F) for an eligible individual with the most significant disabilities for whom an employment outcome in a supported employment setting has been determined to be appropriate, information identifying--

(i) the extended services needed by the eligible individual; and

(ii) the source of extended services or, to the extent that the source of the extended services cannot be identified at the time of the development of the individualized plan for employment, a description of the basis for concluding that there is a reasonable expectation that such source will become available; and

(G) as determined to be necessary, a statement of projected need for post-employment services.

(c) Procedures

(1) In general

Each State shall establish procedures for mediation of, and procedures for review through an impartial due process hearing of, determinations made by personnel of the designated State unit that affect the provision of vocational rehabilitation services to applicants or eligible individuals.

(2) Notification

(A) Rights and assistance

The procedures shall provide that an applicant or an eligible individual or, as appropriate, the applicant's representative or individual's representative shall be notified of--

(i) the right to obtain review of determinations described in paragraph (1) in an impartial due process hearing under paragraph (5);

(ii) the right to pursue mediation with respect to the determinations under paragraph (4); and

(iii) the availability of assistance from the client assistance program under section 112.

(B) Timing

Such notification shall be provided in writing--

(i) at the time an individual applies for vocational rehabilitation services provided under this title;

(ii) at the time the individualized plan for employment for the individual is developed; and

(iii) upon reduction, suspension, or cessation of vocational rehabilitation services for the individual.

(3) Evidence and representation

The procedures required under this subsection shall, at a minimum--

(A) provide an opportunity for an applicant or an eligible individual, or, as appropriate, the applicant's representative or individual's representative, to submit at the mediation session or hearing evidence and information to support the position of the applicant or eligible individual; and

(B) include provisions to allow an applicant or an eligible individual to be represented in the mediation session or hearing by a person selected by the applicant or eligible individual.

(4) Mediation

(A) Procedures

Each State shall ensure that procedures are established and implemented under this subsection to allow parties described in paragraph (1) to disputes involving any determination described in paragraph (1) to resolve such disputes through a mediation process that, at a minimum, shall be available whenever a hearing is requested under this subsection.

(B) Requirements

Such procedures shall ensure that the mediation process--

(i) is voluntary on the part of the parties;

(ii) is not used to deny or delay the right of an individual to a hearing under this subsection, or to deny any other right afforded under this title; and

(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(C) List of mediators

The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services under this title, from which the mediators described in subparagraph (B) shall be selected.

(D) Cost

The State shall bear the cost of the mediation process.

(E) Scheduling

Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) Agreement

An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

(G) Confidentiality

Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

(H) Construction

Nothing in this subsection shall be construed to preclude the parties to such a dispute from informally resolving the dispute prior to proceedings under this paragraph or paragraph (5), if the informal process used is not used to deny or delay the right of the applicant or eligible individual to a hearing under this subsection or to deny any other right afforded under this title.

(5) Hearings

(A) Officer

A due process hearing described in paragraph (2) shall be conducted by an impartial hearing officer who shall issue a decision based on the provisions of the approved State plan, this Act (including regulations implementing this Act), and State regulations and policies that are consistent with the Federal requirements specified in this title. The officer shall provide the decision in writing to the applicant or eligible individual, or, as appropriate, the applicant's representative or individual's representative, and to the designated State unit.

(B) List

The designated State unit shall maintain a list of qualified impartial hearing officers who are knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services under this title from which the officer described in subparagraph (A) shall be selected. For the purposes of maintaining such list, impartial hearing officers shall be identified jointly by--

(i) the designated State unit; and

(ii) members of the Council or commission, as appropriate, described in section 101(a)(21).

(C) Selection

Such an impartial hearing officer shall be selected to hear a particular case relating to a determination--

(i) on a random basis; or

(ii) by agreement between--

(I) the Director of the designated State unit and the individual with a disability; or

(II) in appropriate cases, the Director and the individual's representative.

(D) Procedures for seeking review

A State may establish procedures to enable a party involved in a hearing under this paragraph to seek an impartial review of the decision of the hearing officer under subparagraph (A) by--

(i) the chief official of the designated State agency if the State has established both a designated State agency and a designated State unit under section 101(a)(2); or

(ii) an official from the office of the Governor.

(E) Review request

If the State establishes impartial review procedures under subparagraph (D), either party may request the review of the decision of the hearing officer within 20 days after the decision.

(F) Reviewing official

The reviewing official described in subparagraph (D) shall--

(i) in conducting the review, provide an opportunity for the submission of additional evidence and information relevant to a final decision concerning the matter under review;

(ii) not overturn or modify the decision of the hearing officer, or part of the decision, that supports the position of the applicant or eligible individual unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to the approved State plan, this Act

(including regulations implementing this Act) or any State regulation or policy that is consistent with the Federal requirements specified in this title; and

(iii) make a final decision with respect to the matter in a timely manner and provide such decision in writing to the applicant or eligible individual, or, as appropriate, the applicant's representative or individual's representative, and to the designated State unit, including a full report of the findings and the grounds for such decision.

(G) Finality of hearing decision

A decision made after a hearing under subparagraph (A) shall be final, except that a party may request an impartial review if the State has established procedures for such review under subparagraph (D) and a party involved in a hearing may bring a civil action under subparagraph (J).

(H) Finality of review

A decision made under subparagraph (F) shall be final unless such a party brings a civil action under subparagraph (J).

(I) Implementation

If a party brings a civil action under subparagraph (J) to challenge a final decision of a hearing officer under subparagraph (A) or to challenge a final decision of a State reviewing official under subparagraph (F), the final decision involved shall be implemented pending review by the court.

(J) Civil action

(i) In general

Any party aggrieved by a final decision described in subparagraph (I), may bring a civil action for review of such decision. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(ii) Procedure

In any action brought under this subparagraph, the court--

(I) shall receive the records relating to the hearing under subparagraph (A) and the records relating to the State review under subparagraphs (D) through (F), if applicable;

(II) shall hear additional evidence at the request of a party to the action; and

(III) basing the decision of the court on the preponderance of the evidence, shall grant such relief as the court determines to be appropriate.

(6) Hearing board

(A) In general

A fair hearing board, established by a State before January 1, 1985, and authorized under State law to review determinations or decisions under this Act, is authorized to carry out the responsibilities of the impartial hearing officer under this subsection.

(B) Application

The provisions of paragraphs (1), (2), and (3) that relate to due process hearings do not apply, and paragraph (5) (other than subparagraph (J)) does not apply, to any State to which subparagraph (A) applies.

(7) Impact on provision of services

Unless the individual with a disability so requests, or, in an appropriate case, the individual's representative, so requests, pending a decision by a mediator, hearing officer, or reviewing officer under this subsection, the designated State unit shall not institute a suspension, reduction, or termination of services being provided for the individual, including evaluation and assessment services and plan development, unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual, or the individual's representative.

(8) Information collection and report

(A) In general

The Director of the designated State unit shall collect information described in subparagraph (B) and prepare and submit to the Commissioner a report containing such information. The Commissioner shall prepare a summary of the information furnished under this paragraph and include the summary in the annual report submitted under section 13. The Commissioner shall also collect copies of the final decisions of impartial hearing officers conducting hearings under this subsection and State officials conducting reviews under this subsection.

(B) Information

The information required to be collected under this subsection includes--

(i) a copy of the standards used by State reviewing officials for reviewing decisions made by impartial hearing officers under this subsection;

(ii) information on the number of hearings and reviews sought from the impartial hearing officers and the State reviewing officials, including the type of complaints and the issues involved;

(iii) information on the number of hearing decisions made under this subsection that were not reviewed by the State reviewing officials; and

(iv) information on the number of the hearing decisions that were reviewed by the State reviewing officials, and, based on such reviews, the number of hearing decisions that were--

(I) sustained in favor of an applicant or eligible individual;

(II) sustained in favor of the designated State unit;

(III) reversed in whole or in part in favor of the applicant or eligible individual; and

(IV) reversed in whole or in part in favor of the designated State unit.

(C) Confidentiality

The confidentiality of records of applicants and eligible individuals maintained by the designated State unit shall not preclude the access of the Commissioner to those records for the purposes described in subparagraph (A).

(d) Policies and Procedures

Each designated State agency, in consultation with the State Rehabilitation Council, if the State has such a council, shall, consistent with section 100(a)(3)(C), develop and implement written policies and procedures that enable each individual who is an applicant for or eligible to receive vocational rehabilitation services under this title to exercise informed choice throughout the vocational rehabilitation process carried out under this title, including policies and procedures that require the designated State agency--

(1) to inform each such applicant and eligible individual (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of the designated State unit), through appropriate modes of communication, about the availability of, and opportunities to exercise, informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice, throughout the vocational rehabilitation process;

(2) to assist applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services under this title;

(3) to develop and implement flexible procurement policies and methods that facilitate the provision of services, and that afford eligible individuals meaningful choices among the methods used to procure services, under this title;

(4) to provide or assist eligible individuals in acquiring information that enables those individuals to exercise informed choice under this title in the selection of--

(A) the employment outcome;

(B) the specific vocational rehabilitation services needed to achieve the employment outcome;

(C) the entity that will provide the services;

(D) the employment setting and the settings in which the services will be provided; and

(E) the methods available for procuring the services; and

(5) to ensure that the availability and scope of informed choice provided under this section is consistent with the obligations of the designated State agency under this title.

Sec. 103. Vocational Rehabilitation Services

(a) Vocational Rehabilitation Services for Individuals

Vocational rehabilitation services provided under this title are any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, including--

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

(2) counseling and guidance, including information and support services to assist an individual in exercising informed choice consistent with the provisions of section 102(d);

(3) referral and other services to secure needed services from other agencies through agreements developed under section 101(a)(11), if such services are not available under this title;

(4) job-related services, including job search and placement assistance, job retention services, followup services, and follow-along services;

(5) vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials, except that no training services provided at an institution of higher education shall be paid for with funds under this title unless maximum efforts have been made by the designated State unit and the individual to secure grant assistance, in whole or in part, from other sources to pay for such training;

(6) to the extent that financial support is not readily available from a source (such as through health insurance of the individual or through comparable services and benefits consistent with section 101(a)(8)(A)), other than the designated State unit, diagnosis and treatment of physical and mental impairments, including--

(A) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition that constitutes a substantial impediment to employment, but is of such a nature that such correction or modification may reasonably be expected to eliminate or reduce such impediment to employment within a reasonable length of time;

(B) necessary hospitalization in connection with surgery or treatment;

(C) prosthetic and orthotic devices;

(D) eyeglasses and visual services as prescribed by qualified personnel who meet State licensure laws and who are selected by the individual;

(E) special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the treatment of individuals with end-stage renal disease; and

(F) diagnosis and treatment for mental and emotional disorders by qualified personnel who meet State licensure laws;

(7) maintenance for additional costs incurred while participating in an assessment for determining eligibility and vocational rehabilitation needs or while receiving services under an individualized plan for employment;

(8) transportation, including adequate training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service described in this section and needed by the individual to achieve an employment outcome;

(9) on-the-job or other related personal assistance services provided while an individual is receiving other services described in this section;

(10) interpreter services provided by qualified personnel for individuals who are deaf or hard of hearing, and reader services for individuals who are determined to be blind, after an examination by qualified personnel who meet State licensure laws;

(11) rehabilitation teaching services, and orientation and mobility services, for individuals who are blind;

(12) occupational licenses, tools, equipment, and initial stocks and supplies;

(13) technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(14) rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

(15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the individualized plan for employment;

(16) supported employment services;

(17) services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome; and

(18) specific post-employment services necessary to assist an individual with a disability to, retain, regain, or advance in employment.

(b) Vocational Rehabilitation Services for Groups of Individuals

Vocational rehabilitation services provided for the benefit of groups of individuals with disabilities may also include the following:

(1) In the case of any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by the designated State agency, the provision of such services and supervision, along or together with the acquisition by the designated State agency of vending facilities or other equipment and initial stocks and supplies.

(2)(A) The establishment, development, or improvement of community rehabilitation programs, including, under special circumstances, the construction of a facility. Such programs shall be used to provide services that promote integration and competitive employment.

(B) The provision of other services, that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any 1 individual with a disability.

(3) The use of telecommunications systems (including telephone, television, satellite, radio, and other similar systems) that have the potential for substantially improving delivery methods of activities described in this section and developing appropriate programming to meet the particular needs of individuals with disabilities.

(4)(A) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media.

(B) Captioned television, films, or video cassettes for individuals who are deaf or hard of hearing.

(C) Tactile materials for individuals who are deaf-blind.

(D) Other special services that provide information through tactile, vibratory, auditory, and visual media.

(5) Technical assistance and support services to businesses that are not subject to title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and that are seeking to employ individuals with disabilities.

(6) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

Sec. 104. Non-Federal share for establishment of program or construction

For the purpose of determining the amount of payments to States for carrying out part B (or to an Indian tribe under part C), the non-Federal share, subject to such limitations and conditions as may be prescribed in regulations by the Commissioner, shall include contributions of funds made by any private agency, organization, or individual to a State or local agency to assist in meeting the costs of establishment of a community rehabilitation program or construction, under special circumstances, of a facility for such a program, which would be regarded as State or local funds except for the condition, imposed by the contributor, limiting use of such funds to establishment of such a program or construction of such a facility.

Sec. 105. State Rehabilitation Council

(a) Establishment

(1) In general

Except as provided in section 101(a)(21)(A)(i), to be eligible to receive financial assistance under this title a State shall establish a State Rehabilitation Council (referred to in this section as the 'Council') in accordance with this section.

(2) Separate agency for individuals who are blind

A State that designates a State agency to administer the part of the State plan under which vocational rehabilitation services are provided for individuals who are blind under section 101(a)(2)(A)(i) may establish a separate Council in accordance with this section to perform the duties of such a Council with respect to such State agency.

(b) Composition and Appointment

(1) Composition

(A) In general

Except in the case of a separate Council established under subsection (a)(2), the Council shall be composed of--

(i) at least one representative of the Statewide Independent Living Council established under section 705, which representative may be the chairperson or other designee of the Council;

(ii) at least one representative of a parent training and information center established pursuant to section 682(a) of the Individuals with Disabilities Education Act (as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105-17);

(iii) at least one representative of the client assistance program established under section 112;

(iv) at least one qualified vocational rehabilitation counselor, with knowledge of and experience with vocational rehabilitation programs, who shall serve as an ex officio, nonvoting member of the Council if the counselor is an employee of the designated State agency;

(v) at least one representative of community rehabilitation program service providers;

(vi) four representatives of business, industry, and labor;

(vii) representatives of disability advocacy groups representing a cross section of--

(I) individuals with physical, cognitive, sensory, and mental disabilities; and

(II) individuals' representatives of individuals with disabilities who have difficulty in representing themselves or are unable due to their disabilities to represent themselves;

(viii) current or former applicants for, or recipients of, vocational rehabilitation services;

(ix) in a State in which one or more projects are carried out under section 121, at least one representative of the directors of the projects;

(x) at least one representative of the State educational agency responsible for the public education of students with disabilities who are eligible to receive services under this title and part B of the Individuals with Disabilities Education Act; and

(xi) at least one representative of the State workforce investment board.

(B) Separate council

In the case of a separate Council established under subsection (a)(2), the Council shall be composed of--

(i) at least one representative described in subparagraph (A)(i);

(ii) at least one representative described in subparagraph (A)(ii);

(iii) at least one representative described in subparagraph (A)(iii);

(iv) at least one vocational rehabilitation counselor described in subparagraph (A)(iv), who shall serve as described in such subparagraph;

(v) at least one representative described in subparagraph (A)(v);

(vi) four representatives described in subparagraph (A)(vi);

(vii) at least one representative of a disability advocacy group representing individuals who are blind;

(viii) at least one individual's representative, of an individual who--

(I) is an individual who is blind and has multiple disabilities; and

(II) has difficulty in representing himself or herself or is unable due to disabilities to represent himself or herself;

(ix) applicants or recipients described in subparagraph (A)(viii);

(x) in a State described in subparagraph (A)(ix), at least one representative described in such subparagraph;

(xi) at least one representative described in subparagraph (A)(x); and

(xii) at least one representative described in subparagraph (A)(xi).

(C) Exception

In the case of a separate Council established under subsection (a)(2), any Council that is required by State law, as in effect on the date of enactment of the Rehabilitation Act Amendments of 1992, to have fewer than 15 members shall be deemed to be in compliance with subparagraph (B) if the Council--

(i) meets the requirements of subparagraph (B), other than the requirements of clauses (vi) and (ix) of such subparagraph; and

(ii) includes at least--

(I) one representative described in subparagraph (B)(vi); and

(II) one applicant or recipient described in subparagraph (B)(ix).

(2) Ex officio member

The Director of the designated State unit shall be an ex officio, nonvoting member of the Council.

(3) Appointment

Members of the Council shall be appointed by the Governor. The Governor shall select members after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities. In selecting members, the Governor shall consider, to the greatest extent practicable, the extent to which minority populations are represented on the Council.

(4) Qualifications

(A) In general

A majority of Council members shall be persons who are--

(i) individuals with disabilities described in section 7(20)(A); and

(ii) not employed by the designated State unit.

(B) Separate council

In the case of a separate Council established under subsection (a)(2), a majority of Council members shall be persons who are--

(i) blind; and

(ii) not employed by the designated State unit.

(5) Chairperson

(A) In general

Except as provided in subparagraph (B), the Council shall select a chairperson from among the membership of the Council.

(B) Designation by governor

In States in which the chief executive officer does not have veto power pursuant to State law, the Governor shall designate a member of the Council to serve as the chairperson of the Council or shall require the Council to so designate such a member.

(6) Terms of appointment

(A) Length of term

Each member of the Council shall serve for a term of not more than 3 years, except that--

(i) a member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed, shall be appointed for the remainder of such term; and

(ii) the terms of service of the members initially appointed shall be (as specified by the Governor) for such fewer number of years as will provide for the expiration of terms on a staggered basis.

(B) Number of terms

No member of the Council, other than a representative described in clause (iii) or (ix) of paragraph (1)(A), or clause (iii) or (x) of paragraph (1)(B), may serve more than two consecutive full terms.

(7) Vacancies

(A) In general

Except as provided in subparagraph (B), any vacancy occurring in the membership of the Council shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Council.

(B) Delegation

The Governor may delegate the authority to fill such a vacancy to the remaining members of the Council after making the original appointment.

(c) Functions of Council

The Council shall, after consulting with the State workforce investment board--

(1) review, analyze, and advise the designated State unit regarding the performance of the responsibilities of the unit under this title, particularly responsibilities relating to--

(A) eligibility (including order of selection);

(B) the extent, scope, and effectiveness of services provided; and

(C) functions performed by State agencies that affect or that potentially affect the ability of individuals with disabilities in achieving employment outcomes under this title;

(2) in partnership with the designated State unit--

(A) develop, agree to, and review State goals and priorities in accordance with section 101(a)(15)(C); and

(B) evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Commissioner in accordance with section 101(a)(15)(E);

(3) advise the designated State agency and the designated State unit regarding activities authorized to be carried out under this title, and assist in the preparation of the State plan and amendments to the plan, applications, reports, needs assessments, and evaluations required by this title;

(4) to the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with--

(A) the functions performed by the designated State agency;

(B) vocational rehabilitation services provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under this Act; and

(C) employment outcomes achieved by eligible individuals receiving services under this title, including the availability of health and other employment benefits in connection with such employment outcomes;

(5) prepare and submit an annual report to the Governor and the Commissioner on the status of vocational rehabilitation programs operated within the State, and make the report available to the public;

(6) to avoid duplication of efforts and enhance the number of individuals served, coordinate activities with the activities of other councils within the State, including the Statewide Independent Living Council established under section 705, the advisory panel established under section 612(a)(21) of the Individual with Disabilities Education Act (as amended by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105-17), the State Developmental Disabilities Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6024), the State mental health planning council established under section 1914(a) of the Public Health Service Act (42 U.S.C. 300x-4(a)), and the State workforce investment board;

(7) provide for coordination and the establishment of working relationships between the designated State agency and the Statewide Independent Living Council and centers for independent living within the State; and

(8) perform such other functions, consistent with the purpose of this title, as the State Rehabilitation Council determines to be appropriate, that are comparable to the other functions performed by the Council.

(d) Resources

(1) Plan

The Council shall prepare, in conjunction with the designated State unit, a plan for the provision of such resources, including such staff and other personnel, as may be necessary and sufficient to carry out the functions of the Council under this section. The resource plan shall, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.

(2) Resolution of disagreements

To the extent that there is a disagreement between the Council and the designated State unit in regard to the resources necessary to carry out the functions of the Council as set forth in this section, the disagreement shall be resolved by the Governor consistent with paragraph (1).

(3) Supervision and evaluation

Each Council shall, consistent with State law, supervise and evaluate such staff and other personnel as may be necessary to carry out its functions under this section.

(4) Personnel conflict of interest

While assisting the Council in carrying out its duties, staff and other personnel shall not be assigned duties by the designated State unit or any other agency or office of the State, that would create a conflict of interest.

(e) Conflict of Interest

No member of the Council shall cast a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest under State law.

(f) Meetings

The Council shall convene at least 4 meetings a year in such places as it determines to be necessary to conduct Council business and conduct such forums or hearings as the Council considers appropriate. The meetings, hearings, and forums shall be publicly announced. The meetings shall be open and accessible to the general public unless there is a valid reason for an executive session.

(g) Compensation and Expenses

The Council may use funds allocated to the Council by the designated State unit under this title (except for funds appropriated to carry out the client assistance program under section 112 and funds reserved pursuant to section 110(c) to carry out part C) to reimburse members of the Council for reasonable and necessary expenses of attending Council meetings and performing Council duties (including child care and personal assistance services), and to pay compensation to a member of the Council, if such member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing the duties of the Council.

(h) Hearings and Forums

The Council is authorized to hold such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council.

Sec. 106. Evaluation Standards and Performance Indicators

(a) Establishment

(1) In general

(A) Establishment of standards and indicators

The Commissioner shall, not later than July 1, 1999, establish and publish evaluation standards and performance indicators for the vocational rehabilitation program carried out under this title.

(B) Review and revision

Effective July 1, 1999, the Commissioner shall review and, if necessary, revise the evaluation standards and performance indicators every 3 years. Any revisions of the standards and indicators shall be developed with input from State vocational rehabilitation agencies, related professional and consumer organizations, recipients of vocational rehabilitation services, and other interested parties. Any revisions of the standards and indicators shall be subject to the publication, review, and comment provisions of paragraph (3).

(C) Bases

Effective July 1, 1999, to the maximum extent practicable, the standards and indicators shall be consistent with the core indicators of performance established under section 136(b) of the Workforce Investment Act of 1998.

(2) Measures

The standards and indicators shall include outcome and related measures of program performance that facilitate the accomplishment of the purpose and policy of this title.

(3) Comment

The standards and indicators shall be developed with input from State vocational rehabilitation agencies, related professional and consumer organizations, recipients of vocational rehabilitation services, and other interested parties. The Commissioner shall publish in the Federal Register a notice of intent to regulate regarding the development of proposed standards and indicators. Proposed standards and indicators shall be published in the Federal Register for review and comment. Final standards and indicators shall be published in the Federal Register.

(b) Compliance

(1) State reports

In accordance with regulations established by the Secretary, each State shall report to the Commissioner after the end of each fiscal year the extent to which the State is in compliance with the standards and indicators.

(2) Program improvement

(A) Plan

If the Commissioner determines that the performance of any State is below established standards, the Commissioner shall provide technical assistance to the State, and the State and the Commissioner shall jointly develop a program improvement plan outlining the specific actions to be taken by the State to improve program performance.

(B) Review

The Commissioner shall--

(i) review the program improvement efforts of the State on a biannual basis and, if necessary, request the State to make further revisions to the plan to improve performance; and

(ii) continue to conduct such reviews and request such revisions until the State sustains satisfactory performance over a period of more than 1 year.

(c) Withholding

If the Commissioner determines that a State whose performance falls below the established standards has failed to enter into a program improvement plan, or is not complying substantially with the terms and conditions of such a program improvement plan, the Commissioner shall, consistent with subsections (c) and (d) of section 107, reduce or make no further payments to the State under this program, until the State has entered into an approved program improvement plan, or satisfies the Commissioner that the State is complying substantially with the terms and conditions of such a program improvement plan, as appropriate.

(d) Report to Congress

Beginning in fiscal year 1999, the Commissioner shall include in each annual report to the Congress under section 13 an analysis of program performance, including relative State performance, based on the standards and indicators.

Sec. 107. Monitoring and Review

(a) In General

(1) Duties

In carrying out the duties of the Commissioner under this title, the Commissioner shall--

(A) provide for the annual review and periodic onsite monitoring of programs under this title;
and

(B) determine whether, in the administration of the State plan, a State is complying substantially with the provisions of such plan and with evaluation standards and performance indicators established under section 106.

(2) Procedures for reviews

In conducting reviews under this section the Commissioner shall consider, at a minimum--

(A) State policies and procedures;

(B) guidance materials;

(C) decisions resulting from hearings conducted in accordance with due process;

(D) State goals established under section 101(a)(15) and the extent to which the State has achieved such goals;

(E) plans and reports prepared under section 106(b);

(F) consumer satisfaction reviews and analyses described in section 105(c)(4);

(G) information provided by the State Rehabilitation Council established under section 105, if the State has such a Council, or by the commission described in section 101(a)(21)(A)(i), if the State has such a commission;

(H) reports; and

(I) budget and financial management data.

(3) Procedures for monitoring

In conducting monitoring under this section the Commissioner shall conduct--

(A) onsite visits, including onsite reviews of records to verify that the State is following requirements regarding the order of selection set forth in section 101(a)(5)(A);

(B) public hearings and other strategies for collecting information from the public;

(C) meetings with the State Rehabilitation Council, if the State has such a Council or with the commission described in section 101(a)(21)(A)(i), if the State has such a commission;

(D) reviews of individual case files, including individualized plans for employment and ineligibility determinations; and

(E) meetings with qualified vocational rehabilitation counselors and other personnel.

(4) Areas of inquiry

In conducting the review and monitoring, the Commissioner shall examine--

(A) the eligibility process;

(B) the provision of services, including, if applicable, the order of selection;

(C) such other areas as may be identified by the public or through meetings with the State Rehabilitation Council, if the State has such a Council or with the commission described in section 101(a)(21)(A)(i), if the State has such a commission; and

(D) such other areas of inquiry as the Commissioner may consider appropriate.

(5) Reports

If the Commissioner issues a report detailing the findings of an annual review or onsite monitoring conducted under this section, the report shall be made available to the State Rehabilitation Council, if the State has such a Council, for use in the development and modification of the State plan described in section 101.

(b) Technical Assistance

The Commissioner shall--

(1) provide technical assistance to programs under this title regarding improving the quality of vocational rehabilitation services provided; and

(2) provide technical assistance and establish a corrective action plan for a program under this title if the Commissioner finds that the program fails to comply substantially with the provisions of the State plan, or with evaluation standards or performance indicators established under section 106, in order to ensure that such failure is corrected as soon as practicable.

(c) Failure To Comply With Plan

(1) Withholding payments

Whenever the Commissioner, after providing reasonable notice and an opportunity for a hearing to the State agency administering or supervising the administration of the State plan approved under section 101, finds that--

(A) the plan has been so changed that it no longer complies with the requirements of section 101(a); or

(B) in the administration of the plan there is a failure to comply substantially with any provision of such plan or with an evaluation standard or performance indicator established under section 106,

the Commissioner shall notify such State agency that no further payments will be made to the State under this title (or, in the discretion of the Commissioner, that such further payments will be reduced, in accordance with regulations the Commissioner shall prescribe, or that further payments will not be made to the State only for the projects under the parts of the State plan affected by such failure), until the Commissioner is satisfied there is no longer any such failure.

(2) Period

Until the Commissioner is so satisfied, the Commissioner shall make no further payments to such State under this title (or shall reduce payments or limit payments to projects under those parts of the State plan in which there is no such failure).

(3) Disbursal of withheld funds

The Commissioner may, in accordance with regulations the Secretary shall prescribe, disburse any funds withheld from a State under paragraph (1) to any public or nonprofit private organization or agency within such State or to any political subdivision of such State submitting a plan meeting the requirements of section 101(a). The Commissioner may not make any payment under this paragraph unless the entity to which such payment is made has provided assurances to the Commissioner that such entity will contribute, for purposes of carrying out such plan, the same amount as the State would have been obligated to contribute if the State received such payment.

(d) Review

(1) Petition

Any State that is dissatisfied with a final determination of the Commissioner under section 101(b) or subsection (c) may file a petition for judicial review of such determination in the United States Court of Appeals for the circuit in which the State is located. Such a petition may be filed only within the 30-day period beginning on the date that notice of such final determination was received by the State. The clerk of the court shall transmit a copy of the petition to the Commissioner or to any officer designated by the Commissioner for that purpose. In accordance with section 2112 of title 28, United States Code, the Commissioner shall file with the court a record of the proceeding on which the Commissioner based the determination being appealed by the State. Until a record is so filed, the Commissioner may modify or set aside any determination made under such proceedings.

(2) Submissions and determinations

If, in an action under this subsection to review a final determination of the Commissioner under section 101(b) or subsection (c), the petitioner or the Commissioner applies to the court for leave to have additional oral submissions or written presentations made respecting such determination, the court may, for good cause shown, order the Commissioner to provide within 30 days an additional opportunity to make such submissions and presentations. Within such period, the Commissioner may revise any findings of fact, modify or set aside the determination being reviewed, or make a new determination by reason of the additional submissions and presentations, and shall file such modified or new determination, and any revised findings of fact, with the return of such submissions and presentations. The court shall thereafter review such new or modified determination.

(3) Standards of review

(A) In general

Upon the filing of a petition under paragraph (1) for judicial review of a determination, the court shall have jurisdiction--

(i) to grant appropriate relief as provided in chapter 7 of title 5, United States Code, except for interim relief with respect to a determination under subsection (c); and

(ii) except as otherwise provided in subparagraph (B), to review such determination in accordance with chapter 7 of title 5, United States Code.

(B) Substantial evidence

Section 706 of title 5, United States Code, shall apply to the review of any determination under this subsection, except that the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such determination if the court finds that the determination is not supported by substantial evidence in the record of the

proceeding submitted pursuant to paragraph (1), as supplemented by any additional submissions and presentations filed under paragraph (2).

Sec. 108. Expenditure of Certain Amounts

(a) Expenditure

Amounts described in subsection (b) may not be expended by a State for any purpose other than carrying out programs for which the State receives financial assistance under this title, under part B of title VI, or under title VII.

(b) Amounts

The amounts referred to in subsection (a) are amounts provided to a State under the Social Security Act (42 U.S.C. 301 et seq.) as reimbursement for the expenditure of payments received by the State from allotments under section 110 of this Act.

Sec. 109. Training of Employers with Respect to Americans with Disabilities Act of 1990

A State may expend payments received under section 111--

(1) to carry out a program to train employers with respect to compliance with the requirements of title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.); and

(2) to inform employers of the existence of the program and the availability of the services of the program.

Part B--Basic Vocational Rehabilitation Services

STATE ALLOTMENTS

Sec. 110. (a)(1) Subject to the provisions of subsection (c), for each fiscal year beginning before October 1, 1978, each State shall be entitled to an allotment of an amount bearing the same ratio to the amount authorized to be appropriated under section 100(b)(1) for allotment under this section as the product of--

(A) the population of the State; and

(B) the square of its allotment percentage, bears to the sum of the corresponding products for all the States.

(2)(A) For each fiscal year beginning on or after October 1, 1978, each State shall be entitled to an allotment in an amount equal to the amount such State received under paragraph (1) for the

fiscal year ending September 30, 1978, and an additional amount determined pursuant to subparagraph (B) of this paragraph.

(B) For each fiscal year beginning on or after October 1, 1978, each State shall be entitled to an allotment, from any amount authorized to be appropriated for such fiscal year under section 100(b)(1) for allotment under this section in excess of the amount appropriated under section 100(b)(1)(A) for the fiscal year ending September 30, 1978, in an amount equal to the sum of--

(i) an amount bearing the same ratio to 50 percent of such excess amount as the product of the population of the State and the square of its allotment percentage bears to the sum of the corresponding products for all the States; and

(ii) an amount bearing the same ratio to 50 percent of such excess amount as the product of the population of the State and its allotment percentage bears to the sum of the corresponding products for all the States.

(3) The sum of the payment to any State (other than Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands) under this subsection for any fiscal year which is less than one-third of 1 percent of the amount appropriated under section 100(b)(1), or \$3,000,000, whichever is greater, shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotment to each of the remaining such States under this subsection, but with such adjustments as may be necessary to prevent the sum of the allotments made under this subsection to any such remaining State from being thereby reduced to less than that amount.

(b)(1) Not later than forty-five days prior to the end of the fiscal year, the Commissioner shall determine, after reasonable opportunity for the submission to the Commissioner of comments by the State agency administering or supervising the program established under this title, that any payment of an allotment to a State under section 111(a) for any fiscal year will not be utilized by such State in carrying out the purposes of this title.

(2) As soon as practicable but not later than the end of the fiscal year, the Commissioner shall make such amount available for carrying out the purposes of this title to one or more other States to the extent the Commissioner determines such other State will be able to use such additional amount during that fiscal year or the subsequent fiscal year for carrying out such purposes. The Commissioner shall make such amount available only if such other State will be able to make sufficient payments from non-Federal sources to pay for the non-Federal share of the cost of vocational rehabilitation services under the State plan for the fiscal year for which the amount was appropriated.

(3) For the purposes of this part, any amount made available to a State for any fiscal year pursuant to this subsection shall be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year.

(c)(1) For fiscal year 1987 and for each subsequent fiscal year, the Commissioner shall reserve from the amount appropriated under section 100(b)(1) for allotment under this section a sum, determined under paragraph (2), to carry out the purposes of part C.

(2) The sum referred to in paragraph (1) shall be, as determined by the Secretary--

(A) not less than three-quarters of 1 percent and not more than 1.5 percent of the amount referred to in paragraph (1), for fiscal year 1999; and

(B) not less than 1 percent and not more than 1.5 percent of the amount referred to in paragraph (1), for each of fiscal years 2000 through 2003.

PAYMENTS TO STATES

Sec. 111. (a)(1) Except as provided in paragraph (2), from each State's allotment under this part for any fiscal year, the Commissioner shall pay to a State an amount equal to the Federal share of the cost of vocational rehabilitation services under the plan for that State approved under section 101, including expenditures for the administration of the State plan.

(2)(A) The total of payments under paragraph (1) to a State for a fiscal year may not exceed its allotment under subsection (a) of section 110 for such year.

(B) For fiscal year 1994 and each fiscal year thereafter, the amount otherwise payable to a State for a fiscal year under this section shall be reduced by the amount by which expenditures from non-Federal sources under the State plan under this title for the previous fiscal year are less than the total of such expenditures for the second fiscal year preceding the previous fiscal year.

(C) The Commissioner may waive or modify any requirement or limitation under subparagraph (B) or section 101(a)(17) if the Commissioner determines that a waiver or modification is an equitable response to exceptional or uncontrollable circumstances affecting the State.

(3)(A) Except as provided in subparagraph (B), the amount of a payment under this section with respect to any construction project in any State shall be equal to the same percentage of the cost of such project as the Federal share that is applicable in the case of rehabilitation facilities (as defined in section 645(g) of the Public Health Service Act (42 U.S.C. 291o(a))), in such State.

(B) If the Federal share with respect to rehabilitation facilities in such State is determined pursuant to section 645(b)(2) of such Act (42 U.S.C. 291o(b)(2)), the percentage of the cost for purposes of this section shall be determined in accordance with regulations prescribed by the Commissioner designed to achieve as nearly as practicable results comparable to the results obtained under such section.

(b) The method of computing and paying amounts pursuant to subsection (a) shall be as follows:

(1) The Commissioner shall, prior to the beginning of each calendar quarter or other period prescribed by the Commissioner, estimate the amount to be paid to each State under the provisions of such subsection for such period, such estimate to be based on such records of the State and information furnished by it, and such other investigation as the Commissioner may find necessary.

(2) The Commissioner shall pay, from the allotment available therefor, the amount so estimated by the Commissioner for such period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which the Commissioner finds that the estimate of the amount to be paid the State for any prior period under such subsection was greater or less than the amount which should have been paid to the State for such prior period under such subsection. Such payment shall be made prior to audit or settlement by the General Accounting Office, shall be made through the disbursing facilities of the Treasury Department, and shall be made in such installments as the Commissioner may determine.

CLIENT ASSISTANCE PROGRAM

Sec. 112.(a) From funds appropriated under subsection (h), the Secretary shall, in accordance with this section, make grants to States to establish and carry out client assistance programs to provide assistance in informing and advising all clients and client applicants of all available benefits under this Act, and, upon request of such clients or client applicants, to assist and advocate for such clients or applicants in their relationships with projects, programs, and services provided under this Act, including assistance and advocacy in pursuing legal, administrative, or other appropriate remedies to ensure the protection of the rights of such individuals under this Act and to facilitate access to the services funded under this Act through individual and systemic advocacy. The client assistance program shall provide information on the available services and benefits under this Act and title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) to individuals with disabilities in the State, especially with regard to individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs. In providing assistance and advocacy under this subsection with respect to services under this title, a client assistance program may provide the assistance and advocacy with respect to services that are directly related to facilitating the employment of the individual.

(b) No State may receive payments from its allotment under this Act in any fiscal year unless the State has in effect not later than October 1, 1984, a client assistance program which--

(1) has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of individuals with disabilities who are receiving treatments, services, or rehabilitation under this Act within the State; and

(2) meets the requirements of designation under subsection (c).

(c)(1)(A) The Governor shall designate a public or private agency to conduct the client assistance program under this section. Except as provided in the last sentence of this subparagraph, the Governor shall designate an agency which is independent of any agency which provides treatment, services, or rehabilitation to individuals under this Act. If there is an agency in the State which has, or had, prior to the date of enactment of the Rehabilitation Amendments of 1984, served as a client assistance agency under this section and which received Federal financial assistance under this Act, the Governor may, in the initial designation, designate an agency which provides treatment, services, or rehabilitation to individuals with disabilities under this Act.

(B)(i) The Governor may not redesignate the agency designated under subparagraph (A) without good cause and unless--

- (I)** the Governor has given the agency 30 days notice of the intention to make such redesignation, including specification of the good cause for such redesignation and an opportunity to respond to the assertion that good cause has been shown;
- (II)** individuals with disabilities or the individuals' representatives have timely notice of the redesignation and opportunity for public comment; and
- (III)** the agency has the opportunity to appeal to the Commissioner on the basis that the redesignation was not for good cause.

(ii) If, after the date of enactment of the Rehabilitation Act Amendments of 1998--

- (I)** a designated State agency undergoes any change in the organizational structure of the agency that results in the creation of 1 or more new State agencies or departments or results in the merger of the designated State agency with 1 or more other State agencies or departments; and
- (II)** an agency (including an office or other unit) within the designated State agency was conducting a client assistance program before the change under the last sentence of subparagraph (A), the Governor shall redesignate the agency conducting the program. In conducting the redesignation, the Governor shall designate to conduct the program an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals with disabilities under this Act.

(2) In carrying out the provisions of this section, the Governor shall consult with the director of the State vocational rehabilitation agency, the head of the developmental disability protection and advocacy agency, and with representatives of professional and consumer organizations serving individuals with disabilities in the State.

(3) The agency designated under this subsection shall be accountable for the proper use of funds made available to the agency.

(d) The agency designated under subsection (c) of this section may not bring any class action in carrying out its responsibilities under this section.

(e)(1)(A) The Secretary shall allot the sums appropriated for each fiscal year under this section among the States on the basis of relative population of each State, except that no State shall receive less than \$50,000.

(B) The Secretary shall allot \$30,000 each to American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(C) For the purpose of this paragraph, the term 'State' does not include American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(D)(i) In any fiscal year that the funds appropriated for such fiscal year exceed \$7,500,000, the minimum allotment shall be \$100,000 for States and \$45,000 for territories.

(ii) For any fiscal year in which the total amount appropriated under subsection (h) exceeds the total amount appropriated under such subsection for the preceding fiscal year, the Secretary shall increase each of the minimum allotments under clause (i) by a percentage that shall not exceed the percentage increase in the total amount appropriated under such subsection between the preceding fiscal year and the fiscal year involved.

(2) The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallocation by the Secretary at appropriate times to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period, and the total of such reduction shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any such amount so reallocated to a State for a fiscal year shall be deemed to be a part of its allotment for such fiscal year.

(3) Except as specifically prohibited by or as otherwise provided in State law, the Secretary shall pay to the agency designated under subsection (c) the amount specified in the application approved under subsection (f).

(f) No grant may be made under this section unless the State submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems necessary to meet the requirements of this section.

(g) The Secretary shall prescribe regulations applicable to the client assistance program which shall include the following requirements:

(1) No employees of such programs shall, while so employed, serve as staff or consultants of any rehabilitation project, program, or facility receiving assistance under this Act in the State.

(2) Each program shall be afforded reasonable access to policymaking and administrative personnel in the State and local rehabilitation programs, projects, or facilities.

(3)(A) Each program shall contain provisions designed to assure that to the maximum extent possible alternative means of dispute resolution are available for use at the discretion of an applicant or client of the program prior to resorting to litigation or formal adjudication to resolve a dispute arising under this section.

(B) In subparagraph (A), the term 'alternative means of dispute resolution' means any procedure, including good faith negotiation, conciliation, facilitation, mediation, factfinding, and arbitration, and any combination of procedures, that is used in lieu of litigation in a court or formal adjudication in an administrative forum, to resolve a dispute arising under this section.

(4) For purposes of any periodic audit, report, or evaluation of the performance of a client assistance program under this section, the Secretary shall not require such a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

(h) There are authorized to be appropriated such sums as may be necessary for fiscal years 1999 through 2003 to carry out the provisions of this section.

Part C--American Indian Vocational Rehabilitation Services

Vocational Rehabilitation Services Grants

Sec. 121. (a) The Commissioner, in accordance with the provisions of this part, may make grants to the governing bodies of Indian tribes located on Federal and State reservations (and consortia of such governing bodies) to pay 90 percent of the costs of vocational rehabilitation services for American Indians who are individuals with disabilities residing on or near such reservations. The non-Federal share of such costs may be in cash or in kind, fairly valued, and the Commissioner may waive such non-Federal share requirement in order to carry out the purposes of this Act.

(b)(1) No grant may be made under this part for any fiscal year unless an application therefor has been submitted to and approved by the Commissioner. The Commissioner may not approve an application unless the application--

(A) is made at such time, in such manner, and contains such information as the Commissioner may require;

(B) contains assurances that the rehabilitation services provided under this part to American Indians who are individuals with disabilities residing on or near a reservation in a State shall be, to the maximum extent feasible, comparable to rehabilitation services provided under this title to

other individuals with disabilities residing in the State and that, where appropriate, may include services traditionally used by Indian tribes; and

(C) contains assurances that the application was developed in consultation with the designated State unit of the State. (2) The provisions of sections 5, 6, 7, and 102(a) of the Indian Self-Determination and Education Assistance Act shall be applicable to any application submitted under this part. For purposes of this paragraph, any reference in any such provision to the Secretary of Education or to the Secretary of the Interior shall be considered to be a reference to the Commissioner.

(3) Any application approved under this part shall be effective for not more than 60 months, except as determined otherwise by the Commissioner pursuant to prescribed regulations. The State shall continue to provide vocational rehabilitation services under its State plan to American Indians residing on or near a reservation whenever such State includes any such American Indians in its State population under section 110(a)(1).

(4) In making grants under this part, the Secretary shall give priority consideration to applications for the continuation of programs which have been funded under this part.

(5) Nothing in this section may be construed to authorize a separate service delivery system for Indian residents of a State who reside in non-reservation areas.

(c) The term "reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

Part D--Vocational Rehabilitation Services Client Information

Sec. 131. Data Sharing

(a) In General

(1) Memorandum of understanding

The Secretary of Education and the Secretary of Health and Human Services shall enter into a memorandum of understanding for the purposes of exchanging data of mutual importance--

(A) that concern clients of designated State agencies; and

(B) that are data maintained either by--

(i) the Rehabilitation Services Administration, as required by section 13; or

(ii) the Social Security Administration, from its Summary Earnings and Records and Master Beneficiary Records.

(2) Employment statistics

The Secretary of Labor shall provide the Commissioner with employment statistics specified in section 15 of the Wagner-Peyser Act, that facilitate evaluation by the Commissioner of the program carried out under part B, and allow the Commissioner to compare the progress of individuals with disabilities who are assisted under the program in securing, retaining, regaining, and advancing in employment with the progress made by individuals who are assisted under title I of the Workforce Investment Act of 1998.

(b) Treatment of Information

For purposes of the exchange described in subsection (a)(1), the data described in subsection (a)(1)(B)(ii) shall not be considered return information (as defined in section 6103(b)(2) of the Internal Revenue Code of 1986) and, as appropriate, the confidentiality of all client information shall be maintained by the Rehabilitation Services Administration and the Social Security Administration.

TITLE II--RESEARCH AND TRAINING

Declaration of Purpose

Sec. 200.

The purpose of this title is to--

(1) provide for research, demonstration projects, training, and related activities to maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities of all ages, with particular emphasis on improving the effectiveness of services authorized under this Act;

(2) provide for a comprehensive and coordinated approach to the support and conduct of such research, demonstration projects, training, and related activities and to ensure that the approach is in accordance with the 5-year plan developed under section 202(h);

(3) promote the transfer of rehabilitation technology to individuals with disabilities through research and demonstration projects relating to--

(A) the procurement process for the purchase of rehabilitation technology;

(B) the utilization of rehabilitation technology on a national basis;

(C) specific adaptations or customizations of products to enable individuals with disabilities to live more independently; and

(D) the development or transfer of assistive technology;

(4) ensure the widespread distribution, in usable formats, of practical scientific and technological information--

(A) generated by research, demonstration projects, training, and related activities; and

(B) regarding state-of-the-art practices, improvements in the services authorized under this Act, rehabilitation technology, and new knowledge regarding disabilities, to rehabilitation professionals, individuals with disabilities, and other interested parties, including the general public;

(5) identify effective strategies that enhance the opportunities of individuals with disabilities to engage in employment, including employment involving telecommuting and self-employment; and

(6) increase opportunities for researchers who are members of traditionally underserved populations, including researchers who are members of minority groups and researchers who are individuals with disabilities.

Authorization of Appropriations

Sec. 201. (a) There are authorized to be appropriated--

(1) for the purpose of providing for the expenses of the National Institute on Disability and Rehabilitation Research under section 202, which shall include the expenses of the Rehabilitation Research Advisory Council under section 205, and shall not include the expenses of such Institute to carry out section 204, such sums as may be necessary for each of fiscal years 1999 through 2003; and

(2) to carry out section 204, such sums as may be necessary for each of fiscal years 1999 through 2003. (b) Funds appropriated under this title shall remain available until expended.

National Institute on Disability and Rehabilitation Research

Sec. 202. (a)(1)

There is established within the Department of Education a National Institute on Disability and Rehabilitation Research (hereinafter in this title referred to as the 'Institute'), which shall be headed by a Director (hereinafter in this title referred to as the 'Director'), in order to--

(A) promote, coordinate, and provide for--

(i) research;

(ii) demonstration projects and training; and

(iii) related activities, with respect to individuals with disabilities;

(B) more effectively carry out activities through the programs under section 204 and activities under this section;

(C) widely disseminate information from the activities described in subparagraphs (A) and (B); and

(D) provide leadership in advancing the quality of life of individuals with disabilities.

(2) In the performance of the functions of the office, the Director shall be directly responsible to the Secretary or to the same Under Secretary or Assistant Secretary of the Department of Education to whom the Commissioner is responsible under section 3(a).

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

(1) administering the programs described in section 204 and activities under this section;

(2) widely disseminating findings, conclusions, and recommendations, resulting from research, demonstration projects, training, and related activities (referred to in this title as "covered activities") funded by the Institute, to--

(A) other Federal, State, tribal, and local public agencies;

(B) private organizations engaged in research relating to rehabilitation or providing rehabilitation services;

(C) rehabilitation practitioners; and

(D) individuals with disabilities and the individuals' representatives;

(3) coordinating, through the Interagency Committee established by section 203 of this Act, all Federal programs and policies relating to research in rehabilitation;

(4) widely disseminating educational materials and research results, concerning ways to maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, to--

(A) public and private entities, including--

(i) elementary and secondary schools (as defined in section 14101 of the Elementary and Secondary Education Act of 1965; and

(ii) institutions of higher education;

(B) rehabilitation practitioners;

(C) individuals with disabilities (especially such individuals who are members of minority groups or of populations that are unserved or underserved by programs under this Act); and

(D) the individuals' representatives for the individuals described in subparagraph (C);

(5)(A) conducting an education program to inform the public about ways of providing for the rehabilitation of individuals with disabilities, including information relating to--

(i) family care;

(ii) self-care; and

(iii) assistive technology devices and assistive technology services; and

(B) as part of the program, disseminating engineering information about assistive technology devices;

(6) conducting conferences, seminars, and workshops (including in-service training programs and programs for individuals with disabilities) concerning advances in rehabilitation research and rehabilitation technology (including advances concerning the selection and use of assistive technology devices and assistive technology services), pertinent to the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities;

(7) taking whatever action is necessary to keep the Congress fully and currently informed with respect to the implementation and conduct of programs and activities carried out under this title, including dissemination activities;

(8) producing, in conjunction with the Department of Labor, the National Center for Health Statistics, the Bureau of the Census, the Health Care Financing Administration, the Social Security Administration, the Bureau of Indian Affairs, the Indian Health Service, and other Federal departments and agencies, as may be appropriate, statistical reports and studies on the employment, self-employment, telecommuting, health, income, and other demographic characteristics of individuals with disabilities, including information on individuals with disabilities who live in rural or inner-city settings, with particular attention given to underserved populations, and widely disseminating such reports and studies to rehabilitation professionals, individuals with disabilities, the individuals' representatives, and others to assist in the planning, assessment, and evaluation of vocational and other rehabilitation services for individuals with disabilities;

(9) conducting research on consumer satisfaction with vocational rehabilitation services for the purpose of identifying effective rehabilitation programs and policies that promote the independence of individuals with disabilities and achievement of long-term vocational goals;

(10) conducting research to examine the relationship between the provision of specific services and successful, sustained employment outcomes, including employment outcomes involving self-employment and telecommuting; and

(11) coordinating activities with the Attorney General regarding the provision of information, training, or technical assistance regarding the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) to ensure consistency with the plan for technical assistance required under section 506 of such Act (42 U.S.C. 12206).

(c)(1) The Director, acting through the Institute or 1 or more entities funded by the Institute, shall provide for the development and dissemination of models to address consumer-driven information needs related to assistive technology devices and assistive technology services.

(2) The development and dissemination of models may include--

(A) convening groups of individuals with disabilities, family members and advocates of such individuals, commercial producers of assistive technology, and entities funded by the Institute to develop, assess, and disseminate knowledge about information needs related to assistive technology;

(B) identifying the types of information regarding assistive technology devices and assistive technology services that individuals with disabilities find especially useful;

(C) evaluating current models, and developing new models, for transmitting the information described in subparagraph (B) to consumers and to commercial producers of assistive technology; and

(D) disseminating through 1 or more entities funded by the Institute, the models described in subparagraph (C) and findings regarding the information described in subparagraph (B) to consumers and commercial producers of assistive technology.

(d)(1) The Director of the Institute shall be appointed by the Secretary. The Director shall be an individual with substantial experience in rehabilitation and in research administration.

(2) The Director, subject to the approval of the President, may appoint, for terms not to exceed three years, without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, and may compensate, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, such technical and professional employees of the Institute as the Director determines to be necessary to accomplish the functions of the Institute and also appoint and compensate without regard to such provisions, in a number not to exceed one-fifth of the number of full-time, regular technical and professional employees of the Institute.

(3) The Director may obtain the services of consultants, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

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

(f)(1) The Director shall provide for scientific peer review of all applications for financial assistance for research, training, and demonstration projects over which the Director has authority. The scientific peer review shall be conducted by individuals who are not Federal employees, who are scientists or other experts in the rehabilitation field (including the independent living field), including knowledgeable individuals with disabilities, and the individuals' representatives, and who are competent to review applications for the financial assistance.

(2) In providing for such scientific peer review, the Secretary shall provide for training, as necessary and appropriate, to facilitate the effective participation of those individuals selected to participate in such review.

(g) Not less than 90 percent of the funds appropriated under this title for any fiscal year shall be expended by the Director to carry out activities under this title through grants, contracts, or cooperative agreements. Up to 10 percent of the funds appropriated under this title for any fiscal year may be expended directly for the purpose of carrying out the functions of the Director under this section.

(h)(1) The Director shall--

(A) by October 1, 1998 and every fifth October 1 thereafter, prepare and publish in the Federal Register for public comment a draft of a 5-year plan that outlines priorities for rehabilitation research, demonstration projects, training, and related activities and explains the basis for such priorities;

(B) by June 1, 1999, and every fifth June 1 thereafter, after considering public comments, submit the plan in final form to the appropriate committees of Congress;

(C) at appropriate intervals, prepare and submit revisions in the plan to the appropriate committees of Congress; and

(D) annually prepare and submit progress reports on the plan to the appropriate committees of Congress.

(2) Such plan shall--

(A) identify any covered activity that should be conducted under this section and section 204 respecting the full inclusion and integration into society of individuals with disabilities, especially in the area of employment;

(B) determine the funding priorities for covered activities to be conducted under this section and section 204;

(C) specify appropriate goals and timetables for covered activities to be conducted under this section and section 204;

(D) be developed by the Director--

(i) after consultation with the Rehabilitation Research Advisory Council established under section 205;

(ii) in coordination with the Commissioner;

(iii) after consultation with the National Council on Disability established under title IV, the Secretary of Education, officials responsible for the administration of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.), and the Interagency Committee on Disability Research established under section 203; and

(iv) after full consideration of the input of individuals with disabilities and the individuals' representatives, organizations representing individuals with disabilities, providers of services furnished under this Act, researchers in the rehabilitation field, and any other persons or entities the Director considers to be appropriate;

(E) specify plans for widespread dissemination of the results of covered activities, in accessible formats, to rehabilitation practitioners, individuals with disabilities, and the individuals' representatives; and

(F) specify plans for widespread dissemination of the results of covered activities that concern individuals with disabilities who are members of minority groups or of populations that are unserved or underserved by programs carried out under this Act.

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

(j)(1) The Director shall take appropriate actions to provide for a comprehensive and coordinated research program under this title. In providing such a program, the Director may undertake joint activities with other Federal entities engaged in research and with appropriate private entities.

Any Federal entity proposing to establish any research project related to the purposes of this Act shall consult, through the Interagency Committee established by section 203, with the Director as Chairperson of such Committee and provide the Director with sufficient prior opportunity to comment on such project.

(2) Any person responsible for administering any program of the National Institutes of Health, the Department of Veterans Affairs, the National Science Foundation, the National Aeronautics and Space Administration, the Office of Special Education and Rehabilitative Services, or of any other Federal entity, shall, through the Interagency Committee established by section 203, consult and cooperate with the Director in carrying out such program if the program is related to the purposes of this title.

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

(k) The Director shall make grants to institutions of higher education for the training of rehabilitation researchers, including individuals with disabilities, with particular attention to research areas that support the implementation and objectives of this Act and that improve the effectiveness of services authorized under this Act.

Interagency Committee

Sec. 203. (a)(1) In order to promote coordination and cooperation among Federal departments and agencies conducting rehabilitation research programs, there is established within the Federal Government an Interagency Committee on Disability Research (hereinafter in this section referred to as the "Committee"), chaired by the Director and comprised of such members as the President may designate, including the following (or their designees): the Director, the Commissioner of the Rehabilitation Services Administration, the Assistant Secretary for Special Education and Rehabilitative Services, the Secretary of Education, the Secretary of Veterans Affairs, the Director of the National Institutes of Health, the Director of the National Institute of Mental Health, the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation, the Assistant Secretary of the Interior for Indian Affairs, the Director of the Indian Health Service, and the Director of the National Science Foundation.

(2) The Committee shall meet not less than four times each year.

(b) After receiving input from individuals with disabilities and the individuals' representatives, the Committee shall identify, assess, and seek to coordinate all Federal programs, activities, and projects, and plans for such programs, activities, and projects with respect to the conduct of research related to rehabilitation of individuals with disabilities.

(c) The Committee shall annually submit to the President and to the appropriate committees of the Congress a report making such recommendations as the Committee deems appropriate with respect to coordination of policy and development of objectives and priorities for all Federal programs relating to the conduct of research related to rehabilitation of individuals with disabilities.

Research and Other Covered Activities

Sec. 204. (a)(1) To the extent consistent with priorities established in the 5-year plan described in section 202(h), the Director may make grants to and contracts with States and public or private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to pay part of the cost of projects for the purpose of planning and conducting research, demonstration projects, training, and related activities, the purposes of which are to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most significant disabilities, and improve the effectiveness of services authorized under this Act.

(2)(A) In carrying out this section, the Director shall emphasize projects that support the implementation of titles I, III, V, VI, and VII, including projects addressing the needs described in the State plans submitted under section 101 or 704 by State agencies.

(B) Such projects, as described in the State plans submitted by State agencies, may include--

(i) medical and other scientific, technical, methodological, and other investigations into the nature of disability, methods of analyzing it, and restorative techniques, including basic research where related to rehabilitation techniques or services;

(ii) studies and analysis of industrial, vocational, social, recreational, psychiatric, psychological, economic, and other factors affecting rehabilitation of individuals with disabilities;

(iii) studies and analysis of special problems of individuals who are homebound and individuals who are institutionalized;

(iv) studies, analyses, and demonstrations of architectural and engineering design adapted to meet the special needs of individuals with disabilities;

(v) studies, analyses, and other activities related to supported employment;

(vi) related activities which hold promise of increasing knowledge and improving methods in the rehabilitation of individuals with disabilities and individuals with the most significant disabilities, particularly individuals with disabilities, and individuals with the most significant

disabilities, who are members of populations that are unserved or underserved by programs under this Act; and

(vii) studies, analyses, and other activities related to job accommodations, including the use of rehabilitation engineering and assistive technology.

(b)(1) In addition to carrying out projects under subsection (a), the Director may make grants under this subsection (referred to in this subsection as 'research grants') to pay part or all of the cost of the research or other specialized covered activities described in paragraphs (2) through (18). A research grant made under any of paragraphs (2) through (18) may only be used in a manner consistent with priorities established in the 5-year plan described in section 202(h).

(2)(A) Research grants may be used for the establishment and support of Rehabilitation Research and Training Centers, for the purpose of providing an integrated program of research, which Centers shall--

(i) be operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services; and

(ii) serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the individuals' representatives.

(B) The Centers shall conduct research and training activities by--

(i) conducting coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge that will improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence of individuals with disabilities, especially promoting the ability of the individuals to prepare for, secure, retain, regain, or advance in employment;

(ii) providing training (including graduate, pre-service, and in-service training) to assist individuals to more effectively provide rehabilitation services;

(iii) providing training (including graduate, pre-service, and in-service training) for rehabilitation research personnel and other rehabilitation personnel; and

(iv) serving as an informational and technical assistance resource to providers, individuals with disabilities, and the individuals' representatives, through conferences, workshops, public education programs, in-service training programs, and similar activities.

(C) The research to be carried out at each such Center may include--

(i) basic or applied medical rehabilitation research;

(ii) research regarding the psychological and social aspects of rehabilitation, including disability policy;

(iii) research related to vocational rehabilitation;

(iv) continuation of research that promotes the emotional, social, educational, and functional growth of children who are individuals with disabilities;

(v) continuation of research to develop and evaluate interventions, policies, and services that support families of those children and adults who are individuals with disabilities; and

(vi) continuation of research that will improve services and policies that foster the productivity, independence, and social integration of individuals with disabilities, and enable individuals with disabilities, including individuals with mental retardation and other developmental disabilities, to live in their communities.

(D) Training of students preparing to be rehabilitation personnel shall be an important priority for such a Center.

(E) The Director shall make grants under this paragraph to establish and support both comprehensive centers dealing with multiple disabilities and centers primarily focused on particular disabilities.

(F) Grants made under this paragraph may be used to provide funds for services rendered by such a Center to individuals with disabilities in connection with the research and training activities.

(G) Grants made under this paragraph may be used to provide faculty support for teaching--

(i) rehabilitation-related courses of study for credit; and

(ii) other courses offered by the Centers, either directly or through another entity.

(H) The research and training activities conducted by such a Center shall be conducted in a manner that is accessible to and usable by individuals with disabilities.

(I) The Director shall encourage the Centers to develop practical applications for the findings of the research of the Centers.

(J) In awarding grants under this paragraph, the Director shall take into consideration the location of any proposed Center and the appropriate geographic and regional allocation of such Centers.

(K) To be eligible to receive a grant under this paragraph, each such institution or provider described in subparagraph (A) shall--

(i) be of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner consistent with appropriate State and Federal law; and

(ii) demonstrate the ability to carry out the training activities either directly or through another entity that can provide such training.

(L) The Director shall make grants under this paragraph for periods of 5 years, except that the Director may make a grant for a period of less than 5 years if--

(i) the grant is made to a new recipient; or

(ii) the grant supports new or innovative research.

(M) Grants made under this paragraph shall be made on a competitive basis. To be eligible to receive a grant under this paragraph, a prospective grant recipient shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

(N) In conducting scientific peer review under section 202(f) of an application for the renewal of a grant made under this paragraph, the peer review panel shall take into account the past performance of the applicant in carrying out the grant and input from individuals with disabilities and the individuals' representatives.

(O) An institution or provider that receives a grant under this paragraph to establish such a Center may not collect more than 15 percent of the amount of the grant received by the Center in indirect cost charges.

(3)(A) Research grants may be used for the establishment and support of Rehabilitation Engineering Research Centers, operated by or in collaboration with institutions of higher education or nonprofit organizations, to conduct research or demonstration activities, and training activities, regarding rehabilitation technology, including rehabilitation engineering, assistive technology devices, and assistive technology services, for the purposes of enhancing opportunities for better meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives.

(B) In order to carry out the purposes set forth in subparagraph (A), such a Center shall carry out the research or demonstration activities by--

(i) developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to--

(I) solve rehabilitation problems and remove environmental barriers through planning and conducting research, including cooperative research with public or private agencies and organizations, designed to produce new scientific knowledge, and new or improved methods, equipment, and devices; and

(II) study new or emerging technologies, products, or environments, and the effectiveness and benefits of such technologies, products, or environments;

(ii) demonstrating and disseminating--

(I) innovative models for the delivery, to rural and urban areas, of cost-effective rehabilitation technology services that promote utilization of assistive technology devices; and

(II) other scientific research to assist in meeting the employment and independent living needs of individuals with significant disabilities; or

(iii) conducting research or demonstration activities that facilitate service delivery systems change by demonstrating, evaluating, documenting, and disseminating--

(I) consumer responsive and individual and family-centered innovative models for the delivery to both rural and urban areas, of innovative cost-effective rehabilitation technology services that promote utilization of rehabilitation technology; and

(II) other scientific research to assist in meeting the employment and independent living needs of, and addressing the barriers confronted by, individuals with disabilities, including individuals with significant disabilities.

(C) To the extent consistent with the nature and type of research or demonstration activities described in subparagraph (B), each Center established or supported through a grant made available under this paragraph shall--

(i) cooperate with programs established under the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2201 et seq.) and other regional and local programs to provide information to individuals with disabilities and the individuals' representatives to--

(I) increase awareness and understanding of how rehabilitation technology can address their needs; and

(II) increase awareness and understanding of the range of options, programs, services, and resources available, including financing options for the technology and services covered by the area of focus of the Center;

(ii) provide training opportunities to individuals, including individuals with disabilities, to become researchers of rehabilitation technology and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organizations; and

(iii) respond, through research or demonstration activities, to the needs of individuals with all types of disabilities who may benefit from the application of technology within the area of focus of the Center.

(D)(i) In establishing Centers to conduct the research or demonstration activities described in subparagraph (B)(iii), the Director may establish one Center in each of the following areas of focus:

(I) Early childhood services, including early intervention and family support.

(II) Education at the elementary and secondary levels, including transition from school to postschool activities.

(III) Employment, including supported employment, and reasonable accommodations and the reduction of environmental barriers as required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and title V.

(IV) Independent living, including transition from institutional to community living, maintenance of community living on leaving the work force, self-help skills, and activities of daily living.

(ii) Each Center conducting the research or demonstration activities described in subparagraph (B)(iii) shall have an advisory committee, of which the majority of members are individuals with disabilities who are users of rehabilitation technology, and the individuals' representatives.

(E) Grants made under this paragraph shall be made on a competitive basis and shall be for a period of 5 years, except that the Director may make a grant for a period of less than 5 years if--

(i) the grant is made to a new recipient; or

(ii) the grant supports new or innovative research. (F) To be eligible to receive a grant under this paragraph, a prospective grant recipient shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

(G) Each Center established or supported through a grant made available under this paragraph shall--

(i) cooperate with State agencies and other local, State, regional, and national programs and organizations developing or delivering rehabilitation technology, including State programs funded under the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2201 et seq.); and

(ii) prepare and submit to the Director as part of an application for continuation of a grant, or as a final report, a report that documents the outcomes of the program of the Center in terms of both short- and long-term impact on the lives of individuals with disabilities, and such other information as may be requested by the Director.

(4)(A) Research grants may be used to conduct a program for spinal cord injury research, including conducting such a program by making grants to public or private agencies and organizations to pay part or all of the costs of special projects and demonstration projects for spinal cord injuries, that will--

(i) ensure widespread dissemination of research findings among all Spinal Cord Injury Centers, to rehabilitation practitioners, individuals with spinal cord injury, the individuals' representatives, and organizations receiving financial assistance under this paragraph;

(ii) provide encouragement and support for initiatives and new approaches by individual and institutional investigators; and

(iii) establish and maintain close working relationships with other governmental and voluntary institutions and organizations engaged in similar efforts in order to unify and coordinate scientific efforts, encourage joint planning, and promote the interchange of data and reports among spinal cord injury investigations.

(B) Any agency or organization carrying out a project or demonstration project assisted by a grant under this paragraph that provides services to individuals with spinal cord injuries shall--

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

(ii) demonstrate and evaluate the benefits to individuals with spinal cord injuries served in, and the degree of cost-effectiveness of, such a regional system;

(iii) demonstrate and evaluate existing, new, and improved methods and rehabilitation technology essential to the care, management, and rehabilitation of individuals with spinal cord injuries; and

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

(C) In awarding grants under this paragraph, the Director shall take into account the location of any proposed Spinal Cord Injury Center and the appropriate geographic and regional allocation of such Centers.

(5) Research grants may be used to conduct a program for end-stage renal disease research, to include support of projects and demonstrations for providing special services (including

transplantation and dialysis), artificial kidneys, and supplies necessary for the rehabilitation of individuals with such disease and which will--

(A) ensure dissemination of research findings;

(B) provide encouragement and support for initiatives and new approaches by individuals and institutional investigators; and

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

(6) Research grants may be used to conduct a program for international rehabilitation research, demonstration, and training for the purpose of developing new knowledge and methods in the rehabilitation of individuals with disabilities in the United States, cooperating with and assisting in developing and sharing information found useful in other nations in the rehabilitation of individuals with disabilities, and initiating a program to exchange experts and technical assistance in the field of rehabilitation of individuals with disabilities with other nations as a means of increasing the levels of skill of rehabilitation personnel.

(7) Research grants may be used to conduct a research program concerning the use of existing telecommunications systems (including telephone, television, satellite, radio, and other similar systems) which have the potential for substantially improving service delivery methods, and the development of appropriate programming to meet the particular needs of individuals with disabilities.

(8) Research grants may be used to conduct a program of joint projects with the National Institutes of Health, the National Institute of Mental Health, the Health Services Administration, the Administration on Aging, the National Science Foundation, the Veterans' Administration, the Department of Health and Human Services, the National Aeronautics and Space Administration, other Federal agencies, and private industry in areas of joint interest involving rehabilitation.

(9) Research grants may be used to conduct a program of research related to the rehabilitation of children, or older individuals, who are individuals with disabilities, including older American Indians who are individuals with disabilities. Such research program may include projects designed to assist the adjustment of, or maintain as residents in the community, older workers who are individuals with disabilities on leaving the work force.

(10) Research grants may be used to conduct a research program to develop and demonstrate innovative methods to attract and retain professionals to serve in rural areas in the rehabilitation of individuals with disabilities, including individuals with significant disabilities.

(11) Research grants may be used to conduct a model research and demonstration project designed to assess the feasibility of establishing a center for producing and distributing to individuals who are deaf or hard of hearing captioned video cassettes providing a broad range of educational, cultural, scientific, and vocational programming.

(12) Research grants may be used to conduct a model research and demonstration program to develop innovative methods of providing services for preschool age children who are individuals with disabilities, including--

(A) early intervention, assessment, parent counseling, infant stimulation, early identification, diagnosis, and evaluation of children who are individuals with significant disabilities up to the age of five, with a special emphasis on children who are individuals with significant disabilities up to the age of three;

(B) such physical therapy, language development, pediatric, nursing, psychological, and psychiatric services as are necessary for such children; and

(C) appropriate services for the parents of such children, including psychological and psychiatric services, parent counseling, and training.

(13) Research grants may be used to conduct a model research and training program under which model training centers shall be established to develop and use more advanced and effective methods of evaluating and addressing the employment needs of individuals with disabilities, including programs that--

(A) provide training and continuing education for personnel involved with the employment of individuals with disabilities;

(B) develop model procedures for testing and evaluating the employment needs of individuals with disabilities;

(C) develop model training programs to teach individuals with disabilities skills which will lead to appropriate employment;

(D) develop new approaches for job placement of individuals with disabilities, including new followup procedures relating to such placement;

(E) provide information services regarding education, training, employment, and job placement for individuals with disabilities; and

(b) Duties

The Council shall advise the Director with respect to research priorities and the development and revision of the 5-year plan required by section 202(h).

(c) Qualifications

Members of the Council shall be generally representative of the community of rehabilitation professionals, the community of rehabilitation researchers, the community of individuals with disabilities, and the individuals' representatives. At least one-half of the members shall be individuals with disabilities or the individuals' representatives.

(d) Terms of Appointment**(1) Length of term**

Each member of the Council shall serve for a term of up to 3 years, determined by the Secretary, except that--

(A) a member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed, shall be appointed for the remainder of such term; and

(B) the terms of service of the members initially appointed shall be (as specified by the Secretary) for such fewer number of years as will provide for the expiration of terms on a staggered basis.

(2) Number of terms

No member of the Council may serve more than two consecutive full terms. Members may serve after the expiration of their terms until their successors have taken office.

(e) Vacancies

Any vacancy occurring in the membership of the Council shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Council.

(f) Payment and Expenses**(1) Payment**

Each member of the Council who is not an officer or full-time employee of the Federal Government shall receive a payment of \$150 for each day (including travel time) during which

the member is engaged in the performance of duties for the Council. All members of the Council who are officers or full-time employees of the United States shall serve without compensation in addition to compensation received for their services as officers or employees of the United States.

(2) Travel expenses

Each member of the Council may receive travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for employees serving intermittently in the Government service, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(g) Detail of Federal Employees

On the request of the Council, the Secretary may detail, with or without reimbursement, any of the personnel of the Department of Education to the Council to assist the Council in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(h) Technical Assistance

On the request of the Council, the Secretary shall provide such technical assistance to the Council as the Council determines to be necessary to carry out its duties.

(i) Termination

Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Council.



REHABILITATION SERVICES

*Services of the West Virginia Division of Rehabilitation Services
are provided on a non-discriminatory basis
without regard to race, color, sex, age, creed, disability or national origin.*

For More Information

**Contact Your Local Office
or Telephone Toll-Free**

1-800-642-8207

TITLES III, IV, V, VI, and VII

of the

REHABILITATION ACT

VOLUME 2 of 2

State Department of Education and the Arts
Division of Rehabilitation Services
James S. Jeffers, Director



NOTICE

***This document includes the text of Titles III, IV, V, VI, and VII
of the Rehabilitation Act of 1973, as amended.***

It is provided as a public service.

It is intended only for the information of interested citizens.

***It is not intended to be and should not be relied on as an
authoritative reference for litigation or for other legal matters.***

***Persons desiring to consult or cite an authoritative reference
should obtain the advice of a qualified attorney.***

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TITLE III--PROFESSIONAL DEVELOPMENT AND SPECIAL PROJECTS AND DEMONSTRATIONS

Sec. 301. Declaration of Purpose and Competitive Basis of Grants and Contracts

(a) Purpose

It is the purpose of this title to authorize grants and contracts to--

(1)(A) provide academic training to ensure that skilled personnel are available to provide rehabilitation services to individuals with disabilities through vocational, medical, social, and psychological rehabilitation programs (including supported employment programs), through economic and business development programs, through independent living services programs, and through client assistance programs; and

(B) provide training to maintain and upgrade basic skills and knowledge of personnel (including personnel specifically trained to deliver services to individuals with disabilities whose employment outcome is self-employment or telecommuting) employed to provide state-of-the-art service delivery and rehabilitation technology services;

(2) conduct special projects and demonstrations that expand and improve the provision of rehabilitation and other services (including those services provided through community rehabilitation programs) authorized under this Act, or that otherwise further the purposes of this Act, including related research and evaluation;

(3) provide vocational rehabilitation services to individuals with disabilities who are migrant or seasonal farmworkers;

(4) initiate recreational programs to provide recreational activities and related experiences for individuals with disabilities to aid such individuals in employment, mobility, socialization, independence, and community integration; and

(5) provide training and information to individuals with disabilities and the individuals' representatives, and other appropriate parties to develop the skills necessary for individuals with disabilities to gain access to the rehabilitation system and statewide workforce investment systems and to become active decisionmakers in the rehabilitation process.

(b) Competitive Basis of Grants and Contracts

The Secretary shall ensure that all grants and contracts are awarded under this title on a competitive basis.

(B) Types of projects -----

Academic training projects described in this subsection may include--

(i) projects to train personnel in the areas of assisting and supporting individuals with disabilities pursuing self-employment, business ownership, and telecommuting, and of vocational rehabilitation counseling, rehabilitation technology, rehabilitation medicine, rehabilitation nursing, rehabilitation social work, rehabilitation psychiatry, rehabilitation psychology, rehabilitation dentistry, physical therapy, occupational therapy, speech pathology and audiology, physical education, therapeutic recreation, community rehabilitation programs, or prosthetics and orthotics;

(ii) projects to train personnel to provide--

(I) services to individuals with specific disabilities or individuals with disabilities who have specific impediments to rehabilitation, including individuals who are members of populations that are unserved or underserved by programs under this Act;

(II) job development and job placement services to individuals with disabilities;

(III) supported employment services, including services of employment specialists for individuals with disabilities;

(IV) specialized services for individuals with significant disabilities; or

(V) recreation for individuals with disabilities;

(iii) projects to train personnel in other fields contributing to the rehabilitation of individuals with disabilities; and

(iv) projects to train personnel in the use, applications, and benefits of rehabilitation technology.

(2) Application

No grant shall be awarded or contract entered into under this subsection unless the applicant has submitted to the Commissioner an application at such time, in such form, in accordance with such procedures, and including such information as the Secretary may require, including--

(A) a description of how the designated State unit or units will participate in the project to be funded under the grant or contract, including, as appropriate, participation on advisory committees, as practicum sites, in curriculum development, and in other ways so as to build closer relationships between the applicant and the designated State unit and to encourage students to pursue careers in public vocational rehabilitation programs;

(B) the identification of potential employers that provide employment that meets the requirements of paragraph (5)(A)(i); and

(C) an assurance that data on the employment of graduates or trainees who participate in the project is accurate.

(3) Limitation

(A) In general

Except as provided in subparagraph (B), no grant or contract under this subsection may be used to provide any one course of study to an individual for a period of more than 4 years.

(B) Exception

If a grant or contract recipient under this subsection determines that an individual has a disability which seriously affects the completion of training under this subsection, the grant or contract recipient may extend the period referred to in subparagraph (A).

(4) Authority to provide scholarships

Grants and contracts under paragraph (1) may be expanded to provide services that include the provision of scholarships and necessary stipends and allowances.

(5) Agreements

(A) Contents

A recipient of a grant or contract under this subsection shall provide assurances to the Commissioner that each individual who receives a scholarship, for any academic year beginning after June 1, 1992, utilizing funds provided under such grant or contract shall enter into an agreement with the recipient under which the individual shall--

(i) maintain employment--

(I) in a nonprofit rehabilitation agency or related agency or in a State rehabilitation agency or related agency, including a professional corporation or professional practice group through which the individual has a service arrangement with the designated State agency;

(II) on a full- or part-time basis; and

(III) for a period of not less than the full-time equivalent of 2 years for each year for which assistance under this section was received by the individual, within a period, beginning after the recipient completes the training for which the scholarship was awarded, of not more than the sum of the number of years in the period described in subclause (III) and 2 additional years; and

(ii) repay all or part of any scholarship received, plus interest, if the individual does not fulfill the requirements of clause (i), except as the Commissioner by regulation may provide for repayment exceptions and deferrals.

(B) Enforcement

The Commissioner shall be responsible for the enforcement of each agreement entered into under subparagraph (A) upon completion of the training involved under such subparagraph.

(c) Grants to Historically Black Colleges and Universities

The Commissioner, in carrying out this section, shall make grants to historically Black colleges and universities and other institutions of higher education whose minority student enrollment is at least 50 percent of the total enrollment of the institution.

(d) Application

A grant may not be awarded to a State or other organization under this section unless the State or organization has submitted an application to the Commissioner at such time, in such form, in accordance with such procedures, and containing such information as the Commissioner may require. Any such application shall include a detailed description of strategies that will be utilized to recruit and train individuals so as to reflect the diverse populations of the United States as part of the effort to increase the number of individuals with disabilities, and individuals who are from linguistically and culturally diverse backgrounds, who are available to provide rehabilitation services.

(e) Evaluation and Collection of Data

The Commissioner shall evaluate the impact of the training programs conducted under this section, and collect information on the training needs of, and data on shortages of qualified personnel necessary to provide services to individuals with disabilities. The Commissioner shall prepare and submit to Congress, by September 30 of each fiscal year, a report setting forth and justifying in detail how the funds made available for training under this section for the fiscal year prior to such submission are allocated by professional discipline and other program areas. The report shall also contain findings on such personnel shortages, how funds proposed for the succeeding fiscal year will be allocated under the President's budget proposal, and how the findings on personnel shortages justify the allocations.

(f) Grants for the Training of Interpreters

(1) Authority

(A) In general

For the purpose of training a sufficient number of qualified interpreters to meet the communications needs of individuals who are deaf or hard of hearing, and individuals who are deaf-blind, the Commissioner, acting through a Federal office responsible for deafness and communicative disorders, may award grants to public or private nonprofit agencies or organizations to pay part of the costs--

(i) for the establishment of interpreter training programs; or

(ii) to enable such agencies or organizations to provide financial assistance for ongoing interpreter training programs.

(B) Geographic areas

The Commissioner shall award grants under this subsection for programs in geographic areas throughout the United States that the Commissioner considers appropriate to best carry out the objectives of this section.

(C) Priority

In awarding grants under this subsection, the Commissioner shall give priority to public or private nonprofit agencies or organizations with existing programs that have a demonstrated capacity for providing interpreter training services.

(D) Funding The Commissioner may award grants under this subsection through the use of--

(i) amounts appropriated to carry out this section; or

(ii) pursuant to an agreement with the Director of the Office of the Special Education Program (established under section 603 of the Individuals with Disabilities Education Act (as amended by section 101 of the Individuals with Disabilities Education Act Amendments of 1997 (Public Law 105-17))), amounts appropriated under section 686 of the Individuals with Disabilities Education Act.

(2) Application

A grant may not be awarded to an agency or organization under paragraph (1) unless the agency or organization has submitted an application to the Commissioner at such time, in such form, in accordance with such procedures, and containing such information as the Commissioner may require, including--

(A) a description of the manner in which an interpreter training program will be developed and operated during the 5-year period following the date on which a grant is received by the applicant under this subsection;

(B) a demonstration of the applicant's capacity or potential for providing training for interpreters for individuals who are deaf or hard of hearing, and individuals who are deaf-blind;

(C) assurances that any interpreter trained or retrained under a program funded under the grant will meet such minimum standards of competency as the Commissioner may establish for purposes of this subsection; and

(D) such other information as the Commissioner may require.

(g) Technical Assistance and In-Service Training

(1) Technical assistance

The Commissioner is authorized to provide technical assistance to State designated agencies and community rehabilitation programs, directly or through contracts with State designated agencies or nonprofit organizations.

(2) Compensation

An expert or consultant appointed or serving under contract pursuant to this section shall be compensated at a rate, subject to approval of the Commissioner, that shall not exceed the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code. Such an expert or consultant may be allowed travel and transportation expenses in accordance with section 5703 of title 5, United States Code.

(3) In-service training of rehabilitation personnel

(A) Projects

Subject to subparagraph (B), at least 15 percent of the sums appropriated to carry out this section shall be allocated to designated State agencies to be used, directly or indirectly, for projects for in-service training for rehabilitation personnel, consistent with the needs identified through the comprehensive system for personnel development required by section 101(a)(7), including projects designed--

(i) to address recruitment and retention of qualified rehabilitation professionals;

(ii) to provide for succession planning;

(iii) to provide for leadership development and capacity building; and

(iv) for fiscal years 1999 and 2000, to provide training regarding the Workforce Investment Act of 1998 and the amendments to this Act made by the Rehabilitation Act Amendments of 1998.

(B) Limitation

If the allocation to designated State agencies required by subparagraph (A) would result in a lower level of funding for projects being carried out on the date of enactment of the Rehabilitation Act Amendments of 1998 by other recipients of funds under this section, the Commissioner may allocate less than 15 percent of the sums described in subparagraph (A) to designated State agencies for such in-service training.

(h) Provision of Information

The Commissioner, subject to the provisions of section 306, may require that recipients of grants or contracts under this section provide information, including data, with regard to the impact of activities funded under this section.

(i) Authorization of Appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1999 through 2003.

Sec. 303. Demonstration and Training Programs

(a) Demonstration Projects To Increase Client Choice

(1) Grants

The Commissioner may make grants to States and public or nonprofit agencies and organizations to pay all or part of the costs of projects to demonstrate ways to increase client choice in the rehabilitation process, including the selection of providers of vocational rehabilitation services.

(2) Use of funds

An entity that receives a grant under this subsection shall use the grant only--

(A) for activities that are directly related to planning, operating, and evaluating the demonstration projects; and

(B) to supplement, and not supplant, funds made available from Federal and non-Federal sources for such projects.

(3) Application

Any eligible entity that desires to receive a grant under this subsection shall submit an application at such time, in such manner, and containing such information and assurances as the Commissioner may require, including--

(A) a description of--

(i) how the entity intends to promote increased client choice in the rehabilitation process, including a description, if appropriate, of how an applicant will determine the cost of any service or product offered to an eligible client;

(ii) how the entity intends to ensure that any vocational rehabilitation service or related service is provided by a qualified provider who is accredited or meets such other quality assurance and cost-control criteria as the State may establish; and

(iii) the outreach activities to be conducted by the applicant to obtain eligible clients; and

(B) assurances that a written plan will be established with the full participation of the client, which plan shall, at a minimum, include--

(i) a statement of the vocational rehabilitation goals to be achieved;

(ii) a statement of the specific vocational rehabilitation services to be provided, the projected dates for their initiation, and the anticipated duration of each such service; and

(iii) objective criteria, an evaluation procedure, and a schedule, for determining whether such goals are being achieved.

(4) Award of grants

In selecting entities to receive grants under paragraph (1), the Commissioner shall take into consideration--

(A) the diversity of strategies used to increase client choice, including selection among qualified service providers;

(B) the geographic distribution of projects; and

(C) the diversity of clients to be served.

(5) Records

Entities that receive grants under paragraph (1) shall maintain such records as the Commissioner may require and comply with any request from the Commissioner for such records.

(6) Direct services

At least 80 percent of the funds awarded for any project under this subsection shall be used for direct services, as specifically chosen by eligible clients.

(7) Evaluation

The Commissioner may conduct an evaluation of the demonstration projects with respect to the services provided, clients served, client outcomes obtained, implementation issues addressed, the cost-effectiveness of the project, and the effects of increased choice on clients and service providers. The Commissioner may reserve funds for the evaluation for a fiscal year from the amounts appropriated to carry out projects under this section for the fiscal year.

(8) Definitions

For the purposes of this subsection:

(A) Direct services

The term "direct services" means vocational rehabilitation services, as described in section 103(a).

(B) Eligible client

The term "eligible client" means an individual with a disability, as defined in section 7(20)(A), who is not currently receiving services under an individualized plan for employment established through a designated State unit.

(b) Special Demonstration Programs

(1) Grants; contracts

The Commissioner, subject to the provisions of section 306, may provide grants to, or enter into contracts with, eligible entities to pay all or part of the cost of programs that expand and improve the provision of rehabilitation and other services authorized under this Act or that further the purposes of the Act, including related research and evaluation activities.

(2) Eligible entities; terms and conditions

(A) Eligible entities

To be eligible to receive a grant, or enter into a contract, under paragraph (1), an entity shall be a State vocational rehabilitation agency, community rehabilitation program, Indian tribe or tribal organization, or other public or nonprofit agency or organization, or as the Commissioner determines appropriate, a for-profit organization. The Commissioner may limit competitions to 1 or more types of organizations described in this subparagraph.

(B) Terms and conditions

A grant or contract under paragraph (1) shall contain such terms and conditions as the Commissioner may require.

(3) Application

An eligible entity that desires to receive a grant, or enter into a contract, under paragraph (1) shall submit an application to the Secretary at such time, in such form, and containing such information and assurances as the Commissioner may require, including, if the Commissioner determines appropriate, a description of how the proposed project or demonstration program--

(A) is based on current research findings, which may include research conducted by the National Institute on Disability and Rehabilitation Research, the National Institutes of Health, and other public or private organizations; and

(B) is of national significance.

(4) Types of projects

The programs that may be funded under this subsection may include--

(A) special projects and demonstrations of service delivery;

(B) model demonstration projects;

(C) technical assistance projects;

(D) systems change projects;

(E) special studies and evaluations; and

(F) dissemination and utilization activities.

(5) Priority for competitions

(A) In general

In announcing competitions for grants and contracts under this subsection, the Commissioner shall give priority consideration to--

(i) special projects and demonstration programs of service delivery for adults who are either low-functioning and deaf or low-functioning and hard of hearing;

(ii) supported employment, including community-based supported employment programs to meet the needs of individuals with the most significant disabilities or to provide technical assistance to States and community organizations to improve and expand the provision of supported employment services; and

(iii) model transitional planning services for youths with disabilities.

(B) Additional competitions: In announcing competitions for grants and contracts under this subsection, the Commissioner may require that applicants address 1 or more of the following:

(i) Age ranges.

(ii) Types of disabilities.

(iii) Types of services.

(iv) Models of service delivery.

(v) Stage of the rehabilitation process.

(vi) The needs of underserved populations, unserved and underserved areas, individuals with significant disabilities, low-incidence disability population or individuals residing in federally designated empowerment zones and enterprise communities.

(vii) Expansion of employment opportunities for individuals with disabilities.

(viii) Systems change projects to promote meaningful access of individuals with disabilities to employment-related services under title I of the Workforce Investment Act of 1998 and under other Federal laws.

(ix) Innovative methods of promoting achievement of high-quality employment outcomes.

(x) The demonstration of the effectiveness of early intervention activities in improving employment outcomes.

(xi) Alternative methods of providing affordable transportation services to individuals with disabilities who are employed, seeking employment, or receiving vocational rehabilitation

services from public or private organizations and who reside in geographic areas in which public transportation or paratransit service is not available.

(6) Use of funds for continuation awards

The Commissioner may use funds made available to carry out this section for continuation awards for projects that were funded under sections 12 and 311 (as such sections were in effect on the day before the date of the enactment of the Rehabilitation Act Amendments of 1998).

(c) Parent Information and Training Program

(1) Grants

The Commissioner is authorized to make grants to private nonprofit organizations for the purpose of establishing programs to provide training and information to enable individuals with disabilities, and the parents, family members, guardians, advocates, or other authorized representatives of the individuals to participate more effectively with professionals in meeting the vocational, independent living, and rehabilitation needs of individuals with disabilities. Such grants shall be designed to meet the unique training and information needs of the individuals described in the preceding sentence, who live in the area to be served, particularly those who are members of populations that have been unserved or underserved by programs under this Act.

(2) Use of grants

An organization that receives a grant to establish training and information programs under this subsection shall use the grant to assist individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals--

(A) to better understand vocational rehabilitation and independent living programs and services;

(B) to provide followup support for transition and employment programs;

(C) to communicate more effectively with transition and rehabilitation personnel and other relevant professionals;

(D) to provide support in the development of the individualized plan for employment;

(E) to provide support and expertise in obtaining information about rehabilitation and independent living programs, services, and resources that are appropriate; and

(F) to understand the provisions of this Act, particularly provisions relating to employment, supported employment, and independent living.

(3) Award of grants

The Commissioner shall ensure that grants under this subsection--

(A) shall be distributed geographically to the greatest extent possible throughout all States; and

(B) shall be targeted to individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals, in both urban and rural areas or on a State or regional basis.

(4) Eligible organizations

In order to receive a grant under this subsection, an organization--

(A) shall submit an application to the Commissioner at such time, in such manner, and containing such information as the Commissioner may require, including information demonstrating the capacity and expertise of the organization--

(i) to coordinate training and information activities with Centers for Independent Living;

(ii) to coordinate and work closely with parent training and information centers established pursuant to section 682(a) of the Individuals with Disabilities Education Act (as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105-17); and

(iii) to effectively conduct the training and information activities authorized under this subsection;

(B)(i) shall be governed by a board of directors--

(I) that includes professionals in the field of vocational rehabilitation; and

(II) on which a majority of the members are individuals with disabilities or the parents, family members, guardians, advocates, or authorized representatives of the individuals; or

(ii)(I) shall have a membership that represents the interests of individuals with disabilities; and

(II) shall establish a special governing committee that meets the requirements specified in subclauses (I) and (II) of clause (i) to operate a training and information program under this subsection; and

(C) shall serve individuals with a full range of disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals.

(5) Consultation

Each organization carrying out a program receiving assistance under this subsection shall consult with appropriate agencies that serve or assist individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals, located in the jurisdiction served by the program.

(6) Coordination

The Commissioner shall provide coordination and technical assistance by grant or cooperative agreement for establishing, developing, and coordinating the training and information programs. To the extent practicable, such assistance shall be provided by the parent training and information centers established pursuant to section 682(a) of the Individuals with Disabilities Education Act (as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105-17).

(7) Review

(A) Quarterly review

The board of directors or special governing committee of an organization receiving a grant under this subsection shall meet at least once in each calendar quarter to review the training and information program, and each such committee shall directly advise the governing board regarding the views and recommendations of the committee.

(B) Review for grant renewal

If a nonprofit private organization requests the renewal of a grant under this subsection, the board of directors or the special governing committee shall prepare and submit to the Commissioner a written review of the training and information program conducted by the organization during the preceding fiscal year.

(d) Braille Training Programs

(1) Establishment

The Commissioner shall make grants to, and enter into contracts with, States and public or nonprofit agencies and organizations, including institutions of higher education, to pay all or part of the cost of training in the use of braille for personnel providing vocational rehabilitation services or educational services to youth and adults who are blind.

(2) Projects

Such grants shall be used for the establishment or continuation of projects that may provide--

(A) development of braille training materials;

(B) in-service or pre-service training in the use of braille, the importance of braille literacy, and methods of teaching braille to youth and adults who are blind; and

(C) activities to promote knowledge and use of braille and nonvisual access technology for blind youth and adults through a program of training, demonstration, and evaluation conducted with leadership of experienced blind individuals, including the use of comprehensive, state-of-the-art technology.

(3) Application

To be eligible to receive a grant, or enter into a contract, under paragraph (1), an agency or organization shall submit an application to the Commissioner at such time, in such manner, and containing such information as the Commissioner may require.

(e) Authorization of Appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1999 through 2003.

Sec. 304. Migrant and Seasonal Farmworkers

(a) Grants

(1) Authority

The Commissioner, subject to the provisions of section 306, may make grants to eligible entities to pay up to 90 percent of the cost of projects or demonstration programs for the provision of vocational rehabilitation services to individuals with disabilities who are migrant or seasonal farmworkers, as determined in accordance with rules prescribed by the Secretary of Labor, and to the family members who are residing with such individuals (whether or not such family members are individuals with disabilities).

(2) Eligible entities

To be eligible to receive a grant under paragraph (1), an entity shall be--

(A) a State designated agency;

(B) a nonprofit agency working in collaboration with a State agency described in subparagraph (A); or

(C) a local agency working in collaboration with a State agency described in subparagraph (A).

(3) Maintenance and transportation

(A) In general

Amounts provided under a grant under this section may be used to provide for the maintenance of and transportation for individuals and family members described in paragraph (1) as necessary for the rehabilitation of such individuals.

(B) Requirement

Maintenance payments under this paragraph shall be provided in a manner consistent with any maintenance payments provided to other individuals with disabilities in the State under this Act.

(4) Assurance of cooperation

To be eligible to receive a grant under this section an entity shall provide assurances (satisfactory to the Commissioner) that in the provision of services under the grant there will be appropriate cooperation between the grantee and other public or nonprofit agencies and organizations having special skills and experience in the provision of services to migrant or seasonal farmworkers or their families.

(5) Coordination with other programs

The Commissioner shall administer this section in coordination with other programs serving migrant and seasonal farmworkers, including programs under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.), and the Workforce Investment Act of 1998.

(b) Authorization of Appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section, for each of the fiscal years 1999 through 2003.

Sec. 305. Recreational Programs

(a) Grants

(1) Authority

(A) In general

The Commissioner, subject to the provisions of section 306, shall make grants to States, public agencies, and nonprofit private organizations to pay the Federal share of the cost of the establishment and operation of recreation programs to provide individuals with disabilities with recreational activities and related experiences to aid in the employment, mobility, socialization, independence, and community integration of such individuals.

(B) Recreation programs

The recreation programs that may be funded using assistance provided under a grant under this section may include vocational skills development, leisure education, leisure networking, leisure resource development, physical education and sports, scouting and camping, 4-H activities, construction of facilities for aquatic rehabilitation therapy, music, dancing, handicrafts, art, and homemaking. When possible and appropriate, such programs and activities should be provided in settings with peers who are not individuals with disabilities.

(C) Design of program

Programs and activities carried out under this section shall be designed to demonstrate ways in which such programs assist in maximizing the independence and integration of individuals with disabilities.

(2) Maximum term of grant

A grant under this section shall be made for a period of not more than 3 years.

(3) Availability of nongrant resources

(A) In general

A grant may not be made to an applicant under this section unless the applicant provides assurances that, with respect to costs of the recreation program to be carried out under the grant, the applicant, to the maximum extent practicable, will make available non-Federal resources (in cash or in-kind) to pay the non-Federal share of such costs.

(B) Federal share

The Federal share of the costs of the recreation programs carried out under this section shall be--

(i) with respect to the first year in which assistance is provided under a grant under this section, 100 percent;

(ii) with respect to the second year in which assistance is provided under a grant under this section, 75 percent; and

(iii) with respect to the third year in which assistance is provided under a grant under this section, 50 percent.

(4) Application

To be eligible to receive a grant under this section, a State, agency, or organization shall submit an application to the Commissioner at such time, in such manner, and containing such information as the Commissioner may require, including a description of--

(A) the manner in which the findings and results of the project to be funded under the grant, particularly information that facilitates the replication of the results of such projects, will be made generally available; and

(B) the manner in which the service program funded under the grant will be continued after Federal assistance ends.

(5) Level of services

Recreation programs funded under this section shall maintain, at a minimum, the same level of services over a 3-year project period.

(6) Reports by grantees

(A) Requirement

The Commissioner shall require that each recipient of a grant under this section annually prepare and submit to the Commissioner a report concerning the results of the activities funded under the grant.

(B) Limitation

The Commissioner may not make financial assistance available to a grant recipient for a subsequent year until the Commissioner has received and evaluated the annual report of the recipient under subparagraph (A) for the current year.

(b) Authorization of Appropriations

There are authorized to be appropriated to carry out this section, such sums as may be necessary for each of the fiscal years 1999 through 2003.

Sec. 306. Measuring of Project Outcomes and Performance

The Commissioner may require that recipients of grants under this title submit information, including data, as determined by the Commissioner to be necessary to measure project outcomes and performance, including any data needed to comply with the Government Performance and Results Act.

TITLE IV--NATIONAL COUNCIL ON DISABILITY

Establishment of National Council on Disability

Sec. 400. (a)(1)

(A) There is established within the Federal Government a National Council on Disability (hereinafter in this title referred to as the "National Council"), which shall be composed of fifteen members appointed by the President, by and with the advice and consent of the Senate.

(B) The President shall select members of the National Council after soliciting recommendations from representatives of--

(i) organizations representing a broad range of individuals with disabilities; and

(ii) organizations interested in individuals with disabilities.

(C) The members of the National Council shall be individuals with disabilities, parents or guardians of individuals with disabilities, or other individuals who have substantial knowledge or experience relating to disability policy or programs. The members of the National Council shall be appointed so as to be representative of individuals with disabilities, national organizations concerned with individuals with disabilities, providers and administrators of services to individuals with disabilities, individuals engaged in conducting medical or scientific research relating to individuals with disabilities, business concerns, and labor organizations. A majority of the members of the National Council shall be individuals with disabilities. The members of the National Council shall be broadly representative of minority and other individuals and groups.

(2) The purpose of the National Council is to promote policies, programs, practices, and procedures that--

(A) guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and

(B) empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

(b)(1) Each member of the National Council shall serve for a term of 3 years, except that the terms of service of the members initially appointed after the date of enactment of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 shall be (as specified by the President) for such fewer number of years as will provide for the expiration of terms on a staggered basis.

(2)(A) No member of the National Council may serve more than two consecutive full terms beginning on the date of commencement of the first full term on the Council. Members may serve after the expiration of their terms until their successors have taken office.

(B) As used in this paragraph, the term "full term" means a term of 3 years.

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

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

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

DUTIES OF NATIONAL COUNCIL

Sec. 401. (a) The National Council shall--

(1) provide advice to the Director with respect to the policies and conduct of the National Institute on Disability and Rehabilitation Research, including ways to improve research concerning individuals with disabilities and the methods of collecting and disseminating findings of such research;

(2) provide advice to the Commissioner with respect to the policies of and conduct of the Rehabilitation Services Administration;

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

(4) provide advice regarding priorities for the activities of the Interagency Disability Coordinating Council and review the recommendations of such Council for legislative and administrative changes to ensure that such recommendations are consistent with the purposes of the Council to promote the full integration, independence, and productivity of individuals with disabilities;

(5) review and evaluate on a continuing basis--

(A) policies, programs, practices, and procedures concerning individuals with disabilities conducted or assisted by Federal departments and agencies, including programs established or

assisted under this Act or under the Developmental Disabilities Assistance and Bill of Rights Act; and

(B) all statutes and regulations pertaining to Federal programs which assist such individuals with disabilities;

in order to assess the effectiveness of such policies, programs, practices, procedures, statutes, and regulations in meeting the needs of individuals with disabilities;

(6) assess the extent to which such policies, programs, practices, and procedures facilitate or impede the promotion of the policies set forth in subparagraphs (A) and (B) of section 400(a)(2);

(7) gather information about the implementation, effectiveness, and impact of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(8) make recommendations to the President, the Congress, the Secretary, the Director of the National Institute on Disability and Rehabilitation Research, and other officials of Federal agencies or other Federal entities, respecting ways to better promote the policies set forth in section 400(a)(2);

(9) provide to the Congress on a continuing basis advice, recommendations, legislative proposals, and any additional information that the National Council or the Congress deems appropriate; and

(10) review and evaluate on a continuing basis new and emerging disability policy issues affecting individuals with disabilities at the Federal, State, and local levels, and in the private sector, including the need for and coordination of adult services, access to personal assistance services, school reform efforts and the impact of such efforts on individuals with disabilities, access to health care, and policies that operate as disincentives for the individuals to seek and retain employment.

(b)(1) Not later than October 31, 1998, and annually thereafter, the National Council shall prepare and submit to the President and the appropriate committees of the Congress a report entitled "National Disability Policy: A Progress Report".

(2) The report shall assess the status of the Nation in achieving the policies set forth in section 400(a)(2), with particular focus on the new and emerging issues impacting on the lives of individuals with disabilities. The report shall present, as appropriate, available data on health, housing, employment, insurance, transportation, recreation, training, prevention, early intervention, and education. The report shall include recommendations for policy change.

(3) In determining the issues to focus on and the findings, conclusions, and recommendations to include in the report, the National Council shall seek input from the public, particularly individuals with disabilities, representatives of organizations representing a broad range of

individuals with disabilities, and organizations and agencies interested in individuals with disabilities.

Compensation of National Council Members

Sec. 402. (a) Members of the National Council shall be entitled to receive compensation at a rate equal to the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code, including travel time, for each day they are engaged in the performance of their duties as members of the National Council.

(b) Members of the National Council who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the National Council except for compensation for travel expenses as provided under subsection (c) of this section.

(c) While away from their homes or regular places of business in the performance of services for the National Council, members of the National Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

Staff of National Council

Sec. 403. (a)(1) The Chairperson of the National Council may appoint and remove, without regard to the provisions of title 5, United States Code, governing appointments, the provisions of chapter 75 of such title (relating to adverse actions), the provisions of chapter 77 of such title (relating to appeals), or the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates), an Executive Director to assist the National Council to carry out its duties. The Executive Director shall be appointed from among individuals who are experienced in the planning or operation of programs for individuals with disabilities.

(2) The Executive Director is authorized to hire technical and professional employees to assist the National Council to carry out its duties.

(b)(1) The National Council may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code (but at rates for individuals not to exceed the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code).

(2) The National Council may--

(A) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code;

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

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

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

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

(d)(1) It shall be the duty of the Secretary of the Treasury to invest such portion of the amounts made available under subsection (a)(2)(B) as is not, in the Secretary's judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(2) The amounts described in paragraph (1), and the interest on, and the proceeds from the sale or redemption of, the obligations described in paragraph (1) shall be available to the National Council to carry out this title.

Administrative Powers of National Council

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

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

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

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

(e) The National Council may use, with the consent of the agencies represented on the Interagency Disability Coordinating Council; and as authorized in title V, such services, personnel, information, and facilities as may be needed to carry out its duties under this title, with or without reimbursement to such agencies.

Authorization of Appropriations

Sec. 405.

There are authorized to be appropriated to carry out this title such sums as may be necessary for each of the fiscal years 1999 through 2003.

Architectural and Transportation Barriers Compliance Board

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

(A) Thirteen members shall be appointed by the President from among members of the general public of whom at least a majority shall be individuals with disabilities.

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

(i) Department of Health and Human Services.

(ii) Department of Transportation

(iii) Department of Housing and Urban Development

(iv) Department of Labor

(v) Department of the Interior

(vi) Department of Defense

(vii) Department of Justice

(viii) General Services Administration

(ix) Department of Veterans Affairs

(x) United States Postal Service

(xi) Department of Education

(xii) Department of Commerce

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

(2)(A)(i) The term of office of each appointed member of the Access Board shall be 4 years, except as provided in clause (ii). Each year, the terms of office of at least three appointed members of the Access Board shall expire.

(ii)(I) One member appointed for a term beginning December 4, 1992 shall serve for a term of 3 years.

(II) One member appointed for a term beginning December 4, 1992 shall serve for a term of 2 years.

(III) One member appointed for a term beginning December 4, 1992 shall serve for a term of 1 year.

(IV) Members appointed for terms beginning before December 4, 1992 shall serve for terms of 3 years.

(B) A member whose term has expired may continue to serve until a successor has been appointed.

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

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

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

(5)(A) Members of the Access Board who are not regular full-time employees of the United States shall, while serving on the business of the Access Board, be entitled to receive compensation at rates fixed by the President, but not to exceed the daily equivalent of the rate of pay for level IV of the Executive Schedule under section 5315 of title 5, United States Code, including travel time, for each day they are engaged in the performance of their duties as members of the Access Board; and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

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

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

(B) The bylaws shall include quorum requirements. The quorum requirements shall provide that (i) a proxy may not be counted for purposes of establishing a quorum, and (ii) not less than half the members required for a quorum shall be members of the general public appointed under paragraph (1)(A).

(b) It shall be the function of the Access Board to -

(1) ensure compliance with the standards prescribed pursuant to the Act entitled "An Act to ensure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped", approved August 12, 1968, (commonly known as the Architectural Barriers Act of 1968; 42 U.S.C. 4151 et seq.) (including the application of such Act to the United States Postal Service), including enforcing all standards under such Act, and ensuring that all waivers and modifications to the standards are based on findings of fact and are not inconsistent with the provisions of this section;

(2) develop advisory information for, and provide appropriate technical assistance to, individuals or entities with rights or duties under regulations prescribed pursuant to this title or titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq. and 12181 et seq.) with respect to overcoming architectural, transportation, and communication barriers;

(3) establish and maintain--

(A) minimum guidelines and requirements for the standards issued pursuant to the Act commonly known as the Architectural Barriers Act of 1968;

(B) minimum guidelines and requirements for the standards issued pursuant to titles II and III of the Americans with Disabilities Act of 1990;

(C) guidelines for accessibility of telecommunications equipment and customer premises equipment under section 255 of the Telecommunications Act of 1934 (47 U.S.C. 255); and

(D) standards for accessible electronic and information technology under section 508;

(4) promote accessibility throughout all segments of society;

(5) investigate and examine alternative approaches to the architectural, transportation, communication, and attitudinal barriers confronting individuals with disabilities, particularly with respect to telecommunications devices, public buildings and monuments, parks and parklands, public transportation (including air, water, and surface transportation, whether interstate, foreign, intrastate, or local), and residential and institutional housing;

(6) determine what measures are being taken by Federal, State, and local governments and by other public or nonprofit agencies to eliminate the barriers described in paragraph (5);

(7) promote the use of the International Accessibility Symbol in all public facilities that are in compliance with the standards prescribed by the Administrator of General Services, the Secretary of Defense, and the Secretary of Housing and Urban Development pursuant to the Act commonly known as the Architectural Barriers Act of 1968;

(8) make to the President and to the Congress reports that shall describe in detail the results of its investigations under paragraphs (5) and (6);

(9) make to the President and to the Congress such recommendations for legislative changes as the Access Board determines to be necessary or desirable to eliminate the barriers described in paragraph (5);

(10) ensure that public conveyances, including rolling stock, are readily accessible to, and usable by, individuals with physical disabilities; and

(11) carry out the responsibilities specified for the Access Board in section 508.

(c) The Access Board shall also

(1)(A) determine how and to what extent transportation barriers impede the mobility of individuals with disabilities and aged individuals with disabilities and consider ways in which travel expenses in connection with transportation to and from work for individuals with disabilities can be met or subsidized when such individuals are unable to use mass transit systems or need special equipment in private transportation, and

(B) consider the housing needs of individuals with disabilities;

(2) determine what measures are being taken, especially by public and other nonprofit agencies and groups having an interest in and a capacity to deal with such problems,

(A) to eliminate barriers from public transportation systems (including vehicles used in such systems), and to prevent their incorporation in new or expended transportation systems, and

(B) to make housing available and accessible to individuals with disabilities or to meet sheltered housing needs; and (3) prepare plans and proposals for such further actions as may be necessary to the goals of adequate transportation and housing for individuals with disabilities, including proposals for bringing together in a cooperative effort, agencies, organizations, and groups already working toward such goals or whose cooperation is essential to effective and comprehensive action.

(d)(1) The Access Board shall conduct investigations, hold public hearings, and issue such orders as it deems necessary to ensure compliance with the provisions of the Acts cited in subsection

(b). Except as provided in paragraph (3) of subsection (e), the provisions of subchapter II of chapter 5, and chapter 7 of title 5, United States Code, shall apply to procedures under this subsection, and an order of compliance issued by the Access Board shall be the final order for purposes of judicial review. Any such order affecting any Federal department, agency, or instrumentality of the United States shall be final and binding on such department, agency, or instrumentality. An order of compliance may include the withholding or suspension of Federal funds with respect to any building or public conveyance or rolling stock found not to be in compliance with standards enforced under this section. Pursuant to chapter 7 of title 5, United States Code, any complainant or participant in a proceeding under this subsection may obtain review of a final order issued in such proceeding.

(2) The Executive Director is authorized, at the direction of the Access Board -

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

(B) to intervene, appear, and participate, or to appear as amicus curiae, in any court of the United States or in any court of a State in civil actions that relate to this section or to the Architectural Barriers Act of 1968. Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the executive director may appear for and represent the Access Board in any civil litigation brought under this section.

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

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

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

(f)(1)(A) In carrying out the technical assistance responsibilities of the Access Board under this section, the Board may enter into an interagency agreement with another Federal department or agency.

(B) Any funds appropriated to such a department or agency for the purpose of providing technical assistance may be transferred to the Access Board. Any funds appropriated to the Access Board for the purpose of providing such technical assistance may be transferred to such department or agency.

(C) The Access Board may arrange to carry out the technical assistance responsibilities of the Board under this section through such other departments and agencies for such periods as the Board determines to be appropriate.

(D) The Access Board shall establish a procedure to ensure separation of its compliance and technical assistance responsibilities under this section.

(2) The departments or agencies specified in subsection (a) of this section shall make available to the Access Board such technical, administrative, or other assistance as it may require to carry out its functions under this section, and the Access Board may appoint such other advisers, technical experts, and consultants as it deems necessary to assist it in carrying out its functions under this section. Special advisory and technical experts and consultants appointed pursuant to this paragraph shall, while performing their functions under this section, be entitled to receive compensation at rates fixed by the Chairperson, but not exceeding the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code, including travel time, and while serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

(g)(1) The Access Board shall, at the end of each fiscal year, report its activities during the preceding fiscal year to the Congress. Such report shall include an assessment of the extent of compliance with the Acts cited in subsection (b) of this section, along with a description and analysis of investigations made and actions taken by the Access Board, and the reports and recommendations described in paragraphs (8) and (9) of such subsection.

(2) The Access Board shall, at the same time that the Access Board transmits the report required under section 7(b) of the Act commonly known as the Architectural Barriers Act of 1968 (42 U.S.C. 4157(b)), transmit the report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(h)(1) The Access Board may make grants to, or enter into contracts with, public or private organizations to carry out its duties under subsections (b) and (c).

(2)(A) The Access Board may accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding and facilitating the functions of the Access Board under paragraphs (2) and (4) of subsection (b). Gifts and bequests of money and proceeds from sales of other property received as gifts, devises, or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Chairperson. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gifts, devises, or bequests. For purposes of Federal income, estate, or gift taxes, property accepted under this section shall be considered as a gift, devise, or bequest to the United States.

(B) The Access Board shall publish regulations setting forth the criteria the Board will use in determining whether the acceptance of gifts, devises, and bequests of property, both real and personal, would reflect unfavorably upon the ability of the Board or any employee to carry out the responsibilities or official duties of the Board in a fair and objective manner, or would compromise the integrity of or the appearance of integrity of a Government program or any official involved in that program.

(i) There are authorized to be appropriated for the purpose of carrying out the duties and functions of the Access Board under this section such sums as may be necessary for each of the fiscal years 1999 through 2003.

Employment Under Federal Contracts

Sec. 503.(a) Any contract in excess of \$10,000 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with disabilities. The provisions of this section shall apply to any subcontract in excess of \$10,000 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after the date of enactment of this section.

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

(c)(1) The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which the President shall prescribe, when the President determines that special circumstances in the national interest so require and states in writing the reasons for such determination.

(2)(A) The Secretary of Labor may waive the requirements of the affirmative action clause required by the regulations promulgated under subsection (a) with respect to any of the prime contractor's or subcontractor's facilities that are found to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, if the Secretary of Labor also finds that such a waiver will not interfere with or impede the effectuation of this Act.

(B) Such waivers shall be considered only upon the request of the contractor or subcontractor. The Secretary of Labor shall promulgate regulations that set forth the standards used for granting such a waiver.

(d) The standards used to determine whether this section has been violated in a complaint alleging nonaffirmative action employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

(e) The Secretary shall develop procedures to ensure that administrative complaints filed under this section and under the Americans with Disabilities Act of 1990 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this section and the Americans with Disabilities Act of 1990.

Nondiscrimination Under Federal Grants and Programs

Sec. 504.(a) No otherwise qualified individual with a disability in the United States, as defined in section 7(20), shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulations may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

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

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

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

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

(B) a local educational agency (as defined in section 14101 of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

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

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

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

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

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

(d) The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of

sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

Remedies and Attorneys' Fees

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

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

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

Secretarial Responsibilities

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

(1) to persons operating community rehabilitation programs; and

(2) with the concurrence of the Access Board established by section 502, to any public or nonprofit agency, institution, or organization;

for the purpose of assisting such persons or entities in removing architectural, transportation, or communication barriers. Any concurrence of the Access Board under paragraph (2) shall reflect its consideration of the cost studies carried out by States.

(b) Any such experts or consultants, while serving pursuant to such contracts, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code, including travel time, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of

subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(c) The Secretary, with the concurrence of the Access Board and the President, may provide directly or by contract, financial assistance to any public or nonprofit agency, institution, or organization for the purpose of removing architectural, transportation, and communication barriers. No assistance may be provided under this subsection until a study demonstrating the need for such assistance has been conducted and submitted under section 502(h)(1) of this title.

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

Interagency Disability Coordinating Council

Sec. 507.(a) Establishment

There is hereby established an Interagency Disability Coordinating Council (hereafter in this section referred to as the "Council") composed of the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Assistant Secretary of the Interior for Indian Affairs, the Attorney General, the Director of the Office of Personnel Management, the Chairperson of the Equal Employment Opportunity Commission, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and such other officials as may be designated by the President.

(b) Duties

The Council shall -

(1) have the responsibility for developing and implementing agreements, policies, and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistencies among the operations, functions, and jurisdictions of the various departments, agencies, and branches of the Federal Government responsible for the implementation and enforcement of the provisions of this title, and the regulations prescribed thereunder;

(2) be responsible for developing and implementing agreements, policies, and practices designed to coordinate operations, functions, and jurisdictions of the various departments and agencies of the Federal Government responsible for promoting the full integration into society, independence, and productivity of individuals with disabilities; and

(3) carry out such studies and other activities, subject to the availability of resources, with advice from the National Council on Disability, in order to identify methods for overcoming barriers to integration into society, independence, and productivity of individuals with disabilities.

(c) Report

On or before July 1 of each year, the Interagency Disability Coordinating Council shall prepare and submit to the President and to the Congress a report of the activities of the Council designed to promote and meet the employment needs of individuals with disabilities, together with such recommendations for legislative and administrative changes as the Council concludes are desirable to further promote this section, along with any comments submitted by the National Council on Disability as to the effectiveness of such activities and recommendations in meeting the needs of individuals with disabilities. Nothing in this section shall impair any responsibilities assigned by any Executive order to any Federal department, agency, or instrumentality to act as a lead Federal agency with respect to any provisions of this title.

Electronic and Information Technology Accessibility Guidelines

Sec. 508. Electronic and Information Technology

(a) Requirements for Federal Departments and Agencies

(1) Accessibility

(A) Development, procurement, maintenance, or use of electronic and information technology

When developing, procuring, maintaining, or using electronic and information technology, each Federal department or agency, including the United States Postal Service, shall ensure, unless an undue burden would be imposed on the department or agency, that the electronic and information technology allows, regardless of the type of medium of the technology--

(i) individuals with disabilities who are Federal employees to have access to and use of information and data that is comparable to the access to and use of the information and data by Federal employees who are not individuals with disabilities; and

(ii) individuals with disabilities who are members of the public seeking information or services from a Federal department or agency to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.

(B) Alternative means efforts

When development, procurement, maintenance, or use of electronic and information technology that meets the standards published by the Access Board under paragraph (2) would impose an undue burden, the Federal department or agency shall provide individuals with disabilities covered by paragraph (1) with the information and data involved by an alternative means of access that allows the individual to use the information and data.

(2) Electronic and information technology standards

(A) In general

Not later than 18 months after the date of enactment of the Rehabilitation Act Amendments of 1998, the Architectural and Transportation Barriers Compliance Board (referred to in this section as the "Access Board"), after consultation with the Secretary of Education, the Administrator of General Services, the Secretary of Commerce, the Chairman of the Federal Communications Commission, the Secretary of Defense, and the head of any other Federal department or agency that the Access Board determines to be appropriate, including consultation on relevant research findings, and after consultation with the electronic and information technology industry and appropriate public or nonprofit agencies or organizations, including organizations representing individuals with disabilities, shall issue and publish standards setting forth--

(i) for purposes of this section, a definition of electronic and information technology that is consistent with the definition of information technology specified in section 5002(3) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401(3)); and

(ii) the technical and functional performance criteria necessary to implement the requirements set forth in paragraph (1).

(B) Review and amendment

The Access Board shall periodically review and, as appropriate, amend the standards required under subparagraph (A) to reflect technological advances or changes in electronic and information technology.

(3) Incorporation of standards

Not later than 6 months after the Access Board publishes the standards required under paragraph (2), the Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation and each Federal department or agency shall revise the Federal procurement policies and directives under the control of the department or agency to incorporate those standards. Not later than 6 months after the Access Board revises any standards required under paragraph (2), the Council shall revise the Federal Acquisition Regulation and each appropriate Federal department or agency shall revise the procurement policies and directives, as necessary, to incorporate the revisions.

(4) Acquisition planning

In the event that a Federal department or agency determines that compliance with the standards issued by the Access Board under paragraph (2) relating to procurement imposes an undue burden, the documentation by the department or agency supporting the procurement shall explain why compliance creates an undue burden.

(5) Exemption for national security systems

This section shall not apply to national security systems, as that term is defined in section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452).

(6) Construction

(A) Equipment

In a case in which the Federal Government provides access to the public to information or data through electronic and information technology, nothing in this section shall be construed to require a Federal department or agency--

(i) to make equipment owned by the Federal Government available for access and use by individuals with disabilities covered by paragraph (1) at a location other than that where the electronic and information technology is provided to the public; or

(ii) to purchase equipment for access and use by individuals with disabilities covered by paragraph (1) at a location other than that where the electronic and information technology is provided to the public.

(B) Software and peripheral devices

Except as required to comply with standards issued by the Access Board under paragraph (2), nothing in paragraph (1) requires the installation of specific accessibility-related software or the attachment of a specific accessibility-related peripheral device at a workstation of a Federal employee who is not an individual with a disability.

(b) Technical Assistance

The Administrator of General Services and the Access Board shall provide technical assistance to individuals and Federal departments and agencies concerning the requirements of this section.

(c) Agency Evaluations

Not later than 6 months after the date of enactment of the Rehabilitation Act Amendments of 1998, the head of each Federal department or agency shall evaluate the extent to which the electronic and information technology of the department or agency is accessible to and usable by individuals with disabilities described in subsection (a)(1), compared to the access to and use of the technology by individuals described in such subsection who are not individuals with disabilities, and submit a report containing the evaluation to the Attorney General.

(d) Reports

(1) Interim report

Not later than 18 months after the date of enactment of the Rehabilitation Act Amendments of 1998, the Attorney General shall prepare and submit to the President a report containing information on and recommendations regarding the extent to which the electronic and information technology of the Federal Government is accessible to and usable by individuals with disabilities described in subsection (a)(1).

(2) Biennial reports

Not later than 3 years after the date of enactment of the Rehabilitation Act Amendments of 1998, and every 2 years thereafter, the Attorney General shall prepare and submit to the President and Congress a report containing information on and recommendations regarding the state of Federal department and agency compliance with the requirements of this section, including actions regarding individual complaints under subsection (f).

(e) Cooperation

Each head of a Federal department or agency (including the Access Board, the Equal Employment Opportunity Commission, and the General Services Administration) shall provide to the Attorney General such information as the Attorney General determines is necessary to conduct the evaluations under subsection (c) and prepare the reports under subsection (d).

(f) Enforcement

(1) General

(A) Complaints

Effective 2 years after the date of enactment of the Rehabilitation Act Amendments of 1998, any individual with a disability may file a complaint alleging that a Federal department or agency fails to comply with subsection (a)(1) in providing electronic and information technology.

(B) Application

This subsection shall apply only to electronic and information technology that is procured by a Federal department or agency not less than 2 years after the date of enactment of the Rehabilitation Act Amendments of 1998.

(2) Administrative complaints

Complaints filed under paragraph (1) shall be filed with the Federal department or agency alleged to be in noncompliance. The Federal department or agency receiving the complaint shall apply the complaint procedures established to implement section 504 for resolving allegations of discrimination in a federally conducted program or activity.

(3) Civil actions

The remedies, procedures, and rights set forth in sections 505(a)(2) and 505(b) shall be the remedies, procedures, and rights available to any individual with a disability filing a complaint under paragraph (1).

(g) Application to Other Federal Laws

This section shall not be construed to limit any right, remedy, or procedure otherwise available under any provision of Federal law (including sections 501 through 505) that provides greater or equal protection for the rights of individuals with disabilities than this section.

Sec. 509. Protection and Advocacy of Individual Rights

(a) Purpose and Construction

(1) Purpose

The purpose of this section is to support a system in each State to protect the legal and human rights of individuals with disabilities who--

(A) need services that are beyond the scope of services authorized to be provided by the client assistance program under section 112; and

(B)(i) are ineligible for protection and advocacy programs under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) because the individuals do not have a developmental disability, as defined in section 102 of such Act (42 U.S.C. 6002); and

(ii) are ineligible for services under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.) because the individuals are not individuals with mental illness, as defined in section 102 of such Act (42 U.S.C. 10802).

(2) Construction

This section shall not be construed to require the provision of protection and advocacy services that can be provided under the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (42 U.S.C. 2201 et seq.).

(b) Appropriations Less Than \$5,500,000

For any fiscal year in which the amount appropriated to carry out this section is less than \$5,500,000, the Commissioner may make grants from such amount to eligible systems within States to plan for, develop outreach strategies for, and carry out protection and advocacy programs authorized under this section for individuals with disabilities who meet the requirements of subparagraphs (A) and (B) of subsection (a)(1).

(c) Appropriations of \$5,500,000 or More

(1) Reservations

(A) Technical assistance

For any fiscal year in which the amount appropriated to carry out this section equals or exceeds \$5,500,000, the Commissioner shall set aside not less than 1.8 percent and not more than 2.2 percent of the amount to provide training and technical assistance to the systems established under this section.

(B) Grant for the eligible system serving the American Indian consortium

For any fiscal year in which the amount appropriated to carry out this section equals or exceeds \$10,500,000, the Commissioner shall reserve a portion, and use the portion to make a grant for the eligible system serving the American Indian consortium. The Commission shall make the grant in an amount of not less than \$50,000 for the fiscal year.

(2) Allotments

For any such fiscal year, after the reservations required by paragraph (1) have been made, the Commissioner shall make allotments from the remainder of such amount in accordance with paragraph (3) to eligible systems within States to enable such systems to carry out protection and advocacy programs authorized under this section for individuals referred to in subsection (b).

(3) Systems within states

(A) Population basis

Except as provided in subparagraph (B), from such remainder for each such fiscal year, the Commissioner shall make an allotment to the eligible system within a State of an amount bearing the same ratio to such remainder as the population of the State bears to the population of all States.

(B) Minimums

Subject to the availability of appropriations to carry out this section, and except as provided in paragraph (4), the allotment to any system under subparagraph (A) shall be not less than \$100,000 or one-third of one percent of the remainder for the fiscal year for which the allotment is made, whichever is greater, and the allotment to any system under this section for any fiscal year that is less than \$100,000 or one-third of one percent of such remainder shall be increased to the greater of the two amounts.

(4) Systems within other jurisdictions

(A) In general

For the purposes of paragraph (3)(B), Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall not be considered to be States.

(B) Allotment

The eligible system within a jurisdiction described in subparagraph (A) shall be allotted under paragraph (3)(A) not less than \$50,000 for the fiscal year for which the allotment is made.

(5) Adjustment for inflation

For any fiscal year, beginning in fiscal year 1999, in which the total amount appropriated to carry out this section exceeds the total amount appropriated to carry out this section for the preceding fiscal year, the Commissioner shall increase each of the minimum grants or allotments under paragraphs (1)(B), (3)(B), and (4)(B) by a percentage that shall not exceed the percentage increase in the total amount appropriated to carry out this section between the preceding fiscal year and the fiscal year involved.

(d) Proportional Reduction

To provide minimum allotments to systems within States (as increased under subsection (c)(5)) under subsection (c)(3)(B), or to provide minimum allotments to systems within States (as

increased under subsection (c)(5)) under subsection (c)(4)(B), the Commissioner shall proportionately reduce the allotments of the remaining systems within States under subsection (c)(3), with such adjustments as may be necessary to prevent the allotment of any such remaining system within a State from being reduced to less than the minimum allotment for a system within a State (as increased under subsection (c)(5)) under subsection (c)(3)(B), or the minimum allotment for a State (as increased under subsection (c)(5)) under subsection (c)(4)(B), as appropriate.

(e) Reallotment.

Whenever the Commissioner determines that any amount of an allotment to a system within a State for any fiscal year described in subsection (c)(1) will not be expended by such system in carrying out the provisions of this section, the Commissioner shall make such amount available for carrying out the provisions of this section to one or more of the systems that the Commissioner determines will be able to use additional amounts during such year for carrying out such provisions. Any amount made available to a system for any fiscal year pursuant to the preceding sentence shall, for the purposes of this section, be regarded as an increase in the allotment of the system (as determined under the preceding provisions of this section) for such year.

(f) Application

In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will--

(1) have in effect a system to protect and advocate the rights of individuals with disabilities;

(2) have the same general authorities, including access to records and program income, as are set forth in part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.);

(3) have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State or the American Indian consortium who are individuals described in subsection (a)(1);

(4) provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State or the American Indian consortium;

(5) develop a statement of objectives and priorities on an annual basis, and provide to the public, including individuals with disabilities and, as appropriate, the individuals' representatives, an

opportunity to comment on the objectives and priorities established by, and activities of, the system including--

(A) the objectives and priorities for the activities of the system for each year and the rationale for the establishment of such objectives and priorities; and

(B) the coordination of programs provided through the system under this section with the advocacy programs of the client assistance program under section 112, the State long-term care ombudsman program established under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.), and the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.);

(6) establish a grievance procedure for clients or prospective clients of the system to ensure that individuals with disabilities are afforded equal opportunity to access the services of the system; and

(7) provide assurances to the Commissioner that funds made available under this section will be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided.

(g) Carryover and Direct Payment

(1) Direct payment

Notwithstanding any other provision of law, the Commissioner shall pay directly to any system that complies with the provisions of this section, the amount of the allotment of the State or the grant for the eligible system that serves the American Indian consortium involved under this section, unless the State or American Indian consortium provides otherwise.

(2) Carryover

Any amount paid to an eligible system that serves a State or American Indian consortium for a fiscal year that remains unobligated at the end of such year shall remain available to such system that serves the State or American Indian consortium for obligation during the next fiscal year for the purposes for which such amount was paid.

(h) Limitation on Disclosure Requirements

For purposes of any audit, report, or evaluation of the performance of the program established under this section, the Commissioner shall not require such a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

(i) Administrative Cost

In any State in which an eligible system is located within a State agency, a State may use a portion of any allotment under subsection (c) for the cost of the administration of the system required by this section. Such portion may not exceed 5 percent of the allotment.

(j) Delegation

The Commissioner may delegate the administration of this program to the Commissioner of the Administration on Developmental Disabilities within the Department of Health and Human Services.

(k) Report

The Commissioner shall annually prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report describing the types of services and activities being undertaken by programs funded under this section, the total number of individuals served under this section, the types of disabilities represented by such individuals, and the types of issues being addressed on behalf of such individuals.

(l) Authorization of Appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1999 through 2003.

(m) Definitions

As used in this section:

(1) Eligible system

The term "eligible system" means a protection and advocacy system that is established under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and that meets the requirements of subsection (f).

(2) American indian consortium

The term "American Indian consortium" means a consortium established as described in section 142 of the Developmental Disabilities Assistance and Bill of Rights Act.

TITLE VI--EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH DISABILITIES

Sec. 601. Short Title

This title may be cited as the "Employment Opportunities for Individuals With Disabilities Act".

Part A--Projects With Industry

Sec. 611. (a)(1) The purpose of this part is to create and expand job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process, to identify competitive job and career opportunities and the skills needed to perform such jobs, to create practical job and career readiness and training programs, and to provide job placements and career advancement.

(2) The Commissioner, in consultation with the Secretary of Labor and with designated State units, may award grants to individual employers, community rehabilitation program providers, labor unions, trade associations, Indian tribes, tribal organizations, designated State units, and other entities to establish jointly financed Projects With Industry to create and expand job and career opportunities for individuals with disabilities, which projects shall--

(A) provide for the establishment of business advisory councils, that shall--

(i) be comprised of--

- (I) representatives of private industry, business concerns, and organized labor;
- (II) individuals with disabilities and representatives of individuals with disabilities; and
- (III) a representative of the appropriate designated State unit;

(ii) identify job and career availability within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(iii) identify the skills necessary to perform the jobs and careers identified; and

(iv) prescribe training programs designed to develop appropriate job and career skills, or job placement programs designed to identify and develop job placement and career advancement opportunities, for individuals with disabilities in fields related to the job and career availability identified under clause (ii);

(B) provide job development, job placement, and career advancement services;

(C) to the extent appropriate, provide for--

(i) training in realistic work settings in order to prepare individuals with disabilities for employment and career advancement in the competitive market; and

(ii) to the extent practicable, the modification of any facilities or equipment of the employer involved that are used primarily by individuals with disabilities, except that a project shall not be required to provide for such modification if the modification is required as a reasonable accommodation under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); and

(D) provide individuals with disabilities with such support services as may be required in order to maintain the employment and career advancement for which the individuals have received training under this part.

(3)(A) An individual shall be eligible for services described in paragraph (2) if the individual is determined to be an individual described in section 102(a)(1), and if the determination is made in a manner consistent with section 102(a).

(B) Such a determination may be made by the recipient of a grant under this part, to the extent the determination is appropriate and available and consistent with the requirements of section 102(a).

(4) The Commissioner shall enter into an agreement with the grant recipient regarding the establishment of the project. Any agreement shall be jointly developed by the Commissioner, the grant recipient, and, to the extent practicable, the appropriate designated State unit and the individuals with disabilities (or the individuals' representatives) involved. Such agreements shall specify the terms of training and employment under the project, provide for the payment by the Commissioner of part of the costs of the project (in accordance with subsection (c)), and contain the items required under subsection (b) and such other provisions as the parties to the agreement consider to be appropriate.

(5) Any agreement shall include a description of a plan to annually conduct a review and evaluation of the operation of the project in accordance with standards developed by the Commissioner under subsection (d), and, in conducting the review and evaluation, to collect data and information of the type described in subparagraphs (A) through (C) of section 101(a)(10), as determined to be appropriate by the Commissioner.

(6) The Commissioner may include, as part of agreements with grant recipients, authority for such grant recipients to provide technical assistance to--

(A) assist employers in hiring individuals with disabilities; or

(B) improve or develop relationships between--

(i) grant recipients or prospective grant recipients; and

(ii) employers or organized labor; or

(C) assist employers in understanding and meeting the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) as the Act relates to employment of individuals with disabilities.

(b) No payment shall be made by the Commissioner under any agreement with a grant recipient entered into under subsection (a) unless such agreement--

(1) provides an assurance that individuals with disabilities placed under such agreement shall receive at least the applicable minimum wage;

(2) provides an assurance that any individual with a disability placed under this part shall be afforded terms and benefits of employment equal to terms and benefits that are afforded to the similarly situated nondisabled co-workers of the individual, and that such individuals with disabilities shall not be segregated from their co-workers; and

(3) provides an assurance that an annual evaluation report containing information specified under subsection (a)(5) shall be submitted as determined to be appropriate by the Commissioner.

(c) Payments under this section with respect to any project may not exceed 80 per centum of the costs of the project.

(d)(1) The Commissioner shall develop standards for the evaluation described in subsection (a)(5) and shall review and revise the evaluation standards as necessary, subject to paragraph (2).

(2) In revising the standards for evaluation to be used by the grant recipients, the Commissioner shall obtain and consider recommendations for such standards from State vocational rehabilitation agencies, current and former grant recipients, professional organizations representing business and industry, organizations representing individuals with disabilities, individuals served by grant recipients, organizations representing community rehabilitation program providers, and labor organizations.

(e)(1)(A) A grant may be awarded under this section for a period of up to 5 years and such grant may be renewed.

(B) Grants under this section shall be awarded on a competitive basis. To be eligible to receive such a grant, a prospective grant recipient shall submit an application to the Commissioner at such time, in such manner, and containing such information as the Commissioner may require.

(2) The Commissioner shall, to the extent practicable, ensure an equitable distribution of payments made under this section among the States. To the extent funds are available, the Commissioner shall award grants under this section to new projects that will serve individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations, that are currently unserved or underserved by projects.

(f)(1) The Commissioner shall, as necessary, develop and publish in the Federal Register, in final form, indicators of what constitutes minimum compliance consistent with the evaluation standards under subsection (d)(1).

(2) Each grant recipient shall report to the Commissioner at the end of each project year the extent to which the grant recipient is in compliance with the evaluation standards.

(3)(A) The Commissioner shall annually conduct onsite compliance reviews of at least 15 percent of grant recipients. The Commissioner shall select grant recipients for review on a random basis.

(B) The Commissioner shall use the indicators in determining compliance with the evaluation standards.

(C) The Commissioner shall ensure that at least one member of a team conducting such a review shall be an individual who--

(i) is not an employee of the Federal Government; and

(ii) has experience or expertise in conducting projects.

(D) The Commissioner shall ensure that--

(i) a representative of the appropriate designated State unit shall participate in the review; and

(ii) no person shall participate in the review of a grant recipient if--

(I) the grant recipient provides any direct financial benefit to the reviewer; or

(II) participation in the review would give the appearance of a conflict of interest.

(4) In making a determination concerning any subsequent grant under this section, the Commissioner shall consider the past performance of the applicant, if applicable. The Commissioner shall use compliance indicators developed under this subsection that are consistent with program evaluation standards developed under subsection (d) to assess minimum project performance for purposes of making continuation awards in the third, fourth, and fifth years.

(5) Each fiscal year the Commissioner shall include in the annual report to Congress required by section 13 an analysis of the extent to which grant recipients have complied with the evaluation standards. The Commissioner may identify individual grant recipients in the analysis. In addition, the Commissioner shall report the results of onsite compliance reviews, identifying individual grant recipients.

(g) The Commissioner may provide, directly or by way of grant, contract, or cooperative agreement, technical assistance to--

(1) entities conducting projects for the purpose of assisting such entities in--

(A) the improvement of or the development of relationships with private industry or labor; or

(B) the improvement of relationships with State vocational rehabilitation agencies; and

(2) entities planning the development of new projects.

(h) As used in this section:

(1) The term 'agreement' means an agreement described in subsection (a)(4).

(2) The term 'project' means a Project With Industry established under subsection (a)(2).

(3) The term 'grant recipient' means a recipient of a grant under subsection (a)(2).

Authorization of Appropriations

Sec. 612. There are authorized to be appropriated to carry out the provisions of this part, such sums as may be necessary for each of fiscal years 1999 through 2003.

Part B--Supported Employment Services for Individuals With the Most Significant Disabilities

Sec. 621. Purpose

It is the purpose of this part to authorize allotments, in addition to grants for vocational rehabilitation services under title I, to assist States in developing collaborative programs with appropriate entities to provide supported employment services for individuals with the most significant disabilities to enable such individuals to achieve the employment outcome of supported employment.

Sec. 622. Allotments

(a) In General

(1) States

The Secretary shall allot the sums appropriated for each fiscal year to carry out this part among the States on the basis of relative population of each State, except that--

(A) no State shall receive less than \$250,000, or one-third of one percent of the sums appropriated for the fiscal year for which the allotment is made, whichever is greater; and

(B) if the sums appropriated to carry out this part for the fiscal year exceed by \$1,000,000 or more the sums appropriated to carry out this part in fiscal year 1992, no State shall receive less than \$300,000, or one-third of one percent of the sums appropriated for the fiscal year for which the allotment is made, whichever is greater.

(2) Certain territories

(A) In general

For the purposes of this subsection, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall not be considered to be States.

(B) Allotment

Each jurisdiction described in subparagraph (A) shall be allotted not less than one-eighth of one percent of the amounts appropriated for the fiscal year for which the allotment is made.

(b) Reallotment

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

Sec. 623. Availability of Services

Funds provided under this part may be used to provide supported employment services to individuals who are eligible under this part. Funds provided under this part, or title I, may not be used to provide extended services to individuals who are eligible under this part or title I.

Sec. 624. Eligibility

An individual shall be eligible under this part to receive supported employment services authorized under this Act if--

- (1) the individual is eligible for vocational rehabilitation services;
- (2) the individual is determined to be an individual with a most significant disability; and
- (3) a comprehensive assessment of rehabilitation needs of the individual described in section 7(2)(B), including an evaluation of rehabilitation, career, and job needs, identifies supported employment as the appropriate employment outcome for the individual.

Sec. 625. State Plan

(a) State Plan Supplements

To be eligible for an allotment under this part, a State shall submit to the Commissioner, as part of the State plan under section 101, a State plan supplement for providing supported employment services authorized under this Act to individuals who are eligible under this Act to receive the services. Each State shall make such annual revisions in the plan supplement as may be necessary.

(b) Contents

Each such plan supplement shall--

- (1) designate each designated State agency as the agency to administer the program assisted under this part;
- (2) summarize the results of the comprehensive, statewide assessment conducted under section 101(a)(15)(A)(i), with respect to the rehabilitation needs of individuals with significant disabilities and the need for supported employment services, including needs related to coordination;
- (3) describe the quality, scope, and extent of supported employment services authorized under this Act to be provided to individuals who are eligible under this Act to receive the services and specify the goals and plans of the State with respect to the distribution of funds received under section 622;
- (4) demonstrate evidence of the efforts of the designated State agency to identify and make arrangements (including entering into cooperative agreements) with other State agencies and other appropriate entities to assist in the provision of supported employment services;

(5) demonstrate evidence of the efforts of the designated State agency to identify and make arrangements (including entering into cooperative agreements) with other public or nonprofit agencies or organizations within the State, employers, natural supports, and other entities with respect to the provision of extended services;

(6) provide assurances that--

(A) funds made available under this part will only be used to provide supported employment services authorized under this Act to individuals who are eligible under this part to receive the services;

(B) the comprehensive assessments of individuals with significant disabilities conducted under section 102(b)(1) and funded under title I will include consideration of supported employment as an appropriate employment outcome;

(C) an individualized plan for employment, as required by section 102, will be developed and updated using funds under title I in order to--

(i) specify the supported employment services to be provided;

(ii) specify the expected extended services needed; and

(iii) identify the source of extended services, which may include natural supports, or to the extent that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed, a statement describing the basis for concluding that there is a reasonable expectation that such sources will become available;

(D) the State will use funds provided under this part only to supplement, and not supplant, the funds provided under title I, in providing supported employment services specified in the individualized plan for employment;

(E) services provided under an individualized plan for employment will be coordinated with services provided under other individualized plans established under other Federal or State programs;

(F) to the extent jobs skills training is provided, the training will be provided on site; and

(G) supported employment services will include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities;

(7) provide assurances that the State agencies designated under paragraph (1) will expend not more than 5 percent of the allotment of the State under this part for administrative costs of carrying out this part; and

(8) contain such other information and be submitted in such manner as the Commissioner may require.

Sec. 626. Restriction

Each State agency designated under section 625(b)(1) shall collect the information required by section 101(a)(10) separately for eligible individuals receiving supported employment services under this part and for eligible individuals receiving supported employment services under title I.

Sec. 627. Savings Provision

(a) Supported Employment Services

Nothing in this Act shall be construed to prohibit a State from providing supported employment services in accordance with the State plan submitted under section 101 by using funds made available through a State allotment under section 110.

(b) Postemployment Services

Nothing in this part shall be construed to prohibit a State from providing discrete postemployment services in accordance with the State plan submitted under section 101 by using funds made available through a State allotment under section 110 to an individual who is eligible under this part.

Sec. 628. Authorization of Appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of fiscal years 1999 through 2003.

TITLE VII--INDEPENDENT LIVING SERVICES AND CENTERS FOR INDEPENDENT LIVING

Chapter 1--Individuals with Significant Disabilities

Part A--General Provisions

Sec. 701. Purpose

The purpose of this chapter is to promote a philosophy of independent living, including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society, by--

- (1) providing financial assistance to States for providing, expanding, and improving the provision of independent living services;
- (2) providing financial assistance to develop and support statewide networks of centers for independent living; and
- (3) providing financial assistance to States for improving working relationships among State independent living rehabilitation service programs, centers for independent living, Statewide Independent Living Councils established under section 705, State vocational rehabilitation programs receiving assistance under title I, State programs of supported employment services receiving assistance under part B of title VI, client assistance programs receiving assistance under section 112, programs funded under other titles of this Act, programs funded under other Federal law, and programs funded through non-Federal sources.

Sec. 702. Definitions

As used in this chapter:

(1) Center for independent living

The term "center for independent living" means a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency that--

- (A) is designed and operated within a local community by individuals with disabilities; and
- (B) provides an array of independent living services.

(2) Consumer control

The term "consumer control" means, with respect to a center for independent living, that the center vests power and authority in individuals with disabilities.

Sec. 703. Eligibility for Receipt of Services

Services may be provided under this chapter to any individual with a significant disability, as defined in section 7(21)(B).

Sec. 704. State Plan

(a) In General

(1) Requirement

To be eligible to receive financial assistance under this chapter, a State shall submit to the Commissioner, and obtain approval of, a State plan containing such provisions as the Commissioner may require, including, at a minimum, the provisions required in this section.

(2) Joint development

The plan under paragraph (1) shall be jointly developed and signed by--

(A) the director of the designated State unit; and

(B) the chairperson of the Statewide Independent Living Council, acting on behalf of and at the direction of the Council.

(3) Periodic review and revision

The plan shall provide for the review and revision of the plan, not less than once every 3 years, to ensure the existence of appropriate planning, financial support and coordination, and other assistance to appropriately address, on a statewide and comprehensive basis, needs in the State for--

(A) the provision of State independent living services;

(B) the development and support of a statewide network of centers for independent living; and

(C) working relationships between--

(i) programs providing independent living services and independent living centers; and

(ii) the vocational rehabilitation program established under title I, and other programs providing services for individuals with disabilities.

(4) Date of submission

The State shall submit the plan to the Commissioner 90 days before the completion date of the preceding plan. If a State fails to submit such a plan that complies with the requirements of this section, the Commissioner may withhold financial assistance under this chapter until such time as the State submits such a plan.

(b) Statewide Independent Living Council

The plan shall provide for the establishment of a Statewide Independent Living Council in accordance with section 705.

(c) Designation of State Unit

The plan shall designate the designated State unit of such State as the agency that, on behalf of the State, shall--

(1) receive, account for, and disburse funds received by the State under this chapter based on the plan;

(2) provide administrative support services for a program under part B, and a program under part C in a case in which the program is administered by the State under section 723;

(3) keep such records and afford such access to such records as the Commissioner finds to be necessary with respect to the programs; and

(4) submit such additional information or provide such assurances as the Commissioner may require with respect to the programs.

(d) Objectives

The plan shall--

(1) specify the objectives to be achieved under the plan and establish timelines for the achievement of the objectives; and

(2) explain how such objectives are consistent with and further the purpose of this chapter.

(e) Independent Living Services

The plan shall provide that the State will provide independent living services under this chapter to individuals with significant disabilities, and will provide the services to such an individual in accordance with an independent living plan mutually agreed upon by an appropriate staff member of the service provider and the individual, unless the individual signs a waiver stating that such a plan is unnecessary.

(f) Scope and Arrangements

The plan shall describe the extent and scope of independent living services to be provided under this chapter to meet such objectives. If the State makes arrangements, by grant or contract, for providing such services, such arrangements shall be described in the plan.

(g) Network

The plan shall set forth a design for the establishment of a statewide network of centers for independent living that comply with the standards and assurances set forth in section 725.

(h) Centers

In States in which State funding for centers for independent living equals or exceeds the amount of funds allotted to the State under part C, as provided in section 723, the plan shall include policies, practices, and procedures governing the awarding of grants to centers for independent living and oversight of such centers consistent with section 723.

(i) Cooperation, Coordination, and Working Relationships Among Various Entities

The plan shall set forth the steps that will be taken to maximize the cooperation, coordination, and working relationships among--

(1) the independent living rehabilitation service program, the Statewide Independent Living Council, and centers for independent living; and

(2) the designated State unit, other State agencies represented on such Council, other councils that address the needs of specific disability populations and issues, and other public and private entities determined to be appropriate by the Council.

(j) Coordination of Services

The plan shall describe how services funded under this chapter will be coordinated with, and complement, other services, in order to avoid unnecessary duplication with other Federal, State, and local programs.

(k) Coordination Between Federal and State Sources

The plan shall describe efforts to coordinate Federal and State funding for centers for independent living and independent living services.

(l) Outreach

With respect to services and centers funded under this chapter, the plan shall set forth steps to be taken regarding outreach to populations that are unserved or underserved by programs under this title, including minority groups and urban and rural populations.

(m) Requirements

The plan shall provide satisfactory assurances that all recipients of financial assistance under this chapter will--

(1) notify all individuals seeking or receiving services under this chapter about the availability of the client assistance program under section 112, the purposes of the services provided under such program, and how to contact such program;

(2) take affirmative action to employ and advance in employment qualified individuals with disabilities on the same terms and conditions required with respect to the employment of such individuals under the provisions of section 503;

(3) adopt such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of and accounting for funds paid to the State under this chapter;

(4)(A) maintain records that fully disclose--

(i) the amount and disposition by such recipient of the proceeds of such financial assistance;

(ii) the total cost of the project or undertaking in connection with which such financial assistance is given or used; and

(iii) the amount of that portion of the cost of the project or undertaking supplied by other sources;

(B) maintain such other records as the Commissioner determines to be appropriate to facilitate an effective audit;

(C) afford such access to records maintained under subparagraphs (A) and (B) as the Commissioner determines to be appropriate; and

(D) submit such reports with respect to such records as the Commissioner determines to be appropriate;

(5) provide access to the Commissioner and the Comptroller General or any of their duly authorized representatives, for the purpose of conducting audits and examinations, of any books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under this chapter; and

(6) provide for public hearings regarding the contents of the plan during both the formulation and review of the plan.

(n) Evaluation

The plan shall establish a method for the periodic evaluation of the effectiveness of the plan in meeting the objectives established in subsection (d), including evaluation of satisfaction by individuals with disabilities.

Sec. 705. Statewide Independent Living Council

(a) Establishment

To be eligible to receive financial assistance under this chapter, each State shall establish a Statewide Independent Living Council (referred to in this section as the 'Council'). The Council shall not be established as an entity within a State agency.

(b) Composition and Appointment

(1) Appointment

Members of the Council shall be appointed by the Governor. The Governor shall select members after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities.

(2) Composition

The Council shall include--

(A) at least one director of a center for independent living chosen by the directors of centers for independent living within the State;

(B) as ex officio, nonvoting members--

(i) a representative from the designated State unit; and

(ii) representatives from other State agencies that provide services for individuals with disabilities; and

(C) in a State in which 1 or more projects are carried out under section 121, at least 1 representative of the directors of the projects.

(3) Additional members

The Council may include--

(A) other representatives from centers for independent living;

(B) parents and guardians of individuals with disabilities;

(C) advocates of and for individuals with disabilities;

(D) representatives from private businesses;

(E) representatives from organizations that provide services for individuals with disabilities; and

(F) other appropriate individuals.

(4) Qualifications

(A) In general

The Council shall be composed of members--

(i) who provide statewide representation;

(ii) who represent a broad range of individuals with disabilities from diverse backgrounds;

(iii) who are knowledgeable about centers for independent living and independent living services; and

(iv) a majority of whom are persons who are--

(I) individuals with disabilities described in section 7(20)(B); and

(II) not employed by any State agency or center for independent living.

(B) Voting members

A majority of the voting members of the Council shall be--

- (i) individuals with disabilities described in section 7(20)(B); and
- (ii) not employed by any State agency or center for independent living.

(5) Chairperson

(A) In general

Except as provided in subparagraph (B), the Council shall select a chairperson from among the voting membership of the Council.

(B) Designation by governor

In States in which the Governor does not have veto power pursuant to State law, the Governor shall designate a voting member of the Council to serve as the chairperson of the Council or shall require the Council to so designate such a voting member.

(6) Terms of appointment

(A) Length of term

Each member of the Council shall serve for a term of 3 years, except that--

- (i) a member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed, shall be appointed for the remainder of such term; and
- (ii) the terms of service of the members initially appointed shall be (as specified by the Governor) for such fewer number of years as will provide for the expiration of terms on a staggered basis.

(B) Number of terms

No member of the Council may serve more than two consecutive full terms.

(7) Vacancies

(A) In general

Except as provided in subparagraph (B), any vacancy occurring in the membership of the Council shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Council.

(B) Delegation

The Governor may delegate the authority to fill such a vacancy to the remaining voting members of the Council after making the original appointment.

(c) Duties

The Council shall--

(1) jointly develop and sign (in conjunction with the designated State unit) the State plan required in section 704;

(2) monitor, review, and evaluate the implementation of the State plan;

(3) coordinate activities with the State Rehabilitation Council established under section 105, if the State has such a Council, or the commission described in section 101(a)(21)(A), if the State has such a commission, and councils that address the needs of specific disability populations and issues under other Federal law;

(4) ensure that all regularly scheduled meetings of the Statewide Independent Living Council are open to the public and sufficient advance notice is provided; and

(5) submit to the Commissioner such periodic reports as the Commissioner may reasonably request, and keep such records, and afford such access to such records, as the Commissioner finds necessary to verify such reports.

(d) Hearings and Forums

The Council is authorized to hold such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council.

(e) Plan

(1) In general

The Council shall prepare, in conjunction with the designated State unit, a plan for the provision of such resources, including such staff and personnel, as may be necessary and sufficient to carry out the functions of the Council under this section, with funds made available under this chapter, and under section 110 (consistent with section 101(a)(18)), and from other public and private sources. The resource plan shall, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.

(2) Supervision and evaluation

Each Council shall, consistent with State law, supervise and evaluate such staff and other personnel as may be necessary to carry out the functions of the Council under this section.

(3) Conflict of interest

While assisting the Council in carrying out its duties, staff and other personnel shall not be assigned duties by the designated State agency or any other agency or office of the State, that would create a conflict of interest.

(f) Compensation and Expenses

The Council may use such resources to reimburse members of the Council for reasonable and necessary expenses of attending Council meetings and performing Council duties (including child care and personal assistance services), and to pay compensation to a member of the Council, if such member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing Council duties.

Sec. 706. Responsibilities of the Commissioner

(a) Approval of State Plans

(1) In general

The Commissioner shall approve any State plan submitted under section 704 that the Commissioner determines meets the requirements of section 704, and shall disapprove any such plan that does not meet such requirements, as soon as practicable after receiving the plan. Prior to such disapproval, the Commissioner shall notify the State of the intention to disapprove the plan, and shall afford such State reasonable notice and opportunity for a hearing.

(2) Procedures

(A) In general

Except as provided in subparagraph (B), the provisions of subsections (c) and (d) of section 107 shall apply to any State plan submitted to the Commissioner under section 704.

(B) Application

For purposes of the application described in subparagraph (A), all references in such provisions--

(i) to the Secretary shall be deemed to be references to the Commissioner; and

(ii) to section 101 shall be deemed to be references to section 704. (b) **Indicators:** Not later than October 1, 1993, the Commissioner shall develop and publish in the Federal Register indicators of minimum compliance consistent with the standards set forth in section 725.

(c) Onsite Compliance Reviews

(1) Reviews

The Commissioner shall annually conduct onsite compliance reviews of at least 15 percent of the centers for independent living that receive funds under section 722 and shall periodically conduct such a review of each such center. The Commissioner shall annually conduct onsite compliance reviews of at least one-third of the designated State units that receive funding under section 723. and, to the extent necessary to determine the compliance of such a State unit with subsections (f) and (g) of section 723, centers that receive funding under section 723 in such State. The Commissioner shall select the centers and State units described in this paragraph for review on a random basis.

(2) Qualifications of employees conducting reviews

The Commissioner shall--

(A) to the maximum extent practicable, carry out such a review by using employees of the Department who are knowledgeable about the provision of independent living services;

(B) ensure that the employee of the Department with responsibility for supervising such a review shall have such knowledge; and

(C) ensure that at least one member of a team conducting such a review shall be an individual who--

(i) is not a government employee; and

(ii) has experience in the operation of centers for independent living.

(d) Reports

The Commissioner shall include, in the annual report required under section 13, information on the extent to which centers for independent living receiving funds under part C have complied with the standards and assurances set forth in section 725. The Commissioner may identify individual centers for independent living in the analysis. The Commissioner shall report the results of onsite compliance reviews, identifying individual centers for independent living and other recipients of assistance under this chapter.

Part b--Independent Living Services

Sec. 711. Allotments

(a) In General

(1) States

(A) Population basis

Except as provided in subparagraphs (B) and (C), from sums appropriated for each fiscal year to carry out this part, the Commissioner shall make an allotment to each State whose State plan has been approved under section 706 of an amount bearing the same ratio to such sums as the population of the State bears to the population of all States.

(B) Maintenance of 1992 amounts

Subject to the availability of appropriations to carry out this part, the amount of any allotment made under subparagraph (A) to a State for a fiscal year shall not be less than the amount of an allotment made to the State for fiscal year 1992 under part A of this title, as in effect on the day before the date of enactment of the Rehabilitation Act Amendments of 1992.

(C) Minimums

Subject to the availability of appropriations to carry out this part, and except as provided in subparagraph (B), the allotment to any State under subparagraph (A) shall be not less than \$275,000 or one-third of one percent of the sums made available for the fiscal year for which the allotment is made, whichever is greater, and the allotment of any State under this section for any fiscal year that is less than \$275,000 or one-third of one percent of such sums shall be increased to the greater of the two amounts.

(2) Certain territories

(A) In general

For the purposes of paragraph (1)(C), Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall not be considered to be States.

(B) Allotment

Each jurisdiction described in subparagraph (A) shall be allotted under paragraph (1)(A) not less than one-eighth of one percent of the amounts made available for purposes of this part for the fiscal year for which the allotment is made.

(3) Adjustment for inflation

For any fiscal year, beginning in fiscal year 1999, in which the total amount appropriated to carry out this part exceeds the total amount appropriated to carry out this part for the preceding fiscal year, the Commissioner shall increase the minimum allotment under paragraph (1)(C) by a percentage that shall not exceed the percentage increase in the total amount appropriated to carry out this part between the preceding fiscal year and the fiscal year involved.

(b) Proportional Reduction

To provide allotments to States in accordance with subsection (a)(1)(B), to provide minimum allotments to States (as increased under subsection (a)(3)) under subsection (a)(1)(C), or to provide minimum allotments to States under subsection (a)(2)(B), the Commissioner shall proportionately reduce the allotments of the remaining States under subsection (a)(1)(A), with such adjustments as may be necessary to prevent the allotment of any such remaining State from being reduced to less than the amount required by subsection (a)(1)(B).

(c) Reallocation

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

Sec. 712. Payments to States from Allotments

(a) Payments

From the allotment of each State for a fiscal year under section 711, the State shall be paid the Federal share of the expenditures incurred during such year under its State plan approved under section 706. Such payments may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments and on such conditions as the Commissioner may determine.

(b) Federal Share

(1) In general

The Federal share with respect to any State for any fiscal year shall be 90 percent of the expenditures incurred by the State during such year under its State plan approved under section 706.

(2) Non-federal share

The non-Federal share of the cost of any project that receives assistance through an allotment under this part may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.

Sec. 713. Authorized Uses of Funds

The State may use funds received under this part to provide the resources described in section 705(e), relating to the Statewide Independent Living Council, and may use funds received under this part--

- (1) to provide independent living services to individuals with significant disabilities;
- (2) to demonstrate ways to expand and improve independent living services;
- (3) to support the operation of centers for independent living that are in compliance with the standards and assurances set forth in subsections (b) and (c) of section 725;
- (4) to support activities to increase the capacities of public or nonprofit agencies and organizations and other entities to develop comprehensive approaches or systems for providing independent living services;
- (5) to conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to Federal, State, and local policymakers in order to enhance independent living services for individuals with disabilities;
- (6) to train individuals with disabilities and individuals providing services to individuals with disabilities and other persons regarding the independent living philosophy; and
- (7) to provide outreach to populations that are unserved or underserved by programs under this title, including minority groups and urban and rural populations.

Sec. 714. Authorization of Appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal years 1999 through 2003.

Part C--Centers for Independent Living

Sec. 721. Program Authorization

(a) In General

From the funds appropriated for fiscal year 1999 and for each subsequent fiscal year to carry out this part, the Commissioner shall allot such sums as may be necessary to States and other entities in accordance with subsections (b) through (d).

(b) Training

(1) Grants; contracts; other arrangements

For any fiscal year in which the funds appropriated to carry out this part exceed the funds appropriated to carry out this part for fiscal year 1993, the Commissioner shall first reserve from such excess, to provide training and technical assistance to eligible agencies, centers for independent living, and Statewide Independent Living Councils for such fiscal year, not less than 1.8 percent, and not more than 2 percent, of the funds appropriated to carry out this part for the fiscal year involved.

(2) Allocation

From the funds reserved under paragraph (1), the Commissioner shall make grants to, and enter into contracts and other arrangements with, entities that have experience in the operation of centers for independent living to provide such training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers for independent living.

(3) Funding priorities

The Commissioner shall conduct a survey of Statewide Independent Living Councils and centers for independent living regarding training and technical assistance needs in order to determine funding priorities for such grants, contracts, and other arrangements.

(4) Review

To be eligible to receive a grant or enter into a contract or other arrangement under this subsection, such an entity shall submit an application to the Commissioner at such time, in such manner, and containing a proposal to provide such training and technical assistance, and containing such additional information as the Commissioner may require. The Commissioner shall provide for peer review of grant applications by panels that include persons who are not government employees and who have experience in the operation of centers for independent living.

(5) Prohibition on combined funds

No funds reserved by the Commissioner under this subsection may be combined with funds appropriated under any other Act or part of this Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this chapter are separately identified in such grant or payment and are used for the purposes of this chapter.

(c) In General .

(1) States

(A) Population basis

After the reservation required by subsection (b) has been made, and except as provided in subparagraphs (B) and (C), from the remainder of the amounts appropriated for each such fiscal year to carry out this part, the Commissioner shall make an allotment to each State whose State plan has been approved under section 706 of an amount bearing the same ratio to such remainder as the population of the State bears to the population of all States.

(B) Maintenance of 1992 amounts

Subject to the availability of appropriations to carry out this part, the amount of any allotment made under subparagraph (A) to a State for a fiscal year shall not be less than the amount of financial assistance received by centers for independent living in the State for fiscal year 1992 under part B of this title, as in effect on the day before the date of enactment of the Rehabilitation Act Amendments of 1992.

(C) Minimums

Subject to the availability of appropriations to carry out this part and except as provided in subparagraph (B), for a fiscal year in which the amounts appropriated to carry out this part exceed the amounts appropriated for fiscal year 1992 to carry out part B of this title, as in effect on the day before the date of enactment of the Rehabilitation Act Amendments of 1992--

(i) if such excess is not less than \$8,000,000, the allotment to any State under subparagraph (A) shall be not less than \$450,000 or one-third of one percent of the sums made available for the fiscal year for which the allotment is made, whichever is greater, and the allotment of any State under this section for any fiscal year that is less than \$450,000 or one-third of one percent of such sums shall be increased to the greater of the two amounts;

(ii) if such excess is not less than \$4,000,000 and is less than \$8,000,000, the allotment to any State under subparagraph (A) shall be not less than \$400,000 or one-third of one percent of the

sums made available for the fiscal year for which the allotment is made, whichever is greater. and the allotment of any State under this section for any fiscal year that is less than \$400,000 or one-third of one percent of such sums shall be increased to the greater of the two amounts; and

(iii) if such excess is less than \$4,000,000, the allotment to any State under subparagraph (A) shall approach, as nearly as possible, the greater of the two amounts described in clause (ii).

(2) Certain territories

(A) In general

For the purposes of paragraph (1)(C), Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall not be considered to be States.

(B) Allotment

Each jurisdiction described in subparagraph (A) shall be allotted under paragraph (1)(A) not less than one-eighth of one percent of the remainder for the fiscal year for which the allotment is made.

(3) Adjustment for inflation

For any fiscal year, beginning in fiscal year 1999, in which the total amount appropriated to carry out this part exceeds the total amount appropriated to carry out this part for the preceding fiscal year, the Commissioner shall increase the minimum allotment under paragraph (1)(C) by a percentage that shall not exceed the percentage increase in the total amount appropriated to carry out this part between the preceding fiscal year and the fiscal year involved.

(4) Proportional reduction

To provide allotments to States in accordance with paragraph (1)(B), to provide minimum allotments to States (as increased under paragraph (3)) under paragraph (1)(C), or to provide minimum allotments to States under paragraph (2)(B), the Commissioner shall proportionately reduce the allotments of the remaining States under paragraph (1)(A), with such adjustments as may be necessary to prevent the allotment of any such remaining State from being reduced to less than the amount required by paragraph (1)(B).

(d) Reallotment

Whenever the Commissioner determines that any amount of an allotment to a State for any fiscal year will not be expended by such State for carrying out the provisions of this part, the Commissioner shall make such amount available for carrying out the provisions of this part to one or more of the States that the Commissioner determines will be able to use additional

amounts during such year for carrying out such provisions. Any amount made available to a State for any fiscal year pursuant to the preceding sentence shall, for the purposes of this section, be regarded as an increase in the allotment of the State (as determined under the preceding provisions of this section) for such year.

Sec. 722. Grants to Centers for Independent Living in States in Which Federal Funding Exceeds State Funding

(a) Establishment

(1) In general

Unless the director of a designated State unit awards grants under section 723 to eligible agencies in a State for a fiscal year, the Commissioner shall award grants under this section to such eligible agencies for such fiscal year from the amount of funds allotted to the State under subsection (c) or (d) of section 721 for such year.

(2) Grants

The Commissioner shall award such grants, from the amount of funds so allotted, to such eligible agencies for the planning, conduct, administration, and evaluation of centers for independent living that comply with the standards and assurances set forth in section 725.

(b) Eligible Agencies

In any State in which the Commissioner has approved the State plan required by section 704, the Commissioner may make a grant under this section to any eligible agency that--

(1) has the power and authority to carry out the purpose of this part and perform the functions set forth in section 725 within a community and to receive and administer funds under this part, funds and contributions from private or public sources that may be used in support of a center for independent living, and funds from other public and private programs;

(2) is determined by the Commissioner to be able to plan, conduct, administer, and evaluate a center for independent living consistent with the standards and assurances set forth in section 725; and

(3) submits an application to the Commissioner at such time, in such manner, and containing such information as the Commissioner may require.

(c) Existing Eligible Agencies

In the administration of the provisions of this section, the Commissioner shall award grants to any eligible agency that has been awarded a grant under this part by September 30, 1997, unless the Commissioner makes a finding that the agency involved fails to meet program and fiscal standards and assurances set forth in section 725.

(d) New Centers for Independent Living

(1) In general

If there is no center for independent living serving a region of the State or a region is underserved, and the increase in the allotment of the State is sufficient to support an additional center for independent living in the State, the Commissioner may award a grant under this section to the most qualified applicant proposing to serve such region, consistent with the provisions in the State plan setting forth the design of the State for establishing a statewide network of centers for independent living.

(2) Selection

In selecting from among applicants for a grant under this section for a new center for independent living, the Commissioner--

(A) shall consider comments regarding the application, if any, by the Statewide Independent Living Council in the State in which the applicant is located;

(B) shall consider the ability of each such applicant to operate a center for independent living based on--

(i) evidence of the need for such a center;

(ii) any past performance of such applicant in providing services comparable to independent living services;

(iii) the plan for satisfying or demonstrated success in satisfying the standards and the assurances set forth in section 725;

(iv) the quality of key personnel and the involvement of individuals with significant disabilities;

(v) budgets and cost-effectiveness;

(vi) an evaluation plan; and

(vii) the ability of such applicant to carry out the plans; and

(C) shall give priority to applications from applicants proposing to serve geographic areas within each State that are currently unserved or underserved by independent living programs, consistent with the provisions of the State plan submitted under section 704 regarding establishment of a statewide network of centers for independent living.

(3) Current centers

Notwithstanding paragraphs (1) and (2), a center for independent living that receives assistance under part B for a fiscal year shall be eligible for a grant for the subsequent fiscal year under this subsection.

(e) Order of Priorities

The Commissioner shall be guided by the following order of priorities in allocating funds among centers for independent living within a State, to the extent funds are available:

(1) The Commissioner shall support existing centers for independent living, as described in subsection (c), that comply with the standards and assurances set forth in section 725, at the level of funding for the previous year.

(2) The Commissioner shall provide for a cost-of-living increase for such existing centers for independent living.

(3) The Commissioner shall fund new centers for independent living, as described in subsection (d), that comply with the standards and assurances set forth in section 725.

(f) Nonresidential Agencies

A center that provides or manages residential housing after October 1, 1994, shall not be considered to be an eligible agency under this section.

(g) Review

(1) In general

The Commissioner shall periodically review each center receiving funds under this section to determine whether such center is in compliance with the standards and assurances set forth in section 725. If the Commissioner determines that any center receiving funds under this section is not in compliance with the standards and assurances set forth in section 725, the Commissioner shall immediately notify such center that it is out of compliance.

(2) Enforcement

The Commissioner shall terminate all funds under this section to such center 90 days after the date of such notification unless the center submits a plan to achieve compliance within 90 days of such notification and such plan is approved by the Commissioner.

Sec. 723. Grants to Centers for Independent Living in States in Which State Funding Equals or Exceeds Federal Funding

(a) Establishment

(1) In general

(A) Initial year

(i) Determination

The director of a designated State unit, as provided in paragraph (2), or the Commissioner, as provided in paragraph (3), shall award grants under this section for an initial fiscal year if the Commissioner determines that the amount of State funds that were earmarked by a State for a preceding fiscal year to support the general operation of centers for independent living meeting the requirements of this part equaled or exceeded the amount of funds allotted to the State under subsection (c) or (d) of section 721 for such year.

(ii) Grants

The director or the Commissioner, as appropriate, shall award such grants, from the amount of funds so allotted for the initial fiscal year, to eligible agencies in the State for the planning, conduct, administration, and evaluation of centers for independent living that comply with the standards and assurances set forth in section 725.

(iii) Regulation

The Commissioner shall by regulation specify the preceding fiscal year with respect to which the Commissioner will make the determinations described in clause (i) and subparagraph (B), making such adjustments as may be necessary to accommodate State funding cycles such as 2-year funding cycles or State fiscal years that do not coincide with the Federal fiscal year.

(B) Subsequent years

For each year subsequent to the initial fiscal year described in subparagraph (A), the director of the designated State unit shall continue to have the authority to award such grants under this section if the Commissioner determines that the State continues to earmark the amount of State funds described in subparagraph (A)(i). If the State does not continue to earmark such an amount for a fiscal year, the State shall be ineligible to make grants under this section after a final year

following such fiscal year, as defined in accordance with regulations established by the Commissioner, and for each subsequent fiscal year.

(2) Grants by designated state units

In order for the designated State unit to be eligible to award the grants described in paragraph (1) and carry out this section for a fiscal year with respect to a State, the designated State agency shall submit an application to the Commissioner at such time, and in such manner as the Commissioner may require, including information about the amount of State funds described in paragraph (1) for the preceding fiscal year. If the Commissioner makes a determination described in subparagraph (A)(i) or (B), as appropriate, of paragraph (1), the Commissioner shall approve the application and designate the director of the designated State unit to award the grant and carry out this section.

(3) Grants by commissioner

If the designated State agency of a State described in paragraph (1) does not submit and obtain approval of an application under paragraph (2), the Commissioner shall award the grant described in paragraph (1) to eligible agencies in the State in accordance with section 722.

(b) Eligible Agencies

In any State in which the Commissioner has approved the State plan required by section 704, the director of the designated State unit may award a grant under this section to any eligible agency that--

(1) has the power and authority to carry out the purpose of this part and perform the functions set forth in section 725 within a community and to receive and administer funds under this part, funds and contributions from private or public sources that may be used in support of a center for independent living, and funds from other public and private programs;

(2) is determined by the director to be able to plan, conduct, administer, and evaluate a center for independent living, consistent with the standards and assurances set forth in section 725; and

(3) submits an application to the director at such time, in such manner, and containing such information as the head of the designated State unit may require.

(c) Existing Eligible Agencies

In the administration of the provisions of this section, the director of the designated State unit shall award grants under this section to any eligible agency that has been awarded a grant under this part by September 30, 1997, unless the director makes a finding that the agency involved fails to comply with the standards and assurances set forth in section 725.

(d) New Centers for Independent Living

(1) In general

If there is no center for independent living serving a region of the State or the region is unserved or underserved, and the increase in the allotment of the State is sufficient to support an additional center for independent living in the State, the director of the designated State unit may award a grant under this section from among eligible agencies, consistent with the provisions of the State plan under section 704 setting forth the design of the State for establishing a statewide network of centers for independent living.

(2) Selection

In selecting from among eligible agencies in awarding a grant under this part for a new center for independent living--

(A) the director of the designated State unit and the chairperson of, or other individual designated by, the Statewide Independent Living Council acting on behalf of and at the direction of the Council, shall jointly appoint a peer review committee that shall rank applications in accordance with the standards and assurances set forth in section 725 and criteria jointly established by such director and such chairperson or individual;

(B) the peer review committee shall consider the ability of each such applicant to operate a center for independent living, and shall recommend an applicant to receive a grant under this section, based on--

(i) evidence of the need for a center for independent living, consistent with the State plan;

(ii) any past performance of such applicant in providing services comparable to independent living services;

(iii) the plan for complying with, or demonstrated success in complying with, the standards and the assurances set forth in section 725;

(iv) the quality of key personnel of the applicant and the involvement of individuals with significant disabilities by the applicant;

(v) the budgets and cost-effectiveness of the applicant;

(vi) the evaluation plan of the applicant; and

(vii) the ability of such applicant to carry out the plans; and

(C) the director of the designated State unit shall award the grant on the basis of the recommendations of the peer review committee if the actions of the committee are consistent with Federal and State law.

(3) Current centers

Notwithstanding paragraphs (1) and (2), a center for independent living that receives assistance under part B for a fiscal year shall be eligible for a grant for the subsequent fiscal year under this subsection.

(e) Order of Priorities

Unless the director of the designated State unit and the chairperson of the Council or other individual designated by the Council acting on behalf of and at the direction of the Council jointly agree on another order of priority, the director shall be guided by the following order of priorities in allocating funds among centers for independent living within a State, to the extent funds are available:

(1) The director of the designated State unit shall support existing centers for independent living, as described in subsection (c), that comply with the standards and assurances set forth in section 725, at the level of funding for the previous year.

(2) The director of the designated State unit shall provide for a cost-of-living increase for such existing centers for independent living.

(3) The director of the designated State unit shall fund new centers for independent living, as described in subsection (d), that comply with the standards and assurances set forth in section 725.

(f) Nonresidential Agencies

A center that provides or manages residential housing after October 1, 1994, shall not be considered to be an eligible agency under this section.

(g) Review

(1) In general

The director of the designated State unit shall periodically review each center receiving funds under this section to determine whether such center is in compliance with the standards and assurances set forth in section 725. If the director of the designated State unit determines that any center receiving funds under this section is not in compliance with the standards and assurances

set forth in section 725, the director of the designated State unit shall immediately notify such center that it is out of compliance.

(2) Enforcement

The director of the designated State unit shall terminate all funds under this section to such center 90 days after--

(A) the date of such notification; or

(B) in the case of a center that requests an appeal under subsection (i), the date of any final decision under subsection (i), unless the center submits a plan to achieve compliance within 90 days and such plan is approved by the director, or if appealed, by the Commissioner.

(h) Onsite Compliance Review

The director of the designated State unit shall annually conduct onsite compliance reviews of at least 15 percent of the centers for independent living that receive funding under this section in the State. Each team that conducts onsite compliance review of centers for independent living shall include at least one person who is not an employee of the designated State agency, who has experience in the operation of centers for independent living, and who is jointly selected by the director of the designated State unit and the chairperson of or other individual designated by the Council acting on behalf of and at the direction of the Council. A copy of this review shall be provided to the Commissioner.

(i) Adverse Actions

If the director of the designated State unit proposes to take a significant adverse action against a center for independent living, the center may seek mediation and conciliation to be provided by an individual or individuals who are free of conflicts of interest identified by the chairperson of or other individual designated by the Council. If the issue is not resolved through the mediation and conciliation, the center may appeal the proposed adverse action to the Commissioner for a final decision.

Sec. 724. Centers Operated by State Agencies

A State that receives assistance for fiscal year 1993 with respect to a center in accordance with subsection (a) of this section (as in effect on the day before the date of enactment of the Rehabilitation Act Amendments of 1998) may continue to receive assistance under this part for fiscal year 1994 or a succeeding fiscal year if, for such fiscal year--

(1) no nonprofit private agency--

(A) submits an acceptable application to operate a center for independent living for the fiscal year before a date specified by the Commissioner; and

(B) obtains approval of the application under section 722 or 723; or

(2) after funding all applications so submitted and approved, the Commissioner determines that funds remain available to provide such assistance.

Sec. 725. Standards and Assurances for Centers for Independent Living

(a) In General

Each center for independent living that receives assistance under this part shall comply with the standards set out in subsection (b) and provide and comply with the assurances set out in subsection (c) in order to ensure that all programs and activities under this part are planned, conducted, administered, and evaluated in a manner consistent with the purposes of this chapter and the objective of providing assistance effectively and efficiently.

(b) Standards

(1) Philosophy

The center shall promote and practice the independent living philosophy of--

(A) consumer control of the center regarding decisionmaking, service delivery, management, and establishment of the policy and direction of the center;

(B) self-help and self-advocacy;

(C) development of peer relationships and peer role models; and

(D) equal access of individuals with significant disabilities to society and to all services, programs, activities, resources, and facilities, whether public or private and regardless of the funding source.

(2) Provision of services

The center shall provide services to individuals with a range of significant disabilities. The center shall provide services on a cross-disability basis (for individuals with all different types of significant disabilities, including individuals with significant disabilities who are members of populations that are unserved or underserved by programs under this title). Eligibility for services at any center for independent living shall be determined by the center, and shall not be based on the presence of any one or more specific significant disabilities.

(3) Independent living goals

The center shall facilitate the development and achievement of independent living goals selected by individuals with significant disabilities who seek such assistance by the center.

(4) Community options

The center shall work to increase the availability and improve the quality of community options for independent living in order to facilitate the development and achievement of independent living goals by individuals with significant disabilities.

(5) Independent living core services

The center shall provide independent living core services and, as appropriate, a combination of any other independent living services.

(6) Activities to increase community capacity

The center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities.

(7) Resource development activities

The center shall conduct resource development activities to obtain funding from sources other than this chapter.

(c) Assurances

The eligible agency shall provide at such time and in such manner as the Commissioner may require, such satisfactory assurances as the Commissioner may require, including satisfactory assurances that--

(1) the applicant is an eligible agency;

(2) the center will be designed and operated within local communities by individuals with disabilities, including an assurance that the center will have a Board that is the principal governing body of the center and a majority of which shall be composed of individuals with significant disabilities;

(3) the applicant will comply with the standards set forth in subsection (b);

(4) the applicant will establish clear priorities through annual and 3-year program and financial planning objectives for the center, including overall goals or a mission for the center, a work plan for achieving the goals or mission, specific objectives, service priorities, and types of services to be provided, and a description that shall demonstrate how the proposed activities of the applicant are consistent with the most recent 3-year State plan under section 704;

(5) the applicant will use sound organizational and personnel assignment practices, including taking affirmative action to employ and advance in employment qualified individuals with significant disabilities on the same terms and conditions required with respect to the employment of individuals with disabilities under section 503;

(6) the applicant will ensure that the majority of the staff, and individuals in decisionmaking positions, of the applicant are individuals with disabilities;

(7) the applicant will practice sound fiscal management, including making arrangements for an annual independent fiscal audit, notwithstanding section 7502(a)(2)(A) of title 31, United States Code;

(8) the applicant will conduct annual self-evaluations, prepare an annual report, and maintain records adequate to measure performance with respect to the standards, containing information regarding, at a minimum--

(A) the extent to which the center is in compliance with the standards;

(B) the number and types of individuals with significant disabilities receiving services through the center;

(C) the types of services provided through the center and the number of individuals with significant disabilities receiving each type of service;

(D) the sources and amounts of funding for the operation of the center;

(E) the number of individuals with significant disabilities who are employed by, and the number who are in management and decisionmaking positions in, the center; and

(F) a comparison, when appropriate, of the activities of the center in prior years with the activities of the center in the most recent year;

(9) individuals with significant disabilities who are seeking or receiving services at the center will be notified by the center of the existence of, the availability of, and how to contact, the client assistance program;

(10) aggressive outreach-regarding services provided through the center will be conducted in an effort to reach populations of individuals with significant disabilities that are unserved or underserved by programs under this title, especially minority groups and urban and rural populations;

(11) staff at centers for independent living will receive training on how to serve such unserved and underserved populations, including minority groups and urban and rural populations;

(12) the center will submit to the Statewide Independent Living Council a copy of its approved grant application and the annual report required under paragraph (8);

(13) the center will prepare and submit a report to the designated State unit or the Commissioner, as the case may be, at the end of each fiscal year that contains the information described in paragraph (8) and information regarding the extent to which the center is in compliance with the standards set forth in subsection (b); and

(14) an independent living plan described in section 704(e) will be developed unless the individual who would receive services under the plan signs a waiver stating that such a plan is unnecessary.

Sec. 726. Definitions

As used in this part, the term "eligible agency" means a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency.

Sec. 727. Authorization of Appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal years 1999 through 2003.

Chapter 2--Independent Living Services for Older Individuals Who are Blind

Sec. 751. Definition

For purposes of this chapter, the term "older individual who is blind" means an individual age 55 or older whose significant visual impairment makes competitive employment extremely difficult to attain but for whom independent living goals are feasible.

Sec. 752. Program of Grants

(a) In General

(1) Authority for grants

Subject to subsections (b) and (c), the Commissioner may make grants to States for the purpose of providing the services described in subsection (d) to older individuals who are blind.

(2) Designated state agency

The Commissioner may not make a grant under subsection (a) unless the State involved agrees that the grant will be administered solely by the agency described in section 101(a)(2)(A)(i).

(b) Contingent Competitive Grants

Beginning with fiscal year 1993, in the case of any fiscal year for which the amount appropriated under section 753 is less than \$13,000,000, grants made under subsection (a) shall be--

(1) discretionary grants made on a competitive basis to States; or

(2) grants made on a noncompetitive basis to pay for the continuation costs of activities for which a grant was awarded--

(A) under this chapter; or

(B) under part C, as in effect on the day before the date of enactment of the Rehabilitation Act Amendments of 1992.

(c) Contingent Formula Grants

(1) In general

In the case of any fiscal year for which the amount appropriated under section 753 is equal to or greater than \$13,000,000, grants under subsection (a) shall be made only to States and shall be made only from allotments under paragraph (2).

(2) Allotments

For grants under subsection (a) for a fiscal year described in paragraph (1), the Commissioner shall make an allotment to each State in an amount determined in accordance with subsection (j), and shall make a grant to the State of the allotment made for the State if the State submits to the Commissioner an application in accordance with subsection (i).

(d) Services Generally

The Commissioner may not make a grant under subsection (a) unless the State involved agrees that the grant will be expended only for purposes of--

- (1) providing independent living services to older individuals who are blind;
- (2) conducting activities that will improve or expand services for such individuals; and
- (3) conducting activities to help improve public understanding of the problems of such individuals.

(e) Independent Living Services

Independent living services for purposes of subsection (d)(1) include--

- (1) services to help correct blindness, such as--
 - (A) outreach services;
 - (B) visual screening;
 - (C) surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions; and
 - (D) hospitalization related to such services;
- (2) the provision of eyeglasses and other visual aids;
- (3) the provision of services and equipment to assist an older individual who is blind to become more mobile and more self-sufficient;
- (4) mobility training, braille instruction, and other services and equipment to help an older individual who is blind adjust to blindness;
- (5) guide services, reader services, and transportation;
- (6) any other appropriate service designed to assist an older individual who is blind in coping with daily living activities, including supportive services and rehabilitation teaching services;
- (7) independent living skills training, information and referral services, peer counseling, and individual advocacy training; and
- (8) other independent living services.

(f) Matching Funds

(1) In general

The Commissioner may not make a grant under subsection (a) unless the State involved agrees, with respect to the costs of the program to be carried out by the State pursuant to such subsection, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than \$1 for each \$9 of Federal funds provided in the grant.

(2) Determination of amount contributed

Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(g) Certain Expenditures of Grants

A State may expend a grant under subsection (a) to carry out the purposes specified in subsection (d) through grants to public and nonprofit private agencies or organizations.

(h) Requirement Regarding State Plan

The Commissioner may not make a grant under subsection (a) unless the State involved agrees that, in carrying out subsection (d)(1), the State will seek to incorporate into the State plan under section 704 any new methods and approaches relating to independent living services for older individuals who are blind.

(i) Application for Grant

(1) In general

The Commissioner may not make a grant under subsection (a) unless an application for the grant is submitted to the Commissioner and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Commissioner determines to be necessary to carry out this section (including agreements, assurances, and information with respect to any grants under subsection (j)(4)).

(2) Contents

An application for a grant under this section shall contain--

(A) an assurance that the agency described in subsection (a)(2) will prepare and submit to the Commissioner a report, at the end of each fiscal year, with respect to each project or program the

(B) Amounts

The amounts referred to in subparagraph (A) are any amounts that are not paid to States under subsection (a) as a result of—

- (i) the failure of any State to submit an application under subsection (i);
- (ii) the failure of any State to prepare within a reasonable period of time such application in compliance with such subsection; ~~or~~
- (iii) any State informing the Commissioner that the State does not intend to expend the full amount of the allotment made for the State under subsection (a).

(C) Conditions

The Commissioner may not make a grant under subparagraph (A) unless the State involved agrees that the grant is subject to the same conditions as grants made under subsection (a).

Sec. 753. Authorization of Appropriations

There are authorized to be appropriated to carry out this chapter such sums as may be necessary for each of the fiscal years 1999 through 2003.



REHABILITATION SERVICES

*Services of the West Virginia Division of Rehabilitation Services
are provided on a non-discriminatory basis
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4500 through 6700—RESERVED.

6800 DEFINITIONS.

2100 CASELOAD STATUS SYSTEM.

2101 Description of Statuses. Progress and decision points in the rehabilitation process traditionally have been referred to as statuses and represented as two-digit codes. The chief distinction in these statuses is between those representing cases that remain open versus cases that have been closed. The following list summarizes these statuses:

OPEN STATUSES

Status 02, Applicant. When an individual signs a document to request rehabilitation services, s/he becomes an applicant and the case is placed into Status 02. While an applicant, the individual's eligibility for rehabilitation services is determined within 60 days in most instances. (If eligibility cannot be determined within 60 days, a waiver must be signed.) The applicant will be moved to extended assessment (Status 07) when additional information is needed to determine whether the individual can benefit from vocational rehabilitation (VR) services in terms of an employment outcome. If eligible, the applicant's case is moved to either the Pre-Service Listing (Status 04) where services will be delayed because s/he does not meet the Division's order of selection priorities or the Service Statuses (10 to 24) where no delay in the delivery of services is intended. If not eligible for rehabilitation services, the applicant's case will be closed in Status 08.

Status 04, Pre-Service Listing. An applicant placed into this status has been determined eligible for rehabilitation services, but cannot receive them because s/he does not meet the Division's order of selection priorities. Typically, the name of the individual will be placed on a waiting list for services until such time as the Division has sufficient funds available to provide services. Placement of the person's name on the waiting list for services indicates that there will be a delay in the initiation of services which the individual is otherwise entitled to receive. A case leaving this status will be moved either to the Service Statuses (10 to 24) to signify that services will be provided without further delay or closed in Status 38 to indicate that services will not be provided for whatever reason.

Status 07, Extended Assessment. An applicant is placed into this status for a maximum of six months when the Rehabilitation Counselor finds there is insufficient assessment data to determine whether the applicant can benefit from VR services in terms of an employment outcome. If eligible for VR, applicants leaving this status will be moved to the Pre-Service Listing (Status 04) or to the Service Statuses (10 to 24). If not eligible, the applicant's case will be closed in Status 08.

SERVICE STATUSES

Status 10, Eligible. A case is placed into this status when it has been determined that the applicant is eligible for VR services or independent living (IL) services. The Rehabilitation Counselor will conduct the thorough diagnostic study to the extent appropriate for the individual. The Individualized Plan for Employment (IPE)/Independent Living Plan (ILP) will be developed if moving from Status 02. A case leaving this status will move to Status 12 after

IPE/ILP approval or into closure Status 30 if for any reason the individual becomes unable to continue the program.

Status 12, Approval of Individualized Plan for Employment/Independent Living Plan. The case is placed in this status when the initial IPE/ILP has been developed and approved, and is ready to be implemented. A case leaving this status will be moved into Status 14 for intense counseling and guidance, Status 16 for physical and/or mental restoration, Status 18 for rehabilitation training, or Status 20 for placement. If the individual refuses to continue the program, or for any reason becomes unable to continue the program, the case will be moved into the closure Status 30.

Status 14, Counseling and Guidance Only. A case is moved into this status when the IPE/ILP denotes that the individual is receiving intensive counseling and guidance as the major service. These counseling and guidance services are of greater depth and longer duration than the ongoing counseling and guidance provided to every individual in the course of his/her rehabilitation. A case leaving this status may be moved into Status 16 for physical and/or mental restoration, Status 18 for rehabilitation training, or Status 20 for placement. The IPE/ILP will be amended when necessary to reflect any significant change in service. If the individual's counseling and guidance must be interrupted for an indefinite period, the case will be moved into Status 24. If the individual refuses to continue the program, or for any reason becomes unable to continue the program, the case is closed into Status 28.

Status 16, Physical/Mental Restoration. A case is moved into this status when the IPE/ILP denotes that the individual is receiving physical and/or mental restoration services as the major service in keeping with the original or amended IPE/ILP. In this status, the individual receives hospitalization, surgery, psychiatric care and treatment, therapy, artificial appliance fitting and training, and other required physical/mental restoration services. A case leaving this status may be moved into Status 14 if intensive counseling and guidance is needed, Status 18 if rehabilitation training is needed, or Status 20 for placement. The IPE/ILP will be amended when necessary to reflect any significant change in service. If the individual's physical/mental restoration services must be interrupted for an indefinite period, the case will be moved into Status 24. If the individual refuses to continue the program, or for any reason becomes unable to continue the program, the case is closed into Status 28.

Status 18, Rehabilitation Training. A case is moved into this status when the IPE/ILP denotes that the individual is receiving rehabilitation training as the major service. In this status, the individual receives academic, business, vocational, personal adjustment, or any other type of training from a college or university, community college, business or commercial college, rehabilitation facility, by tutor, correspondence, or on the job. A case leaving this status may be moved into Status 14 if intensive counseling and guidance is needed, Status 16 if physical/mental restoration is needed, or Status 20 for placement. The IPE/ILP will be amended when necessary to reflect any significant change in service. If the individual's rehabilitation training services must be interrupted for an indefinite period, the case will be moved into Status 24. If the individual refuses to continue the program, or for any reason becomes unable to continue the program, the case is closed in Status 28.

Status 20, Ready for Employment. A case is moved into this status when the individual has completed the services specified in his/her original or amended IPE/ILP and is ready to accept a job, but has not been placed. Additionally, this status is appropriate for the individual who has been placed but has not begun working and whose only required service is placement. In this status the individual is expected to continue to receive counseling and guidance and placement assistance. A case leaving this status may be moved to Status 14 if intensive counseling and guidance is needed, Status 16 if physical/mental restoration is needed, Status 18 if rehabilitation training is needed, or Status 22 if placed in employment and working. The IPE/ILP will be amended when necessary to reflect any significant change in service. If the individual's employment services must be interrupted for an indefinite period, the case will be moved into Status 24. If the individual refuses to continue the program, or for any reason becomes unable to continue the program, the IPE/ILP closure amendment is completed and the case is closed in Status 28.

Status 22, In Employment. A case will be moved into this status when it has been determined that services specified in the original or amended IPE/ILP have been completed and the individual is working. In this status the Rehabilitation Counselor will observe the individual's job performance to determine the adequacy of the placement and to identify and solve any problems that may prevent the individual from making a satisfactory adjustment to the job or IL. A case leaving this status may be moved to Status 14 if intensive counseling and guidance is needed, Status 16 if physical/mental restoration is needed, Status 18 if rehabilitation training is needed, or Status 20 if additional placement services are needed. Job stabilization shall be individually determined for each person in supported employment. The Rehabilitation Counselor will move the case into Status 22 when it is determined that: the individual has reached a maximum level of work performance; the agreement on hourly work goal has been reached (If the individual is stabilized in employment at a level of hourly work less than the goal established on the IPE, and the individual and Rehabilitation Counselor agree that the job represents substantial and suitable employment, the Rehabilitation Counselor shall amend the IPE noting the actual hours of employment achieved prior to the Status 26 closure.); the individual is earning minimum wage or the prevailing wage; and job coaching and related interventions, such as adjustment counseling and advocacy, have decreased to a level necessary to maintain the individual in employment. The IPE/ILP will be amended when necessary to reflect any significant change in service. If the individual's employment services must be interrupted for an indefinite period, the case will be moved into Status 24. If the individual is on the job for a minimum of 90 days, close the VR case in Status 26. If the individual meets the IL goal for at least 60 days, the case will be closed in Status 26. If the individual refuses to continue the program, or for any reason becomes unable to continue the program, the IPE/ILP closure amendment is completed and the case is closed in Status 28.

Status 24, Services Interrupted. A case is moved into this status when an interruption of services is to occur for an indefinite period of time. The Rehabilitation Counselor will maintain communication as appropriate with the individual to determine when movement from this status may occur. A case leaving this status should return to the same status from which it was moved into Status 24 or may be moved into Status 14 if intensive counseling and guidance is

needed, Status 16 if physical/mental restoration services are needed, Status 18 if rehabilitation training is needed, or Status 20 if the individual is requesting placement services only. The IPE/ILP will be amended when necessary to reflect any significant change in service. If the individual refuses to continue the program, or for any reason becomes unable to continue the program, complete the IPE/ILP closure amendment and close the case in Status 28.

Status 32, Post Employment Services. A case moved into this status denotes that the individual is receiving post employment services in keeping with the original or amended IPE (VR only). A case leaving this status may enter Status 46 for successful post employment services, Status 48 for unsuccessful post employment services, or Status 50 for unsuccessful post employment services where conditions are such that the case will be reopened as a new rehabilitation case.

CLOSURE STATUSES

Status 08, Closed Not Accepted/Ineligible for VR/IL Services. This status is used to identify persons determined ineligible or who are otherwise not accepted for VR/IL services. There may be no movement from this status.

Status 26, Rehabilitated. Cases closed as rehabilitated must, as a minimum, have (1) been declared eligible for services; (2) received appropriate assessment and related services; (3) had a program for VR/IL services formulated; (4) completed the program; (5) been provided counseling; and, (6) been determined to be suitably employed for a minimum of 90 days for VR cases or achieve the IL goal for at least 60 days. If the individual does not need post employment services, there will be no further movement of the case. If the individual needs post employment services, the case will be moved into Status 32.

Status 28, Closed Other Reasons After IPE/ILP Initiated. Cases closed into this category must have met criteria (1), (2), and (3) in Status 26 above, and at least one of the services provided for by the IPE/ILP must have been initiated, but for some reason, one or more of criteria (4), (5), and (6) above were not met. There is no movement from this status.

Status 30, Closed Other Reasons Before IPE/ILP Initiated. Cases placed into Status 30 are those which, although accepted for VR/IL services, did not progress to the point that services were actually initiated under an IPE/ILP. There is no movement from this status.

Status 38, Closed from Pre-Service Listing (Order of Selection). This status is used to identify individuals eligible for rehabilitation services who will not advance to the Service Statuses (10 to 24) and whose names have been removed from the Pre-Service Listing (Status 04). There is no movement from this status.

Status 46, Post Employment Services Terminated with Employment Maintained. This status denotes that post employment services have been terminated because the services

were successful in assisting the individual in maintaining employment. There is no movement from this status.

Status 48, Post Employment Services Terminated with Employment Not Maintained. This status denotes that the post employment services have been terminated and these services were not successful in assisting the individual in maintaining employment. There is no movement from this status.

Status 50, Post Employment Services Terminated with Case Reopened. This status denotes that the post employment services have been terminated and these services were not successful in assisting the individual in maintaining employment and a new case will be opened. The case will be reopened whenever a new disabling condition or vocational situation not related to the original rehabilitation effort emerges while the case is in Status 32 and the condition or situation is seen to require a complex or comprehensive rehabilitation effort. If the individual elects to do so, a new application will be taken and a new determination of eligibility will be made.

2200 EMPLOYMENT SERVICES.

2201 General. The West Virginia Division of Rehabilitation Services is dedicated to providing employment services as an integral part of the service delivery system throughout the entire rehabilitation process. Throughout the rehabilitation process the Rehabilitation Counselor will emphasize the goal of competitive employment in the integrated labor market to the greatest extent practicable as the culmination of all services provided to the individual. Vocational counseling will be provided from intake and throughout the process as needed to assist individuals in focusing on the requirements and benefits of employment, even though specific job placement activities may not occur until the last phase of the rehabilitation process. The culmination of the rehabilitation effort is reaching an employment goal. Therefore, employment is necessary for the client's successful rehabilitation.

2201.1 Provision of and Responsibility for Employment Services.

Employment services will be provided as one component of an individual's Individualized Plan for Employment (IPE) when a competitive vocational goal is established and the individual is not already satisfactorily employed. The Rehabilitation Counselor has primary responsibility for the provision of job placement assistance, using available resources, including the Division's employment specialists and district employment teams who may have been designated specifically to assist with job placement in an office, unit or district. The Rehabilitation Counselor will coordinate employment efforts and will promote collaboration and teamwork among Division staff, the employment community, service providers and the recipient of Division services or his/her representative in order for the individual to achieve a successful employment outcome. The Rehabilitation Counselor also will refer individuals to the statewide workforce system that includes America's Workforce Net work as well as employment and training services provided at one stop Work4WV Career Centers, self access locations, and their affiliate sites. Self access computers are located in all field offices. Information that contains locations and contact information for the Centers will be provided to the individual.

2201.2 Referral to Employment Specialist. The Rehabilitation Counselor will consider consultation with and referral of individuals to the Employment Specialists and/or the district placement team duties whenever additional assistance is required in helping an individual to find and retain suitable employment. During the program development phase of casework, consultation with the Employment Specialist should be considered when the individual and Rehabilitation Counselor encounter difficulty determining a suitable vocational goal or need information pertaining to local job markets. When it has been determined that an individual meets the criteria for job readiness upon completion of services, the individual's case will be referred to the Employment Specialist within one month of being placed in Status 20. Referral to the Employment Specialist requires use of the form *Referral for Assistance with Job Placement Services*.

2201.3 WVRC Career Development Center Referrals. Individuals completing training programs at the West Virginia Rehabilitation Center (WVRC) or in the community may be provided job placement services through the WVRC Career Development

Center if their placement plans include remaining in the greater Kanawha Valley. This also should include self access to computers in order to view America's Work force Network, including America's Job Bank, America's Talent Bank and America's Learning Exchange, which is part of the state's workforce development system.

2201.4 Job Readiness. The Rehabilitation Counselor will assure that the individual is prepared for employment. Related activities include, as appropriate:

A. *Career Counseling.* This provides support to the individual regarding employment issues such as defining a suitable vocational goal and work environment preferences, the impact of employment on entitlements, discouragement with the job seeking process, employment rights under ADA, etc.

B. *Use of Software.* Use employer-employee job match system, the Internet and other software to refine selection of a particular job within an occupational area.

C. *Job Site Training.* This assesses the individual's needs for short term job training to assure employment success, including supported employment opportunities where a job coach may be needed.

D. *Job Seeking Skills Training.* This provides training in a group or individual setting on effective job search techniques, including resume preparation, interviewing skills, mock interviews, etc.

E. *Internships and/or Volunteer Placement.* If appropriate, consider and discuss these options with the individual in order to further develop the individual's skills, abilities and confidence.

2201.5 Job Search Activities. Once the individual is prepared for employment in terms of skills, abilities and work behaviors, the Rehabilitation Counselor will refer the individual to the district's Employment Specialist within one month of entering Status 20. The Rehabilitation Counselor also will ascertain the level of involvement the individual wishes the Rehabilitation Counselor to take in the placement process. If the individual does not wish for prospective employers to be aware of the individual's association with WVDRS, the Rehabilitation Counselor will notify the Employment Specialist and provide assistance accordingly. It is the Rehabilitation Counselor's responsibility to assist the individual in taking an active role in the placement process and to either provide directly or arrange for the individual to be well versed in job search techniques and skills required to obtain employment. This should include referral to the Work4WV Career Center, our state's workforce development system. If the individual has not been successful in obtaining employment at the end of five months in Status 20, the individual's case will be referred to the district's Placement Team to determine if there are services or resources that may assist the individual in placement efforts.

2201.6 Outreach to the Employment Community. In order to develop a positive, collaborative relationship between the Division and local employers and to ultimately improve employment prospects for individuals with disabilities, Division staff will, through the leadership of the Employment Specialist, actively promote the services that the Division can provide to employers including, but not limited to, assessing employer needs and, as appropriate, assistance to an employer by conducting training on disability awareness or the Americans with Disabilities Act.

2202 Job Placement. Job placement entails the planning and provision of services to prepare an individual for work and to assist the individual in obtaining competitive employment, including the development of individual attitudes consistent with the work environment and the identification and remediation of any and all barriers to employment stemming from the individual's disability, architectural or transportation barriers, etc. It is a collaborative process with the individual involving direct Counselor-Employer communication and activity that results in actual employment of the individual. Job placement also can include on-the-job training (OJT) which results in employment.

2202.1 Placement Process. The process starts in the applicant phase (Status 02) as part of the counseling process, although it becomes more directly focused as the individual and Rehabilitation Counselor begin the process of determining a vocational objective and preparing the IPE, it continues until competitive employment is obtained. The job placement process includes:

- A. Selecting a vocational goal;
- B. Locating an appropriate job/position to meet the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;
- C. Securing a position through meeting employer requirements and completing necessary steps in hiring practices;
- D. Performing required job duties; and,
- E. Retaining employment through satisfactory work performance, appropriate work/social behavior, and independent functioning.

2202.2 Job Placement Services. Job placement services are organized and identifiable efforts by the Division to establish or improve the linkage of an individual and a specific work situation. Such services can be advisory, active, or promotional, such as direct employer contact, Job Club, job search, etc.

- A. General. In general, job placement services include, but are not limited to, the following types of activities:

1. Evaluating the individual's job readiness;
2. Providing employment-related information during the assessment of rehabilitation potential and formulation of the vocational objective;
3. Assisting the client in studying and interpreting employment trends and forecasts (a good tool to use is the Internet's America's Workforce Network);
4. Instructing the individual in making job applications and in his/her conduct and appearance during interviews and identifying needs for job seeking skills training or special assistance in interviewing;
5. Guiding the individual in developing and executing a plan for job seeking activities (often may be accomplished through job seeking skills training or Job Club);
6. Providing individual or group instruction in subjects related to employment, including but not limited to, job seeking skills training or Job Club;
7. Individual or group counseling on job retention skills and job adjustment, especially regarding avoidance or resolution of employee-employer conflicts;
8. Contacting employers on a regular basis;
9. Registering individuals with the Department of Employment Security and other employment programs such as Work4WV Career Centers, as appropriate;
10. Analyzing and modifying jobs, consulting with employers or supervisors, and/or advising in training with them as necessary;
11. Selective placement search activities for individuals with significant disabilities;
12. Providing post employment follow up prior to closure; and/or,
13. Planning for post employment services after case closure, if indicated.

B. Specific Modalities. Specific modalities of job placement services may include, but are not limited to, the following:

1. *Job Seeking Skills*. This is a group orientation for individuals to the basic skills of independent job seeking, including the preparation of employment applications and employment interviews.

2. *Job Club*. This is a structured, group approach to self-directed job search, often as an extension of job seeking skills training. The Job Club requires actual job hunting and a contract of commitment by the individual. Job Clubs are conducted in the District offices either by the Employment Specialist located in the District or by a Job Club Specialist from the West Virginia Rehabilitation Center. This service is also provided monthly at the West Virginia Rehabilitation Center.

3. *Job Analysis*. This is a systematic approach for gathering data about a specific job. The job analysis focuses on what the worker has to do to get the job done and all external factors which impact upon him in those efforts.

4. *Job Restructuring*. This may involve changing the components of a job to fit the skills and/or limitations of the worker. Examples would be eliminating a swing shift requirement for a diabetic, or trading the mobility related job requirements for a paraplegic machinist with an equal number of benchwork duties formerly performed by a non-disabled worker.

5. *Job Modification*. This includes the adaptation or modification of the physical job site to meet the needs of the worker; i.e., installing ramps for a wheelchair user or installing flashing lights for the deaf worker. The Rehabilitation Counselor may request assistance from the rehabilitation technology program to determine how technology may be used to modify a job site for accommodating the individual.

6. *Job Forecasting*. This is a method for projecting or estimating the local employment outlook.

7. *Job/Talent Data Bank(s)*. This consists of a computerized file system, arranged by *Dictionary of Occupational Titles* (DOT) code, of available jobs and/or potentially employable Division clients.

8. *Job Development*. This may include communicating and negotiating with a variety of community resources, business, industry, and labor for the purpose of increasing opportunities for the employment of persons with disabilities. Job development may or may not be on behalf of a specific individual.

C. *Employer Services*. Services provided directly to employers may facilitate the hiring and retention of individual clients or other individuals with disabilities by enhancing employer awareness of their productive abilities and fostering an employment environment within which physical or mental impairments may be accommodated more productively. Therefore, employer services also are considered job placement services and should be documented in *Counselor Comments* when provided on behalf of an individual client. Employer services may include, but are not limited to, the following:

1. Collaborating with employment agencies and other organizations involved in manpower assistance to employers, including activities with the Department of Employment Security, Work4WV Career Centers, and/or other local organizations providing placement assistance to individuals with disabilities;
2. Assisting employers in analyzing tasks through job inventory or analysis and job restructuring and/or accommodation regarding employment of individuals with disabilities;
3. Consulting with employers on the job adjustment of employees with disabilities and related employee-employer conflicts or concerns;
4. Assisting employers in the development of affirmative action programs, including interpretation of related federal and state laws and regulations including a working knowledge of ADA;
5. Assisting employers in the use of rehabilitation technology or ergonomics in modifying a specific job;
6. Providing technical assistance and consultation to employers regarding job placement and other vocational rehabilitation processes and services provided by the Division; and,
7. Identifying employees in need of vocational rehabilitation services for job retention or advancement.

2202.3 Job Readiness Criteria. Assessment of the client's readiness for employment should include consideration of the following:

A. *Adjustment to Disability.* The individual has successfully adjusted to his/her disability, to the maximum extent possible when s/he has reached an understanding of his/her limitations and has achieved reasonable compensation for his/her deficits. The individual's adjustment to disability allows entry into employment that can be expected to result positively for both the individual and his/her colleagues.

B. *Mobility.* The individual is reasonably mobile, at least to the extent that s/he can travel to and from work and travel within a work situation without danger of injury to oneself or others. Generally, the travel ability of an individual should be determined by the Rehabilitation Counselor in conjunction with other rehabilitation resources such as the availability of community travel assistance.

C. *Personality.* The individual's personality will enable the individual to "get along" with others, especially in the work situation. This can be determined by

observing the individual in a simulated work setting, by psychological evaluation, and/or by other assessment techniques.

D. *Supervision.* The individual is able to respond appropriately to supervision.

E. *Motivation.* The individual demonstrates motivation to work.

F. *Personal Habits.* The individual has personal habits (such as grooming and general appearance) that are appropriate to the work environment and acceptable to potential work associates.

G. *Physical Aspects.* All the individual's physical problems that could be expected to limit the individual in the pursuit of the chosen vocational objective should have been eliminated or improved to the maximum extent possible. However, if certain physical problems cannot be eliminated or improved, counseling and guidance should be provided to assist the individual in selecting an employment objective consistent with the individual's limitations and with the performance requirements of the job.

H. *Vocational Skills.* The individual possesses the skills necessary to perform the job adequately as outlined in the vocational objective, unless that objective includes OJT. If the individual does not possess all the skills necessary to perform the job adequately, the Rehabilitation Counselor should be certain that either the individual has made the proper accommodation or that a restructuring of the job will enable the individual to perform satisfactorily.

2202.4 Competitive Employment. Whether performed full-time or part-time, *each* of the following criteria must be met before the client can be determined to be successfully employed in the competitive labor market:

- A. The client, employer, and Rehabilitation Counselor are satisfied;
- B. The client is maintaining adequate interpersonal relationships and acceptable behavior as suggested by the absence of negative feedback from the employer and/or supervisor;
- C. The client possesses adequate skills to perform/continue the work satisfactorily;
- D. The employment is regular and reasonably permanent;
- E. The work is performed in an integrated setting;

F. The compensation received is at or above minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled;

G. The occupation is consistent with the client's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

H. The employment/working conditions will not aggravate the client's disability; and,

I. The employment will not jeopardize the health or safety of either the client or others.

2202.5 Placement Follow Up. Follow up must take place before the case can be closed rehabilitated; e.g., within a minimum period of 90 days. If follow up continues past the time that the case is closed, perhaps through regular liaison activities, needs for post employment services may be identified. In each case, the Rehabilitation Counselor will inform the client, through appropriate modes of communication, of the availability of post employment services.

A. *Purpose.* Follow up measures the effectiveness of job planning and of the services received by the individual between referral and case closure. It serves to determine the employer's and the employee's satisfaction in their working relationship and completes the information necessary for closing the case. Follow up also serves to reinforce a positive relationship with the employer and is, therefore, of value as a successive placement method. The satisfaction of the individual must be evaluated, as well as the extent to which the job is commensurate with his capacities and potential. *Since the purpose of follow up is to determine if the employment is suitable, the criteria given in this section regarding suitable employment must be met.*

B. *Relationship With Employer.* It is crucially important that the employer be satisfied with the individual's work performance and attitude toward the job, the supervisor, and the co-workers. Both the employer and the individual should be assured of the Rehabilitation Counselor's availability for assistance in resolving problems should they arise. If the relationship with the employer is generally favorable, an inquiry also might be made concerning the adequacy of the individual's preparation as related to expected job performance.

C. *Methods.* The frequencies and timing of placement follow up contacts, whom to contact, how to contact, etc., will depend on the individual, employer and job, and on the Rehabilitation Counselor's assessment of these factors. The frequency of follow up contacts may range from daily to monthly, but no less than every 60 calendar days. The Rehabilitation Counselor should determine, with the assistance of the liaison Counselor assigned to the employer and/or the Employment Specialist, who would be the most

appropriate member of the employer's organization to contact for follow up on a specific individual's employment. Depending on the size and structure of a company, the contact could well be the supervisor, personnel director, owner, or an appropriate designee. The specifics of how a particular placement occurred may indicate the contact person to be the employer or representative, the Employment Specialist, the liaison Counselor, a cooperating agency, or the individual (if s/he effected his/her placement). Whenever possible, follow up should be performed by a personal visit so that the Rehabilitation Counselor can assess all aspects of the placement. If for some reason, a personal visit is not feasible or appropriate, follow up can be made by mail or telephone. The following activities should be considered in order to assure that the client makes a positive adjustment to the position and is successful in retaining the job:

1. Evaluate, using appropriate resources, the need for reasonable accommodations and, as necessary, assist in restructuring the job station or providing assistive devices.

2. Arrange a schedule of follow up contacts with the supervisor and employee as to progress and/or problem areas, if appropriate.

3. Visit the employee at the work site and evaluate job performance and satisfaction on the job, if appropriate.

D. Responsibility. Even when assistance is provided by the Employment Specialist, follow up after placement remains the responsibility of the Rehabilitation Counselor. The level of involvement of the Rehabilitation Counselor with the employer depends on the wishes of the individual and whether the employer is aware that the individual is a recipient of Division services.

E. Documentation. Placement follow up will be documented as part of the Rehabilitation Counselor's narrative recording.

2202.6 District Placement Systems.

A. Purpose. The district placement systems are intended to enhance the Division's placement services in several ways. The systems:

1. Enable the Division to determine those individuals who are available to fill job vacancies and to reduce response time to employers;

2. Ensure that each individual is considered for job openings, even when the assigned Rehabilitation Counselor is absent, through referral to the self access computer, a component of the state's workforce development system;

3. Allow the Division to review the compatibility of planned vocational goals with the availability of jobs in the labor market;

4. Allow the Division to impact upon the private sector in a regular and consistent manner;
5. Enable the Division to involve business and industry in the rehabilitation process;
6. Allow the Division to educate the private sector regarding the vocational role of the Division; and,
7. Establish the placement process as a permanent and ongoing function and responsibility of the Division's professional staff.

B. *Employment Specialist.* Each of the Division's districts has a person designated as an Employment Specialist. Although the Rehabilitation Counselor still is responsible for the placement of the individual, including (unless other arrangements are made) a responsibility for appropriate on-the-job follow up of the placed individual, the Employment Specialist coordinates the job development and placement activities within the district. Toward this end, the Specialist directs efforts by the counseling staff of the offices within the district to educate employers regarding the Division and the vocational rehabilitation process and to promote new and expanded job placement opportunities.

1. *Role and Duties of the Employment Specialist.* The Employment Specialist's role and duties will include the following;

- a. Providing direct job placement services;
- b. Training district counseling staff in the development of positive working relationships with employers;
- c. Providing technical consultation and coordination of all on-the-job training programs within the district;
- d. Upon request, assisting district Rehabilitation Counselors in performing job analyses;
- e. Providing technical consultation to employers within the district regarding the Rehabilitation Act, ADA, and assisting district Rehabilitation Counselors in providing this service to employers; and,
- f. Serving as a resource in each office of the district for staffing cases with Rehabilitation Counselors regarding vocational objectives, labor market trends, innovative placements, job restructuring, job modification, and skill bank information including the provision of conceptual and technical assistance with difficult placements.

2. *Liaison With Major Employers.* The Employment Specialist will serve as the primary Division contact and liaison with all major employers within the district. The major employers within the district will be identified jointly by the Employment Specialist and the District Manager. The Employment Specialist will have the responsibility for establishing and maintaining a personal working relationship with management and labor representatives of major employers. The services of the Employment Specialist to major employers within the district may include, but are not limited to, the following:

- a. Affirmative action (including information about the Americans with Disabilities Act);
- b. Tax incentives and OJT information;
- c. Manpower needs (including identification of high turnover areas);
- d. Personnel practices relating to the hiring of persons with disabilities;
- e. Job analysis and job expansion;
- f. Technical assistance regarding the rehabilitation of injured workers;

- g. Employer assistance programming;
- h. Employee training regarding persons with disabilities;
- i. Advancement possibilities for persons with disabilities;
- j. In-house management training and other consultant services, as appropriate; and,
- k. Development of early-return-to-work programs for injured workers.

2202.7 Job Talent Bank. A system will be established at the District Office to respond to, share and follow up on job leads and to assure follow up contact with the employer. All staff members will immediately document and disseminate job lead information using *WVDRS Job Order* or other means. Internet access to America's Workforce Network provides information about employment, labor market statistics, and job talent bank. Rehabilitation Counselors will be responsible for following up with employers regarding job orders. The Rehabilitation Counselor should consider a referral to the Employment Specialist for any individual needing special assistance in job placement.

2202.8 State Selective Placement Program. The Division of Personnel, in cooperation with the Division, has established a special position specific assessment and certification procedure for applicants with significant disabilities. The procedure described here is not intended to replace test accommodations. Rather, it is an alternative evaluation procedure which allows any applicant with a significant disability maximum opportunity to show that s/he possesses all the qualifications necessary to merit equal consideration for a designated position vacancy. Any applicant with a verifiable disability may request test accommodations under current guidelines. The alternative procedure would be used only when the following conditions are met:

A. The hiring agency is committed to the appointment of an applicant with a significant disability and agrees to assist the Division in the evaluation process, and is willing to provide any reasonable and necessary job accommodations.

B. The agency requests that the Division of Personnel approve a position specific for selective certification for the consideration and possible appointment of a qualified applicant with a significant disability.

C. The applicant for such an appointment has been certified by the Division as having a severe mental or physical disability which would significantly interfere with his/her performance on the competitive examination. The Division and the Division of

Personnel also must determine that all other reasonable alternative competitive test accommodations have been considered and are not appropriate for the applicant.

D. The applicant meets all stated minimum requirements for the job class.

E. The applicant has been certified by the Program Supervisor, Employment Services, to be qualified to perform all essential duties of the position and to be fully competent for work in the job environment.

F. The employee successfully completes a trial employment period (probationary status) and the appointing authority has determined that the employee should be given permanent status.

2202.9 Federal Selective Placement Program. The federal Department of Personnel Selective Placement Program shall be utilized for those individuals whose disabilities are so significant that they are unable to demonstrate their capabilities to obtain federal employment under the competitive system, even with examination accommodation. In 1964 the U. S. Civil Service Commission (now the Office of Personnel Management) established a special appointing authority for job applicants with significant disabilities. The aim of this program is to hire people on the basis of ability, not disability. This authority was supplemented in May 1971 by an amendment that allows involvement by state vocational rehabilitation agencies and the Veterans Administration in the process of making appointments for persons with disabilities. Division individuals with significant disabilities need not go through the competitive employment process to qualify for positions covered under the U. S. Civil Service System. If the individual can be certified as significantly disabled, a written examination is not necessarily required. In most cases, an individual need only be qualified to perform the tasks necessary to the specific job rather than an entire class of positions. The individual may begin federal employment by either:

A. *700-Hour Temporary Trial Appointment.* This placement (approximately four months) gives an individual the opportunity to work within the federal system and demonstrate ability to perform the job requirements; however, no commitment for permanent employment is made by the hiring agency; or,

B. *Excepted Appointment for Permanent Job Under the Disabled Authority.* Disability alone does not qualify a person for an excepted appointment. There must be evidence that the person is disabled in such a way as to greatly reduce that individual's opportunities for competitive appointment to the position involved. Qualification for an excepted appointment does not necessarily mean that the person could not take or would inevitably fail a competitive examination, but it does mean that, because of a disability, s/he would not normally be expected to obtain the appointment under the competitive rules. The most important consideration is the degree to which the person's overall ability to find and keep a job is limited by the disability. Such appointments may be made under either Schedule

A for individuals with physical disability or mental retardation or Schedule B for individuals with psychiatric disability.

2202.10 Project ABLE (Able Beneficiaries Linked to Employers). All SSDI or SSI recipients who are job ready and under an approved IPE can be referred to a resume bank that assists these individuals in obtaining employment through an automated applicant referral system developed by the Office Of Personnel Management of the federal government.

2202.11 Purchased Placement Services. The Rehabilitation Counselor may purchase placement services from private non-profit or private for-profit employment agencies. However, it should be noted that, in all instances, job placement continues to be the primary responsibility of the Rehabilitation Counselor. Purchased Placement Services (PPS) are tools to be used or coordinated under an IPE to assist the client in identifying and entering competitive employment. The two types of PPS are direct and supported.

A. Direct.

1. *Required Staffing.* Clients for whom direct PPS is being considered must be staffed in a District Placement Team meeting before proceeding to direct PPS referral.

2. *Considerations.* Direct PPS is intended for those clients the Rehabilitation Counselor has determined to be "job ready" but who, for a variety of reasons, have been unable to locate or successfully secure suitable competitive employment opportunities. Direct PPS may be appropriate for individuals who meet the following criteria:

- a. The individual is an active client (usually in Status 20);
- b. On the basis of the preliminary and comprehensive assessment, the client has a vocational goal of competitive employment that is consistent with the client's informed choice;
- c. The vocational goal can be expected to result in competitive employment; i.e., work that is performed in the competitive labor market for an average of 30 hours per week with wages at or above the minimum wage;
- d. The client does not need supported employment or job site training; and,
- e. The client requires more specialized or intensive job development and placement services than can be provided by the Rehabilitation Counselor in a timely manner.

3. *Direct PPS Components.* Direct PPS services will consist of the following three components:

a. *Client Intake.* This includes the placement agency's initial interview with the client, completion of the Job Placement Services assessment activities, and preparation of the client's *Job Placement Plan*. During this phase the Rehabilitation Counselor and client will meet with the placement agency staff to augment the information contained on the referral form and to assist in completion of the *Placement Services Assessment Form* and the *Job Placement Plan*.

b. *Job Placement.* This occurs when the Rehabilitation Counselor is notified that a job placement has been secured and the client's starting date has been identified. Prior to this date, but following the completion of the intake process, the Rehabilitation counselor should expect to receive, at a minimum, monthly reports from the placement agency which document the activities that have occurred relevant to the job placement effort.

c. *Retention and Follow Up.* The placement agency will continue job retention and follow up services as needed, but at least monthly, for a minimum of 90 days after employment, along with any additional interventions that may be required to achieve job stabilization and employer satisfaction. Close coordination and communication between the Rehabilitation Counselor and the placement agency staff will be essential to ensure client success, and in some instances more than 90 days of follow up services may be warranted prior to case closure.

4. *Authorizing Direct PPS.*

a. *Completing WVDRS-16.* Direct PPS services will be authorized using WVDRS-16, *Authorization*. The Rehabilitation Counselor usually will authorize the total fee (sum of all three phases) for "Direct Placement" services.

b. *Fee Service Code.* All three phases of Direct PPS services are covered by service code 903022.

c. *Exception.* If the time required to complete all three phases of the job placement plan will carry into the next state fiscal year (July 1), the Rehabilitation Counselor may authorize only those components of the service that will be completed during the current fiscal year.

d. *Economic Need.* Direct PPS services are subject to economic need.

e. *Fees.* The Rehabilitation Counselor will receive invoices for services rendered along with required documentation and reports at the completion of each phase of the placement process as listed below:

(1) *Client Intake.* This phase of Direct PPS may be invoiced and paid when all intake and placement services assessment activities are completed. The Rehabilitation Counselor shall receive a copy of the client's *Placement Services Assessment Form/Report* and a copy of the client's *Job Placement Plan*. All forms or reports should accompany the invoice from the placement agency.

(2) *Job Placement.* The Rehabilitation Counselor will receive an invoice for this phase of the placement process when the client actually begins working at the agreed upon job site. The placement site should be in conformance with the client's choice and the vocational objective set forth in the client's IPE.

(3) *Case Closure.* The final phase of the placement process will be invoiced and paid at the point of the client's case closure in Status 26. This will occur following 90 days or more of follow up services by the placement agency to ensure appropriate job adjustment and employer satisfaction. The Rehabilitation Counselor should forward the invoice for payment when all parties are in agreement that case closure is appropriate. *Job Placement Follow Up Form(s)* should be included with the final invoice submitted by the placement agency.

5. *State Use or JWOD.* The final Direct PPS placement will be in the competitive labor market, and will not involve a community rehabilitation program in the role of employer under State Use or JWOD contracts.

6. *Dual Payments.* If a private employment agency is being paid by an employer to find and refer prospects for placement with that employer, the Division will not pay that agency for Direct PPS regarding such referrals of Division clients.

B. *Supported Placement.* A supported placement may be purchased as either supported employment or non-supported employment.

1. *Supported Employment.* See Section 4100.

2. *Non-Supported Employment.*

a. Upon written referral and authorization from the Rehabilitation Counselor, the vendor will develop for and place the client on a job based on his/her unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. This service is applicable for a client:

(1) Determined significantly disabled and who, through informed client choice, has established a vocational goal;

(2) Who requires more specialized or intensive job development and placement services than can be provided by the Rehabilitation Counselor in a timely manner; and,

(3) Who does not need Extended Supported Employment Services.

b. A non-supported placement occurs when the Rehabilitation Counselor is notified that a job placement has been secured and the client's starting date has been identified. Prior to this date, but following completion of the *Placement Service Plan*, the Rehabilitation Counselor should expect to receive monthly (at a minimum) reports from the CRP which document the activities that have occurred relevant to the job placement effort. The placement must occur within an agreed upon time frame and result in a competitive

employment outcome. Use code 903019 to authorize this service. See Section 7200 for the fee.

2203 Extended Employment Option. Extended employment programs provide a valuable service for individuals with significant disabilities who cannot perform integrated work in the community or who choose to work only among their peers with disabilities. For those individuals electing to pursue extended employment on a long-term basis, the Rehabilitation Counselor will refer the individual to local extended employment provider(s).

2204 Self Employment. For purposes of the Division's programs, *self employment* is defined as working for oneself in a business selling goods or services for the purpose of making a profit. Self employment is a vocational option which may be considered as one of an array of employment choices available to the client and the Rehabilitation Counselor. If self employment is to be the placement of choice, the decision needs to be made as early as possible in the rehabilitation process. Active participation by both the Rehabilitation Counselor and the client are extremely critical in this decision. Self employment is a more viable employment goal today than even a few years ago. Because of the advancements in electronics and computers, new opportunities are available for individuals with disabilities to start a small business in West Virginia. However, owing to the very challenging nature of self employment, both advantages and disadvantages should be carefully considered.

2204.1 Initial Considerations.

A. *Advantages.* There are potential advantages to self employment including:

1. Independence to set goals and control work schedule.
2. Being the boss.
3. Direct contact with customers, suppliers, etc.
4. Doing work that you enjoy.
5. Personal responsibility for job security.
6. Opportunity to make decisions that impact on individual and

family goals.

B. *Disadvantages.* Likewise, potential disadvantages to self employment may include:

1. Small business owners often must work 40 to 60 hours per week, or more, if the business is to be successful.

free time.

2. Long hours and other stresses can strain family life and reduce

3. Potential loss of medical benefits.

4. Potential loss of personal assets if the business fails.

5. Cash flow often is limited through the first two years of operation.

2204.2 Basis. The decision to commit Division funds in support of self employment must be based on a variety of factors, including but not limited to, the total start-up cost, viability of the business plan, potential for supporting financial resources, and Rehabilitation Counselor judgment. If the business plan is approved and Division funds are provided, those funds may be used to leverage additional funding.

A. Assessment of Client's Potential For Success. Assessment of the client's potential for success is, without question, the most crucial phase of the Rehabilitation Counselor's and client's joint effort toward the client's self employment as the owner and operator of a small business. Therefore, the assessment must be comprehensive and may be difficult in some instances. However, usually it need not be complex. It is essential that the Rehabilitation Counselor conduct a thorough evaluation of the consumer's physical and mental abilities, previous work habits, skills and attitudes, and the availability of family and others to assist the potential owner. The assessment may be done by the Rehabilitation Counselor, a team appointed by the District Manager, a small business expert, or an external evaluator.

B. Required Assessments. Required assessments consist of vocational evaluation, psychological assessment, credit check, evaluation of the client's physical ability to do the job, and a referral to the Small Business Administration for consultation, evaluation, and assistance with development of the business plan (discussed later in this section).

C. Personal Determinations. The potential small business owner must have the ability, skills and business acumen to develop a workable business plan which will contain numerous issues which require a frank assessment of personal expectations and constraints. Therefore, self employment proposal must address, in detail, the following questions of the consumer:

1. Why do you believe self employment is the best vocational goal for you?

2. Why did you select this particular business?

3. What experience have you had in this or a related business?

4. What experience have you had in dealing with the public?
5. Do you like working with people?
6. What training have you had or will you need to be successful in this business?

7. How many hours do you believe will be required each week to succeed?

8. What is the minimum weekly income you need to meet financial obligations not associated with the business?

D. *Financial Assets.* An assessment of cash, savings, home equity, and other personal financial assets which the client is willing to commit to the self employment effort is a fundamental aspect of evaluating the client's potential for success. Also, with the client's consent, it is strongly recommended that the Rehabilitation counselor obtain a complete credit check. A current report of the client's credit status can save valuable time and avoid frustration later in the development and approval of the business plan as it might prove impossible to secure operating capital if the client has a record as a poor credit risk.

E. *Documentation.* There must be evidence in the case record that the Rehabilitation Counselor has completed a thorough assessment of the client's ability to successfully operate and manage a small business.

2204.3 Business Plan. Without exception, clients seeking Division assistance in pursuing self employment as a vocational goal must complete a written business plan prior to development of the IPE. The business plan must address the following issues: market research to determine the need for the business, who the customers would be, and what they are looking for. Accomplishing this task should provide both the consumer and the Division with information necessary to determine the likelihood of success for the business. Although technical and other assistance should be provided as needed, allowing the client to develop the business plan with minimum guidance can offer an opportunity for the client to demonstrate the initiative and commitment which are key characteristics of successful entrepreneurs.

A. *Education or Training.* The client is expected to be knowledgeable about the product or service offered and about various aspects of running a business, such as management, bookkeeping, or marketing. The client would acquire needed knowledge or skills through whatever means are appropriate, such as attending school, correspondence classes, participating in a training program, or working at the same job in another business.

B. *Technical Assistance.* The client will seek technical assistance from the Small Business Administration but also may obtain needed technical assistance regarding any aspect of the proposed business from one or more experts either within the Division, from an outside consultant, from the persons operating the same type of business, from a business in a related industry, from retailers, sales representatives, industry associations, or chambers of commerce, including information about banks and loans, tax information, licensing, type(s) of training needed, insurance, inventory, advertising, site location, customers, product distribution, licensing, accountants, attorneys, or tax. Books on general topics such as marketing or management may be useful, in addition to books more specifically addressing the service(s) to be provided; or the product(s) to be manufactured.

C. *Community Resources.* The Rehabilitation Counselor may wish to refer the consumer to a variety of community supports available to entrepreneurs. These may include local business incubators, economic development programs, or a local college or university. Such groups can provide extensive support (e.g., guidance in developing a business plan), including assistance with funding in some instances. The Rehabilitation Counselor should explore the benefits of the Plan for Achieving Self Support (PASS Plan) to individuals who receive SSI and encourage these individuals to consider a PASS plan for self-employment.

D. *Required Components.* The written business plan will identify the business goal and address each of the following issues:

1. What is the purpose of the business?
2. Who will use the business?
3. Where are the potential customers located?
4. How many customers are projected to use the products or services in the first year; second year?
5. How much money must you make during the first year; second year?
6. What are the marketing plans?
7. What other, similar businesses are in the business catchment area?
8. Can you compete and obtain a market share if another business already exists?
9. What skills do you need to run this business?
10. Who will do the ordering, bookkeeping, and customer contact?
11. What will be the store or business hours?
12. Where will the business be located?
13. What equipment will be needed?
14. How much money will you need to start the business?

15. How much money can you contribute?

16. What are the other likely sources of money?

17. Can you get all of the necessary licenses and zoning waivers if necessary?

E. *Home Based Businesses.* While the need for establishing a home based business will not require as much capital for start up, the approach to the business is the same. It is not appropriate to expend funds for store front or home based businesses without first determining the viability of the business; e.g., regardless of the particular goods or services to be provided, the break-even point still must be determined.

F. *Prohibited Activities.* Division funds may not be used to support the following:

1. Businesses organized as non-profit;
2. Refinancing of existing debt;
3. Businesses that violate federal, state, or community laws or ordinances;
4. Purchase of vehicles; or,

2204.4 Approval by District Placement Team. All proposed self employment plans must be reviewed and approved by the District Placement Team prior to preparation of the IPE. The District Manager will participate as a member of the team regarding all such reviews. Information reviewed by the team will include the written business plan and a summary by the Rehabilitation Counselor of technical assistance provided by the Small Business Administration. The Program Supervisor, Employment Services, will be provided a copy of both the written business plan and the IPE regarding each approved self employment proposal.

2205 Homemaking as Employment Outcome. Homemaking shall not be considered an employment outcome unless the Rehabilitation Counselor determines that, as a result of receiving vocational rehabilitation services, both of the following criteria are met:

A. The client's performance of two or more of the following activities has significantly improved: preparing meals, cleaning and maintaining the household, laundering clothes, child care, or caring for an aged or disabled family member; and,

B. Due to the client's improved functioning as a homemaker, a paid or volunteer homemaker is required no longer or a family member has been freed to seek or continue employment.

C. See also Section 3900, *Significantly Disabled Homemaker Program*.

2206 Services to Employers.

2206.1 Wellness. In partnership with the Wellness Council of West Virginia (WCWV), the Division plays a vital role in the prevention of disability and the promotion of health among West Virginians through its support of worksite wellness programs. The Council has become the focal point for a statewide employer initiative to advance the health status of our citizens. Through the Council, the Division plays a significant role in the development of a model wellness program for the West Virginia Public Employees Insurance Agency which has resulted in the initiation of wellness programming available to all public employees. Further, through wellness programs and services for its own employees, the Division is providing leadership by example for all employers in West Virginia, especially those in the public sector, by putting into practice those innovative wellness processes and programs that it recommends to others.

2206.2 Disability Management. Disability management programs help employers reduce lost time associated with employee injury/disability through programs of prevention and safety, early intervention, effective case management, transitional work, and early return-to-work. By matching these competencies with the needs of employers, valuable relationships are built and maintained. The Disability Management Program positions the Division as an employer resource with extensive knowledge of industry demands. This relationship can be useful in finding and gaining employment opportunities for Division clients in jobs that have not traditionally been available. The program also assists people with disabilities to maintain employment. With early intervention and assisting employers in making appropriate accommodations, the Division assists workers to maintain employment when they might otherwise lose their jobs. Likewise, this process also assists employers in complying with federal and state laws and regulations, including those associated with the Americans with Disabilities Act. Upon request, the Division will assist employers with the following services:

A. Consultation regarding early return-to-work programs.

B. Assisting employers and employees in the development of a system where the value of people with disabilities is recognized.

C. Encouraging a positive continuous communication between the injured/disabled employee and supervisor to preserve a strong working relationship.

D. Serving as a resource to Division staff members, community partners, and business and industry for disability management and wellness issues.

2300 CONFIDENTIALITY: PROTECTION, USE, AND RELEASE OF PERSONAL INFORMATION.

2301 General Provisions. In accordance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Division will safeguard the confidentiality of all personal information, including all health information, photographs and lists of names. These policies assure that:

A. Specific safeguards exist that protect current and stored personal information, including, but not limited to:

1. The provision of secure workstations and data entry areas;
2. The location of printers and FAX machines in secure areas;
3. The positioning of computer screens away from the general public;
4. Assurances of a secure E-mail system, including safeguards that no messages are sent to anyone not authorized to receive the message; and,
5. Training of staff on controls of the use of protected health information.

B. All applicants and eligible individuals and as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

C. All applicants or their representatives are informed about the Division's need to collect personal information and the policies governing its use, including:

1. Identification of the authority under which information is collected;
2. Explanation of the principal purposes for which the Division intends to use or release the information;
3. Explanation of whether providing requested information to the Division is mandatory or voluntary and the effects of not providing requested information;
4. Identification of those situations in which the Division requires or does not require informed written consent of the individual before information may be released; and,
5. Identification of the agencies to which information is routinely released.

a. An explanation of state policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and,

b. These policies and procedures provide no fewer protections for individuals than state laws and regulations.

2302 State Program Use. All personal information in the possession of the Division must be used only for the purposes directly connected with the administration of the rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the Division may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged.

2303 Release to Applicants and Eligible Individuals. Except as provided below, if requested in writing by an applicant or eligible individual, the Division shall make all requested information in that individual's record of service accessible to and shall release the information to the individual or the individual's representative within 15 working days.

2303.1 Release of Harmful Information. Medical, psychological, or other information that the Division determines may be potentially harmful to the individual may not be released directly to the individual, but must be provided to the individual through either the designated Client Assistance Program representative or the medical or mental health professional from whom the information originated, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

2303.2 Release of Information Obtained from Other Agencies. If personal information has been obtained from another agency or organization, it may not be released. The individual may request the information from the agency or organization from which it was obtained.

2303.3 Requested Amendment to Case Record. An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the Division amend the information. If the information is not amended, the request for an amendment must be documented in the case record.

A. A request to amend or correct records shall be in writing, dated and signed by the individual or the individual's representative, and shall:

1. Identify the records which are the subject of the request;
2. Describe the requested change precisely; and,

3. State the reasons for the change.

B. Within 30 working days after receiving a request to amend or correct records, the Rehabilitation Counselor shall:

1. Make or refuse to make the requested change;

2. Give the individual or the individual's representative written notice of the action taken;

3. If the requested change is refused, state the reasons for the refusal. The Rehabilitation Counselor may refuse to amend or correct records because, among other reasons, the records were not created by the Division.

C. If the Rehabilitation Counselor refuses to make the requested change and the individual or the individual's representative disagrees with the action, the Rehabilitation Counselor shall advise the individual or the individual's representative of the appeal process. The Rehabilitation Counselor also shall advise the individual or the individual's representative that s/he may file with the Division a concise statement that, in five pages or less, states the reasons for the requested change in the record of services and for disagreement with the Rehabilitation Counselor's action. The statement of disagreement shall be attached to the disputed record and the Rehabilitation Counselor shall provide a copy of the statement whenever the disputed record is disclosed to another person.

2303.4 Right of the Individual to Inspect Records.

A. When requested by an individual or the individual's representative, the Rehabilitation Counselor shall permit the individual or the individual's representative to inspect any records in the custody of the Division which contain personal information about the individual. Certain restrictions may be found in preceding paragraphs.

B. A request to inspect records shall be in writing, dated and signed by the individual or the individual's representative, and identify the records which are the subject of the request.

C. The Rehabilitation Counselor shall comply with a request to inspect records within a reasonable period, but not to exceed 30 working days after the receipt of the request. A written response from the Rehabilitation Counselor will contain notification of the time and place of the meeting to be held, within the 30 day period, to review the record of service.

D. If the requested records are unavailable or have been destroyed, the Rehabilitation Counselor shall notify the individual or the individual's representative within 10 working days after receipt of the request.

2303.5 Appeal of Denial to Inspect or Amend Records. An individual or the individual's representative may request an appeal hearing if the Rehabilitation Counselor takes any of the following actions with respect to any records in the custody of the Division which contain personal information about the individual:

- A. Denies a request to inspect and obtain copies of the records;
- B. Denies a request to amend or correct records;
- C. Fails to attach a statement of disagreement to the disputed record;
- D. Fails to provide a statement of the disagreement when a disputed record is disclosed to another person.

2304 Release for Audit, Program Evaluation, and Research. With prior approval of the Director or designee, personal information may be released to an organization, agency, or individual engaged in audit, program evaluation, or research only for purposes directly connected with the administration of the rehabilitation program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that:

- A. The information will be used only for the purpose for which it is being provided;
- B. The information will be released only to persons officially connected with the audit, evaluation, or research;
- C. The information will not be released to the involved individual;
- D. The information will be managed in a manner to safeguard confidentiality; and,
- E. The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

2305 Release to Other Programs or Authorities.

2305.1 Informed Written Consent. All individually identifiable health information is subject to HIPAA regulations and is to be protected. Protected health information may be disclosed only for treatment purposes, to obtain payment, or to the individual, unless a written authorization for releasing the information is completed. To disclose information to other parties, unless for the purposes of treatment or to obtain payment, the Counselor will obtain the informed written consent of the individual or, if appropriate, the individual's representative, utilizing the WVDRS-84, Release of Information. The Division may then release personal and health information to another agency or organization for its program purposes. Cooperative agreements *DO NOT* supersede this policy.

2305.2 Release of Information Considered Harmful. Medical or psychological information that the Division determines may be harmful to the individual may be released if the other agency or organization assures the Division that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

2305.3 Release of Information Required by Federal Law. The Division shall release personal information if required by federal law or regulations.

2305.4 Release of Information to the Judicial System. The Division shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, and in response to an order issued by a judge, magistrate, or other authorized judicial officer, unless expressly prohibited by federal or state laws or regulations.

2305.5 Release of Information for Protection. The Division may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

2305.6 Explanation of Restrictions to the Individual. If the disclosure of requested records is restricted, such restrictions shall be explained to the individual or the individual's representative. The Rehabilitation Counselor shall:

A. Inform the individual or the individual's representative and document in the case record that specific records contain information which requires professional explanation and interpretation, and review and/or release would not be in the individual's best interests;

B. Inform the individual or the individual's representative that arrangements may be made for the individual to meet the person who prepared the report to discuss the material, provide a summary of the report, and answer any questions concerning its content; and,

C. Advise the individual or the individual's representative of the appeal procedure.

2306 Requesting and Receiving Information. To administer the rehabilitation program and make key decisions in the development of an individual's case, the Rehabilitation Counselor may obtain information about the individual from the individual and other sources outside the Division.

2306.1 Obtaining Information from the Individual. Fundamental to the act of applying for rehabilitation services is the responsibility of the individual to provide such information as the Rehabilitation Counselor reasonably may request for the purposes of determining eligibility and planning and providing rehabilitation services. By signing the *Application for Rehabilitation Services*, the applicant acknowledges his/her understanding that

his/her case information will be held confidential by the Division. Also by signing the application form, the individual authorizes the Division, in effect, to use the information for the stated purposes of determining eligibility and planning and providing rehabilitation services.

2306.2 Obtaining Information from Family Members. When required in the course of serving the individual or in providing services to members of the individual's family, or both, the Rehabilitation Counselor may obtain information from the individual's family members. All information obtained from the individual's family members is subject to the same confidential treatment as is information obtained from the individual or from other sources. Prior to talking with the individual's family members, the Rehabilitation Counselor will explain the reasons fully to the individual and obtain the individual's informed consent in writing on WVDRS-85, *Request for Information*. If the information is obtained from the family member in the presence of the individual it will not be necessary to obtain written informed consent. When speaking with family members, the Rehabilitation Counselor will explain the reasons for requesting the information and advise them that the information will be held confidential.

2306.3 Obtaining Information from Other Sources. When the individual has received services from a physician, other medical provider, educational institution, or other individual, agency, or organization, the Rehabilitation Counselor may need the record or transcript of such services as an aid in determining eligibility or planning and providing services.

A. The Rehabilitation Counselor will inform the individual of the specific information needed from each source and the reason(s) therefore.

B. The Rehabilitation Counselor will prepare WVDRS-85, *Request for Information*. A separate form will be prepared for each source from which information is requested. Entered on the form will be the specific information requested, including specific dates of service when available, date-spans, or certain treatment/procedures that were performed. The Counselor will also provide a description of the purpose for which the information is requested. The individual's informed consent for the source to release the requested information will be shown by the individual's signature. The original will be sent to the source, while a duplicate of the completed form will be attached to the information when received and filed in the case folder. *In every case, the form will be completed specifically for the source and the requested information; the individual will not be asked to sign blank forms. Information received in response to WVDRS-85 will not be released by the Division.*

2307 Fees.

2307.1 Copying Records. The Division may charge a reasonable fee (\$0.25 per page) for copying records if reproduction is made by a photocopying machine within the Division, or the actual cost of reproduction if reproduction is made by a photocopying machine

outside the Division or if the record is not susceptible to photocopying (for example, microfilm, x-rays, etc.). A charge may not be made if the total amount of the fee is \$1 or less.

2307.2 Searching and Preparing Records. The Division may charge a reasonable fee not to exceed \$15 per hour for the time beyond the first two hours expended searching for requested records and preparing the records for inspection and copying. The fee may be prorated for fractions of an hour.

2307.3 Postage. The Division may charge for the cost of postage to mail copies of records.

2307.4 Cost Agreement. Before copying records, the Division shall:

A. Estimate the cost of reproduction, including research, preparation time, and postage, and,

B. Either obtain the agreement of the person requesting copies of the records to pay the cost or demand prepayment of any estimated fee before reproducing the records.

2307.5 Fee Reduction/Waiver. Upon request, the Division may waive or reduce any fee charged pursuant to this section if the Division determines that the waiver or reduction is in the public interest. The Division shall consider, among other relevant factors, the ability of the person requesting the copies of records to pay the fee.

2307.6 Payment Process. If a fee is required, payment will be made to the "West Virginia Division of Rehabilitation Services."

2400 INTAKE AND CASE MANAGEMENT.

2401 Community Outreach and Referral Source Development. The Division will develop and maintain relationships with organizations, agencies and persons in the community in order to obtain appropriate, timely referral of such individuals for rehabilitation services. Division staff members shall inform referral sources of services offered by the Division; policies and procedures related to the order of selection; application requirements; and, the need to provide current medical, social, vocational, and other pertinent information for determining eligibility and priority of services. Division brochures will be provided to referral sources and a Division staff person will be assigned to serve as a liaison to the referral source as appropriate.

2402 Referral Procedure. The Division will establish and maintain processes which ensure that referrals are accepted, assigned, and registered promptly and equitably. Contact will be initiated to all referred individuals within ten working days of receipt of the referral. The following types of referrals are not to be considered for application:

A. A person already on the rolls of the Division in statuses 02 through 04, 10 through 24, or 32; or,

B. A person who is incarcerated with no firm release date or firm date of parole. For an incarcerated individual with a firm release date, the application is to be initiated no sooner than 60 days prior to the scheduled release. In cases involving parole, the application can be initiated as soon as parole has been granted.

2403 Scheduling Initial Interviews. As soon as possible after referral, an initial interview will be scheduled with the individual and, as appropriate, the individual's representative. The individual will be advised to bring all relevant medical, educational, and employment information to the initial interview in order to expedite eligibility determination and assignment to an order of selection category (see Section 2600). Special needs, particularly those that would affect the exchange of information, i.e., need for translator, interpreter, or alternate format, shall be addressed. The Rehabilitation Counselor will issue a contact letter to SSI or SSDI allowed referrals within five working days of receipt.

2404 Required Content of Initial Interview. At the time of intake, the individual and/or the individual's representative will be advised of the following:

2404.1 Available Services. A knowledgeable staff member shall explain the rehabilitation process and services available through the Division. If not previously provided, relevant brochures will be offered to the individual.

2404.2 Emphasis on Employment. When the individual applies for vocational rehabilitation (VR) services, a staff member shall emphasize at the initial meeting and in subsequent contacts that the primary objective is achievement of competitive employment.

2404.3 Non-Discrimination. A Division staff member shall notify the individual orally or in writing that the Division complies with the Civil Rights Act and the Americans with Disabilities Act and does not discriminate on the basis of sex, race, religion, color, age, national origin, residence, physical or mental disability, or political affiliation in determining eligibility and in providing services.

2404.4 Rights and Responsibilities. See also Section 3300. A staff member shall inform individuals in the appropriate mode of communication of:

A. Their rights, including the appeal process, availability of the Client Assistance Program (CAP), and confidentiality;

B. The responsibility of the individual or family for financial participation in the cost of services to be arranged or provided if appropriate; and,

C. The right and responsibility to fully participate in selection of the:

1. Rehabilitation goal;
2. Objectives and services required to meet the goal; and,
3. Providers of services.

2404.5 Required Signatures. A staff member shall explain that if the individual is not yet eighteen years of age or has a legal guardian, all forms requiring signature of the applicant or eligible individual shall be signed by the parent, guardian, or the individual's representative.

2404.6 Order of Selection. For individuals interested in VR services, a staff member shall explain the order of selection policy including the order of selection categories and which categories are currently being served.

2404.7 Financial Participation. A staff member shall explain the Division's policy and procedures related to financial need, participation, and use of comparable benefits. It shall be emphasized that the Division will pay only for those services that have been pre-authorized by a signed Division purchase document(s).

2404.8 Need for Information. A staff member shall explain the need for information related to determination of eligibility, assessment of rehabilitation needs, and financial participation. Emphasis will be placed on self reporting and obtaining existing information. The procedure for obtaining existing information from other sources through use of the *Request for Information* form will be described. Information related to the collection and dissemination of information, as stated on the *Application for Rehabilitation Services* shall be discussed.

2404.9 Application for Services. A staff member shall describe the application process and request that the individual or the individual's representative complete and sign the *Application for Rehabilitation Services* if interested in receiving rehabilitation services. The individual will be advised that eligibility will be determined within 60 days after the completed and signed application is received by the Division unless there are special circumstances (see Section 2500).

2404.10 Centers for Independent Living (CIL) Referral. Verbal and written information about centers for independent living (CILs) will be provided to each individual during the intake process. This information will explain how the individual could benefit from CIL services. If the individual lives within a CIL service area, a formal referral will be made if the individual expresses interest.

2405 Review of Information/Self Report. The assigned Rehabilitation Counselor will meet with the individual to discuss information related to background, career aspirations, preferences, capabilities, limitations, accommodations, and other matters related to employment and/or independence. They will review the *Application for Rehabilitation Services*, which may include the *Financial Statement* and the *Health Assessment Questionnaire*. The Rehabilitation Counselor will advise the individual about additional community resources which may be of assistance to the individual during the rehabilitation program and will provide guidance in referral to such resources.

2406 Counseling and Guidance. The Rehabilitation Counselor will develop a collaborative relationship with each applicant and eligible individual and will promote the individual's full involvement and participation in the rehabilitation process. The Rehabilitation Counselor's role in providing information about and guiding the individual in exploration of options is critical to supporting informed choice of the individual. The Rehabilitation Counselor will provide encouragement, support, and assistance with problem solving and clarification of values, as well as information about and referral to community resources and coordination of services. The employment goal will be emphasized in contacts with the individual throughout the rehabilitation process. Regular contacts will occur throughout the individual's rehabilitation program.

2407 Registration of Applicant. Based on information provided on the *Social Profile* a Division staff member shall collect information required for federal reporting purposes and register the applicant.

2408 Case Statuses. Case statuses indicate the movement of a case from application to closure. This movement will occur in a timely manner and according to the needs of the individual and capabilities/resources of the Division (see Section 2100).

2409 Staffings. Staffings will be conducted as determined necessary by the Rehabilitation Counselor or supervisor, at the request of the applicant or eligible individual or, as appropriate, the individual's representative.

2410 Record of Services. The record of services will contain documentation related to eligibility determination and the provision of services to the individual. Information provided by Division staff will be factual, legible, and objective. The appropriate section for *Actions / Details* will be used to document contacts and relevant information. The individual's current status will be evident from the information in the record. Information will be placed in the file chronologically, beginning with the most recent.

2411 Transfer of Records of Services. If a case transfer is requested or otherwise necessary, a record of services will be transferred based upon the residence of the individual, the nature of the individual's disability, and the individual's best interests. The transfer will be accomplished as follows:

A. Transfer Based Upon Residence.

1. The Rehabilitation Counselor shall discuss the transfer with the individual and the receiving Rehabilitation Counselor, except for referrals where contact with the individual has not yet been made.

2. The Rehabilitation Counselor shall complete an up to date summary including reason for transfer, in *Actions / Details*.

B. Transfer to Specialty Territories. Individuals who are determined to be appropriate for a special caseload should be transferred promptly to the proper specialty Rehabilitation Counselor. The referral will include, if available; name, address, phone number, Social Security number, date of birth, directions to home address, and a brief summary of the stated disability.

1. *Rehabilitation Counselor for the Blind and Visually Impaired.* This Counselor will review all ophthalmological and optometric evaluations obtained in the district and assign appropriate disability codes prior to determining the individual's eligibility. The Rehabilitation Counselor for the Blind and Visually Impaired will provide consultative services to other Rehabilitation Counselors within the district.

a. Each case with an impairment Code 01(Blindness) or an impairment Code 02 (Visual Impairment) in which the client meets the other eligibility criteria for vision impairment, at or subsequent to referral will be transferred to the Rehabilitation Counselor for the Blind and Visually Impaired.

b. At discretion of the District Manager, the Rehabilitation Counselor for the Blind and Visually Impaired may recommend that selected cases with special visual accommodation needs be transferred to the specialty territory.

c. Cases referred from the West Virginia School for the Blind usually will be served by the Rehabilitation Counselor for the Blind and Visually Impaired.

2. *Rehabilitation Counselor for the Deaf and Hard of Hearing.* This Counselor will review all audiological and otological evaluations obtained in the district and assign appropriate disability codes prior to determination of the individual's eligibility. The Rehabilitation Counselor for the Deaf and Hard of Hearing will provide consultative services to other Rehabilitation Counselors within the district as needed. In all cases, documentation will occur in *Actions / Details*. Prior to purchase of a hearing aid, pertinent medical and narrative information will be sent to the Rehabilitation Counselor for the Deaf and Hard of Hearing for review.

a. Each case with an impairment code of 03 (Deafness, Primary Communication Visual), 04 (Deafness, Primary Communication Auditory) or 08 (Deaf Blindness) will be transferred to the Rehabilitation Counselor for the Deaf and Hard of Hearing.

b. At discretion of the District Manager, the Rehabilitation Counselor for the Deaf and Hard of Hearing will recommend which cases, with impairment codes of 05 (Hearing Loss, Primary communication Visual), 06 (Hearing Loss, Primary Communication Auditory), or 07 (Other Hearing Impairments) be transferred to the specialty territory. Cases in which there are questions concerning the appropriate territory, will be staffed with the District Manager and /or Rehabilitation Program Supervisor, Services for the Deaf and Hard of Hearing.

c. Cases referred from the West Virginia School for the Deaf usually be served by the Rehabilitation Counselor for the Deaf and Hard of Hearing.

d. The deafblind individual is either legally blind or has a condition of progressive visual loss which has been verified by a physician skilled in disease of the eye and as such blindness may result. Also, the individual has a hearing impairment of 55db (ANSI) or more, unaided for either speech reception threshold (SRT) or pure tone average (PTA) in the better ear; or impairment between 30-54 db (ANSI), unaided, for either SRT or PTA in the better ear and either speech discrimination less than 50 percent or a statement by a physician skilled in disease of the ear indicating progressive loss.

3. *Specialty Rehabilitation Counselors for the School System.* The Rehabilitation Counselor for the School Program will provide consultation services to other Rehabilitation

Counselors in the district regarding educational concerns within the secondary school system and may, upon request, serve any case involving a secondary school student. Students with severe sensory impairments will be referred to the Rehabilitation Counselor for the Deaf and Hard of Hearing and/or the Rehabilitation Counselor for the Blind and Visually Impaired for consultation and determination of placement. In the instance of severe sensory impairments, collaboration between the two specialty Rehabilitation Counselors will be necessary. Transfer of cases to the specialty school territory ordinarily should result from consultation and agreement between the School Program Rehabilitation Counselor and the general or other specialty Rehabilitation Counselor. At the discretion of the District Manager, the Rehabilitation Counselor for the School Program may recommend that selected applicants or school students be transferred to the school territory.

2500 ELIGIBILITY.

2501 Eligibility for Vocational Rehabilitation Services.

2501.1 Criteria. Determination of an applicant's eligibility for vocational rehabilitation (VR) services shall be based only on the following:

A. Eligibility Criteria:

1. The applicant has a physical or mental impairment; and,
2. The applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; and,
3. The individual can benefit in terms of an employment outcome from the provision of rehabilitation services; and,
4. The applicant requires VR services to prepare for, enter into, engage in, or retain employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

B. Presumption of Benefit. It will be presumed that an applicant who meets eligibility requirements 1 and 2 above can benefit in terms of an employment outcome unless it is demonstrated, based on clear and convincing evidence, that the applicant is incapable of benefiting from VR services in terms of an employment outcome due to the severity of the disability. See also extended assessment later in this section.

C. Presumption of Significant Disability and Eligibility for SSDI or SSI. Individuals who receive Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits based on disability are deemed significantly disabled. Further, such individuals will be presumed eligible for VR services upon stating their intention to achieve an employment outcome consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The determination of eligibility and presumption of significant disability for individuals who receive SSDI/SSI does not eliminate the need for extended assessment services in Status 10 when there is a question regarding the severity of the disability. If there is doubt that the eligible individual can benefit in terms of an employment outcome due to the severity of the disability, the Counselor will initiate an extended assessment in Status 10 to determine whether the individual may benefit from services. The same services that are made available in Status 07 should be provided, including a trial or extended work experience and a rehabilitation technology evaluation. The outcome of this assessment will be used to establish whether there is clear and convincing evidence that the SSDI/SSI beneficiary can attain an employment outcome with the provision of rehabilitation services.

1. Applicants who are recipients of SSI or SSDI need to provide evidence of their eligibility for benefits. If an applicant is unable to provide evidence such as an award letter or check, the Rehabilitation Counselor must verify this eligibility by contacting the Social Security Administration (SSA). Verbal confirmation from SSA of receipt of benefits is acceptable, but only if paper copies are not available. Documentation of evidence received will be maintained in the individual's case record.

2. Verification of SSA benefits must be made within 60 days, the required timeline for determining eligibility for VR services.

2501.2 Assessment for Determining Eligibility and Priority for Services. To the maximum extent possible and appropriate, consistent with confidentiality requirements, the Rehabilitation Counselor shall review and assess relevant information that is existing and current in determining whether an individual is eligible for VR services and to determine the appropriate priority category to which the individual should be assigned for purposes of the order of selection. The Rehabilitation Counselor also may provide appropriate assessment services and activities to obtain additional information when necessary to make such determinations:

A. Use of Existing Information.

1. *Individual and Family Members.* The individual and, when appropriate and consistent with confidentiality requirements, the individual's family members, will be considered by the Rehabilitation Counselor as a primary source of information regarding whether the individual has a physical or mental impairment which, for that individual, results in a substantial impediment to employment.

2. *Information from Direct Observation.* The Rehabilitation Counselor often will be able to determine the presence or absence of physical impairment by direct observation of a physical condition, thus reducing the need for medical consultations having the limited purpose of merely documenting an otherwise obvious impairment.

a. Counselor determinations of impairment based on direct observation shall be limited to those physical disabilities which are readily apparent; e.g., the various plegias, amputations, deformities, and similar conditions. Cognitive and emotional impairments, of course, are not directly observable.

b. In no instance will the Rehabilitation Counselor request or attempt to make any observation in a manner which the individual or the individual's representative might be reasonably expected to find inappropriate, intrusive, or otherwise offensive; e.g., the Rehabilitation Counselor will neither touch the individual nor request the individual to remove any article of apparel in the course of observing a physical condition.

3. *Information from Other Programs and Providers.* To the maximum extent appropriate, the Rehabilitation Counselor will utilize information and determinations available from other federal, State, and local programs or from private providers, particularly such relevant information as may be available from Division records regarding previous cases; the Social Security Administration; public schools and higher education institutions; physicians, hospitals, and psychologists; Work4WV Career Centers; and other agencies that are members of the state workforce development system.

B. To the extent existing information does not describe the current functioning of the individual or is unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of VR services, including assistive technology evaluation and vocational explorations and assessments will be undertaken as needed to determine whether an individual is eligible.

C. *Recency of Medical or Psychological Information.* When the individual reports a physical or mental condition which is progressive or unstable and has had an adequate medical or psychological evaluation within one year, the report of that evaluation may be accepted in lieu of a new evaluation. If the individual reports a physical or mental condition which is permanent and stable (e.g., amputation, mental retardation, or blindness), any previous medical or psychological report verifying the condition will suffice, regardless of recency.

D. Determination of priority for services under the order of selection will be based on a review of data as described above and an assessment of additional data to the extent necessary. An order of selection priority code must be assigned at the time of eligibility determination.

2501.3 Assessment and Comparable Benefits. Assessment services are exempt from a determination of the availability of comparable benefits and services; however, any third party resources that are available to the individual for assessment purposes may be utilized if agreed to by the applicant.

2501.4 Medical/Psychological Assessments. Additional medical or psychological data may be obtained by referring the individual for assessment services, including general medical and psychological evaluations.

2501.5 Medical Consultations.

A. *Use of Medical Consultants.* Medical consultations should provide direct assistance to Division staff members in matters relating to medical aspects of casework. Staff members will contact the medical consultant, when appropriate and available, regarding such issues as:

1. Lack of clarity about whether reported conditions represent disabilities as defined within the vocational rehabilitation program;

2. Interpretation of medical information and the identification of functional limitations;

3. Prognosis of disability(ies) when medical information obtained needs clarification; and,

4. Feasibility of providing rehabilitation services to individuals with conditions which are progressive or subject to remission and exacerbation.

B. *Required Documentation.* The record of services shall have information reflecting the medical consultant's response and/or recommendations when appropriate.

2501.6 Assessment for Determining Rehabilitation Needs. Following the determination of eligibility, to the extent additional data is necessary for development of the Individualized Plan for Employment (IPE); the Rehabilitation Counselor shall conduct an assessment for determining rehabilitation needs. See also Section 2700 regarding development of the IPE.

2501.7 Required Timeline. The Rehabilitation Counselor shall determine eligibility for services within a reasonable period of time, not to exceed 60 days after the completed and signed *Application for Rehabilitation Services* has been received by the Division unless:

A. *Exceptional and Unforeseen Circumstances.* Exceptional and unforeseen circumstances beyond the control of the Rehabilitation Counselor may preclude the Rehabilitation Counselor from completing the determination within 60 days. In such instances, the Rehabilitation Counselor will notify the individual of those circumstances and request an extension for some specific period of time as may be reasonably warranted by the circumstances. Upon agreement by the individual or the individual's representative to such an extension for a specified period of time, the Rehabilitation Counselor will obtain the signature of either the individual or the individual's representative on the *Eligibility Extension* form. The signed form will be filed in the individual's case record. In no instance, however, will the Rehabilitation Counselor request an extension for an unspecified period of time.

B. *Extended Assessment.* Agreement for the individual's participation in an extended assessment shall be deemed agreement to an extension of the eligibility determination. In such instances, the Rehabilitation Counselor will specify the period of extension as being "until completion of the extended assessment."

2501.8 Certification of Eligibility. When an individual has been determined eligible for rehabilitation services, a *Certificate of Eligibility* shall be completed and dated, with the Rehabilitation Counselor's name typed on the form.

2501.9 Required Documentation. The record will contain documentation supporting the individual's eligibility for vocational rehabilitation services including:

- A. Completed *Health Assessment Questionnaire*;
- B. Completed *Certificate of Eligibility*;
- C. Inasmuch as possible, information from other sources, medical records or a statement from a physician, psychiatrist, licensed psychologist, or psychologist employed by the school system, identifying the physical or mental disability(ies);
- D. Information regarding the work limitations, capabilities, and career aspirations of the individual;
- E. Information supporting the severity of the individual's disability and completion of the *Certificate of Eligibility, Significant, and Most Significant Disability*;
- F. Completion of appropriate coding as required; and,
- G. Other information as appropriate.

2502 Extended Assessment.

2502.1 Purpose of Extended Assessment. An extended assessment must be provided when, because of the severity of the individual's disability, the Rehabilitation Counselor finds there is insufficient assessment data to determine whether the individual can benefit from VR services in terms of an employment outcome. In such cases, prior to any determination of ineligibility, the Rehabilitation Counselor must conduct an exploration of the individual's abilities, capabilities, and capacity to perform in a realistic work situation to determine whether there is clear and convincing evidence to support such a determination. The assessment must include a rehabilitation technology consultation and a trial work experience. Under limited circumstances, if an individual cannot take advantage of trial work experiences, or if options for trial work experiences have been exhausted before the Rehabilitation Counselor is able to obtain sufficient evidence for an eligibility decision, the Rehabilitation Counselor will conduct an extended work experience. The extended work experience must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

2502.2 Status in Which Extended Assessment Is Conducted. The case will be placed in, and remain in Status 07 during the entire period that the applicant is receiving extended assessment services.

2502.3 Extended Assessment Plan. Services provided as part of an extended assessment require the development of a written plan to assess periodically the individual's abilities to perform in work situations. The Rehabilitation Counselor will formulate a plan that addresses the services to be provided in each of the following categories:

A. *Rehabilitation Technology Consultation.* Rehabilitation technology consultation will be provided prior to any determination that an individual with a significant disability is incapable of benefiting from VR services in terms of an employment outcome because of the severity of that individual's disability, except when such consultation is specifically refused by the individual or the individual's representative.

B. *Types of Work Experiences.*

1. *Trial Work Experience.* Trial work experiences are vocational exploration and assessment services conducted in the most integrated work settings possible, and for the purpose of evaluating the individual's capacities to perform in work situations. These experiences may include supported employment, on-the-job training, and other experiences occurring in realistic, integrated work settings. Priority must be given to locating trial work experiences before considering the use of extended work experiences. The trial work experience will be terminated as soon as the purpose of the experience has been accomplished.

2. *Extended Work Experience.* Extended work experiences are vocational exploration and assessment services conducted in a non-integrated setting. Experiences using realistic work settings such as a work center in a workshop facility may be arranged; however, attempts should be made to provide the services in the most integrated setting possible within the workshop facility. Extended work experience activities are to be terminated as soon as the Rehabilitation Counselor is able to make determinations of the individual's abilities to perform in a work situation.

2502.4 Time Limits. Trial work and extended work experiences must be of sufficient variety and over a sufficient period of time for the Rehabilitation Counselor to make a determination of the individual's eligibility. However, the total period of time allowed for an extended assessment will be limited to six months, not to exceed more than a total of 90 hours for all trial and/or extended work experience(s). Extensions to this limit may be made only with District Manager approval. The Rehabilitation Counselor may terminate extended assessment services at any time prior to the six month limit, promptly upon determining whether rehabilitation services will or will not benefit the applicant in terms of an employment outcome.

2502.5 Authorization of Service. The Rehabilitation Counselor will refer the applicant to an acknowledged Community Rehabilitation Program (CRP) provider to facilitate the individual through an assessment including development of a CRP service plan, development of trial work sites, coaching/training during the work experiences, and a report of the outcome of the Extended Assessment.

A. *Authorization Codes.* See Section 7200 of the WVDRS Resources Manual for the appropriate codes and fees.

B. *Out-of-Area Travel Reimbursement to the CRP.* If there is no CRP available in the immediate area to provide this service, the Counselor may authorize, in addition to the CRP hourly fee, for mileage, lodging, and meal allowances not to exceed the WV Travel regulations for state employees.

2502.6 Worker's Compensation Requirements for Trial Work Experiences. Article 18-10M-1 of the Code of West Virginia provides workers' compensation coverage for Division individuals participating in trial work experience(s), community based assessment, or other unpaid work-based training programs. The Division of Rehabilitation Services shall be the employer of record for individuals while participating in unpaid work-based experiences. Participating employers are immune from liability to the Division of Workers' Compensation. Individuals shall be considered to be paid the amount of wages sufficient to provide workers' compensation weekly benefits required by state code.

A. *Counselor Responsibilities.* Field and Center Counselors are asked to:

1. Prepare and sign a letter of certification as illustrated in the *Statement of Certification for Unpaid Work-Based Training Program*, see Figure 2500-1. Provide both the individual and employer with copies;

2. Provide the individual with a copy of the information excerpted from the Code of West Virginia contained in Figure 2500-2; and,

3. Complete on a quarterly basis the *Unpaid Work-Based Training Report*, see Figure 2500-3, and submit it to the Division's Program Supervisor, Employment Services by the fifteenth working day of the next month.

B. *Employment Services Unit Responsibilities.* The Program Supervisor, Employment Services will collect quarterly information received on the quarterly Unpaid Work Based Training Reports and forward a statewide report to the Manager of Fiscal Services by the twenty-second day of the same month.

2502.7 Assessment of Progress. The Rehabilitation Counselor will assess the individual's progress during the trial work experience or extended work experience as frequently as necessary, but at least once every two weeks. To document the individual's progress, the following CRP forms must be provided by the CRP and filed in the case record:

A. A copy of the *CRP Service Plan*; and,

B. A copy of the *CRP Service Completion Report* with an attached *Community Based Assessment Worksheet*.

2502.8 Outcomes of Extended Assessment. The applicant will be provided counseling and guidance to assure that s/he has received adequate explanation of how

the eligibility decision affects his/her future relationship with the Division. The extended assessment may have only two outcomes:

A. *Applicant Determined Eligible.* If the Rehabilitation Counselor determines that the applicant meets eligibility requirements, the Rehabilitation Counselor will certify the applicant eligible. The Rehabilitation Counselor will conclude the extended assessment, complete the *Certificate of Eligibility*, and move the case into Status 10.

B. *Applicant Determined Ineligible.* Prior to the determination of ineligibility, the Rehabilitation Counselor will document clear and convincing evidence resulting from the trial and/or extended work experience(s) to support such a determination and submit the case record to the District Manager for review and approval. Upon approval by the District Manager, the case will be placed into Status 08. See also Section 6800 regarding the definition of *clear and convincing evidence*.

2503 Ineligibility for Vocational Rehabilitation Services.

2503.1 Certification of Ineligibility/Closure of Record of Services.

When an individual has been determined ineligible for VR services, a *Certificate of Ineligibility* shall be completed, dated, and signed by the Rehabilitation Counselor and a copy given to the individual. The record of services will be closed according to Section 3000.

2503.2 Notification to the Individual.

A. The Rehabilitation Counselor will inform the individual in writing, or by appropriate modes of communication, of the ineligibility determination, including the reasons for that determination, and the rights of the individual, including the right to due process. See also Section 3400.

B. The Rehabilitation Counselor will provide the individual with a description of services available from the Client Assistance Program (CAP) and information on how to contact CAP.

2503.3 Information and Referral. The Rehabilitation Counselor shall, as appropriate, refer the individual to other federal, State, or local programs for services and benefits that will enhance the capacity of the individual to achieve the individual's vocational objectives. The Rehabilitation Counselor will refer the individual to other training or employment-related programs that are part of the one stop service delivery system under Work4WV Career Centers. Information also will be provided about other programs that may benefit the applicant, including centers for independent living (CILs) and community rehabilitation programs (CRPs).

2503.4 Required Documentation. The record of services will include the following documentation related to the determination of ineligibility:

A. *Health Assessment Questionnaire*;

B. Completed *Certificate of Ineligibility*;

C. If the reason for ineligibility is that the applicant is unable to benefit from services due to the severity of the disability, results of trial and/or extended work experience(s) are required, showing clear and convincing evidence that the individual is incapable of benefiting from services in terms of an employment outcome and an assistive technology consultation must have been completed;

D. As appropriate, medical records or a statement from a medical professional supporting the existence or lack of a disability;

E. As appropriate, documentation that the individual does not require services to prepare for, enter, engage in, or retain gainful employment; and,

F. Completion of appropriate coding as required.

2503.5 Review of Ineligibility Determination. If an ineligibility determination is based on a determination that the individual is incapable of achieving an employment outcome, that determination will be reviewed within twelve months. The determination may be reviewed thereafter if requested by the individual or, if appropriate, by the individual's representative. Such reviews are not required when:

A. The individual has been determined not to have a physical or mental impairment which constitutes or results in a substantial impediment to employment;

B. The individual or the individual's representative refuses the review;

C. The individual is no longer present in the state; or,

D. The individual's whereabouts are unknown.

2504 Special Considerations for Eligibility.

2504.1 Alcoholism and Drug Abuse. Eligibility for the primary impairment of alcohol or drug abuse must be focused on a careful assessment of the impact and chronicity of the impairment. The most important question to be answered would be, "Can the applicant benefit in terms of an employment outcome from rehabilitation services?"

A. *Positive Indicators.* The Division considers the following as necessary and positive indicators that the applicant may benefit from rehabilitation services:

1. Documented substantial period of abstention (90 days or more);

2. Voluntary seeking of assistance in participation in programs of Alcoholics Anonymous, Narcotics Anonymous; and/or,

3. Voluntary enrollment and participation in community mental health center programs of treatment. Periods of abstention occurring as a result of the applicant's stay in an inpatient or residential substance abuse treatment program does not suffice as a demonstration of long term abstention.

B. *Negative Indicators.* If the applicant's behavior does not reflect the above activities, the Division considers that to be clear and convincing evidence that the applicant would not benefit from vocational rehabilitation services in terms of an employment outcome.

2504.2 Random Drug Testing. If an individual's eligibility is based on substance abuse, the Rehabilitation Counselor may authorize random drug testing, when included on the IPE, after informing the individual in writing of the reasons. This may occur at any time during the rehabilitation process if the Rehabilitation Counselor questions the individual's potential to refrain from substance abuse.

2504.3 TMJ. Services related to temporal mandibular joint disease (TMJ) will not be underwritten as a rehabilitation service.

2504.4 AIDS. Acquired Immune Deficiency Syndrome (AIDS)

A. *Positive Test Results.* Applicants who have only a positive antibody test for HTLV-III/LAV but who demonstrate no functional impairments or laboratory evidence of immune deficiency are not eligible for rehabilitation services because they do not have a functional problem that results in a substantial impediment to employment.

B. *Applicants with Active AIDS.* Applicants who have a positive antibody test, laboratory evidence of immune deficiency, and the presence of "opportunistic" disorder do not in general have a prognosis that allows the anticipation of a significant work life. Based on information from the Centers for Disease Control, it is probable that rehabilitation services will not benefit these individuals in terms of employment outcome.

C. *Applicants with AIDS Related Complex (ARC).* Applicants who have a presenting diagnosis of ARC have an uncertain prognosis. These individuals usually have a positive antibody test with some signs of infection, such as moderately swollen lymph glands, etc. Some individuals with ARC may have the potential for a significant work life and, therefore, may, in select cases, be eligible for rehabilitation services. In considering eligibility for applicants with ARC, a written medical prognosis which demonstrates an expectation of stability for a sufficient period of time to support the anticipation of a significant work life is required.

D. A determination of ineligibility must be made once the individual's condition has progressed to the degree that opportunistic infections are present, prolonged medical care is involved, and the individual's condition can no longer be considered "stable or slowly progressive."

2504.5 Visual Impairments. In order for an individual to meet the eligibility criteria for substantial impediment to employment, the individual must experience one or more of the following conditions and demonstrate functional limitation(s) that result in a substantial impediment to employment:

A. *Visual Acuity.* A measure of visual acuity of 20/60 or less in the better eye with best correction recorded for either near or distance vision;

B. *Visual Field Limitation.* The angle of vision is 60 degrees or less in the better eye;

C. *Progressive Eye Disease.* A deteriorating eye condition which will result in the loss of visual efficiency (e.g., glaucoma, retinitis pigmentosa, or macular degeneration) as verified by a licensed optometrist or ophthalmologist; or,

D. *Cortical Visual Impairment.* A visual loss caused by a disturbance of the posterior visual pathway and/or cortex.

E. *Exception.* There may be instances wherein the applicant does not meet the conditions listed above but in the counselor's judgment the visual impairment does create a substantial impediment to employment. In such cases, it is appropriate to request a policy exception. Requests for exceptions must be submitted with justification in writing to the Program Supervisor, Blind and Visually Impaired Services, Rehabilitation Programs and Field Services through the District Manager.

2504.6 Asthma. The National Institute on Health has issued guidelines for the diagnosis and management of Asthma which includes classifications for asthma severity. The four classifications include Mild/Intermittent, Mild/Persistent, Moderate/Persistent and Severe/Persistent. The primary difference between the Mild/Persistent and the Moderate/Persistent classifications is the existence of daily symptoms and symptoms at night that are persistent more than five times per month. For the purposes of determining eligibility, the individual must be exhibiting symptoms at least at the "Moderate Persistent" level, as determined by a physician. Symptoms at that level include:

A. The individual has symptoms of breathlessness while talking or while at rest;

B. Breathing problems persist so that the individual's speech is affected when talking in phrases or with each word;

C. The individual's awareness level is usually agitated, or the individual is often drowsy or confused;

D. Wheezing is usually loud enough to be detected and reported by a physician during an examination;

E. Daily use of an inhalant is prescribed,

F. Exacerbations of symptoms more than two times a week that may last days;
and

G. Exacerbations daily affect level of activity,

2504.7 Homemaking.

A. Eligibility. For purposes of eligibility determination, an impairment shall not be considered to impede an applicant's employment as a homemaker unless the Rehabilitation Counselor determines that all of the following criteria are met:

1. In order for Homemaker to be considered the vocational rehabilitation goal, the individual must have the primary responsibility of the management and maintenance of the household in a single or multiple person unit. Age does not prohibit an individual from eligibility consideration for services if there is a reasonable expectation that the individual can perform the majority of the tasks essential to homemaking as a result of substantial rehabilitation services provided; and

2. the impairment substantially interferes with adequate performance in two or more of the following activities: preparing meals, cleaning and maintaining the household, laundering clothes, child care, or caring for an aged or disabled family member; and

3. due to the applicant's inadequate performance as a homemaker,

a. a paid or volunteer housekeeper is required; or,

b. a family member has lost a job, is in jeopardy of losing a job, or has been unable to seek employment due to performance of homemaking duties.

B. Documentation. Each case having the vocational goal of homemaker must have a completed Homemaker Evaluation, *WVDRS-59*, in the file.

This evaluation specifies fourteen areas of physical and cognitive demands in the vocation of homemaking. Under each area, tasks are identified that may be performed. The Rehabilitation Counselor is to complete this form through a combination of interviews and observations of the individual's activities. After the evaluation has been completed, the

Rehabilitation Counselor will make an entry in Actions / Details expanding upon the deficiencies and anticipated services to reduce identified vocational obstacles.

C. Substantial Vocational Rehabilitation Services. Below is a list of possible areas to address when working with a Homemaker. Please do not consider this an exhaustive list of substantial services to provide, only a beginning to individualizing a plan to an individual's situation / needs.

1. Counseling the individual and family members to promote better understanding and adjustment to the disability;

2. Training techniques and skills that will enable the individual to perform tasks in the home;

3. Counseling and training in adaptive methods of child care;

4. Prescribing, providing, and training on equipment and devices for homemaking;

5. Recommending, planning, designing, and/or providing modifications to the home environment for safety and ability in daily work activities;

6. Assisting the individual in obtaining needed medical treatment, therapy services, wheelchairs, prosthetic, and/or orthotic devices;

7. Counseling and training on nutrition and diet;

8. Training in budgeting and financial management of the home.

D. Amending an IPE to Homemaker. An IPE can be amended to a vocational goal of Homemaker at any time during the rehabilitation process or at closure; however, all of the criteria in this section must be met and properly documented. Substantial Services must be related to enabling this individual to successfully perform homemaking activities as the primary homemaker.

2504.8 Upgrading. An applicant who is already employed may be determined eligible for VR services when the current employment is unsuitable, provided that the applicant meets the Division's basic eligibility criteria. Unsuitable employment is characterized as employment that is clearly and substantially below the individual's intellectual abilities and skill levels. Current employment which is reasonably consistent with the applicant's capacities and abilities would not be considered unsuitable simply because the applicant desires a promotion or greater income and needs training or other services to improve career opportunities. Further, although the individual may be working in an entry level position or in unskilled employment, upgrading services would not be appropriate as long as the job is consistent with the individual's abilities. The assessment of substantiality of vocational

impediment in such instances will require the Rehabilitation Counselor to exercise professional expertise in determining and documenting on the *Program Explanation* that all of the following criteria are met:

A. The applicant's current employment is substantially below his/her capacities and/or abilities as documented by a thorough vocational assessment. The assessment may include psychological testing, vocational evaluation, job analysis and/or any other assessment technique(s) which the Rehabilitation Counselor determines appropriate;

B. The applicant lacks marketable vocational skills to obtain employment consistent with his/her abilities; and,

C. The applicant lacks opportunity for career advancement because of either the nature of his/her current occupation or the nature of his/her employer's business.

2504.9 Borderline Intelligence. Borderline intelligence may meet eligibility criteria when intelligence testing results are within 15 standard deviation points of the mental retardation range (70-85) and identifiable functional limitations are manifested in any combination of the following forms:

A. Display of inappropriate behaviors (poor impulse control, inappropriate comments or reactions, diminished maturation);

B. Poor interpersonal skills (difficulty relating to peers, teachers, co-workers);

C. Difficulty communicating or expressing thoughts and ideas;

D. Difficulty understanding instructions or adapting to new situations;

E. Performance below appropriate grade level in school; or,

F. Inability to perform work with adequate speed or acceptable quality levels.

Statement of Certification

Unpaid Work-based Training Program

The **Division of Rehabilitation Services** is responsible for any liability due the workers' compensation division for _____, a client of the Division participating in an unpaid work-based training program at _____.

This liability will exist as long as the client is a participant in the unpaid worked-based training program from _____ to _____.

Counselor
WV Division of Rehabilitation Services

Date

FIGURE 2500-1. Statement of Certification for Unpaid Work-Based Training Program.

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-rn, and to amend chapter twenty-three, article two, section one-a of said code, all related to providing workers compensation coverage for clients of the division of rehabilitation services participating in work-based training programs.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amended and a new article, designated article ten-rn, be added to read as follows:

§18-1aM-i. Allowance for workers' compensation for division of rehabilitation services clients participating in unpaid work-based training programs.

(a) The workers' compensation division shall create a classification and calculate a base premium tax rate for clients of the division of rehabilitation services effective the first day of September of the year two thousand participating in an unpaid work-based training program within an integrated community based setting. The workers' compensation division shall report annually to the division of rehabilitation services;

(1) The amount of the base premium tax rate for the class; and

(2) The amount of wages per client to be used to provide the minimum weekly benefits required by section six, article four, chapter twenty-three of this code.

(b) The base premium tax rate reported to the division of rehabilitation services by the workers' compensation division shall be that which was published prior to the first day of the immediately preceding July. That premium tax rate, however, shall not be implemented by the workers' compensation division until the first day of July of every year and shall remain in effect through the last day of the next June. The workers' compensation division shall make no merit rate adjustment, as otherwise provided for in paragraph (A), subdivision (1), subsection (a), section four, article two, chapter twenty-three of this code, for the members of the class required to be created by subsection (a) of this section.

Chapter 23. Workers' Compensation.

Article 2. Employers and Employees Subject to Chapter:

Extraterritorial Coverage.

§23-2-1a. Employees subject to chapter.

(a) Employees subject to this chapter are all persons in the service of employers and employed by them for the purpose of carrying on the industry, business, service or work in which they are engaged, including, but not limited to:

(1) Persons regularly employed in the state whose duties necessitate employment of a temporary or transitory nature by the same employer without the state;

(2) Every person in the service of the state or of any political subdivision or agency thereof, under any contract of hire, express or implied, and every appointed official or officer thereof while performing his or her official duties;

(3) Checkweighmen employed according to law;

(4) All members of rescue teams assisting in mine accidents with the consent of the owner who, in such case, shall be deemed the employer, or at the direction of the director of the department of mines;

(5) All forest firefighters who, under the supervision of the director of the department of natural resources or his or her designated representative, assist in the prevention, confinement and suppression of any forest fire; and

(6) Students while participating in a work-based learning experience with an employer approved as a part of the curriculum by the county board. The county board shall be the employer of record of students while participating in unpaid work-based experiences off school premises with employers other than the county board. Students in unpaid work-based learning experiences shall be considered to be paid the amount of wages so as to provide the minimum workers' compensation weekly benefits required by section six, article four of this chapter.

7) Clients of the division of rehabilitation services who are participating in work-based training experiences with an employer approved as a part of their rehabilitation plan. The division of rehabilitation services shall be the employer of record of the clients while participating in un work-based experiences in an integrated community based setting. Clients in unpaid work-based training experiences shall be considered to be paid the amount of wages so as to provide the minimum workers' compensation weekly benefits required by section six, article four of this chapter.

(b) The right to receive compensation under this chapter shall not be affected by the fact that a minor is employed or is permitted to be employed in violation of the laws of this state relating to the employment of minors, or that he or she obtained his or her employment by misrepresenting his or her age.

FIGURE 2500-2. Excerpt from Code of West Virginia

Unpaid Work-based Training Report

Please forward this report to the DRS Program Manager, Community Rehabilitation Programs, at the Institute complex, by the 15th working day of January, April, July, & October.

Counselor Name: _____ Phone Number: _____

Name	Hours Worked

FIGURE 2500-3. Unpaid Work-based Training Report

2600 ORDER OF SELECTION.

2601 General. The Division's Director will determine whether resources are going to be available to provide vocational rehabilitation (VR) services to all eligible individuals throughout the program year. If not, consistent with State and federal law and regulation, the Director will establish restrictions regarding priority categories for selecting the order in which otherwise eligible individuals may be served. Only the Director may establish an order of selection (OS).

2602 Exemptions. Services necessary for determination of eligibility, assessment of rehabilitation needs, and post employment services are exempted from the Division's OS. No administrative exemption from the OS shall be approved except by the Director or his/her designee. Any individual notified by the Rehabilitation Counselor of classification as a member of an open priority category shall be exempted should that category later be closed.

2603 Priority Categories. Following are the order of selection categories currently applicable to the Division's VR program:

Category 1: Eligible applicants with the most significant disabilities.

Category 2: Eligible applicants with significant disabilities.

Category 3: Eligible applicants with non-significant disabilities which result in permanent functional limitations.

Category 4: Eligible applicants with non-significant disabilities which do not result in permanent functional limitations.

2604 Notice. The Rehabilitation Counselor shall provide both written notice and an oral explanation of the order of selection to each applicant, including a copy of the form *Information About the Order of Selection*. The *Application for Rehabilitation Services* will include a certification by the applicant that information about the order of selection was received and explained.

2605 Classification. The Rehabilitation Counselor will determine the appropriate order of selection priority classification for each applicant at the earliest practical time in case development.

A. *When Required.* The determination may be completed at any time prior to eligibility determination. However, the Rehabilitation Counselor will complete the determination and assign the individual to the highest appropriate priority category prior to moving the case record into Status 10. In those instances where trial work experience is required prior to eligibility determination, priority classification may be deferred pending completion of the requisite services.

B. *Basis.* The assessment for eligibility determination usually will yield sufficient information to support an appropriate priority classification. As a minimum, the basis for priority classification should include an initial interview, an assessment of current health using the *Health Assessment Questionnaire*, and if appropriate, medical or psychological confirmation of the disability.

C. *Reclassification.* An individual whom the Rehabilitation Counselor determines has been misclassified may be reclassified into the highest appropriate priority classification at any time. However, any individual notified by the Rehabilitation Counselor of classification as a member of an open priority category shall be exempted from later reclassification into a closed category. In such instances, the Rehabilitation Counselor will note the circumstances in the *Counselor Comments* section of the case record, but the initial classification shall remain unchanged.

D. *Documentation.* The Rehabilitation Counselor will complete the appropriate block on the Eligibility Statement based on the determination of priority classification or reclassification.

2606 Classification Into Closed Category. When an individual is classified into a closed category of the order of selection, the Rehabilitation Counselor will notify the individual and place the case record into the Pre-Service Listing, Status 04, by completing the *Status Change Report*. Members of closed categories do not receive rehabilitation services, regardless of whether provision of such services requires expenditure of funds.

A. *Category Reopened.* An individual may be classified into a closed category which is later declared open. If this occurs while the case is in Status 04, and the individual desires to pursue rehabilitation services, then the Rehabilitation Counselor will notify the individual in writing and immediately move the case to Status 10 by completing the *Status Change Report*.

B. *Review.* Cases placed into Status 04 may be reviewed at the request of the individual or the individual's representative but will be reviewed after twelve months. During the review, the individual or the individual's representative will be contacted to ascertain whether any change of the individual's disability or functional limitations indicate that the current classification may no longer be appropriate.

C. *Status 38 Closure.* If the classification has been reviewed and continues to be appropriate after twelve months, the Rehabilitation Counselor will notify the individual in writing and close the case record into Status 38 by completing the *Status Change Report*. The written notice of case closure should encourage the individual to reapply for rehabilitation services should his/her disability or functional limitations become more significant.

2700 REHABILITATION PROGRAM DEVELOPMENT.

2701 Informed Choice. The Rehabilitation Counselor will develop a collaborative relationship with the individual and will assist the individual in identifying goals, services, and service providers in assessing relevant factors related to each option. The Rehabilitation Counselor of record will provide or assist the individual in acquiring information necessary to make an informed choice regarding the selection of the vocational goal, objectives, services, and service providers that are suitable and meet the needs of the individual. See also Section 2800.

2702 Comprehensive Assessment. To the extent possible, the vocational goal, intermediate objectives, and the nature and scope of rehabilitation services to be included in the individual's *Individualized Plan for Employment* (IPE) will be determined based on the data used for the assessment of eligibility and priority for services. See Section 2500. If additional data are necessary to prepare the IPE, the Rehabilitation Counselor will conduct a comprehensive assessment of the unique strengths, resources, priorities, interests and needs (including the need for supported employment services of an eligible individual) in the most integrated setting possible, consistent with the informed choice of the individual.

2702.1 Scope of Assessment. The comprehensive assessment:

A. Is limited to information that is necessary to identify the rehabilitation needs of the eligible individual and to develop the rehabilitation program and vocational goal of the individual;

B. Uses, as a primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information, including information that is provided by the individual, the family of the individual, and educational agencies;

C. May include an analysis of pertinent medical, psychiatric, psychological, neuropsychological, vocational, educational, cultural, social, recreational, and environmental factors, and related functional limitations, that affect the employment and rehabilitation needs of the individual;

D. May include an assessment, through provision of assistive technology services, of the individual's capacities to perform in work and home environments, including in an integrated setting, to the maximum extent feasible, consistent with the individual's informed choice.

2702.2 Types of Assessments. Along with other psychological, medical, and/or vocational diagnostic evaluations, there are extensive assessment services that may be utilized to assist the Counselor in determining the most appropriate vocational pursuits. Comprehensive evaluations are available in the following forms:

A. *Vocational Evaluation.* The vocational evaluation provides a comprehensive, intensive evaluation of work potential to assist in determining the specific job or range of jobs for which the individual is best suited considering his/her capabilities, limitations, interests, work habits, and employment locale. The evaluation is conducted through the use of psychometric testing, work samples, behavior observation, learning styles assessment, transferability of job skills assessment, functional capacities study, and/or career exploration.

B. *Functional Capacities Study.* This evaluation provides information about the individual's physical or functional abilities and limitations by assessing mobility, work positioning, strength, range of motion, and endurance. The study must be completed by a licensed occupational or physical therapist.

C. *Readiness for Employment Assessment.* A comprehensive readiness for employment assessment will permit an individual to learn about the work and life skills in which he/she excels and about the areas where improvement can be made. Areas covered include career exploration, work readiness, life skills, and basic work language, math, and reading. The Rehabilitation Counselor may authorize for up to 5 service days at 5 hours per day. When authorizing a Readiness for Employment Assessment, see Section 7200 of the *WVDRS Resources Manual* for the appropriate fee and code.

D. *Community Based Assessment.* This service provides the individual having a significant or most significant disability with the opportunity to explore different jobs at community business sites to assist him/her in making an informed choice toward determining a vocational goal. In planning this service, the Rehabilitation Counselor must consider that:

1. The service be provided in a community integrated, competitive work setting;
2. The amount of service to be authorized should be based on the individual's previous work history and stated preferences. The vendor's service plan may include four hours of interview time with the individual and family members. The plan must include at least two work based training experiences. The interview and work experiences can not last longer than a total of 90 hours and must be completed within six months. Extensions to these limits may be made only with District Manager approval;
3. The assessment is completed by an acknowledged Division CRP vendor;
4. The community based assessment may be arranged in a paid or unpaid work environment. If the service is provided in an unpaid environment, the Rehabilitation Counselor must obtain written documentation that the individual/parent, guardian, or legal representative agrees to the individual's participation in non-paid work

settings using the Trial Work Contract form, see Figure 2700-1. In addition, necessary documents will need to be completed to meet Worker's Compensation requirements for unpaid work-based experiences. Refer to Worker's Compensation Requirements guidance in Section 2500.

2701.3 Comprehensive Assessment Activities and Timeframe. In order to identify capabilities, interests, rehabilitation needs, goals, objectives, and services, etc., assessment activities will be initiated consistent with the informed choice of the individual and available resources. Sufficient time should be allowed to obtain all information necessary to plan an appropriate vocational goal and services necessary for a successful rehabilitation outcome. However, the maximum time permitted to develop and complete the IPE will be six months following the determination of eligibility. Exceptions to this time requirement are allowed for secondary school students who are determined eligible early in high school, but who may need an additional assessment period to identify and plan a suitable vocational goal. Extensions to the six month limit for clients other than secondary school students may be granted only by approval of the District Manager. Exceptions to the six month limit and the rationale for the extension will be documented in the case record.

2701.4 Program Development for Cooperative School Program Students. Assessment activities and program planning and development will be designed to facilitate the transition of students with disabilities. The development and approval of an IPE will begin as early as is appropriate during the transition process but, at the latest, by the time the student who is determined to be eligible leaves the school setting.

2701.5 Program Explanation Statement. It is essential that the case record clearly and fully reflect the foundations upon which the vocational rehabilitation (VR) planning effort will be based, most especially the information and reasoning which shaped the plan and the contributions which the Division and the individual will make toward its successful implementation. The program explanation statement is crucial because it provides the only documentation in the case record at the time of IPE development which comprehensively addresses all of the relevant factors and considerations which led to the vocational decision. Included may be the individual's past work history, educational background, transferable work skills, intellectual capacities, interests, etc. However, the program explanation must include the following information:

A. Explain how and why the vocational goal and planned services were selected;

B. Explain the job prospects, placement plans, and placement services which will be required, including a description of efforts to be made by the Rehabilitation Counselor and individual in obtaining employment; and,

C. Estimates of program costs and utilization of comparable services and benefits.

2702 Individualized Plan for Employment (IPE).

2702.1 Rehabilitation Services Provided Under IPE. Rehabilitation services shall be provided in accordance with an IPE developed with the eligible individual. Services provided under an IPE will be required for and directly related to the employment goal. The services will be provided within a counseling and guidance relationship in the most integrated setting possible, and must have a substantial and positive impact on the individual's employment outcome. All services provided under an IPE are subject to the Division's economic need policies unless specifically cited as exclusions in policy contained within Section 3200. All services included in the IPE shall be provided in accordance with the prearranged agreement with the individual, except in circumstances where changes in funding or policies necessitate a revision to the planned services. The Counselor will advise the individual upon initial completion of the IPE, that the Plan is not a binding contract for services and that the services outlined on the IPE may be subject to changes in law, Division funding and policies, or administrative approval for certain services.

2702.2 IPE Development.

A. *Facilitating Individual's Participation.* The Rehabilitation Counselor will offer information and technical assistance to eligible individuals and/or their representatives as needed to facilitate their full participation as partners in designing and carrying out the rehabilitation effort, including development of the IPE. The information offered will include the explanatory booklet regarding IPE provided by the Division.

B. *IPE Developed By Individual.* When the eligible individual desires to develop all or part of the IPE, the Rehabilitation Counselor will provide to the individual and/or the individual's representative a copy of the booklet published by the Division to assist in this endeavor. The self-explanatory booklet contains necessary instructions and descriptions of the various IPE components.

1. The individual and/or the individual's representative may address any or all of the required components of the IPE using any format which they find most suitable, except that all proposed components must be submitted in writing.

2. Should the individual and/or the individual's representative desire to develop an entire IPE for review by the Rehabilitation Counselor, then the IPE components proposed by the individual and/or the individual's representative also will be supported by a written statement addressing the required components of the program explanation statement discussed earlier in this section.

3. *Documentation.* After the Rehabilitation Counselor and the individual and/or the individual's representative agree on all components of the proposed IPE, the Rehabilitation Counselor will assist the individual and/or the individual's representative in

documenting the IPE by transposing the provisions of those components to the forms designated by the Division.

4. All documents submitted to the Division by the individual and/or the individual's representative regarding development of the IPE will be filed with the IPE in the case folder.

C. *Approval.* The Rehabilitation Counselor and the individual or, as appropriate, the individual's representative, shall sign and date the IPE and any amendment(s) indicating that:

1. *Individual's Agreement.* The terms of the IPE and the individual's rights and responsibilities have been explained and agreed to by the individual and/or, as appropriate, the individual's representative.

2. *Rehabilitation Counselor's Approval.* The IPE has been approved by the Rehabilitation Counselor, if the Counselor has been delegated plan authority. Otherwise, the IPE will be submitted to the supervisor for approval and signature.

2702.3 Contents. The IPE will be documented by the Rehabilitation Counselor using the form(s) designated by the Division and will include the following components:

A. *Employment Goal.* The IPE shall be developed to achieve the individual's rehabilitation goal for employment, consistent with that individual's unique strengths, resources, priorities, needs, concerns, abilities, and capabilities. The rehabilitation goal will be based on the assessment for determining eligibility and priority of services, the assessment for determining rehabilitation needs, and the individual's informed choice.

B. *Timeframe.* Under the section "I expect to achieve my goal by..." a specific date is not required, but a time frame should be entered; i.e., December 1998—June 1999.

C. *Intermediate Goals.* Intermediate rehabilitation goals will support the attainment of the rehabilitation goal and shall be based on the assessment for determining rehabilitation needs and consistent with the informed choice of the individual.

D. *Intermediate Objectives and Specific Services.* The specific rehabilitation services to be provided shall be included on the IPE. The following sections will be completed:

1. "Services I will need";
2. "Who will provide the services";
3. "Who will pay";

4. "Beginning date of services"; and,

5. "Ending date of services".

E. *Comparable Services and Benefits*. Other sources or benefits that are available to pay in whole or in part for the cost of rehabilitation services shall be indicated. See also Section 2800.

F. *Evaluation Criteria*. Evaluation will be completed on each intermediate objective. The method and schedule will be based on objective criteria and the nature of the service provided.

G. *Post Employment Services (Vocational Rehabilitation)*. The need for post employment services, and if appropriate, extended services will be indicated.

H. *Financial Arrangements*. Based on the individual's financial resources, the individual will be informed on the IPE of his/her responsibilities regarding any financial arrangements.

I. *Client Comments*. The individual, or as appropriate, the individual's representative, will be provided an opportunity to describe how s/he was informed about and involved in choosing among alternative goals, objectives, services, entities providing such services, and methods used to provide or procure such services, and to express his/her views concerning the rehabilitation goals, objectives, and services.

J. *IPE for Supported Employment*. For individuals with the most significant disabilities for whom a vocational objective of supported employment has been determined to be appropriate, each IPE shall contain a:

1. Description of the time-limited services, not to exceed 18 months in duration, to be provided by the Division;

2. Identification of the individual's weekly work goal (stated in terms of hours per week), which reflects the individual's vocational potential at the time of transition to extended services; and,

3. 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 the event that identification of the source is not possible at the time the IPE is developed, a statement shall be included explaining the basis for concluding that there is a reasonable expectation that services will become available.

K. *Approval.* The Rehabilitation Counselor and the individual or, as appropriate, the individual's representative, shall sign and date the IPE and any amendment(s) indicating that:

1. *Individual's Agreement.* The terms of the IPE were agreed to and the individual's rights and responsibilities have been explained and agreed to by the individual or, as appropriate, by the individual's representative.

2. *Rehabilitation Counselor's Approval.* The Rehabilitation Counselor's approval of the IPE shall be indicated by signature and date if the Counselor has been delegated plan authority. Otherwise, the IPE will be submitted to the supervisor for approval.

2702.4 Rights and Responsibilities of the Individual. The Rehabilitation Counselor shall inform the individual of the individual's rights and responsibilities to include information about:

- A. The Client Assistance Program;
- B. The appeal process;
- C. Confidentiality of personal information;
- D. Responsibilities of the individual associated with participation in the rehabilitation program; and,
- E. Financial participation of the individual in the cost of services, if appropriate. The Rehabilitation Counselor also shall inform the individual that services are subject to the availability of funding and that the Division will not pay for services which have not been pre-approved and pre-authorized by a signed, written purchase document.

2702.5 Copy of IPE.

A. Immediately upon signature of all parties, the Rehabilitation Counselor shall provide a printed copy of the IPE and any amendments to the individual or, as appropriate, the individual's representative.

B. Based upon the need and request of the individual, the Rehabilitation Counselor shall provide a copy of the IPE in Braille or other appropriate mode of communication within 15 working days of required signatures.

C. To the maximum extent possible, arrangements will be made for the provision of the IPE in the native language of the individual, or, if appropriate, the individual's representative.

D. The original IPE will be maintained in the individual's record of services.

2702.6 Periodic Reviews of Progress. The record will contain documentation of the results of periodic reviews of the progress of the individual in achievement of the rehabilitation objectives as outlined on the IPE.

2702.7 Annual Review. The IPE shall be reviewed as often as necessary, but no less than annually. Each individual or, as appropriate, the individual's representative, will be given an opportunity to review the program and jointly redevelop and agree to its terms.

2702.8 Amendment.

A. *When Required.* The IPE will be amended when:

1. A major service(s) is/are deleted and/or added;
2. A vocational goal is revised;
3. There is a change in financial participation;
4. There is a change in the individual's responsibilities as an active participant in the rehabilitation effort;
5. The individual requests other substantive changes; and/or,
6. The case is closed rehabilitated with a change in vocational goal.

B. *When Not Required.* An amendment to the IPE is not required for provision of minor services. Minor services provided must be documented in the case record.

C. *Procedure.* Changes to the IPE will be designated as "Amendment" and include the amendment number. Revisions or amendments to the IPE will not take effect until all parties agree to and sign the IPE Amendment (WVDRS-90). Immediately upon signature of all parties, the Rehabilitation Counselor shall provide a printed copy of the IPE amendments to the individual or, as appropriate, to the individual's representative.

2703 Ineligibility Determined After IPE Development. If it is determined after IPE development that an individual is no longer eligible for rehabilitation services, procedures pertaining to ineligibility and closure of the record of services will be followed. See Sections 2500 and 3000.

2704 Guidance. This paragraph provides additional guidance and instructions often needed by the Rehabilitation Counselor when conducting a comprehensive assessment and formulating an IPE.

2704.1 General. The IPE is a vehicle for combining the informed participation of the individual and the expertise of the Rehabilitation Counselor in a way that clearly outlines a strategy for confronting the primary problems and reaching the individual's rehabilitation goal. Therefore, the complexity of the comprehensive assessment and the IPE will vary depending on the individual's needs and limitations.

2704.2 Services in an Integrated Setting. Each VR service provided under an IPE is to be provided in the most integrated setting that is both appropriate for the service and consistent with the informed choice of the individual.

2704.3 Planning. The Rehabilitation Counselor will facilitate, arrange, coordinate, and monitor as necessary for a timely delivery of services that are included in the IPE. The Rehabilitation Counselor should make every effort to be proactive rather than reactive in delivery of services, anticipating service needs to the extent possible and preventing unnecessary service interruptions and delays through appropriate case management, counseling, and guidance.

2704.4 Relevance to Vocational Outcome. In completing the IPE there should be a relationship between services rendered and the vocational outcome expected, in that the services are necessary and will have a positive effect on the individual's preparation for, or placement, in employment.

2704.5 Supportive Services. During the program formulation phase, the Division can provide a limited scope of supportive services such as transportation, short term maintenance, and other similar sorts of assistance that do not improve the individual's functional capacities. However, for example, if it is determined that a hand splint or some other assistive device is needed for adequate appraisal of an eligible individual's functional and vocational limitations and rehabilitation potential, such services may be provided during the assessment. Supportive services provided in Status 10 are not subject to economic need unless actual devices and/or aids are purchased. All fiscal records related to this purchase should be filed in the fiscal section of the case folder and thoroughly explained in the *Counselor Comment* section.

2704.6 Case Recording.

A. *Certificate of Significant or Most Significant Disability.* The electronic caseload management (ECM) system requires that the appropriate certificate be completed prior to IPE development.

B. *IPE Approval.* The IPE is subject to supervisory review at the supervisor's discretion.

C. *Specificity of Vocational Goal.* The Rehabilitation Counselor should enter either the title of the specific job in which the individual will be placed, or if the specific job title is not known, enter a general occupational route. The Rehabilitation Counselor has considerable latitude regarding the vocational goal, but should be as specific as possible. If the goal changes from a general area to a specific area, an amendment to the IPE is required. Note that the DOT code entry requires only the first six digits.

D. *Documenting Client's Views.* The Rehabilitation Counselor will make every effort to ensure that the views of the individual or individual's representative are recorded in the section provided for *Client Comments*.

E. *Notice of Rights and Responsibilities.* The individual is given a written explanation of his/her rights and responsibilities concurrent with completion of IPE development. See also Section 3300.

F. *Documentation of Significant Events.* The Rehabilitation Counselor should record any significant events related to the implementation of the IPE or to the individual's progress toward a rehabilitation goal in the section provided for *Counselor Comments*.

TRIAL WORK CONTRACT

LABOR LAW REGULATIONS

Business Sponsor: _____

Client: _____

Parent/Legal Guardian: _____

Trial Work Experience Job Task: _____

Trainer: _____

Trial Work Experience Begins: _____

Trial Work Experience Ends: _____

According to this agreement the Business Sponsor agrees to permit the client to enter its work site for the purpose of a Trial Work Experience. This agreement will serve as a guide to ensure that the client receives opportunities to participate in the specific skills for the job activities selected, as well as, the vocational and social skills related to the job. A CRP Service Plan has been developed and will be used by the trainer. The use of this plan has been agreed upon by the Business Sponsor, Trainer, Client, Parent/Legal Guardian and Counselor. The client will be on site the normal shift hours for the Trial Work Experience or as determined by the business and trainer.

The trainer will be responsible for ensuring that the client follows company policies and regulations that apply to all employees. The client agrees to attend vocational assessment/skills training according to the schedule and participate in the training activity. He/she will present themselves in proper dress for working and agree to comply with the requirements of their medications and comply with doctor's orders. Transportation will be provided by the client or representative unless other arrangements are made through the DRS Counselor.

The Division of Rehabilitation Services (DRS) is responsible for any liability due the Worker's Compensation Division for this DRS client while participating in an unpaid work based training program. (Article 18-10M-1 of the Code of West Virginia)

It is understood that the employer will not pay the client for the job duties completed during the Trial Work Experience. It is also understood that the activities of the client will not result in an immediate advantage to the business.

All program procedures for this experience are part of the clients DRS **CRP Service Plan**. The trainer will be responsible for the direct supervision of the client and will collect data on all skills that are being assessed/trained. The business sponsor reserves the right to discontinue the assessment/training placement at any time. However, if a problem arises, the employer agrees to discuss the situation with the trainer immediately to identify solutions prior to discontinuing the assessment/training experience.

FIGURE 2700-1. Trial Work Contract: Labor Law Regulations

All parties agree to abide by the guidelines developed by the U.S. Department of Labor for non-paid vocational training sites which include the following:

1. The participant receiving the services will not be entitled to wages from the business while receiving these services.
2. This activity will not result in an immediate advantage to the business involved.
3. No employee of the business participating will be displaced.
4. No vacant position in the participating business will be filled by the participant.
5. No assigned duties to a regular employee of the business will be relieved and assigned to the participant.
6. The participant will not be assigned any duty that even though not being performed by a regular employee benefits the business.
7. The participant will be under continued and direct supervision of either a Supported Employment Services representative or an assigned employee of the business.
8. The participant will be placed to fulfill goals of the individual's CRP Service Plan and not to benefit the business.
9. These are time limited activities as described in the CRP Service Plan.
10. If all the prerequisites 1 through 9 are not met a determination by D.O.L. may present an employment relation entitling the participant to wages.
11. A decision to hire the individual can be made at any time but the service must end if this should occur. The participant If hired will be entitled to the same benefits as a regular employee per the Fair Labor Standards Act.

Clients are not entitled to employment during the Trial Work Experience , however, if the client is hired in a clearly distinguishable occupation, the client will no longer receive Trial Work Experience services at the sponsoring business.

If any of the above criteria fail to be met during the client's Trial Work Experience, an employment situation could be considered and he/she could be entitled to wages from the sponsoring business.

No client will be exposed to an activity that could clearly be considered hazardous to their well being.

APPROVALS

BUSINESS SPONSOR/DATE: _____

JOB COACH/DATE: _____

CLIENT/DATE: _____

PARENT/LEGAL GUARDIAN/DATE: _____

DRS REPRESENTATIVE/DATE: _____

FIGURE 2700-1. Trial Work Contract: Labor Law Regulations (Continued)

2800 REHABILITATION SERVICES.

2801 Requirements for Rehabilitation Service Provision. Rehabilitation services will be provided as follows:

A. Services will be provided, as appropriate:

1. for assessment to determine eligibility and rehabilitation needs;
2. for a Trial Work Experience (vocational rehabilitation only); or,
3. in accordance with an *Individualized Plan for Employment* (IPE).

B. Medical and allied medical services will be provided based on the recommendation and written prescription, as appropriate, of a licensed physician or other authorized health care professional. Copies of recommendations for treatment, prescriptions, and reports of progress or outcome of treatment will be placed in the record of services. See Section 3800.

C. Services will be purchased only from professionals licensed or certified according to state law and approved by the Division.

D. Services will be provided in accordance with the Division's economic need policy and purchasing procedures.

2802 Scope of Vocational Rehabilitation Services. Vocational rehabilitation (VR) services are any goods or services necessary to render an individual employable, including but not limited to the following:

A. An assessment for determining eligibility and priority for services by qualified personnel including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

B. An assessment for determining VR needs;

C. Vocational counseling and guidance;

D. Referral and other services necessary to help applicants and eligible individuals secure needed services from other agencies and to advise those individuals about the Client Assistance Program;

E. Physical restoration and mental health services, including:

1. Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a physical or mental impairment that constitutes a substantial impediment to employment;

2. Diagnosis of and treatment for mental and emotional disorders by a licensed psychiatrist, licensed psychologist or a psychologist employed by a school system;

3. Dental services;

4. Nursing services;

5. Necessary hospitalization (either inpatient or outpatient) in connection with therapeutic treatment, corrective surgery, or clinic services;

6. Medication and medical supplies;

7. Prosthetic, orthotic, or other assistive devices, including hearing aids;

8. Eyeglasses and visual services;

9. Podiatry;

10. Physical therapy;

11. Occupational therapy;

12. Speech or hearing therapy;

13. Mental health services; or,

14. Intercurrent illness.

F. Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education may be paid for with Division funds unless maximum efforts have been made by the individual to secure grant assistance in whole or in part from other sources to pay for that training. Institutions of higher education include universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

G. Interpreter services for individuals who are deaf and tactile interpreting services for individuals who are deafblind;

H. Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind;

I. 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;

J. Job search and placement assistance and job retention services;

K. Supported employment services;

L. Specific post employment services necessary to assist individuals to maintain, regain, or advance in employment;

M. Occupational licenses, tools, equipment, initial stocks, and supplies;

N. Rehabilitation technology services; telecommunications, sensory and other technological aids and devices;

O. Transition services;

P. Vehicular modification;

Q. Other goods and services determined necessary for the individual with a disability to achieve an employment outcome; and,

R. *Support Services*. The following services may be provided while an individual is receiving other VR services:

1. Maintenance for additional costs incurred while participating in rehabilitation;

2. Transportation;

3. VR services to family members (an individual who either is a relative or guardian of an applicant or eligible individual; or lives in the same household as an applicant or eligible individual; has a substantial interest in the well being of that individual; and who requires VR services to enable the applicant or eligible individual to achieve an employment outcome); and,

4. Personal assistance services.

2803 Informed Choice

2803.1 General. While the concept originated with and was a major theme in the 1992 amendments to the Rehabilitation Act of 1973, neither the act nor the regulations include a definition of the term "informed choice." This led to varying interpretations of the term. A definition was created by the 1995 Institute of Rehabilitation Issues. "Informed choice is the outcome of a process that occurs within a partnership where the partners identify and

explore together the various options at each decision point in the consumer's rehabilitation, where the positive and negative implications from the consumer's perspective are identified, and where the Counselor provides support as needed for the consumer to make the informed choices that will result in a meaningful career outcome."

2803.2 Considerations The consumer may choose from among what the Counselor and consumer together decide are good options. The Counselor should spend the time necessary to identify good options and consider the following:

A. The consumer's choices may be limited by laws, regulations, policies, or qualification issues. Whenever a consumer is faced with these kinds of limits the Counselor will fully explain the reason for it.

B. Consumer choices may be limited by the disability and the Counselor must ensure the consumer understands the limitations of the disability.

C. The IPE must be developed and implemented in a manner that affords eligible individuals the opportunity to exercise informed choice in selecting an employment outcome, rehabilitation services, service providers, and methods for procuring services. The opportunity for the individual to exercise informed choice requires special emphasis during the development of the IPE. Options for development of the IPE include:

1. The individual developing all or part of the IPE;
2. The individual using technical assistance in developing all or part of the IPE, including the assistance of the Rehabilitation Counselor; or
3. The individual jointly developing the IPE with the Counselor.

2803.3 Counselor Role and Responsibility in Informed Choice: The Counselor's role in informed choice includes the following:

A. Inform each applicant and/or eligible individual, through effective modes of communication, about the opportunities to exercise informed choice throughout the VR process, including the availability of support services for individuals who require assistance in exercising informed choice;

B. Provide information which must include: the cost, accessibility, and duration of services; the types of services; the degree to which service settings are integrated; the qualifications of service providers; and, to the extent available, information about consumer satisfaction with those services

C. Use counseling skills to encourage the insecure, doubtful, and uncertain consumer to become a partner in planning.

- D. Make certain the consumer is aware of all relevant option.
- E. Recognize that in a partnership, the consumer has an equal responsibility to do the "research" necessary to identify and analyze options.
- F. Make certain the consumer is aware of the implication of each option.
- G. Consider options from the consumer's point of view.
- H. Understand choices are not "informed" choices unless they are based on the pool of options remaining after the possibilities have been identified, considered, and the options that are less preferable to the individual and the Counselor are discarded.
- I. To be sure the choices consumers make are truly their choices, not choices conditioned by a family member, guardian or other well meaning individual.
- J. To avoid letting the severity of the disability stand in the way of believing the consumer has choices and to remember that there are accommodations and technological solutions to many difficult obstacles.
- K. To say "no" when "no" is needed and to help the consumer understand that the universe of choices is not infinite. It is important for the consumer to understand that funds, availability of resources, legalities, limitations of the disability, and the job market may limit some choices.

2803.4 Role and Responsibility of the Applicant and/or Eligible Individual: To accomplish the goal of consumer participation in making an informed choice, the individual must make decisions about the options for developing the IPE, the extent of technical assistance needed for exercising the various options, and the extent to which family members and others are to be involved in the IPE planning process. Exercising informed choice and taking more responsibility in the rehabilitation process makes demands on individuals with disabilities, and may also make demands on other people in their lives. To be fully engaged in the process, including development of the IPE, the individual must

- A. Gather and use information to the extent possible, participate in planning and problem solving, make and implement decisions, and seek or identify needed resources.
- B. Assume the responsibilities identified in the IPE for implementing the decisions and achieving the employment outcome, once the IPE has been signed both by the individual and the Rehabilitation Counselor

2803.5 Counseling Tools for Informed Choice. Sometimes the most difficult task in counseling is helping consumers understand and analyze their limitations,

strengths and interests, to be aware of the various options that may be available in the areas of services, goals, and job market opportunities, and to have the desire to fully explore the spectrum of opportunities that exist. Before a consumer is ready to plan a goal, (s)he must have a strong sense of self awareness, have an understanding of what it will require to reach the desired goal, and have the ability and motivation to obtain the skills necessary to reach the goal. Allowing the consumer to participate in the discovery of the answers to these concerns is what informed choice is about. Tools such as Self-Determination Guides, Career Assessment Inventories and other assessments allow the consumer to advance through stages of the self discovery and goal-setting process.

2804 Comparable Services and Benefits. The Rehabilitation Counselor will determine whether comparable services or benefits are available under any other program prior to providing any VR service. Awards and scholarships based on merit are not to be considered in the determination of comparable services or benefits. The Rehabilitation Counselor will ensure that determination of the availability of comparable services or benefits will not interrupt or delay:

- A. The progress of the individual toward achieving the employment outcome identified in the IPE;
- B. An immediate job placement;
- C. The provision of needed VR services to any individual at extreme medical risk;
- D. Information and referral services to persons classified into a closed category of the order of selection;
- E. Assessment for determining eligibility and VR needs, including assessment of rehabilitation technology needs;
- F. Counseling and guidance, including information and support services necessary to assist an individual in exercising informed choice throughout the rehabilitation process;
- G. Referral and other services necessary to assist an individual in securing needed services through cooperative agreements with other agencies who also are members of the statewide workforce investment system, when such services are not available from the Division;
- H. Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services; and,
- I. Rehabilitation technology services, including telecommunications, sensory, and other technological aids and devices.

2900 SUPPORTED EMPLOYMENT.

2901 General. Supported employment is a time limited "place/train" program that enables individuals with the most significant disabilities to enter or retain competitive employment in an integrated work setting. Individuals eligible for this program will need intensive job site training and support services from the Division in order to perform their work after job placement occurs. Supported employment services shall be purchased only from Division acknowledged service providers in accordance with the Division's fee schedule.

2902 Eligibility. An individual shall be eligible to receive supported employment services if:

- A. The individual is eligible for vocational rehabilitation (VR) services;
- B. The individual is determined to be an individual with a most significant disability;
and,
- C. A comprehensive assessment of rehabilitation needs of the individual, including an evaluation of rehabilitation, career, and job needs, identifies supported employment as the appropriate rehabilitation objective for the individual.

2903 Supported Employment Process.

A. *Determining a Vocational Goal and Services.* In order to determine a vocational goal for Supported Employment the Counselor will need to collect extensive information about the individual's abilities, limitations, and interests. Before developing an IPE for Supported Employment, the Counselor must also have some understanding about the individual's level of need for Supported Employment Job Site Support. If the individual has been previously involved with a Community Rehabilitation Program (CRP), this information may be acquired from existing sources. If there is not sufficient evidence for the Counselor and individual to determine a vocational goal and the level of services needed, the Counselor may provide a Community Based Assessment, see Section 2700, from an acknowledged CRP service provider to assist in the identification of an appropriate goal and services. The assessment information should specifically include the estimated number of hours of supported assistance needed by the individual per week as well as tentative strategies for fading job coaching assistance to a level necessary to reach and maintain the individual's job stabilization.

B. *Individualized Plan for Employment.* For individuals for whom a vocational objective of supported employment has been determined to be appropriate, each IPE shall contain a:

1. Description of the time-limited services to be provided by the Division;
2. Identification of the individual's weekly work goal (stated in terms of hours per week), which reflects the individual's vocational potential at the time of closure.

3. Plans for fading the number of hours of job coaching toward increased independence of the individual and eventual job stabilization.

4. 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 the event that identification of the source is not possible at the time the IPE is developed, a statement shall be included explaining the basis for concluding that there is a reasonable expectation that services will become available.

C. *Developing Placement Site.* Upon written referral from the Counselor, the service provider will develop for and place the individual on a placement site consistent with the individual's identified needs and informed choice. The placement must occur within an agreed upon time frame and result in a competitive employment outcome. See Section 7200 of the *WVDRS Resources Manual* for the appropriate fee and code.

D. *Placement.* Once placed on a job, the individual will receive intensive job site instruction and support from a job coach provided by a Division acknowledged CRP provider. The Counselor will maintain close communication with the individual and the CRP service provider to monitor the individual's progress and maintain appropriate case documentation of the supported employment placement.

1. *Time Limited Service.* The Counselor will move the case into Status 22 immediately upon placement at the job site. Supported Employment Job Site Support will be limited to a maximum of 100 hours. Exceptions to the 100 hour limit may only be granted with approval from the District Manager. If exceptions are requested, the Counselor will document the justification for the extension and specify the number of additional hours that will be necessary to meet the employment objective.

2. *Authorization.* When authorizing Supported Employment Job Site Support, see Section 7200 of the *WVDRS Resources Manual* for the appropriate fee and code. This fee will be paid for individual, face-to-face time spent by the job coach with the individual at the worksite. Travel, report writing, etc. can not be included as billable time.

E. *Job Stabilization and Closure.* In order to designate a point-in-time when a person in a Supported Employment Program can move from the In Employment status (Status 22) into a Rehabilitated status (Status 26), job stabilization must be determined. Job stabilization is a time during Supported Employment Job Site Support when an individual's work performance plateaus and the job coaching and related interventions have faded to the lowest level necessary to maintain the individual in employment, or it is agreed that the individual will continuously need job coaching assistance to sustain his/her employment.

1. *Determining Stabilization.* The decision that stabilization has been attained is a mutual decision that should involve agreement between the provider, Counselor, consumer and employer using the following guidelines:

a. The intervention level fades to less than 20% of the work week for a period of at least 3 consecutive weeks; or,

b. If an intervention greater than 20% is required in order to sustain an individual on the job, the Counselor may determine that stabilization has been attained when the same level of job coach intervention is provided four consecutive weeks.

F. *Case Closure.* The case may not be considered successfully rehabilitated until job stabilization has been attained. Once stabilization has been determined, the Counselor shall consider an individual to be successfully rehabilitated in supported employment when the following criteria have been met:

1. The individual meets the basic requirements for a successful (Status 26) closure as outlined in Section 3000;

2. The individual is working the agreed upon work hours identified in the IPE. If the individual is stabilized in employment at a level of hourly work less than the goal established on the IPE and the individual and the Counselor agree that the job represents substantial and suitable employment, the Counselor shall amend the IPE noting the actual hours of employment achieved prior to the Status 26 closure;

3. The job is stable and is expected to continue; and,

4. The individual is paid at minimum wage or is paid the prevailing wages.

2904 Transition to Extended Supported Employment Services (ESES). The Division receives state special earmarked funds to provide extended services for individuals closed as successfully rehabilitated in supported employment who are not eligible for services through other funding sources.

2904.1 Eligibility for Extended Services. The individual must meet the following requirements to be eligible for extended services:

A. Has received time-limited supported employment services;

B. Has stabilized in the employment situation;

C. Requires extended supported employment services to maintain his/her employment after closure from Division services; and,

D. Is not eligible for extended supported employment services from any other funding source.

2904.2 Supported Employment Extended Services Guidelines.

A. Approximately two to four weeks prior to Status 26 closure, the Counselor will initiate with the individual and service provider the completion of an *ESES Plan*, which will guide the provision of extended services. The *ESES Plan* (shown in Figure 2900-1) must include a minimum of twice monthly monitoring at the job site (unless off-site monitoring has been determined to be in the individual's best interests) and be signed by the individual and the Counselor. The original *ESES Plan* must be sent to the service provider who will provide the follow along services, with a copy provided to the individual.

B. Upon receipt of the *ESES Plan*, the service provider will complete an *Application for Extended Supported Employment Services Funding*, and then mail the *Application* (along with the original *ESES Plan*) to the Program Supervisor, Employment Services. If funds are available, the Program Supervisor will enter an authorization number on the *Application for ESES Funding*, and provide a copy to the service provider and Counselor. Should funds not be available, the Program Supervisor will promptly notify both the service provider and Counselor.

C. After closure, the service provider assumes responsibility for annually completing the *ESES Plan*. The service provider will also complete the *Application for Extended Supported Employment Services Funding* and submit both forms to the Program Supervisor, Employment Services. With a release of information, a copy of the *ESES Plan* can be provided to the Counselor of record.

2905 Post Employment Services. The Counselor may authorize for additional supported assistance, up to a maximum of 50 hours, as a Post-Employment Service. Provision of Supported Employment Job Site Support during Post Employment may only be provided, however, if aspects in the work environment change, creating the need for further job coaching in order to maintain employment. Such aspects may be the change of a supervisor, new tasks required of the worker, or a change in the location of the job.

Community Rehabilitation Programs
EXTENDED SUPPORTED EMPLOYMENT SERVICES PLAN

Individual's Name:		
Date of Birth:		SSN:
Employer Name and Address:		
Job Title:		
Date Started:		Hours/Week:
Hourly Wage:		Benefits: Y / N
Identified Support Need	Support Strategy (Include # of monitoring contacts needed per month)	Service Provider
1.		
2.		
3.		
Extended Services Funding Sources: Medicaid Home & Community Based Waiver _____ State Appropriated Extended Supported Employment Service Funds _____ Other State/Local Resources (describe) _____ _____ _____		
DRS Counselor Signature/Date		Supported Employee Signature/Date
Extended Service Provider (Please Print)		Family Member (if applicable) Signature/Date
For DRS Counselor Use		
Date Entered St. 22:		Projected Date for Closure:

FIGURE 2900-1. Extended Supported Employment Services Plan



3000 RECORD OF SERVICES CLOSURE.

3001 Reasons for Closure. Records of services will be closed when the individual has achieved an employment outcome; declines services or refuses to participate; is not available for services; has been determined ineligible; does not meet the order of selection priority; fails to cooperate; received services but has not achieved an employment outcome; or has completed post employment services.

3002 Participation of the Individual. The individual or, as appropriate, the individual's representative, will be given the opportunity for full consultation in ineligibility, "rehabilitated" closure decisions, and in instances where order of selection priority has not been met, unless the individual is not available for participation.

3003 Closure Without Eligibility Determination (Status 08).

3003.1 When Appropriate. An applicant's record of services may be closed prior to eligibility determination only if the applicant declines to participate in, or is unavailable to complete an assessment for determining eligibility and priority for services, and staff members have made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

3003.2 Required Documentation.

A. Documentation that at least two attempts were made to contact the applicant or, if appropriate, the applicant's representative, to notify the applicant of the pending closure, and to encourage participation of the applicant;

B. Documentation of the reason for closure; and,

C. Completion of appropriate coding.

3004 Closure Related to Order of Selection (Status 38).

3004.1 When Appropriate. An individual's case will be closed in Status 38 to indicate that services will not be provided for whatever reason from Status 04 (see Section 2500).

3004.2 Required Documentation.

A. Documentation of the reason for closure; and,

B. Completion of appropriate coding.

3005 Ineligibility Closure.

3005.1 When Appropriate. An individual's record of services will be closed if it is determined that the individual does not meet or no longer meets eligibility criteria (see Section 2500). If the reason for ineligibility is that the applicant is unable to benefit from services due to the severity of the disability, results of a trial work experience are required, showing clear and convincing evidence that the individual is incapable of benefiting from services in terms of an employment outcome and an assistive technology consultation is required.

3005.2 Required Documentation. The record of services will include the following documentation related to the determination of eligibility:

- A. Completed *Health Assessment Questionnaire*;
 - B. Completed *Certificate of Ineligibility*;
 - C. As appropriate, medical records or a statement from a medical professional supporting the existence or lack of a disability;
 - D. As appropriate, documentation that the individual does not require services to prepare for, enter, engage in, or retain gainful employment;
 - E. Completion of appropriate coding as required;
 - F. Information substantiating referral to other programs, if appropriate;
- and,
- G. Statements supporting the review of the ineligibility decision in accordance with Section 2500.

3006 Rehabilitated Closure (Status 26). The need for post employment services will be reassessed prior to the determination that the individual has achieved an employment outcome. While emphasis is placed on achievement of competitive employment, in selected circumstances consistent with informed choice of the individual and goals and services on the IPE, an employment outcome may be amended at closure and may include employment as a homemaker or unpaid family worker.

3006.1 When Appropriate. The Rehabilitation Counselor will close an individual's record of services as "rehabilitated" when the individual:

- A. Was declared eligible for services;
- B. Received appropriate assessment and related services;
- C. Had a program for rehabilitation services formulated;

- D. Completed the program;
- E. Received counseling;
- F. Has been determined to be suitably employed for a minimum of 90 days; and,
- G. Has received substantial services that contributed in an identifiably positive way toward achievement of an employment outcome.

3006.2 Supported Employment. In a supported employment case the Rehabilitation Counselor shall consider an individual to be successfully rehabilitated when:

- A. The individual meets the basic requirements for a successful (Status 26) closure as previously outlined in this paragraph;
- B. Placement is maintained for at least 90 days after making the transition to extended services; i.e., the ongoing support services being provided by the extended supported employment services provider are adequate to meet the individual's needs with respect to maintaining the supported employment placement;
- C. The individual is working the agreed upon work hours identified in the IPE;
- D. The job is stable and is expected to continue; and,
- E. The individual is paid at minimum wage or is paid the prevailing wage.

3006.3 Required Documentation.

- A. A signed and dated Closure Amendment that includes the reason for closure, information concerning the basis on which the individual has been determined to have achieved an employment outcome, and a statement regarding the need for post employment services; or,
- B. Documentation that the individual was notified in writing or through alternative modes of communication of the reason(s) for closure and information required on the Closure Amendment, with a copy provided to the individual or the individual's representative; and,
- C. A closure statement in the case record at time of closure that summarizes the services provided to the individual and how those services substantially

contributed toward an employment outcome consistent with the informed choice of the individual.

3007 Non-Rehabilitated Closure (Statuses 28 and 30).

3007.1 Closure After Eligibility Determined. When, following certification of eligibility for rehabilitation services, it has been determined that a successful employment outcome cannot be achieved or that employment resulted without vocational rehabilitation (VR) services having contributed to that outcome, the record of services will be closed as "non-rehabilitated."

A. *Status 28 (Closed Other Reasons After IPE Initiated).* Cases closed into this category must meet criteria A, B, and C in paragraph 3006.1, with at least one of the services provided for by the IPE initiated, but for some reason, one or more of criteria D, E, F, and G in paragraph 3006.1 were not met. There is no movement from this status. Prior to closing a case in Status 28 for any reason other than death or institutionalization, the case must be staffed with the district's Placement Team to determine if all attempts have been exhausted to locate individuals who have relocated and to determine if there are any viable actions that may be taken to assist in a positive employment outcome as an alternative to Status 28 closure. If the expected reason for closure is due to either the refusal of services or failure to cooperate, the individual must be provided advance notice of the pending closure along with the reason for the closure and offered a reasonable opportunity to remedy the problem.

B. *Status 30 (Closed Other Reasons Before IPE Initiated).* Cases placed into Status 30 are those that, although accepted for VR services, did not progress to the point that services were actually initiated under an IPE. There is no movement from this status.

3007.2 Required Documentation.

A. Information which demonstrates that the individual was notified in writing or by alternative modes of communication of the reason for closure; advised of rights, including the right to an appeal hearing; and given a description of the Client Assistance Program (CAP) and information regarding access to CAP;

B. Information which demonstrates that the individual was notified in writing or alternative modes of communication of the reason(s) for closure, and information required on the *Closure Amendment*, with a copy provided to the individual or the individual's representative; and,

C. Closure information required for appropriate coding.

3008 Record of Services Closure for Post Employment Services (Statuses 46, 48, and 50).

3008.1 Determination. The decision to terminate post employment services will be made on an individual basis in consultation with the individual receiving such services. Factors to be considered in closing a post employment record of services include the following:

A. *Status 46 (Post Employment Services Terminated with Employment Maintained).* This status denotes that post employment services have been terminated because the services were successful in assisting the individual in maintaining employment. There is no movement from this status.

B. *Status 48 (Post Employment Services Terminated with Employment Not Maintained).* This status denotes that the post employment services have been terminated and these services were not successful in assisting the individual in maintaining employment. There is no movement from this status.

C. *Status 50 (Post Employment Services Terminated with Case Reopened).* This status denotes that the post employment services have been terminated and these services were not successful in assisting the individual in maintaining employment and a new case will be opened. The case will be reopened whenever a new disabling condition or vocational situation not related to the original rehabilitation effort emerges while the case is in Status 32 and the condition or situation is seen to require a complex or comprehensive rehabilitation effort. If the individual elects to do so, a new application will be taken and a new determination of eligibility will be made.

3008.2 Successful Outcome.

A. Satisfactory solution to the precipitating problem requiring post employment services;

B. Attainment of sufficient independence to function without continuing post employment services, or a Rehabilitation Counselor's professional judgment to discontinue services; and,

C. Employment continues at a suitable level in relation to the individual's skills and the particular locality and labor market, or can be realized by the individual's own initiative.

3008.3 Unsuccessful Outcome. The individual's condition or situation suggests that post employment services cannot maintain the individual's employment. Consideration should be given to reopening the record of services for rehabilitation or referral to community providers for services to address the issues impeding performance in employment.

3008.4 Required Documentation. The record of services will include:

A. Documentation reflecting the participation of the individual in the development of the amendment for post employment services and in the closure decision;

B. Documentation of the reason for closure; and,

C. Completion of appropriate coding as required.

3009 Annual Review of Extended Employment.

3009.1 Timeline and Content of Review. After an individual's record of services is closed in extended employment, the Rehabilitation Counselor must conduct an annual review for two years (and thereafter if requested by the individual or, if appropriate, the individual's representative) to reevaluate the status of each individual regarding his/her interests, priorities, and needs with respect to competitive employment or training for competitive employment. Documentation of the review results will include:

A. Results of the Rehabilitation Counselor's efforts to assist the individual in engaging in competitive employment; including identifying and providing VR services, reasonable accommodations, and other necessary support services; and,

B. A signed statement from the individual, or as appropriate, the individual's representative, acknowledging that the review and reevaluation have been conducted with input from the individual.

3009.2 Review Procedure. A list of the names of individuals who have been closed in extended employment and who are scheduled for review will be computer generated and forwarded to the Rehabilitation Counselor prior to the annual review date.

3010 Reopening Closed Records of Services. The record will be reopened as a new referral and an assessment for determining eligibility and priority of services will be completed when an individual whose record of services was closed needs comprehensive services. It is not necessary to re-determine eligibility when post employment services are needed to assist an individual whose record of services has been closed in Status 26 to maintain employment.

3100 POST EMPLOYMENT SERVICES.

3101 Provision of Post Employment Services.

A. Post employment services are vocational rehabilitation (VR) services provided when:

1. The individual has achieved an employment outcome, i.e., the record of services has been closed rehabilitated;
2. Additional services are necessary to assist the individual in maintaining, regaining, or advancing in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests;
3. Solution of the problem does not require a complex and comprehensive provision of services and is limited in scope and duration; and,
4. Services are related to the original disability.

B. Discrete post employment services are provided when necessary after transition to extended supported employment (see Section 4100).

3102 Circumstances Under Which Post Employment Services May Be Appropriate.

3102.1 Considerations for Provision. Post employment services are appropriate in situations including the following:

A. To maintain employment, e.g., the individual has had conflicts with supervisors and coworkers and requires mental health services and counseling to retain his/her job;

B. To regain employment, e.g., the individual's job is eliminated through reorganization and new placement services are needed; or,

C. To advance in employment, e.g., the employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests.

3102.2 Circumstances Under Which Post Employment Services May Not Be Appropriate. If it is determined that the individual's needs would be better met through reopening the individual's record of services for more comprehensive service provision, the policies and procedures for intake and eligibility will be followed (see Sections 2400 and 2500).

3103 Timeframe for Provision. When a year or longer has elapsed since provision of rehabilitation services, the Rehabilitation Counselor will carefully reassess all factors to determine the exact nature of services needed and whether post employment services are appropriate. The period of time after which post employment services will be provided will not be arbitrarily limited, but will be determined on an individual basis. Factors to consider include:

- A. Relevance and current validity of previous data;
- B. Whether previous rehabilitation efforts have lost relevance or significance; and,
- C. Availability of the individual's original record of services.

3104 Required Documentation.

3104.1 Documentation of Need. The Rehabilitation Counselor will document the need for post employment services in the record of services. Information will be added to the original record of services including the individual's present employment situation and any additional relevant data.

3104.2 Amendment. An amendment to the original IPE will be developed with the individual who is to receive post employment services; therefore, a re-determination of eligibility for VR services is not required. The amendment will include, if appropriate, a statement of how post employment services will be provided or arranged through cooperative agreements with other service providers. Policies and procedures related to development of the original program and other amendments also apply to an amendment for post employment services.

3105 Limitations. The policies, procedures and conditions limiting or qualifying services provided under an IPE shall be applicable in the provision of post employment services. Vocational training may in no case be used as a post employment service to train the individual in a new occupation. Should that be required, the case will be reopened with a new determination of eligibility required. Training may be used to upgrade current skills to enable the individual to retain employment in the current occupation. Prescription medications may be provided as a post employment service only during the first twelve months following case closure.

3106 Transfer of Record. When an individual achieves an employment outcome after receiving VR services through the Division, moves out of state, and then requires post employment services, the record of services will be closed and referred to the receiving state. Pertinent information from the existing record of services shall be shared with the receiving state upon receipt of a request or consent form signed by the individual or, if appropriate, the individual's representative. Intra-state moves by the individual will entail a transfer of the record of services to the receiving Division district.

3107 Record of Services Closure.

3107.1 Determination. The decision to terminate post employment services will be made on an individual basis in consultation with the individual receiving such services. Factors to be considered in closing a post employment record of service include the following:

A. *Successful Outcome (Status 46).*

1. Satisfactory solution to the precipitating problem requiring post employment services;
2. Attainment of sufficient independence to function without continuing post employment services, or a Rehabilitation Counselor's professional judgment to discontinue services; and,
3. Employment continues at a suitable level in relation to the individual's skills and the particular locality and labor market, or can be realized by the individual's own initiative.

B. *Unsuccessful Outcome (Status 48).* The individual's condition or situation suggests that post employment services cannot maintain the individual's employment. Consideration should be given to re-opening the record of service (see Section 3000) or referral to community providers for services to address the issues impeding performance in employment.

C. *Post Employment Services Terminated with Case Reopened (Status 50).* This status denotes that the post employment services have been terminated, that services were not successful in assisting the individual in maintaining employment, and a new case will be opened. The case will be reopened whenever a new disabling condition or vocational situation not related to the original rehabilitation effort emerges while the case is in Status 32 and the condition or situation is seen to require a complex or comprehensive rehabilitation effort. If the individual elects to do so, a new application will be taken and a new determination of eligibility will be made.

3107.2 Documentation. The record of service will include:

- A. Documentation reflecting the participation of the individual in the development of the amendment for post employment services and in the closure decision;
- B. Documentation for the reason for closure; and,
- C. Completion of appropriate coding as required.



3200 ECONOMIC NEED.

3201 General. This section provides policy most often needed by the Rehabilitation Counselor when determining whether and to what extent the Division should require an individual to participate financially in the cost of rehabilitation services provided or sponsored by the Division under an *Individualized Plan for Employment* (IPE). The Division's policies regarding economic need will be reviewed annually.

3202 Purpose. The Division's policies regarding economic need implement provisions of state law and regulations by assuring that, when and to the extent appropriate, each individual is required to participate in the cost of implementing the IPE. Such participation also enhances the involvement of the individual in IPE formulation.

3203 Equitable Treatment. The policies of the Division will be implemented uniformly and objectively to ensure that the level of any financial participation required of an individual is equitable and reasonably consistent with that required of other individuals whose available economic resources or other pertinent circumstances are similar.

3204 Reviews. The Rehabilitation Counselor and the individual will jointly review the determination of economic need as often as may be required to assure that the individual is treated equitably. Such reviews must be conducted at least annually and whenever the economic resources or pertinent circumstances of the individual surveyed change substantially.

3205 Services Requiring Consideration of Economic Need. The provision or sponsorship by the Division of services within the following categories requires the consideration of economic need and financial participation by the individual in the cost of their delivery under an IPE, subject to other provisions of this section:

- A. Physical/mental restoration services;
- B. Transportation provided during any phase of the rehabilitation process other than the referral, application, or program formulation phase;
- C. Occupational licenses;
- D. Placement/training tools, equipment, initial stocks and supplies;
- E. Rehabilitation training tuition and fees;
- F. Maintenance provided during any phase of the rehabilitation process other than the referral and application phases;
- G. Services to family members of a type which would require economic need consideration if the same service were provided to the individual;

- H. Telecommunications, sensory, and other technological aids and devices;
- I. Post employment services of a type which would require economic need consideration if provided during the program implementation phase;
- J. Purchased services required to establish or to assist a self employment project, or to purchase an existing self employment project;
- K. Room and board provided in support of vocational or other rehabilitation training;
- L. Clothing and uniforms;
- M. Attendant care services;
- N. Rehabilitation technology;
- O. Supported employment;
- P. Community rehabilitation programs; and,
- Q. Purchased job placement services.

3206 Services Not Subject to Consideration of Economic Need. Services which are entirely paid by third party funding or have no direct cost to the Division are not subject to the consideration of economic need. Additionally, the following categories of service are not subject to the consideration of economic need:

- A. Assessment services in statuses 02, 07, and 10;
- B. Counseling and guidance;
- C. Non-purchased job placement services;
- D. Any auxiliary aid or service, interpreter services, or reader services that an individual with a disability requires to participate in vocational rehabilitation (VR) services;
- E. Any VR service if the individual has been determined eligible for benefits from Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI);
- F. Personal assistance services when necessary to achieve an employment outcome and when provided only while the individual is receiving other VR services; and,
- G. Books and supplies required for completion of training.

3207 Voluntary Contribution. An applicant, individual, or other interested party may elect to contribute voluntarily toward the direct cost of any service provided or sponsored by the Division, including those services not requiring consideration of economic need. Such voluntary contributions should be encouraged when the consideration of economic need is not applicable and the Rehabilitation Counselor finds that substantial financial resources are available.

3208 Determining Direct Cost. *Direct cost to the Division* is defined, for the purpose of this section, as those expenditures accounted by the Division as costs incurred in serving the individual. Services provided directly by staff members at the West Virginia Rehabilitation Center (e.g., therapeutic services or training) are not considered when determining client contribution toward cost of services. While the student attends the Center, any services or goods purchased from outside vendors constitute a direct cost to the Division and will be considered for client contribution. Similar benefits will be utilized as fully as possible for all Center services regardless of consideration of client contribution. Expenditures are documented by the following:

- A. WVDRS-16, *Authorization*;
- B. WVDRS-16A, *Maintenance Authorization*; and,
- C. WVDRS-17, *Case Services Requisition*.

3209 Scheduling Contributions. Required contributions will be payable monthly until either the direct cost to be paid by the Division is reimbursed or the case is closed, whichever occurs first. The Rehabilitation Counselor will not accept payment for a service before that service is provided as no method currently exists for the individual to be reimbursed for prepayment of a service that was not received. The individual(s) surveyed and the Rehabilitation Counselor should review the services(s) included in the IPE and develop a schedule of contributions.

3209.1 Determining Amount of Contribution. Contributions will be based upon a combination of the monthly surplus and assets, if any, as indicated on the *Economic Need Form* in all cases except when the expected family contribution is applied to post-secondary training (see Section 3600). The monthly surplus amount generally will be applied as the monthly contribution unless a different contribution amount is agreed to by the individual and Rehabilitation Counselor and approved by the District Manager. Likewise, assets may be utilized as a lump sum payment toward the cost of services, or may be divided into monthly payments and added to any surplus amount for a total monthly contribution. Assets are to be calculated using actual rather than face value, with consideration given to any taxes and/or penalties that may apply when the assets are liquidated.

3209.2 Initial Contribution. The initial contribution will be planned and agreed to prior to the encumbrance of Division funds for provision or sponsorship of the service(s) to which the contribution pertains.

3209.3 Final Contribution. The final contribution should be scheduled to be received prior to the expected date of case closure. However, in no instance will case closure be delayed when otherwise appropriate simply to complete the schedule of contributions, and any scheduled contributions remaining unpaid at the time of case closure shall be waived.

3210 Methods of Contribution. Every contribution submitted to the Rehabilitation Counselor shall be by check or by money order made payable to "Division of Rehabilitation Services." The Rehabilitation Counselor shall not accept currency, or any check or money order made payable to any party other than the Division, or any post-dated check or money order. The Rehabilitation Counselor will forward each check or money order to the Division's Fiscal Office immediately upon receipt. In no instance will the check or money order be retained locally.

3211 Third Party Payment and Economic Need. Economic need is not applicable to any service if the cost of the service will be borne entirely by any third party and the Division incurs either no cost or only indirect/administrative costs associated with coordinating or monitoring the delivery of the service. If only a portion of direct cost of the service is borne by a third party, the Division's usual policies regarding economic need are applicable to any remaining portion to be borne by the Division.

3212 Economic Survey.

3212.1 Determining Individual(s) to Be Surveyed.

A. *Applicant or Individual.* The applicant or individual shall be included in the survey.

B. *Parent/Guardian.* The parent(s) or guardian(s) shall be included in the survey only when an unmarried applicant or individual is age 23 or younger and resides with the parent(s) or guardian(s). The parent(s) or guardian(s) shall be excluded from the survey when the applicant or individual is age 24 or over, resides separately, is married, or is a ward of the court. College and other training students who live away from home while attending school are considered to reside with their parents if the parents' home is claimed as their permanent residence, the parents provide financial support, the application for financial aid is based upon the parents' income, or the parents claim the student for income tax purposes. Unmarried students under the age of 24 may be considered to reside separately for economic need purposes only when it can be clearly established that the relationship with their parents has been severed, the student is completely financially independent, and application for financial aid is based solely on the student's income.

C. *Spouse.* The applicant's or individual's spouse, if any, shall be included in the survey, unless the spouse is legally separated by court order. A life partner whose legal relationship to the individual is not recognized by the State of West Virginia as a marriage is not deemed a spouse for purposes of this section.

D. *Other Individuals.* Individuals other than the applicant or individual, spouse, parent(s), or guardian(s) are excluded from the survey.

3212.2 Income to Be Reported. Net earned income and all other types of income, either cash or cash equivalent, shall be reported on the *Economic Need Form* whether or not the income will be subject to consideration of economic need. In no instance will

income be excluded by reason of either the source or the nature of the income. As examples, Social Security benefits (SSI, DIB, OASI), pensions, alimony, child support, Workers' Compensation, welfare (TANF, Food Stamps), unemployment compensation, private insurance payments, interest, and dividends are included in the same manner as are wages and other types of income.

3212.3 Determining Net Earned Income. Net earned income is the full amount of earned income received during the month and all non-elective deductions other than garnishments. Garnishments are simply payments of private debts and, therefore, are considered as net income. Earned income includes all money received for personal services, such as wages, salaries, tips, commissions, and fees. Non-elective deductions are those withholdings from gross earnings which are not at the discretion of the wage earner, such as income tax withholdings (at the minimum applicable level), Social Security (FICA) withholdings, required contributions to the employee's retirement plan, premiums paid for life and/or health insurance, etc. Although they may not be required employee plans, a percentage of contributions toward 401(k) plans or individual retirement accounts (IRAs) also may be considered as non-elective deductions as long as the investment plan is intended for retirement purposes. In those instances where the individual is using a 401(k) or IRA for retirement purposes, a maximum of 6% of the gross earnings will be calculated as a non-elective deduction. Any amount of contribution exceeding 6% of the gross income will be counted as income.

3212.4 Assets to Be Included. All checking and/or saving accounts, cash on hand, stocks, and/or securities will be counted as assets. The Rehabilitation Counselor will consider the amount by which the total of any checking and/or saving account, cash on hand, stocks, and/or securities exceeds \$3,000 multiplied by the number of individuals residing within the household who are primarily supported by one or more of the individual(s) surveyed.

3212.5 Assets to Be Excluded. The following types of assets are not deemed pertinent to the Division's determination of economic need and are to be excluded from the survey:

- A. Any real and/or personal property, including land and/or buildings;
- B. Business equipment or inventory; or,

C. 401(k) plans and/or IRAs if the individual does not have another established retirement plan.

3212.6 Standard Deduction. The Rehabilitation Counselor will deduct the amount indicated in Table 3200-1, *Standard Monthly Deductions*, from the total monthly net income after determining the number of individuals residing within the household who are primarily supported by one or more of the individual(s) surveyed.

3212.7 Disability Related Expenses. When documented in the record of service, ongoing out of pocket disability related expenses may be deducted, dollar for dollar. Disability related expenses are defined as costs resulting from payment of medical services, durable medical equipment, medication, or medical supplies that are a direct consequence of the disabling condition and that constitute an ongoing financial obligation. The costs of medical services and/or medications for ancillary health problems or temporary illnesses are not considered disability related expenses. Disability related expenses of an immediate family member may be deducted if the family member is included in the income to be surveyed. The costs of medical or disability related expenses for a family member residing in the home but whose income is not surveyed (such as an elderly relative or adult sibling) will not be considered.

3212.8 Additional Information. The Rehabilitation Counselor should enter in the appropriate section on the *Economic Need Form* any other factual information or explanation which may, in the Rehabilitation Counselor's judgment, be necessary to understand how the amount available for monthly contribution was determined.

3212.9 Administrative Adjustment. In exceptional circumstances, the District Manager may approve administrative adjustments from the Division's usual policies regarding the consideration of economic need. If the Rehabilitation Counselor desires to recommend such an adjustment, a complete description of the adjustment and a rationale for the recommendation also should be entered on the *Economic Need Form* (the rationale may be incorporated by reference to the record of service).

3213 Refusal or Failure to Cooperate.

3213.1 Refusal to Disclose Required Information. If an individual surveyed refuses to disclose financial or other information necessary for the determination of economic need, the Rehabilitation Counselor will provide an explanation of the nature and purpose of the required information and of the Division's policies regarding the confidentiality of such information. If the individual surveyed continues to refuse disclosure of necessary information, the Rehabilitation Counselor will inform the applicant or individual and the individual surveyed, if different, that the Division also must refuse to provide or sponsor any service to which the consideration of economic need is applicable until the necessary information has been disclosed.

3213.2 Failure to Disclose Required Information. Promptly upon learning that an individual surveyed has failed to disclose financial or other information necessary for an appropriate determination of economic need, the Rehabilitation Counselor will meet with the individual surveyed and conduct an appropriate review and revision of the *Economic Need Form* at the earliest practical time. Prior to the completion of an appropriate review, such instances will require approval of the District Manager for sponsorship of further Division services to which the consideration of economic need is applicable.

3213.3 Refusal to Negotiate Amount of Required Contribution. If the *Economic Need Form* reveals a surplus of income and/or assets and the individual surveyed refuses to negotiate with the Rehabilitation Counselor regarding the amount of the contribution to be required, the Rehabilitation Counselor will advise the applicant or individual and the individual surveyed, if different, that the Division must consider and establish the amount of the required contribution prior to the development and completion of an IPE and provision of any subsequent services. The applicant or individual will be advised of his/her due process rights to request a review of the decision.

3213.4 Failure to Submit Required Contribution. If the individual surveyed on the *Economic Need Form* fails to submit a required contribution, the Rehabilitation Counselor will meet or otherwise communicate with the individual surveyed and attempt to determine why the contribution was not submitted. In some instances, failure to submit a required contribution may suggest a need for review and revision of the *Economic Need Form*, for re-negotiation of the amount of the contribution, or for reconsideration of whether an administrative adjustment should be recommended.

3213.5 Refusal to Submit Required Contribution. In those instances where an individual surveyed simply refuses to contribute or the Rehabilitation Counselor and the individual surveyed are unable to resolve a disagreement regarding the amount of the contribution to be required, the Rehabilitation Counselor promptly will seek guidance from the District Manager.

STANDARD MONTHLY DEDUCTION

PERSONS IN HOUSEHOLD	DEDUCTION
ONE	\$ 1,750
TWO	\$ 2,333
THREE	\$ 2,875
FOUR	\$ 3,375
FIVE	\$ 3,833
SIX	\$ 4,250
SEVEN	\$ 4,625
EIGHT	\$ 4,958
ADDITIONAL PERSONS	\$ 4,958 plus \$ 300 each

Table 3200-1.

3300 RIGHTS AND RESPONSIBILITIES.

3301 General. This section sets forth and explains the rights guaranteed to the individual by law, and the responsibilities of the individual in obtaining services under those rights. It is the policy of the Division that the program will be carried out in a manner consistent with the principles of respect for individual dignity, personal responsibility, self-determination and pursuit of meaningful careers, based on informed choice; respect for the privacy, right and equal access (including the use of accessible formats) of the individuals; inclusion, integration and full participation; and support for the involvement of an individual's representative if an individual with a disability requests, desires or needs such support. Individuals who are applicants for services or eligible to participate in vocational rehabilitation (VR) services must be active and full partners in the VR process, making meaningful and informed choices.

3302 Client's Rights.

3302.1 Right to Complete Statement of Rights. The individual is entitled to a complete written statement of rights (*Rights and Responsibilities*), which will be available in accessible formats as requested.

3302.2 Right to Apply for Services. Any individual, except one who is incarcerated without a firm release or parole date, has the right to apply for VR or independent living (IL) services, even if it appears at the time of application that s/he does not meet eligibility criteria. The individual may make application initially in any written form. However, as soon as possible and preferably during the initial contact, the Rehabilitation Counselor will obtain the applicant's signature on the *Application for Rehabilitation Services*.

3302.3 Right to Eligibility Decision within a Reasonable Time. The individual has the right to a decision by the Rehabilitation Counselor of the eligibility decision within a reasonable time, normally not more than 60 days from the date of signing the application, unless:

A. Due to unforeseen and exceptional circumstances beyond the control of the Rehabilitation Counselor, eligibility determination cannot be made within 60 days. The Rehabilitation Counselor and individual will agree to a specific extension of time; or;

B. The Rehabilitation Counselor and individual are exploring the individual's abilities, capabilities, and capacity to perform work in trial work experiences.

1. *Right to Preliminary Assessment.* The preliminary assessment is required in every case to determine whether the individual is eligible or ineligible for rehabilitation services. Therefore, the Division requirement for the individual to be provided a preliminary diagnostic study becomes a right of the individual to receive it.

2. *Right to Eligibility Criteria Applied without Discrimination.* The individual has the right for eligibility criteria to be applied to his/her application without regard

to sex, race, age, creed, color, national origin, residence, or type of disability. The only consideration with respect to the above is that the individual must be of employable age at the time rehabilitation services are completed.

3302.4 Right to Participate in Formulation of Individualized Plan for Employment/Independent Living Plan. Upon being found eligible for rehabilitation services, the individual has the right to develop the initial Individualized Plan for Employment (IPE) or Independent Living Plan (ILP) independently or jointly with the Rehabilitation Counselor. S/he also has the right to develop independently or jointly with the Rehabilitation Counselor any in-process amendment(s) to the IPE or ILP. The following rights are directly related:

A. *Right to Express Dissatisfaction.* The individual has the right to express his/her dissatisfaction with any provision proposed for inclusion in the IPE or ILP. If an IPE or ILP cannot be agreed upon and developed, the individual has the right to a review, mediation, and/or fair hearing. See also Section 3400.

B. *Right to Receive Copies of IPE or ILP.* The individual has the right to receive a copy of the initial IPE or ILP and each in-process amendment. At the time of case closure or termination of post employment services, the individual has the right to receive a copy of the *Closure Statement*.

C. *Right to Thorough Assessment.* As the basis for formulation of the IPE or ILP, the individual has the right to receive a thorough diagnostic study to the extent required for rehabilitation purposes in his/her particular case.

3302.5 Right to Participate in Determination of Ineligibility. If an individual has applied for services and, based on the review of existing information and assessments, is determined ineligible for services; or if an eligible individual receiving services under an IPE or ILP is determined to be no longer eligible for services, the ineligibility determination can be made only after providing an opportunity for full consultation with the individual, or as appropriate, the individual's representative. The individual or, as appropriate, the individual's representative, shall be informed in writing (supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual) of the ineligibility determination, including the reason for the determination, and a description of the means by which the individual may express and seek a remedy for any dissatisfaction with the decision.

3302.6 Right to Annual Review. Whenever the individual's case is closed non-rehabilitated from any status, the individual has the right to an annual review of the ineligibility decision or any time thereafter, if such a review is requested by the individual, or if appropriate, by the individual's representative. Exceptions to annual reviews will occur when:

A. The case was closed because the individual's condition was terminal, or closed from Status 02 because the individual did not meet eligibility criteria;

B. The case was closed because of the individual's lack of cooperation or interest;

C. The individual has given written notice that s/he does not wish to be considered further; or,

D. The individual's whereabouts are unknown or s/he has relocated out of state.

3302.7 Right to Discontinue Program. The individual has the right to discontinue his/her program at any time, upon notice to the Rehabilitation Counselor. Verbal notice is acceptable. Upon receiving the verbal notice, the Rehabilitation Counselor will initiate closure into the proper status and attempt to obtain the individual's participation in the non-rehabilitated closure.

3302.8 Right to Discuss Case with Counselor. The individual has the right to discuss his/her case with the Rehabilitation Counselor at any time in the rehabilitation process.

3302.9 Right to Confidential Treatment of Case Information. The individual has the right to confidential treatment by the Division of all case information.

3302.10 Right to Administrative Review. When dissatisfied with the provision or denial of rehabilitation services, the individual has the right to express his/her dissatisfaction to the Rehabilitation Counselor and to seek a remedy from the Counselor. If dissatisfied with the remedy offered, the individual has the right to request and receive a review, mediation, and/or fair hearing. See also Section 3400.

3302.11 Right to Pursue Mediation. Should the individual or, if appropriate, the individual's representative, be dissatisfied with determinations made by the Rehabilitation Counselor, the mediation process will allow parties to address and resolve disputes as requested. The individual will be provided written notification (supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual) of these rights to mediation:

A. At the time an individual applies for rehabilitation services;

B. At the time the IPE or ILP is developed; and,

C. Upon change, suspension, or termination of rehabilitation services.

3302.12 Right to Client Assistance Program. The individual has the right to avail him/herself of the services of the Client Assistance Program (CAP) currently operated by the West Virginia Advocates (WVA). The purposes of CAP are to provide the individual detailed information on services available from the Division, to assist the individual in working out problems that may be preventing him/her from receiving services and to help the individual understand his/her legal right to rehabilitation services. Upon the individual's request, the Rehabilitation Counselor will advise him/her how to contact CAP.

3303 Individual Responsibilities.

3303.1 General. Central to the rehabilitation process is the interaction between the Rehabilitation Counselor and the individual. Just as the Rehabilitation Counselor has specific responsibilities to fulfill in serving the individual, so has the individual specific responsibilities to discharge in receiving rehabilitation services. The individual's major responsibilities are set forth in this paragraph. Early in the rehabilitation process, the Rehabilitation Counselor should make the individual aware of his/her responsibilities and counsel him/her to carry them out fully.

3303.2 Provide Requested Information. The individual is responsible for providing reasonable information requested by the Rehabilitation Counselor and other individual-serving personnel.

3303.3 Volunteer Pertinent Information. The individual is responsible for taking the initiative to provide the Rehabilitation Counselor and other individual-serving personnel new information having a bearing on his/her case. Among such information are reports of problems encountered and new developments in the individual's personal financial condition.

3303.4 Communicate. The individual is responsible for informing the Rehabilitation Counselor promptly of any change in address and/or phone number, and for answering promptly all correspondence from the Counselor and other individual-serving personnel.

3303.5 Participate in Formulating the IPE or ILP. The individual is responsible for active participation in development of the initial IPE or ILP and its in-process amendment(s), freely offering his/her aspirations, ideas and reactions.

3303.6 Cooperate in Receiving Services. The individual is responsible for full cooperation with the Rehabilitation Counselor and other individual-serving personnel in receiving rehabilitation services. S/he is expected to keep all appointments or give advance notice when s/he cannot, attend training promptly and regularly, and follow closely the instructions of professionals providing services.

3303.7 Meet Acceptable Standards. The individual is responsible for meeting the prescribed standards of training and other services.

3303.8 Participate in Placement. The individual has the responsibility to participate actively in placement. S/he is expected to register with the public employment services of the Bureau of Employment Services, learn the necessary job-seeking skills which may be taught by the Rehabilitation Counselor or other individual-serving personnel, check into job openings on his/her own initiative, and otherwise actively seek employment.

3400 DUE PROCESS.

3401 General. This section describes the Division's policy for reviewing and resolving an individual's request for review of any action, decision, or determination regarding that individual by the Rehabilitation Counselor and/or the Division. A request for review may be based on any instance in which the individual believes that s/he has been treated unfairly or inappropriately by the Division, including any alleged violation of the individual's rights. Any such request for review will be considered and acted upon by the Division as a request for fair hearing. Any meeting occurring in the due process will be held at a location that is convenient to the parties in the dispute. In all phases of the due process, the applicant or eligible individual may be represented by another person selected by the individual. The applicant or eligible individual (or the individual's representative) will be provided the opportunity to submit evidence and information to support the position of the individual.

3401.1 Exclusion. Separate procedures promulgated by the Social Security Administration apply to grievances by claimants for Social Security Disability Insurance (SSDI) and/or Supplemental Security Income (SSI) benefits. Therefore, the procedure discussed in this section does not apply to requests for review arising from the handling of SSDI or SSI benefit claims by the Disability Determination Section.

3401.2 Written Notification of Rights and Responsibilities. The Rehabilitation Counselor will provide the applicant or eligible individual a copy of *WVDRS-95, Rights and Responsibilities* which explains the individual's rights to due process immediately upon reducing, suspending, or terminating any rehabilitation services for the individual. A copy will be provided in the appropriate alternate format if necessary.

3401.3 Receipt of Complaint. Upon receiving an individual's complaint, either from the individual or from the individual's representative, the Rehabilitation Counselor will provide a written statement of individual rights and responsibilities to the individual, document in the case folder that the written statement was provided, and notify his/her immediate supervisor of receipt of the complaint.

A. Explanation of Due Process Options. The individual and/or the individual's representative also will be advised of the various due process options available, including the informal review process, mediation, and fair hearing. All options will be thoroughly explained.

B. Form Used for Review. A form, *WVDRS-14* (see Figure 3400-1), will be made available to the individual for the purpose of requesting a review; however, any type of written request from the individual will be acceptable. If the individual prefers, or if it is necessary to accommodate the individual's disability, the Counselor may accept the verbal notification, offer to complete the written complaint on the individual's behalf, and obtain the individual's signature. The written complaint will be recorded on the *WVDRS-14*, and will include the specific grievance of the individual and the relief sought from the Division. Once

the written request for review has been received from the individual, or the individual's representative, the request will be date stamped.

3401.4 Timeframe Requirements.

A. Timeframe for Filing a Request for Review. The Rehabilitation Counselor will inform the individual that s/he will be allowed a 60 calendar day time period in which to submit a written request for review. The 60 calendar day timeframe for requesting a review begins from the date the individual receives notification either verbally or in writing of any change in service, or other matter with which the individual disagrees. If the notification of change in services is in the form of mailed correspondence, the Counselor should follow-up with telephone communication, if at all possible, to ensure receipt of the notification. Once the written request for review has been received from the individual, or the individual's representative, the request will be date stamped. Effective from the date the request for review is received, the Division will have 60 days to conduct a fair hearing. The individual will be advised of the 60 day requirement and informed that s/he has the right to proceed immediately to the fair hearing level if so desired, or may utilize any or all of the due process options within the 60 days.

B. Timeframe for Response on Decisions. The individual will have 5 working days from the date of written request for review in which to notify the Division of his/her choice to begin with the Informal Review, or to proceed directly to either Mediation, Fair Hearing or both. This 5 working day time limit to choose a due process option applies to each level of the review process. If the individual or individual's representative elects to extend the 5 working day time limit on choosing the review option, the Division may request an extension of the 60 calendar day time requirement for conducting a fair hearing to a period of time that is agreeable to both parties. This agreed upon timeframe will be recorded on the WVDRS-14.

3401.5 Continuation of Services Pending Decision. Evaluation and assessment services, as well as services under an IPE, will not be suspended, reduced, or terminated until the outcome of the review process has been determined unless:

- A. The individual so requests; or,
- B. The Division has evidence that services have been obtained through misrepresentation, fraud, collusion, or criminal conduct by the individual; or,
- C. The continuation of services is contraindicated due to behaviors of the individual that constitute criminal conduct or may pose a danger to the individual or others.

3402 Informal Review. Individuals requesting a fair hearing will be offered the opportunity for informal review. However, participation in informal review is at the discretion of the individual and/or the individual's representative; rejection of informal review will not

prejudice the individual's right to mediation or fair hearing in any manner, and acceptance of informal review is not considered agreement to extend the 60-day time limit for conducting the fair hearing. The Division's informal review process consists of two phases: local reconciliation and administrative review.

3402.1 Scheduling for Informal Review. The immediate supervisor will determine from the individual whether the individual chooses to begin with a Local Reconciliation or proceed directly to an Administrative Review or other option. If the individual opts for a Local Reconciliation, the immediate supervisor will promptly schedule the Local Reconciliation meeting with the individual and the Rehabilitation Counselor for the earliest possible meeting date and concurrently notify the appropriate Assistant Director of the possible need to schedule an Administrative Review. In cases where the written request for review occurs in the field program, the Counselor's supervisor will then immediately notify the Assistant Director, Rehabilitation Programs and Field Services. Likewise, requests for reviews originating at the West Virginia Rehabilitation Center will be directed to the attention of the Assistant Director, WV Rehabilitation Center Services.

3402.2 Local Reconciliation. Upon agreement of the parties, the immediate supervisor, the Rehabilitation Counselor, and the individual and/or the individual's representative may meet to discuss the individual's grievance informally and to ascertain whether a mutually acceptable resolution may be negotiated.

A. *Timeframe for Response.* The individual or individual's representative will have 5 working days upon receipt of the results of the Local Reconciliation in which to notify the Division whether he/she accepts the resolution offered or chooses to proceed to the with another review option. If the individual or individual's representative does not respond within 5 working days upon receipt of the results of the Local Reconciliation, it will be implicit that the resolution has been accepted and the dispute is resolved.

B. *Form of Notification.* The outcome of the Local Reconciliation will be recorded on the WVDRS-14, and will include a statement and dated signature from the individual indicating either the individual's acceptance of the outcome or the next level of review chosen.

C. *Extension of Timeframe.* If the individual or individual's representative elects to extend the 5 working day time limit on choosing the next review option, the individual or representative must notify the Division of the need for the extension within the five day limit. If an extension is requested, the Division may extend the 60 calendar day time requirement to conduct the fair hearing to a period of time that is agreeable to both parties. This agreed upon timeframe will be recorded on the WVDRS-14.

3402.3 Administrative Review. When local reconciliation fails to yield a mutually acceptable resolution, administrative review will be offered. For complaints arising at the West Virginia Rehabilitation Center, the Assistant Director, WV Rehabilitation Center,

or designee, will be the reviewing official. For all other cases, the Assistant Director, Rehabilitation Program and Field Services, or designee, will be the reviewing official.

A. *Timeframe for Response.* The individual or individual's representative will have 5 working days upon receipt of the results of the Administrative Review in which to notify the Division whether he/she accepts the resolution offered or chooses to proceed to another review option. If the individual or individual's representative does not respond within 5 working days upon receipt of the results of the Administrative Review, it will be implicit that the resolution has been accepted and the dispute is resolved.

B. *Form of Notification.* The outcome of the Administrative Review will be recorded on the WVDRS-14, and will include a statement and dated signature from the individual indicating either the individual's acceptance of the outcome or the next level of review chosen.

C. *Extension of Timeframe.* If the individual or individual's representative elects to extend the 5 working day time limit on choosing the next review option, the individual or representative must notify the Division of the need for the extension within the five day limit. If an extension is requested the Division may extend the 60 calendar day time requirement to conduct the fair hearing to a period of time that is agreeable to both parties. This agreed upon timeframe will be recorded on the WVDRS-14.

3403 Resolution Following Informal Review. If a remedy negotiated through informal review is accepted by the individual and/or the individual's representative, and the request for review is withdrawn, the grievance will be considered resolved.

3404 Mediation. Individuals requesting a fair hearing will be offered the opportunity to resolve disputes through a mediation process. Mediation sessions are elective and not required prior to fair hearing. The individual may elect to proceed directly to fair hearing without benefit of mediation. The Division shall bear the cost of the mediation process. Mediation will not be used to deny or delay the right of an individual to an impartial hearing or any other rights afforded that individual under the Rehabilitation Act.

3404.1 Scheduling. If the individual elects to have a mediation session, either the Assistant Director, Rehabilitation Programs and Field Services (if the complaint originates from the field program) or the Assistant Director, WV Rehabilitation Center Services (if the complaint originates from the Center) shall notify the individual or the individual's representative in writing that a mediation session will be scheduled. Mediation sessions must occur within the 60-day time limit for conducting a fair hearing and do not extend the time limit for completion of the due process, except that either party may request a reasonable extension.

3404.2 Mediator. The Division will maintain a list of qualified mediators who are trained in effective mediation techniques and who: are not employees or family members of employees of the Division; are not members of the State Rehabilitation Council; have not

been involved previously in the vocational rehabilitation of the applicant or eligible individual; are knowledgeable of the vocational rehabilitation program and applicable federal and state laws and policies; and have no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during mediation proceedings. The mediator will have responsibility for conducting the mediation sessions and for submitting a written report of the outcomes of the mediation to the Assistant Director, Rehabilitation Programs and Field Services, or the Assistant Director, WV Rehabilitation Center Services, as appropriate.

3404.3 Confidentiality. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process will be required to sign a confidentiality pledge prior to commencement of such process.

3405 Resolution Following Mediation. If a remedy negotiated through the mediation process is accepted by the individual and/or the individual's representative, and the request for fair hearing is withdrawn, the grievance will be considered resolved. If a remedy is not negotiated through the mediation process:

A. *Timeframe for Response.* The individual or individual's representative will have 5 working days upon receipt of the results of the Mediation in which to notify the Division whether he/she accepts the resolution offered or chooses to proceed to a Fair Hearing. If the individual or individual's representative does not respond within 5 working days upon receipt of the results of the Mediation, it will be implicit that the resolution has been accepted and the dispute is resolved.

B. *Form of Notification.* The WVDRS-14 will include a statement and dated signature from the individual indicating either the individual's acceptance of the outcome of Mediation or the decision to proceed to Fair Hearing.

C. *Extension of Timeframe.* If the individual or individual's representative elects to extend the 5 working day time limit on choosing the next review option, the individual or representative must notify the Division of the need for the extension within the five day limit. If an extension is requested, the Division may extend the 60 calendar day time requirement to conduct the fair hearing to a period of time that is agreeable to both parties. This agreed upon timeframe will be recorded on the WVDRS-14.

3406 Fair Hearing. During the fair hearing, the individual will have opportunity to present evidence and witnesses, be represented by legal counsel or by an advocate, and be able to examine all witnesses and other sources of information and evidence.

3406.1 Scheduling. Either the Assistant Director, Rehabilitation Programs and Field Services, or Assistant Director, WV Rehabilitation Center Services, as appropriate, or the Impartial Hearings Officer shall notify the individual or the individual's representative in writing that a hearing will be scheduled. The Impartial Hearings Officer will assume

responsibility for scheduling, conducting, and reporting the fair hearing. The hearing will be scheduled so as to ensure that it will be conducted within 60 days of the Division's receipt of the individual's initial request for review, except that either party may request a reasonable extension. This agreed upon timeframe will be recorded on the WVDRS-14.

3406.2 Impartial Hearings Officer. The Impartial Hearings Officer will be a non-Division employed individual who is appointed by the Director on the basis of demonstrated ability in conducting hearings. The officer also will be a person who:

- A. Has not been involved in previous decisions regarding the dissatisfied vocational rehabilitation applicant or individual;
- B. Possesses background and knowledge of the delivery of vocational rehabilitation services;
- C. Is thoroughly familiar with provisions in the approved State Plan;
and,
- D. Has no personal, economic, or professional interest in the outcome of the hearing other than the proper application of federal and state laws, regulations, and policies.

3406.3 Setting Date, Time, and Place. The Impartial Hearings Officer will set the date, time, and place of the hearing. Immediately upon setting the date, time, and place of the hearing, the Impartial Hearings Officer will inform the parties. The parties will be informed by certified mail of the date, time, place, and other pertinent details.

3406.4 Withdrawal of Individual from Hearing. After receiving notice of the date, time, and place of the hearing, the individual may withdraw from the hearing at any time by giving written notice to the Impartial Hearings Officer. In turn, the Impartial Hearings Officer will notify all parties concerned, in writing, of the individual's withdrawal. The Counselor will file that notice in the case folder.

3406.5 Postponement of Hearing. After notice of the date, time, and place of the hearing has been published by the Impartial Hearings Officer, either party involved in the hearing may request a postponement. Postponements may be granted at the discretion of the Impartial Hearings Officer upon a determination that sufficient cause has been presented and both parties agree to the postponement. When a postponement is granted, the Impartial Hearings Officer will notify the parties by certified mail of the new date, time, and place of the hearing.

3406.6 Abandonment of Fair Hearing. Should the individual fail to appear for the hearing without giving prior notice of inability to be present, the hearing is considered to be abandoned. In such an instance, the Impartial Hearings Officer's report to the Division's

Director will state that the individual was not present, that the individual did not give notice of inability to be present, and that the hearing, therefore, is presumed abandoned without prejudice.

3406.7 Dismissal of Fair Hearing. During the course of the hearing, the individual and/or the individual's representative may request the Impartial Hearings Officer to dismiss the hearing. In such an instance, the Impartial Hearings Officer's report to the Division's Director will include a statement that the individual and/or the individual's representative requested that the hearing be dismissed and state the reasons for the request as announced by the individual and/or the individual's representative.

3406.8 Mailing of Impartial Hearings Officer's Decision to Individual. Within 30 days of completion of the fair hearing, the Impartial Hearings Officer will provide a full written report of findings, the decision, and grounds for the decision to the individual, and/or the individual's representative, and to the Division Director.

3406.9 Review of the Hearing Decision. The individual and/or the individual's representative and the Division may request review of the Hearing Officer's decision within 20 days after the decision.

3407 Reviewing Official. The Chief Official of the designated state agency, the Secretary of the West Virginia Department of Education and the Arts, serves as the Reviewing Official for the Division. If the Reviewing Official decides to review the decision made by the Hearing Officer, the Reviewing Official shall so notify the individual and/or the individual's representative in writing within 20 days of the mailing date of the Hearing Officer's decision, including notice that the individual and/or the Division will have the right to submit additional evidence and information pertaining to the matter under review.

3407.1 Reviewing Official's Decision.

A. If the Reviewing Official does not notify the individual and/or the individual's representative of intent to review the decision within 20 days, the Impartial Hearings Officer's decision will become final on the 21st day following its mailing date.

B. The Reviewing Official will not overturn or modify the Impartial Hearings Officer's decision unless s/he concludes, based on clear and convincing evidence, that the decision of the Impartial Hearings Officer is erroneous on the basis of being contrary to the State Plan or any state regulation or policy that is consistent with federal requirements.

C. The Reviewing Official will make a final decision with respect to the matter within 30 days and provide to the individual, the individual's representative, and the Division a full written report of the findings and grounds for such decision.

3407.2 Individual's Recourse. The decision of the Reviewing Official in the fair hearing is final and binding on the part of the Division. After the Reviewing Official's

decision is made, the individual's recourses for relief from within the Division are exhausted. Authority to overturn the Reviewing Official's decision rests with the courts. Any individual has the right to seek judicial review after all administrative reviews are exhausted. In the final decision, the Reviewing Official shall inform the individual of the right to review to any State or district court of the United States of competent jurisdiction for judicial review.

3408 Report to Rehabilitation Services Administration. The Division annually prepares and submits to the Rehabilitation Services Administration Commissioner a report containing:

- A. A description of state procedures for review;
- B. The number of reviews to the independent Impartial Hearings Officer and the Director, including type of complaint and the issues involved;
- C. The number of decisions by the Reviewing Official reversing in whole or in part the decision of the Impartial Hearings Officer; and,
- D. The number of decisions affirming the position of the individual assisted by the Client Assistance Program (CAP).

Summary of WVDRS Request for Review Process

The West Virginia Division of Rehabilitation Services (DRS) offers several ways for you and DRS to reach a mutually acceptable solution to any issue about your vocational rehabilitation program, with which you are dissatisfied or disagree. You have the right for your concerns to be reviewed.

To start the review process, please complete the information below, or provide a letter containing similar information, and give to your DRS counselor.

An overview of the process.

- **Local Reconciliation:** You and/or your representative and your rehabilitation counselor may ask your counselor's supervisor to help resolve issues or review a counselor decision.
- **Administrative Review:** If you are not satisfied with the findings of the local reconciliation, you may request a review by the appropriate Assistant Director; either the Assistant Director, Rehabilitation Programs and Field Services or the Assistant Director, WV Rehabilitation Center.
- **Mediation:** Qualified mediators are available to conduct a mediation meeting between you and your counselor to try to reach a mutually acceptable agreement.
- **Fair Hearing:** A hearing is an opportunity for you and DRS staff to present personal and witness testimony and written information/evidence about unresolved issues to an impartial hearing officer who is not a DRS or other government employee.

You may wish to take advantage of every option including the local reconciliation, administrative review and/or mediation, but you also have the right to proceed directly to a fair hearing.

DRS has the responsibility to conduct a fair hearing within 60 calendar days from the date the Request for Review is received. Because of this short time frame, you have the responsibility to notify your counselor in a timely manner of your decision or choice.

- At each level of the review process, you have five (5) working days to notify DRS of how you wish to proceed.
- If you need more than five (5) working days to make your decision, you must notify your counselor within that five (5) working day time frame.
- If DRS does not receive from you, within five (5) working days, your intent to proceed to the next level or a request for an extension, the decision of the previous level will stand.
- If you chose to take more than five (5) working days, DRS may request an extension of the 60 calendar day time requirement to conduct the fair hearing to a period of time that is agreeable to both parties.

Complete this form and return to your DRS Counselor.

Name (please print)			Phone	
Address	Street/Box	City	State	Zip
Email (optional)		DRS Counselor		

Please describe in the space below, or on additional sheets, if necessary:

1. Your specific complaint: (Provide as much specific information as possible, including approximate dates, to explain why you are dissatisfied.)

2. A decision that you feel would be fair/what you would like changed:

Client/Representative/Guardian Signature

Date

Request for Review

The review meetings and/or hearing will be held at a DRS local office that it is convenient to you.

Please check any accommodation you will require for the review process:

- ☐ Interpreter
- ☐ CART or note taking
- ☐ Braille
- ☐ Large Print
- ☐ Other (specify) _____

I understand I have 5 working days upon filing a request for review to choose a review level. If I cannot make my choice within 5 days, I must notify my counselor within the 5 working day timeframe. If I need additional time, I understand DRS may request an extension of the 60 calendar day time requirement for conducting a fair hearing to a time period that is agreeable to both of us.

I need until (date) _____ to select a review level. Extension Date agreed to: _____

I choose to start the review process with:

- ☐ Local Reconciliation
 ☐ Administrative Review
 ☐ Mediation
 ☐ Fair Hearing

Client's Signature and Date

WVDRS Representative Signature and Date

I need until (date) _____ to select a review level. Extension Date agreed to: _____

I do not agree with the decision made at the previous level, therefore I choose to continue the review process with:

- ☐ Administrative Review
 ☐ Mediation
 ☐ Fair Hearing

Client's Signature and Date

WVDRS Representative Signature and Date

I need until (date) _____ to select a review level. Extension Date agreed to: _____

I do not agree with the decision made at the previous level, therefore I choose to continue the review process with:

- ☐ Mediation
 ☐ Fair Hearing

Client's Signature and Date

WVDRS Representative Signature and Date

I need until (date) _____ to select a review level. Extension Date agreed to: _____

I do not agree with the decision made at the previous level, therefore I choose to continue the review process with:

- ☐ Fair Hearing

Client's Signature and Date

WVDRS Representative Signature and Date

3500 COUNSELING AND GUIDANCE.

3501 Policy.

3501.1 Initial Contact. Whether or not the individual decides to apply, the Rehabilitation Counselor should inform the individual of any appropriate services, such as those offered by Work4WV Career Centers, that might be available from other agencies or organizations and offer to refer the individual to those services.

A. *Individual Applies.* If the individual decides to apply for rehabilitation services, the Rehabilitation Counselor should complete the *Social Profile* and all other pertinent folders as appropriate and provide any necessary counseling and guidance regarding initiation of the preliminary diagnostic study.

B. *Individual Does Not Apply.* If the individual decides not to apply, s/he should be encouraged to contact the Division at any future time to again discuss an application for services.

3501.2 Report to Referral Source. The Rehabilitation Counselor will inform the individual of any report to the referral source. The Rehabilitation Counselor will not attempt to advise the individual regarding any possible effect upon the individual's relationship with the referral source of the individual's decision not to apply for rehabilitation services, especially if the referral was mandatory. The Rehabilitation Counselor may suggest that the individual contact an appropriate representative of the referral source before making a final decision not to apply.

3501.3 Notification of In/Eligibility Decision. The Rehabilitation Counselor will provide counseling and guidance to assure that the applicant has received an adequate explanation of the eligibility decision and that the applicant has received an explanation of how the decision affects the applicant's future relationship with the Division.

A. *Ineligible Applicant.* The ineligible applicant will be provided any beneficial vocational counseling and guidance that may be offered as a result of the Rehabilitation Counselor's interpretation of information developed during the preliminary diagnostic study. If the applicant disagrees with the Rehabilitation Counselor's decision, after receiving counseling and guidance, the Rehabilitation Counselor will provide the applicant an explanation of the rights of appeal.

B. *Eligible Applicant.* The Rehabilitation Counselor will provide counseling and guidance to the eligible individual to assure that the applicant understands the plan for further action on the application. The meeting may provide an opportunity to initiate the program formulation phase or trial work experience(s).

3501.4 Documentation. The date on which an applicant signs the *Application for Rehabilitation Services* will be considered the entry date for this status. The Rehabilitation

Counselor will complete the *Rehabilitation Assessment Package* (RAP) section of the Electronic Caseload

Management (ECM) system. The Rehabilitation Counselor will document significant counseling and guidance provided during the applicant phase or any extenuating circumstances relevant to case development in the *Comments* box of appropriate sections of the RAP.

3501.5 Pre-Service Listing (Status 04). The Rehabilitation Counselor will document any significant information gathered to determine that the individual does not meet the order of selection under *Counselor's Comments* section of ECM. The Rehabilitation Counselor will notify the individual in writing of the decision that services will be delayed until the particular order of selection is re-opened. This notification will contain information about services available from a Work4WV Career Center or other workforce partners. The Rehabilitation Counselor will insure that the individual understands that s/he will be placed on a waiting list and will be notified of any change in the order of selection that would allow the individual to receive services from the Division.

3501.6 Eligibility Determination (Status 10). The Rehabilitation Counselor will document significant counseling and guidance provided during the program formulation phase in the Action / Details section of ECM.

3501.7 Program Formulation (Status 12). The Rehabilitation Counselor and/or the individual will complete the Individualized Plan for Employment (IPE). The date the IPE is signed will be the effective date for this status. The Rehabilitation Counselor will document any extenuating circumstances concerning the IPE under the "Comments" section of the IPE or in the Actions / Details section (see also Section 2700).

3501.8 Program Implementation (Statuses 14, 16, 18, 20, 22, and 24). The Rehabilitation Counselor will review regularly and evaluate the individual's progress toward the rehabilitation goal throughout the course of the program. The Rehabilitation Counselor will be available to the individual for counseling and guidance and other services as the individual confronts and attempts to resolve his/her vocational, psychological, social, medical, and behavioral challenges. The Rehabilitation Counselor will document significant counseling and guidance provided during the program implementation phase in the Actions / Details section.

3501.9 Intensive Counseling and Guidance (Status 14). If intensive counseling and guidance are provided during the program implementation phase under an approved IPE in Status 14, the Rehabilitation Counselor, in consultation with the individual, will prepare the IPE and document the events and results of that effort in Actions / Details section. The IPE should describe clearly the substantial vocational to be addressed. The approximate frequency and number of intensive counseling and guidance sessions that the Rehabilitation Counselor plans to provide will be specified. The IPE should describe clearly intermediate and long-term objectives for the intensive counseling and guidance effort and specify appropriate objective criteria for reviewing and evaluating the individual's progress toward those objectives. The Rehabilitation Counselor will summarize the results of each intensive counseling guidance session under Actions / Details section, including a statement of the problem(s) discussed, a description of significant contributions to the session by both the Rehabilitation Counselor and the individual, and an evaluation of the session in

terms of progress toward intermediate or long-term objectives of the IPE. Upon concluding the intensive counseling and guidance effort, the Rehabilitation Counselor will summarize the results of the effort in terms of the objectives of the IPE and of demonstrable, substantial benefits to the individual' s employability Actions / Details section.

3501.10 Placement. The Rehabilitation Counselor is expected to take a leadership role in the placement process and is responsible for assuring the individual is placed into suitable employment consistent with the vocational goal, prior to closure of the individual' s case as being rehabilitated. Counseling also should address the individual' s responsibility to actively and cooperatively participate in the placement process.

3501.11 Closure (Statuses 08, 26, 28, 30, and 38). The Rehabilitation Counselor will initiate the closure phase when it is mutually decided with the individual that further rehabilitation services will be of no further benefit in terms of employability.

A. *Rehabilitated Closure (Status 26).* Upon determining that the individual' s vocational situation and case record meet the criteria for a successful closure, the Rehabilitation Counselor may close the case as rehabilitated. The Rehabilitation Counselor' s primary responsibilities are to determine whether the individual has been successfully placed into suitable employment consistent with the rehabilitation goal and whether there is reasonable expectation that the individual would obtain additional substantial benefits to employability. The Rehabilitation Counselor and individual should engage in a closure process through a discussion of services received, vocational adjustment, vocational plans, concerns about future service needs, and the Rehabilitation Counselor' s rationale for the rehabilitated closure.

B. *Non-Rehabilitated Closure (Statuses 08, 28, 30, and 38).* Written notification of the closure decision may be supplemented by a meeting with the individual if the Rehabilitation Counselor determines that such a meeting would be of assistance to the individual and the individual agrees. The Rehabilitation Counselor will document significant counseling and guidance provided during the program closure phase in the Actions / Details section of ECM. The Rehabilitation Counselor will provide counseling and guidance to assure that the following is accomplished:

1. The individual has received an adequate explanation of the rationale for the non-rehabilitated closure decision.

2. If the individual disagrees with the Rehabilitation Counselor' s decision for closure, the Rehabilitation Counselor will provide counseling and guidance to assure that an adequate explanation of the individual' s rights to appeal is provided.

3. The individual has received assistance in obtaining services from other agencies and organizations, including referral to the Work4WV Career Center, that may be helpful in meeting his/her needs.

4. The individual has been informed that the closure decision will be reviewed within one year if the closure occurs after the individual applies for services, and if the closure decision is based on either an unfavorable medical prognosis or a determination that the disability is too severe to permit reasonable expectation that rehabilitation services will benefit him/her substantially in terms of employability.

5. The individual has been informed that s/he may reapply for rehabilitation services at any future time.

3502 Guidance.

3502.1 General. The one-to-one relationship between an individual and a Rehabilitation Counselor is the foundation of the rehabilitation program. The services provided by the Division receive their focus and fulfill the Division's mission only through the counseling and guidance provided by the Rehabilitation Counselor.

A. *Counseling* is a generally accepted term to indicate an interaction with an individual wherein the individual receives assistance in coping effectively with important problems or concerns, in developing plans and making decisions, in exploring feelings about self and significant others, in changing ineffective behaviors to more effective behaviors, and in making an adequate adjustment.

B. *Guidance* is a term generally accepted to indicate a qualitatively different interaction with the individual wherein the Rehabilitation Counselor serves as a giver of information, a coordinator, an advocate, or as a mediator.

C. *Personal Contacts and Progress Reviews.* In order to ensure sufficient communication occurs to maintain the Counseling and Guidance relationship, the Counselor will conduct regular personal contacts and intermediate objective progress reviews:

1. *Method of Review.* A personal contact must be made every 60 calendar days, at a minimum, when an individual's case is in status 02 through 12 and once the case enters into status 22. All active cases in which the services on the IPE have been implemented (status 14 and above, with the exception of 22) are to have a progress review contact every 90 calendar days, at a minimum.

Contact in the form of face-to-face or telephone conversation is preferable. However, interactive electronic communication is acceptable if other methods of communication are prohibitive (e-mail in which the client responds). Correspondence through the mail does not constitute personal contact. Personal contact made by other employees of the Division in the rehabilitation process, e.g.,

vocational evaluators or employment specialists may also be used to meet the 60 / 90 day requirements. It will be

the responsibility of the Counselor; however, to ensure that personal contact from Division staff is occurring within the 60 / 90 day timeframe. The issues discussed will be recorded using the Actions / Details section of ECM.

2. Application, Assessment, and Employment Phase. Personal contacts during these phases are to be conducted every 60 days, at a minimum. The personal contacts during the application and assessment phase (status 02 through 10) will address assessments and interpretation of information gathered to determine eligibility and IPE development. The personal contacts during status 12 will address the progress toward IPE service implementation and any other pertinent information. During status 22, personal contacts will address the individual's employment, adaptation to the employment situation, or obstacles and plans for remediation of the obstacles.

3. Intermediate Objective Review. In order to ensure sufficient communication occurs to maintain the Counseling and Guidance relationship and to ensure that adequate progress is being made toward the vocational goal, the Counselor must review the appropriate intermediate objective(s) on the IPE with the individual at least every 90 calendar days. This applies to all active cases in which the services on the IPE have been implemented (status 14 and above, with the exception of 22). The Counselor will discuss the progress, or lack thereof, toward meeting the agreed upon objectives and will address any obstacles toward reaching the vocational goal with plans to overcome any obstacles.

D. In everyday practice the two terms are used somewhat interchangeably. For purposes of this manual, *counseling and guidance* will refer to the entire range of functions performed by the Rehabilitation Counselor on behalf of the individual. Discussed in following paragraphs are the major counseling and guidance functions of the Rehabilitation Counselor in each phase of the VR process.

3502.2 Initial Contact. The Rehabilitation Counselor should promptly attempt to contact an individual. Counseling and guidance efforts include assuring that the individual understands the character of the Division's services, the criteria for determining an applicant's eligibility for services, the nature of the involvement of any third party referral source, and how the Division might be able to be of service if the individual is found eligible for rehabilitation services. As in every phase of the rehabilitation process, the Rehabilitation Counselor should carefully avoid any misunderstanding that the Division is obligated to provide services that the Rehabilitation Counselor cannot properly deliver. An explanation that the Division is part of a wider workforce development system should occur.

3502.3 Applicant Phase (Status 02). During the applicant phase, the Rehabilitation Counselor completes the preliminary diagnostic study and determines the individual's eligibility for rehabilitation services.

3502.4 Preliminary Diagnostic Study. The Rehabilitation Counselor and the applicant will select the services necessary to accomplish the goals of the preliminary diagnostic study.

The Rehabilitation Counselor will facilitate, arrange, coordinate, and monitor the needed services. The services will be selected in consultation with the applicant, and the Rehabilitation Counselor will provide counseling and guidance to assure that the applicant has received an adequate explanation of the importance of promptly completing the preliminary diagnostic study.

3502.5 Guide to Vocational Diagnostic Interviewing.

A. *Purpose.* The Rehabilitation Counselor's major goal during the first few interviews with an applicant should be to analyze and evaluate those vocational problems which can be defined in terms of specific vocational strengths, limitations, and goals, facilitate a prompt determination of eligibility, and develop a strategy to reduce obstacles between the applicant and a successful vocational placement. Vocational diagnostic interviewing is a flexible but patterned effort to obtain extensive, specific, and vocationally relevant information within a reasonably brief period of time, thereby improving both the Rehabilitation Counselor's effectiveness and efficiency.

B. *Technique.* The vocational diagnostic interviewing technique consists primarily of a decision by the Rehabilitation Counselor to routinely and systematically investigate, during an interview, those characteristics and problems of the applicant which would be important to an employer, and to tentatively determine which of those problems and characteristics may be reduced or improved by the provision of appropriate rehabilitation services. The range of relevant topics will vary with the applicant's circumstances and needs; however, the Rehabilitation Counselor may find it helpful to consider:

1. Perception of employability problem(s);
2. Perception of the disability and functional limitations;
3. Motivation for employment;
4. Reason(s) for deciding to apply for rehabilitation services;
5. Vocational goals, plans, and employment history;
6. Educational history, literacy, and computational skills;
7. Composition, stability, and supportiveness of the applicant's family;
8. Financial assets, financial obligations, and available similar benefits;
9. Environmental factors that may affect the applicant's employability (transportation, housing, chemical dependence or substance abuse, legal conflicts, peer group conflicts, etc.); and,

10: Leisure activities that may have vocational relevance.

3502.6 Pre-Service Listing (Status 04). The Rehabilitation Counselor should assure that the individual understands that s/he will remain in this status for an undetermined amount of time, be placed on a waiting list, and notified of any change in the order of selection that would allow the individual to receive services from the Division.

3502.7 Program Formulation (Status 10). During the program formulation phase, the comprehensive assessment is completed and the IPE for the eligible individual is developed by the individual and/or the Rehabilitation Counselor.

3502.8 Comprehensive Assessment. The comprehensive assessment is an extension of the preliminary diagnostic study, and will include more extensive evaluations of the individual's vocational limitations, aptitudes, interests, and transferable skills. The Rehabilitation Counselor will provide counseling and guidance to assure that the individual understands the purpose and vocational context of the comprehensive assessment.

3502.9 Establishing the Vocational Goal. Since the individual must approve of the vocational goal if the program is to succeed, the individual will make the final selection of the goal. The Rehabilitation Counselor will function primarily as a vocational expert, assisting the individual in every appropriate way toward selection of a suitable vocational goal. The Rehabilitation Counselor may need to provide extensive counseling and guidance with the individual to assist in the understanding of vocational goal possibilities, and in exploring preferences among alternatives for future rehabilitation services. With the Rehabilitation Counselor identifying the relative advantages and disadvantages of possible vocational goal choices, the individual is assisted toward an appropriate choice. Vocational goal choices decided upon by the individual and Rehabilitation Counselor will be consistent with information developed during the preliminary and comprehensive assessments and within Division policies. If clear and convincing evidence indicates that the vocational goal selected by the individual is inappropriate, counseling and guidance will be provided in an effort to find a more appropriate vocational goal. If the individual continues to disagree with the Rehabilitation Counselor's decision not to endorse the vocational goal, the Rehabilitation Counselor will explain the individual's right to appeal (see Section 3400).

3502.10 Selection of Rehabilitation Services. The Rehabilitation Counselor will provide counseling and guidance to assure that the individual understands his/her responsibility for actively participating in receiving services included in the IPE and understands the contribution of each service toward accomplishment of the vocational goal. The Rehabilitation Counselor and individual will determine the scope of rehabilitation services to be included in the IPE, but will avoid including a service which would not have a substantial and beneficial effect on the individual's employability in the chosen vocational goal or which is in conflict with Division policies.

3502.11 Financial Participation by the Individual. The individual will receive counseling and guidance and will be encouraged to participate financially in the cost of rehabilitation services to which the provisions of economic need apply. Counseling and guidance will assure that the individual has received an explanation of the rationale for requesting the

individual to participate financially in the cost of the program and for the level of participation requested. The individual's level of financial participation will be determined by the Rehabilitation Counselor and individual after equitable negotiation with the individual or the individual's representative. Unless the individual requests, the Rehabilitation Counselor will not delay initiating the IPE in order to conclude similar benefit arrangements if the delay constitutes a threat to the success of the individual.

3502.12 Program Implementation (Statuses 14, 16, 18, 20, 22, and 24).

During the program implementation phase the individual receives the services described in the IPE as necessary to accomplish the rehabilitation goal. The Rehabilitation Counselor has several responsibilities during the phase, including the provision of counseling and guidance, and vocational placement services. Through the counseling and guidance offered, the Rehabilitation Counselor will strive to assist the individual in developing effective skills in problem definition, fact finding, problem solving, self correction of ineffective coping skills, maintenance of a positive self image, effectively relating to significant others, selecting appropriate life goals, realistic planning, sustaining goal-directed activities, and in coping with both failure and success.

3502.13 Arranging and Coordinating Services. The Rehabilitation Counselor will facilitate, arrange, coordinate, and monitor as necessary for timely delivery of the services included on the IPE. If the individual requests, the Rehabilitation Counselor may participate in arrangement and coordination of services not included in the IPE if those services are available from third party resources without cost to the Division and the Rehabilitation Counselor determines that the services would be appropriate to assist the individual in securing employment.

3502.14 Intensive Counseling and Guidance (Status 14). The Rehabilitation Counselor may elect to provide counseling and guidance only as the primary rehabilitation service. The IPE may include other rehabilitation services to be provided prior to or after, but not concurrent with the intensive counseling and guidance in Status 14. The intensive counseling and guidance will be directed primarily toward resolving problems which present substantial obstacles to the individual's obtaining, retaining, or preparing for successful placement into suitable employment consistent with the rehabilitation goal. The Rehabilitation Counselor should consider that an evaluation of the individual by a psychiatrist or clinical psychologist is often helpful in the preparation of counseling strategies and may assist the Rehabilitation Counselor in avoiding a variety of difficulties which can arise from an inadequate Counselor understanding of the individual's problems and needs. The Rehabilitation Counselor will approach the intensive counseling and guidance relationship with appropriate deliberation and exercise counseling and guidance skills at their highest levels. The sequence of intensive counseling and guidance sessions should be structured so that the objectives of the IPE are adequately addressed and that the cumulative effect of the counseling and guidance provided is to develop the individual's capacities and skills of independent, effective decision making and action.

3502.15 Closure (Statuses 08, 26, 28, 30, and 38). When appropriate, prompt action to initiate the closure phase may help the Rehabilitation Counselor avoid a variety of difficulties in caseload management and help the individual avoid an over reliance upon the Division's assistance in coping with ordinary life problems. For a Status 38 closure, the

Rehabilitation Counselor will be notified by Management Information that the case is removed from the waiting list.

3502.16 Terminating Post Employment Services (Statuses 46, 48, and 50).

The Rehabilitation Counselor will provide counseling and guidance to the individual upon terminating post employment services. Counseling and guidance will provide the information necessary concerning the maintenance of employment (Status 46) and will ensure that the individual understands his/her right to reapply for rehabilitation services if the maintenance of employment was not successful (Status 48), and the need to reapply if a new disability requires additional rehabilitation services (Status 50).

3600 REHABILITATION TRAINING.

3601 General. Rehabilitation training is any form of organized instruction provided to the individual to enable him/her to attain an intermediate rehabilitation objective specified in his/her Individualized Plan for Employment (IPE). For purposes of this section, post secondary training programs are defined as those institutions that have an established curriculum, offer formal classroom instruction, award a degree/certificate, publish a course catalog, and issue grades on a regular term basis.

3602 Point in the Rehabilitation Process When Rehabilitation Training Planned. Rehabilitation training may be provided while the individual is in active status or while s/he is in post employment services status. The planning of rehabilitation training will be accomplished during formulation of the initial or amended IPE governing the particular phase of the individual's rehabilitation process.

3602.1 Active Status Training. Rehabilitation training that the individual will receive during active status will be planned during the program formulation phase of the rehabilitation process. It will be in direct relation to the specific job objective or range of job objectives set forth in the initial or amended IPE. The type, duration, training facility, and other details of the training will be made part of the amended or initial IPE governing the individual's rehabilitation in Status 16 and beyond. When required by the individual, personal and/or work adjustment training may be provided in active status.

3602.2 Post Employment Training. Rehabilitation training to be provided the individual as a post employment service will be planned during formulation of the amended IPE for post employment services. It is limited to vocational training. See Section 3100.

3603 Conditions Under Which Rehabilitation Training May Be Provided. Vocational training may be provided to the individual only when s/he has a permanent functional impairment. If the disability on which eligibility is established (the disability that imposes the substantial vocational impediment) can be removed or reduced to the point of eliminating the substantial vocational impediment, vocational training will not be provided by the Division. The provision of vocational training will be viewed always as a means of reducing the effects of the individual's permanent functional impairment.

3603.1 Additional Factors for Consideration. In addition to the individual having a permanent functional impairment, the following conditions also should be considered before vocational training may be provided to the individual under Division sponsorship:

A. The job or job range for which the individual is to be trained should be one for which there will be a placement demand at the time the individual completes the training and is ready for placement. If placement is not available in the local area, the individual must be willing to relocate as a means of facilitating placement. In view of the foregoing, the

Rehabilitation Counselor must carefully consider the long range outlook, particularly when a four-year college training course is being considered.

B. Through complete medical evaluation in the comprehensive assessment, the individual must have sufficient functional capacities for the training.

C. Through psychological testing and other appropriate means of assessment, the individual must have a strong aptitude, desire, and preference for the job or job range in which s/he will be placed, and the necessary maturity, self-discipline, intellect, emotional stability, social functioning level, communications ability, and other factors that serve as indicators of successful completion of the training.

3603.2 Note on Licensure. If the individual is a convicted felon and the training being considered is for an occupation that requires licensure, there may be a question whether the individual may be licensed, owing to his/her criminal record. In such a case, the Rehabilitation Counselor will resolve the matter with the appropriate state licensing board.

3604 Maximum Fees for Sponsorship of Training. The maximum amount that may be paid by the Division for college costs as well as occupational skill training provided through a vocational school or program is \$3,500 per 12 month period. The maximum fee does not include college summer school for which a separate maximum fee is established. The twelve month period will become effective on the date the individual begins training at the onset of the school term. This maximum applies to both undergraduate and post-baccalaureate college enrollment and includes costs for all tuition, room and board, books and supplies, maintenance and other incidental costs. The maximum will not apply to training services that are pre-vocational in nature and are intended to prepare an individual for occupational skill training or direct job placement.

3604.1 Maximum Fee for Summer School. The maximum payment for college summer school is \$100 per credit hour for tuition and \$100 for books and supplies for each summer session. Payment of maintenance for summer school room and board will not be allowed. Transportation maintenance for summer school may be provided in accordance with Section 4300.

3604.2 Exceptions to the Maximum Fee. Exceptions to the maximum fee may only occur when the individual has exhausted all other sources of financial aid, including the availability of all deferred, direct student loans available through the Financial Aid Office, whether subsidized or unsubsidized, and the balance of unmet need continues to exceed the Division's maximum fee. The student must exhaust only direct student loans that are available through the United States Department of Education and will not be expected to incur debt from personal loans such as bank or home equity loans. The method for determining the level of contribution from the Division in making an exception will depend on whether the institution is an in-state public institution or otherwise.

A. *In-state Public Institutions or Institutions with Reciprocal Agreements.*

Exceptions to the maximum fee may only occur when the individual student has exhausted all available financial aid, including loans, and have a remaining balance of unmet need utilizing the Student Budget established by the Financial Aid Office of that institution.

B. *Out-of State or Private Institutions.* Exceptions to the maximum fee may only occur when the individual student has exhausted all available financial aid, including loans, and have a remaining balance of unmet need utilizing the Student Budget established by the WVU Financial Aid Office.

C. *Requests for Exceptions.* Requests must be submitted to the Assistant Director, Rehabilitation Programs and Field Services, along with evidence from the individual and the office of financial aid in the institution in which the individual is enrolled, indicating the use of all available aid and loans. See paragraph on Student Loans later in this section for information about direct student loans.

3604.3 Varying Term Lengths. Institutions vary in the length of terms they provide. Classes may be offered on a semester, trimester, or quarterly basis. In some colleges students attend classes quarterly throughout the year and complete baccalaureate work in three rather than four years. In calculating the level of sponsorship for each term, the Counselor will consider the total cost of the student's budget for the full year of any training program and divide accordingly by the number of terms, whether semesters, trimesters, or quarters. The maximum level of sponsorship will remain at \$3,500 whether the student attends year-round or for two semester terms.

3605 Economic Need and Similar Benefits. Similar benefits (e.g., services and/or monetary assistance from sources other than the Division) must be considered fully for all training to be provided in active status. The Rehabilitation Counselor will begin seeking similar benefits as early in the development of the case as possible. Although training should not be delayed while seeking similar benefits, no training services in institutions of higher education shall be paid for with Division funds until maximum efforts have been completed to acquire grant assistance, in whole or in part, from other sources.

3605.1 Student Loan Default. If an individual/student is in default on a student loan, the Division is prohibited from paying the individual's training or college cost. Prior to consideration of Division sponsorship for further training or college, the student must contact the FAO of the institution in which the default occurred to arrange for repayment of the defaulted loan. In the instance of a true hardship, whereby the student has made a responsible repayment effort considering all available resources and cannot meet obligations, Division assistance may be appropriate. After careful examination of all circumstances surrounding this exception, the District Manager may approve this expenditure.

3605.2 Training Services and Economic Need.

A. *Expected Family Contribution as Basis for Economic Need.* The expected family contribution (EFC) is the amount a student and/or family can be expected to contribute toward a student's educational costs. All data used to calculate a student's EFC come from information the student and/or the student's family provides on the Free Application for Federal Student Aid (FAFSA). Regardless of whether the student qualifies for financial aid, the EFC serves as the basis for determining the level of economic need of individuals sponsored by the Division in all higher educational institutions that receive federal aid. The EFC amount indicated by the institution's FAO applies only to training costs such as tuition, room and board, books and supplies, and maintenance. Once the EFC and financial aid from other sources have been applied, the Rehabilitation Counselor may provide assistance for the balance of need, not to exceed the maximum of \$3,500 per school year.

B. *Training Services Subject to Economic Need.* If the individual is receiving Division sponsorship, tuition and fees, maintenance, transportation, and placement/training equipment are subject to economic need considerations. Books and supplies are not subject to the Division's economic needs test. Therefore, the cost of books and supplies may be authorized for those individuals whose EFC equals or exceeds the total college cost and who have no unmet need, as well as those whose EFC may be less than the total college costs, but who do not qualify for other financial assistance and have a balance of unmet need. However, regardless of the cost of books, the total amount that may be paid for supplies is \$40.00.

C. *Support Services While in Training.* The Division's economic need exemption schedule will be used to determine the level of the individual's contribution for all other costs such as physical or mental restoration services, rehabilitation technology, or other support services needed while the individual is in training. However, if the individual receives SSI or SSDI, other support services will not be subject to economic need.

3606 Selection of Training Facility. In selecting the training facility with the individual, the Rehabilitation Counselor will consider the following:

3606.1 Type Training. Through use of standard educational directories and other materials, the Rehabilitation Counselor will determine those institutions offering the desired training.

3606.2 Accreditation/Approval. The Division will use only accredited or approved institutions. Such accreditation will be by legal authority (such as state board of education), voluntary associations of colleges and universities, or professional or trade associations. In every case, the Rehabilitation Counselor will assure that the facility selected has proper accreditation, with the diploma, certificate, credits, or other proof of course completion meeting ready acceptance by employers in the individual's job objective or range

of job objectives. The Division itself approves certain types of training facilities, primarily community rehabilitation programs. These may be used when appropriate.

3606.3 Out of State/Private Institutions. The Rehabilitation Counselor will encourage the individual to attend in-state public colleges or universities whenever the individual's field of study is available within the state. All IPEs written using an out of state or private institution will require the Branch Office Manager's approval.

A. Academic Common Market or Reciprocal Agreements. If the individual's field of study is not available within a public in-state institution the Rehabilitation Counselor and the individual will determine whether the field of study is available through an institution that is either a member of the Academic Common Market or has a reciprocal agreement at in-state public rates. The Academic Common Market is a joint program that enables students to pursue unique majors offered at public institutions in other states while paying in-state tuition, or to enroll in institutions with reciprocal fee agreements at in-state rates. Information about the Academic Common Market or reciprocal agreements may be obtained from either the Southern Regional Education Board website or by contacting the institution. It is the Counselor's responsibility to advise the individual of the cost effectiveness of attending either in-state public institutions or those participating in reciprocal agreements at lower costs to the individual.

B. Application of WVU Rates. If the individual elects to attend a private or out-of-state college or university that does not have a reciprocal fee arrangement, the Counselor will advise the individual that WVU in-state rates will be utilized in determining the maximum level of contribution from the Division in the event the individual requests an *exception to the maximum fee*. Policy found earlier in this section under Exceptions will be applied.

3607 Types of Vocational Training.

3607.1 Employment Readiness Services. Employment Readiness Services are time limited training services designed to assist persons seeking employment to address the following qualities: general work information, work ethic, on-the-job performance skills, work-related communication skills, crossover skills, personal barriers to employment, and job seeking skills. The Counselor may seek these services from acknowledged providers, such as the West Virginia Rehabilitation Center (WVRC), Work4WV Career Centers, or Community Rehabilitation Programs offering Employment Readiness Programs. Appropriate fees and codes for the following types of Employment Readiness Training may be found in Section 7200 of the *WVDRS Resources Manual*.

A. Life Skills Development (Formerly Life and Work Skills). This is a two phase competency based curriculum program designed to assist persons seeking employment to develop or restore effective work behaviors, attitudes, personal characteristics, and/or functional capacities, and to achieve and maintain positive employment outcomes. The individual may enroll in Phase I solely if no additional assistance is needed, however, in order to participate in the entire program, the individual must first enter and complete Phase I. Based on the individual needs of the person seeking employment, one or more of the areas listed in the Life Skills Development outline should be requested in writing by the counselor from an acknowledged service provider. See form at the end of this section.

1. *Phase I.* Phase I emphasizes educational experiences, behavioral modification techniques, coping skills development, and a short experience in a work environment (paid or unpaid) which will better prepare an individual for employment. Prior to the completion of Phase I, the Life Skills staff, the Rehabilitation Counselor and the client will determine whether referral into Phase II is appropriate. Authorization for Phase I will be limited to a maximum of 50 service days.

2. *Phase II.* Phase II continues with the development of Phase I skills, but changes emphasis to work performance skills, i.e., quality of work, quantity of work, and teamwork in a paid or unpaid work environment under the close direction of the Life Skills Development staff. Authorization for Phase II will be limited to a maximum of 50 service days.

B. *Work Skills Development* (Formerly Work Adjustment). Work Skills Development can be an evaluative and/or training service that enables the individual to acquire job readiness skills while performing in actual work settings. It is designed to assist persons seeking employment to develop or restore effective work behaviors, and/or functional capacities to achieve positive employment outcomes. This will be accomplished through written competency based curriculum in a paid integrated or non-integrated work setting. Based on the individual needs of the person seeking employment, one or more of the areas listed in the Work Skills Development outline should be requested in writing by the counselor from an acknowledged service provider. See Figure 3600-1. The Rehabilitation Counselor may authorize up to 60 service days inclusive of an evaluation and training. A period of up to 20 additional service days may be granted with District Manager approval if there is clear evidence the individual needs additional time to improve the individual's employment readiness skills.

C. *Job Seeking Skills.* This service provides training in a group or an individual setting on effective independent job search techniques including: resume preparation, interviewing skills, preparation of employment applications, mock interviews, etc. Based on the individual needs of the person seeking employment, one or more of the areas listed in the Job Seeking Skills outline should be provided by the counselor or requested in writing by the counselor from a Work4WV Career Center or a Division acknowledged Community Rehabilitation Program vendor. See Figure 3600-1.

D. *Job Search Assistance Program* (Formerly Job Club). This is a structured, group approach to self-directed job search, often as an extension of job seeking skills training. The Job Club requires contract commitment to actual job hunting by the individual. Based on the individual needs of the person seeking employment, one or more of the areas listed in the Job Search Assistance Program outline (See Figure 3600-1) should be requested in writing by the Rehabilitation Counselor from one of the following: Employment Specialist located in the District, Work4WV Center, or local Division acknowledged Community Rehabilitation Program vendor. This service is also provided monthly at the West Virginia Rehabilitation Center. This service is limited to 10 service days or less.

3607.2 Training While Working. Following are three forms of non-supported employment training that enable the individual to acquire work skills in an integrated competitive employment setting:

A. *On-the-Job Training (OJT).* OJT is a form of vocational training where the individual acquires job skills under actual conditions of paid employment. The objective of this employer based training program is the successful placement of the individual in competitive employment at the end of the training period. The employer-trainer must agree to pay the trainee at least minimum wage as established by federal law, and all appropriate benefits under state and federal laws pertaining to Workers' Compensation, unemployment insurance, and Social Security.

1. *Considerations.* OJT should be considered when the individual chooses and when it is in the best interest of the individual to learn the job through short, informal periods of instruction followed by longer periods of practical application. Other considerations are the:

a. Potential for placement upon completion of OJT with the same employer providing the training or with another employer;

b. Preference of the individual for OJT as opposed to other types of vocational training;

c. Individual's family and financial responsibilities precluding the individual from relocating to receive another type of vocational training and imposing the necessity for some amount of individual income during training;

d. Provision of concurrent correspondence training to supplement the instruction received during OJT; and,

e. Provision of state law that would terminate the individual's lost-time benefits under Workers' Compensation if s/he earns a salary or wage while receiving OJT.

2. *Selection of Trainer.* When the Rehabilitation Counselor and individual decide to pursue OJT, the Rehabilitation Counselor must arrange for a suitable employer to provide the training. At a minimum, the employer selected by the individual and Rehabilitation Counselor must:

a. Have the proper equipment and physical plan to support the training;

b. Have a sufficient rate of work undertaken by his/her business to assure adequate practice by the individual in all aspects of the job;

- c. Have a person of adequate knowledge, skills, abilities, and proper temperament and personality to serve as the individual's trainer; and,
- d. Follow requirements as outlined in the Memorandum of Agreement.

3. *Workers' Compensation Fund (WCF) OJT Policy.* Workers' Compensation standards for OJT differ from the Division's. If the individual is receiving WCF services, it is mandatory that the Rehabilitation Counselor and individual work with the WCF representative to coordinate and develop the OJT program with the trainer. If this is not done, there is a strong likelihood that WCF payments to the individual will be jeopardized.

4. *Developing an OJT Program.* To initiate an OJT program the Counselor must complete the *OJT Memorandum of Agreement* between the Division and the employer, along with the accompanying *Occupational Cost/Training Outline*, see Figure 3600-2, and obtain the signature of the individual as well as the employer on the Agreement.

5. *Authorization of Tuition.* If required by the trainer/employer, the Rehabilitation Counselor may authorize training tuition to an employer for OJT for up to 60 work days with an approved IPE. If more than 60 work days are required for the OJT, District Manager approval is required. The Rehabilitation Counselor may authorize tuition to cover the individual's salary up to the prevailing wage at the time of the agreement and the cost of the employer's workers' compensation percentage for the employee. The employer-trainer must agree to pay the trainee at least minimum wage as established by federal law, and all appropriate benefits under state and federal laws pertaining to Workers' Compensation, unemployment insurance, and Social Security. When authorizing On-the-Job Training see Section 7200 of the *WVDRS Resources Manual* for the appropriate code.

B. *Job Try-out Program (JToP).* JToP is a time limited program, up to a maximum of 10 working days, which is designed as an employer incentive to achieve job placements for "employment ready" individuals. The program provides the individual an opportunity to display his/her work skills to an employer while receiving a salary, and to gain a greater understanding of the meaning, demands, and rewards of work. The host employer also is provided an opportunity to witness the work qualities of the individual.

- 1. *Employer's Role.* The host business will:
 - a. Train, supervise, and evaluate an "employment ready" individual during an on the job try-out. This can be up to a maximum of 80 (eighty) hours;
 - b. Hire the JToP individual upon his/her satisfactory completion of the job try-out; and,
 - c. Complete a brief worker evaluation report at the end of the individual's job try-out.

2. *Rehabilitation Counselor's Role.* The Counselor will:

- a. Work collaboratively with the Employment Specialist and the Community Rehabilitation Program (CRP) vendor throughout the placement process, particularly job development;
- b. Screen and route all JToP referrals through the Employment Specialist; and,
- c. Refer the individual to the CRP using the referral form provided by the CRP.

3. *CRP Vendor Role.* The CRP will:

- a. Develop a service plan to link the qualified, "job-ready" individual with employer manpower openings based on the individual's IPE;
- b. Act as a temporary employment service. The CRP will establish a temporary employer/employee relationship with the individual and coordinate payment for the worker's wages, including FICA, Unemployment Insurance, and Workers' Compensation;
- c. Provide follow-up services to ensure a smooth transition from the JToP to employment with the host business; and,
- d. Develop a written JToP agreement between the CRP and host business according to accepted rehabilitation-business standards. The agreement will stipulate that the host business who accepts an individual under JToP is expected to hire this individual contingent on his/her satisfactory completion of the job try out. A copy of the agreement will be provided to the Counselor.

4. *Authorization for JToP.* The Counselor will authorize payment to the CRP for the individual's wages, benefits, and CRP administration fee during the JToP, as well as payment for the intake interview and placement, if the individual becomes successfully employed.

a. *Payment for Wages, Benefits, and Administration.* The individual's wages and benefits will be based on an hourly wage customarily paid by the host business to other employees in the positions in which the individual will be working. The formula will be:

$$\underline{\hspace{1cm}} \text{ (hourly wage)} \times 1.865 = \underline{\hspace{1cm}} \text{ (Fee per hour)}$$

b. *Payment for Intake Interview and Placement.* The Counselor will authorize payment to the CRP for an intake interview and a job placement upon receiving the CRP's written reports and invoice upon completion of each service below:

- 1. *Intake Interview.* The CRP Employment Specialist interviews the individual referred to the CRP for the JToP.

2. Full-time or Part-time Employment. The individual has completed all personnel paperwork required by the employer and is on the employer's payroll.

c. *Codes and Fees*. Refer to Section 7200 of the *WVDRS Resources Manual* for the appropriate fees and codes when authorizing Wages, Benefits, Administration Fee, Intake Interview and Placement.

C. *Job Site Training (JST)*. Job Site Training is a form of vocational training whereby an individual receives on-the-job instruction and support from an acknowledged job coach vendor rather than from a supervisor of the employer. This type of JST should be considered for individuals who do not require supported employment, and who have the capacity to maintain a job independently, but need short-term intensive training and support to achieve an employment outcome. Authorization for this service may not exceed 120 hours, nor exceed six weeks in duration.

1. *Criteria for JST*. The following criteria must be met before JST may be considered:

- a. A competitive placement, at minimum wage or higher, and in an integrated setting, has been located and finalized with an employer;
- b. The individual does not require extended follow along services to successfully maintain employment upon completion of services; and,
- c. The assistance of the job coach can be expected to diminish after a relatively short period of time (one to three weeks).

2. *Authorization for JST*. When authorizing Job Site Training, see Section 7200 of the *WVDRS Resources Manual* for the appropriate fee and code. This fee will be paid for individual, face-to-face time spent by the job coach with the individual at the worksite. Travel, report writing, or other costs associated with the JST may not be included as billable time.

3607.3 Supported Employment. Supported employment is a time limited "place/train" program that enables individuals with the most significant disabilities to enter or retain competitive employment in an integrated work setting. See CSM Section 2900 for guidance in the provision of supported employment services.

3607.4 Distance Learning (Online Coursework or Correspondence Training). Distance learning occurs when an instructor presents information to a student who is not physically present in a traditional classroom setting. This transfer of information may be accomplished through use of the Internet or mail delivery.

A. *Accreditation.* No distance learning (either online coursework or correspondence training) will be approved unless the institution is accredited for such purpose. The terms "licensed" or "registered" do not constitute accreditation. Accreditation may be offered by national, regional, or specialized/professional accrediting organizations. Regardless of which accrediting organization is cited, the Rehabilitation Counselor must ensure that the authoritative body providing the accreditation is recognized by the Council for Higher Education Accreditation (CHEA). The principal national accrediting body for distance learning is the Distance Education and Training Council.

B. *Counseling Considerations.* Before distance learning or correspondence courses of any type are considered, the following questions need to be addressed by the individual and the Rehabilitation Counselor:

1. Does the individual have the motivation, self reliance, social maturity, discipline, and "set-aside" time to complete the coursework?

2. Has the individual fully considered the advantages and disadvantages of distance learning? Although coursework in a distance learning class requires little or no travel and work can be done at home, there is little or no personal, face-to-face interaction with instructors or classmates. (This point should receive significant thought for high school graduates who may need and benefit from the social interaction of a campus environment, as opposed to working adults whose needs may differ.)

3. Are the individual's learning styles consistent with the learning styles necessary for distance learning? (Does the individual have difficulty learning visually or does the individual perform better with hands-on or personal instruction?)

C. *Technical Requirements for Online Coursework.* Prior to approving online coursework sponsorship, the Rehabilitation Counselor must address the following technical needs:

1. Does the individual have the necessary computer and modem speeds?

2. Will the individual need audiovisual capabilities, a sound card, certain plug-ins, CD-ROM?

3. Is a specific browser recommended or needed?

4. Is software required for the program?

D. *Types of Distance Learning.*

1. *Single Short Term Virtual Courses.* This type of course may be provided when a specific skill is needed and can be provided through an accredited distance

training program (e.g., instruction in web page/web site creation or computer graphics to meet employment needs).

2. *Online Certificate Training Programs.* Accreditation is not to be confused with certification. Although a distance learning program offering a certificate may be accredited, the relevant certification/licensure boards must be consulted to ensure the earned certificate meets board standards and professional requirements. If there is no certification or professional board, then prospective employers should be consulted to determine whether the online training would result in marketable skills that would qualify the individual for employment in the field of training.

3. *College Courses.* Web-based bachelor level courses are offered by several colleges and universities within the state. These courses often require students to attend periodic onsite classes and tests and require completion of the course within a semester/year timeframe like on-campus classes. If the student is enrolled in college on a full-time basis on a conventional campus, electronic classes will be sponsored by the Division only if the equivalent course is not available on campus in the traditional classroom setting, or there is no added cost for the online course. If the full-time college student opts to enroll in an electronic course, the Counselor will advise the student that it will be the student's responsibility to pay for any extra cost associated with the class. Exceptions may only be granted if the need to enroll in the electronic course is related to the student's disability. In those circumstances, the Counselor will document the disability-related problems and justification for the exception.

4. *Online College Campuses.* If the student is enrolled in an internet campus college program, where classes are offered only online, such courses may be sponsored only if all of the following requirements are met:

a. The individual/student must identify a "home" institution where s/he must be accepted and registered as a student of the selected institution;

b. The selection of online classes must be approved by the institution's Student Advisor to ensure that course credits are accepted by the institution and count toward fulfillment of core requirements or toward the degree in the individual's chosen major field of study; and,

c. The same policy considerations for full time enrollment, grade point average requirements, and financial aid apply to distance learning college courses.

5. *Continuing Education Units (CEUs).* Many online courses are accredited only for continuing education unit credits to be used for professional enhancement. Such courses will not be approved for Division sponsorship unless the individual has the necessary prerequisite degree or certification to qualify for the coursework and only if it has been determined that professional enhancement is necessary to meet the vocational goal.

6. *Correspondence Training.* Correspondence training is a means of training whereby the individual learns at home by independent study of coursework consisting of written materials and learning guides.

7. *Directed Study Programs.* This type of correspondence or distance training program offers no credits or degrees, nor is it affiliated with any college or university. Directed study programs provide/sell study materials and books which are intended to prepare students for competency based, standardized "end-of-course" or proficiency examinations that are offered through some institutions of higher education. As there is no means of monitoring the individual's progress until program completion, this type of training is not sponsored by the Division.

E. *Certification Testing.* Some online courses require proficiency testing prior to advancement in the class. There is often a separate charge for the test which may be paid as part of the course tuition and fees. If the individual fails to pass an examination on the first attempt, the Rehabilitation Counselor may approve sponsorship for only one retesting per level of proficiency.

3607.5 Tutorial Training. When tutorial training is needed at the post secondary level, the Rehabilitation Counselor will refer the individual to the tutoring service offered by the university, college, community college, or other post secondary training institution. It is not the Division's responsibility to purchase this training. If the individual requires specialized tutoring that is not available through the college or training institution, the Rehabilitation Counselor may authorize academic tutoring provided that the tutoring services are not associated with the training facility. Tutoring services are subject to economic need. The Rehabilitation Counselor will assure that the tutor is qualified by education and experience to present the academic tutoring in a qualified manner. The Division will pay the tutor's usual and customary fee not to exceed the rate allowed by the Board of Education in the county where the services are being provided.

3607.6 Business, Trade, or Technical School Training. Business, trade, and technical schools offer an almost unlimited range of vocational training. While most of those schools are privately supported, the number of publicly supported schools is growing, particularly local schools and community colleges offering vocational and technical education. Such schools customarily award a diploma, certificate, or other proof of completion that will lead to the individual's certification or licensure in the particular field.

A. *Considerations.*

1. The individual must meet the published admission standards of the particular school.

2. While business, trade, and technical schools are used primarily in active status to prepare the individual for placement in a given job objective, such schools also

may be utilized effectively for post employment services status, particularly for training the rehabilitated individual in new skills and technology required for him/her to maintain employment in the job in which s/he was closed rehabilitated.

B. *Acceptable Schools.* The Division will use only those business, trade, and technical schools that it has found acceptable. The Rehabilitation Counselor will make full use of county or multi-county vocational-technical centers as those facilities provide low cost, high quality training in a range of vocations.

3607.7 College Training. College or university training may be provided to the individual to prepare him/her for placement in any occupation within the range of professional, managerial, technical, and related fields for which a college degree normally is required. Training in institutions of higher education (universities, colleges, community colleges, vocational schools, technical institutes, and hospital schools of nursing) will be provided consistent with the needs, capabilities, and goals of the individual. Sponsorship in four-year degree college programs should be provided only after full consideration has been given to associate degree and other vocational training programs.

A. *Conditions for All College Sponsorship.*

1. *Full-Time Requirement.* Individuals attending an institution of higher education must be enrolled each semester or it's equivalent as full-time students as defined by the institution of higher education and must complete at least 28 hours per school year (excluding summer school) for continued sponsorship by the Division. Exceptions to the standard requiring the individual to attend an institution of higher education on a full-time basis may be made with District Manager approval only with documented evidence of disability related or extenuating circumstances that interfere with the student's ability to maintain full-time requirements. For post-baccalaureate sponsorship, the individual must be enrolled full time consistent with the institution's definition for full-time enrollment. The full-time requirement does not apply to individuals attending summer school sessions.

2. *GPA Requirement.* The individual must maintain a cumulative 2.0 grade point average (GPA) for continuing Division financial sponsorship and maintain the minimum grade point average required for his/her major study. *However, at the discretion of the District Manager, Division financial sponsorship may be continued for up to two additional semesters when disability related or other extenuating circumstances have prevented the individual from attaining the required GPA (e.g., exacerbation of the disability that precludes attendance, or family disruptions that interfere with attendance and class work).* The individual will be required to submit a copy of his/her grades to the Rehabilitation Counselor of record prior to sponsorship of the next semester or quarter. Failure of the individual to provide a copy of grades or failure to meet the GPA requirements will result in cancellation of payment on any previously submitted authorization to the institution. (If the individual is a student at Marshall University, cancellation of authorizations must be coordinated through the onsite campus Rehabilitation Counselor.) The institution will be notified in writing on the authorization that payment for tuition or other costs is contingent upon the individual's maintenance of required

GPA standards. The individual likewise will be advised that all sponsorship will be discontinued if GPA requirements are not met.

3. *Financial Aid Requirement.* No Division funds may be authorized until all third-party benefits have been explored. Each individual shall apply for federal financial aid and all applicable state and private financial aid on a year-by-year basis. Sponsorship may begin if the application is received prior to the beginning of the following semester.

A copy of the Student Aid Report (SAR) is not necessary if the WVDRS-87 is available. However; if the training facility's financial aid office is unable to provide the Division with the WVDRS-87, then the Student Aid Report (SAR) and the student's financial aid award letter is required to obtain the Expected Family Contribution (EFC) and to identify all third party resources available.

4. *Developmental Courses.* Grades obtained in developmental coursework will be counted by the Division toward the student's GPA, regardless of whether the higher education institution regards the developmental courses in calculating the GPA. Pass/fail grades also will be included. If, for example, the student fails a pass/fail developmental course, the course will be factored into the GPA in the same manner as an F letter grade. If the student passes the developmental course, the effect will be neutral on the remaining grades of the GPA. The first semester of developmental coursework will be considered as a "trial semester" with provisional sponsorship. Stipulations of the provisional sponsorship will be documented on the student's IPE to the extent that the student clearly understands the expectations for continued sponsorship. Division sponsorship for developmental courses beyond the trial semester may be granted only with approval by the District Manager, and only if the need for the courses results from either a learning disability or a sensory impairment, the individual will be pursuing a major field that does not require skills in the area of the learning deficit, and if the student demonstrates success in all other required classes. The Rehabilitation Counselor will need to counsel the student to pursue vocational areas and fields of major study that will not be negatively affected by the learning deficiency.

5. *Vocational and Psychological Assessment.* Through appropriate vocational and psychological assessment, the Rehabilitation Counselor will determine that the individual is intellectually, psychologically, and emotionally ready for college. It must be verified that the individual has the functional capability, maturity, and other qualifications that normally predict success in college.

6. *Criteria for Summer School Sponsorship.* College summer school sessions may be approved for Division sponsorship if summer school is necessary due to the following reasons: to make up a course credit that is not available during the regular semester; when the student requires only 3 or 6 credit hours to graduate; or, if the coursework taken during the summer session(s) will result in elimination of a full semester. The Rehabilitation Counselor should discuss thoroughly the student's reasons for attending summer school to determine if summer school attendance is the most cost effective alternative to obtaining necessary college credits. Full-time enrollment in summer school is not required.

A cumulative 14 summer school credit hours will constitute one semester and will count toward the 10-semester limit for Division sponsorship. Any number of credit hours below 14 will not count toward the 10-semester limit.

B. *Additional Conditions for Baccalaureate Degree Sponsorship.*

1. *Maximum Period of Sponsorship.* Division sponsorship for baccalaureate degree training will not exceed 10 semesters. Summer school sessions will be included in this maximum, with each 14 credit hours of summer school constituting one semester. To ensure the student is enrolled in courses that are needed for the field of major study and appropriate toward attainment of a degree, the Rehabilitation Counselor will conduct a degree audit at least annually to review the courses scheduled by the student for the upcoming term(s). Exceptions to the 10-semester limit will be granted only when the need for an extension is the result of disability related or extenuating circumstances that prevent the student from completing college within 10 semesters. Requests for approval of such extensions must be submitted in writing to the Senior Manager of Field Services for final approval by the Assistant Director of Client Services.

2. *Standardized College Testing.* The Enhanced American College Testing Assessment (ACT) and the Scholastic Aptitude Test (SAT) are excellent benchmarks for the Rehabilitation Counselor to use to assist the individual in determining if a college program is his/her best option. The ACT produces a student profile that estimates the individual's academic potential for various colleges and judges the appropriateness of educational and vocational plans for the individual.

a. *Minimum Requirements.* Sponsorship for a baccalaureate degree program will not be provided unless the individual attains a minimum score of 19 on the composite ACT, or a minimum combined score of 910 on the SAT and has a high school GPA of 2.0. The ACT or SAT will be required for Division sponsorship whether or not these entrance tests are required for admission into the college in which the student plans to enroll. In some instances, the individual may be required to obtain a higher ACT or SAT to gain admission into a specific degree program. For example, a College of Engineering may require a minimum ACT score of 20. In these instances, the Division will require the minimum standard established by the institution for sponsorship purposes. However, in those instances where the institution requires an ACT or SAT above the Division's minimum standard yet allows admission on a provisional basis, sponsorship may be provided if the scores meet or exceed the Division's minimum.

b. *Adult Students.* The above minimum is not required for those individuals who graduated from high school more than five years prior to the request for college sponsorship unless required for admission by the institution. Generally, other provisional entrance requirements for older students are available through the institution.

c. *Students Not Meeting Minimum Requirements.* In those instances where the individual scores below the minimum requirement for baccalaureate programs, the student may consider other post secondary options, including associate degree training, other vocational training, or community college enrollment. If the student does not

meet the minimum ACT/SAT score requirements and chooses to enroll in a four year college program

or a community college on a provisional basis without Division sponsorship, and completes 12 or more credit hours of required classes (including developmental courses) with a GPA of 2.0 or more, the Division will consider assuming sponsorship for continued education at the collegiate level.

d. *Exceptions.* Exceptions to the entrance exam requirements may be granted only when the student has attained a 3.0 cumulative GPA or higher in high school, is an individual with either a learning disability, ADD/HD, or sensory impairment, and has scored a minimum of 17 on the ACT or 830 on the SAT. In such cases Division sponsorship may be granted with District Manager approval.

e. *Gallaudet and National Technical Institute for the Deaf (NTID).* The minimum college entrance exam requirements will not apply to either of these institutions of special instruction for individuals with deafness. Sponsorship for a baccalaureate degree program at these institutions will be contingent on the individual's ability to meet the institution's admissions criteria.

3. *Workers' Compensation Fund (WCF) Standards.* Those individuals receiving WCF sponsorship must carry 15 hours per regular semester, attend 6 hours of summer school if possible, and maintain a 2.0 grade point average. Exceptions to these standards must be approved by WCF or the individual's financial benefits may be terminated.

C. *Associate Degrees and Community Colleges.*

1. *Associate Degrees.* An associate degree is awarded upon completion of at least two, but fewer than four years of work beyond the secondary level. Associate degree programs are offered by universities and community colleges throughout the state. The student must meet the minimum skill levels required or recommended by the training institution for Division sponsorship. If the student successfully completes an associate degree program that has a matriculation agreement with a baccalaureate program, then the Division will consider continued sponsorship for an additional two or three years, not to exceed a total of ten semesters. The Division will not consider sponsorship for further college training *once the associate degree has been attained* if there is no matriculation agreement with an affiliated baccalaureate program or if the individual chooses to pursue additional college work in a field unrelated to the associate degree program. The maximum period of Division sponsorship for an associate degree will not exceed one additional semester beyond that required to complete the associate degree.

2. *Community Colleges.* Community colleges offer opportunities in a variety of associate degree programs and certification programs, as well as "university parallel" curricula. Students must meet the minimum standards established by the community college for the program in which they enroll.

D. *Non-Degree/Non-Certified Courses*. Selected college courses that are not part of degree or certification programs may be authorized when such courses are identified

on the IPE and necessary to attain the vocational goal. In such instances, the Division's policies related to funding of training services in institutions of higher education will not apply; the Division's financial need policy will apply.

E. *Grants and Aids.* Grants, work study programs, and certain student loans are based upon financial need of the student. Student aid is determined by the Financial Aid Officer (FAO) after submission of the financial need application to the appropriate agency. The Financial Aid Form (FAFSA) is used by most schools. The FAFSA is used for the Pell Grant, SEOG, work study, and others, including the West Virginia Higher Education Grant. It provides the basic information used to determine eligibility for most need based financial aid programs because it establishes the expected family contribution (EFC). There is no charge for completion of the FAFSA. The FAO has the responsibility of establishing student budgets for all students. The Division has an agreement with the FAOs to establish the joint budget and joint agency participation for students who have disabilities. This agreement utilizes WVDRS-87, *Student Financial Plan*. In accordance with federal agreements and the joint agreement with the FAOs, special needs of students with significant disabilities are considered and may exceed the normal budget for that student. The Rehabilitation Counselor must include special needs of the student when preparing the *Student Financial Plan* before submission of the initial application to the FAO. The *Student Financial Plan* must be completed annually if Division funds are used.

1. *Student's Financial Participation.* The amount of the family's contribution toward college costs will be based on the expected family contribution (EFC) that is calculated with completion of the FAFSA. The EFC may be found on WVDRS-87, *Student Financial Plan*, as the "Family's Total Financial Contribution" and remains the same regardless of which educational institution the student elects to attend. The student and/or student's family will be expected to contribute toward college costs the EFC amount indicated by the FAO. The Rehabilitation Counselor may not use Division funding to assist with the EFC. Such efforts will result in an over-award in the financial aid package. However, the family's contribution may be applied toward costs for personal expenses and/or travel that are part of the student's budget, reserving other fixed costs such as tuition, fees, and room and board for any available financial aid.

2. *Student Loans.* Several types of direct student loans are available through the U. S. Department of Education, which have low interest rates and flexible repayment plans. Payment of these loans is deferred until after the student graduates. Students may apply for a subsidized or unsubsidized loan, or both.

a. *Subsidized Loans.* To receive a subsidized loan the student must demonstrate financial need. Subsidized loans are often made available to students who still have a remaining need after other needs-based financial aid has been applied. When a student receives a subsidized loan, the government pays the interest while the student is in school. There are generally two types of subsidized loans.

1. *Stafford Loans*. Stafford Loans may be granted by
“Direct Lending Schools” whereby the loans are granted by the educational institution directly
to

the students and/or their parents. These loans are governed by the Federal Direct Student Loan Program (FDSLP). Under another program titled Federal Family Education Loan Program (FFELP), loans may also be provided by private lenders such as banks or credit unions. Nevertheless, all loans are guaranteed against default by the federal government and offer the same interest rates regardless of lender.

2. *Perkins Loans.* The Perkins Loan is awarded to undergraduate or graduate students with exceptional financial need. The Perkins Loan program is a campus-based loan program with the educational institution acting as the lender using a limited pool of funds provided by the federal government.

b. *Unsubsidized Loans.* Unsubsidized loans are available to any student regardless of financial need. Like subsidized loans, payment of the loan is deferred until after graduation. The student is responsible for payment of the interest incurred with the loan, but may either elect to pay only the interest while in school, or defer the interest payments with the loan balance until after graduation.

c. *Loan Requirements.* The Division will not require any student to apply for direct student loans, except in situations where the student must utilize all available deferred loans to justify an exception to the Division's maximum fee.

d. *Replacing Loans.* If student loans are awarded as part of the financial aid package from the educational institution, the Rehabilitation Counselor may provide assistance to replace loans when appropriate. When a loan has been awarded and the Rehabilitation Counselor and student agree that the Division will provide assistance, the student may elect to decline the loan. The student and Counselor then must notify the FAO immediately of the decision to use Division funds to supplant the loan(s) offered. When using Division funds to replace loans, the Rehabilitation Counselor must exercise particular caution to avoid an over-award in the student's financial aid package by notifying the FAO through the WVDRS-87.

3. *Work Study.* When the *Student Financial Plan* includes work study activities as a resource, the student will be expected to participate in the work study program. Exceptions will be granted to any student who is receiving benefits or assistance through a government program that considers work study as income, thus potentially reducing or eliminating the student's benefits or assistance. If the student and Rehabilitation Counselor have concerns about the student's ability to perform certain work study activities, arrangements will be made with the FAO to identify more appropriate work study opportunities, if any, that are consistent with the student's abilities and limitations. If no suitable arrangements can be made for a work study opportunity, the Rehabilitation Counselor may discuss other options with the student and advise the FAO of the reasons for withdrawing from the work study program.

4. *Formula for Financial Aid Unmet Need.* To determine the maximum amount of financial assistance that may be offered by the Division, the

Rehabilitation Counselor first must deduct from the total student budget the amount designated by the FAO for the Family's Total Contribution. From the remaining balance, the Rehabilitation Counselor then

will deduct all financial aid available from other resources. The Rehabilitation Counselor may or may not elect to include loans as part of the financial aid package, depending upon whether the student opts to take the available student loan. After subtracting all other financial aid, the remaining balance is the highest amount that may be paid by the Division (up to the maximum allowed for college training) without creating an over-award.

Financial Aid Formula to Determine Unmet Need

Total Student Budget

- Minus Family's Total Contribution (includes both parental and student contributions)
- Minus other financial aid resources (e.g., Pell, Promise, WVHEG, work study, scholarships, subsidized/unsubsidized loans if applicable) =

Balance that may be paid by Division (up to maximum) without creating over-award

5. *Determining Actual Student Costs.* The Student Budget established by the Financial Aid Office may include allowances for costs that are not actually incurred by the student. An estimated Student Budget is established by the Financial Aid Office to provide a basis for determining a student's needs for financial award purposes. For example, the financial aid officer may list on the *WVDRS-87* room and board costs for a student who is commuting, or a transportation allowance that exceeds the student's actual expenses. In calculating the amount of the Division's contribution the Counselor will use only the actual cost incurred by the student. To determine what constitutes actual costs, the Counselor will consider only the additional out-of-pocket expenditures that are necessary for the student to participate in the training. Once the Counselor has determined the actual student costs, this information will be documented in the case record. In situations where the student qualifies for financial aid, the Counselor will authorize for the amount of actual need while remaining within the amount of unmet need established by the Financial Aid Office. The Counselor will then report to the Financial Aid Office on the *WVDRS-87* the amount authorized by the Division to ensure there is no over-award.

3607.8 Post-Baccalaureate Training. Graduate training beyond the bachelor's level may be provided only if a master's degree is required for employment in the vocational goal or if, in the Rehabilitation Counselor's judgment, the availability of employment opportunities in the job market in which the individual is seeking employment will be severely limited with training at the bachelor's degree level. Documentation regarding the necessity for graduate training will be thoroughly addressed on the *Program Explanation*. Further, a vocational goal which necessitates post-baccalaureate training will require documented evidence that the individual has the intellectual abilities and motivation to succeed at the post-baccalaureate level. Such justification also will be documented on the *Program Explanation*.

A. *Full-Time Requirement.* Individuals attending college at the post-baccalaureate level must be enrolled as full-time students (as defined by the institution in which the individual is enrolled) for consideration of Division sponsorship.

B. *IPE Requirements.* In the event that a vocational goal requiring post-baccalaureate training is established, a written statement must be included on the IPE indicating

that graduate school training is contingent upon academic success in the undergraduate baccalaureate program as well as acceptance and admission to an appropriate graduate school program offering training in the chosen vocational field.

C. *Financial Aid and Sponsorship Restrictions.* The Division's financial participation for a post-baccalaureate degree will be restricted to the same maximum fee allowed for baccalaureate college payment. This assistance will continue to be subject to the application of economic need policies and considerations. The Division's limit on post-baccalaureate financial assistance will be stated clearly on all IPEs in which post-baccalaureate training is planned. Requests for exceptions to this policy must be submitted in writing through the District Manager to the Senior Manager of Field Services and the Assistant Director of Individual Services.

3608 Procedure for Financial Aid Coordination for College Training.

3608.1 In-State College. As far in advance as possible, the individual will advise the Financial Aid Officer (FAO) of his/her probable intent to enroll at the particular college or university. When the individual is considering more than one school, a notice of probable intent will be sent to the FAO for each school under consideration. The individual will advise the Rehabilitation Counselor as to which college(s) is selected. The individual then will assume responsibility for contacting the FAO to arrange for appropriate application for grants and aids available from that facility.

A. When a particular school is selected, the Rehabilitation Counselor and individual will complete Part 1 of the *Student Financial Plan*, have it signed by the individual and, if a minor, the individual's guardian. A copy will be sent to the FAO, who will complete Part 2 (except for item "DRS Authorization to be Issued by Counselor") and return this to the Rehabilitation Counselor.

B. The Rehabilitation Counselor will enter details of "DRS Authorization to be Issued by Counselor," if any. The amount the Division is to pay never will exceed the amount annually budgeted by the FAO unless the special needs of the student have been considered and agreed to by the FAO. If the DRS amount exceeds the amount budgeted by the FAO, this will create an "over-award," making it necessary for the FAO to reduce funding from the school to rule out excess funding. A copy will be forwarded to the FAO as permanent record. An additional copy will be sent to the School Liaison Counselor.

C. A new *Student Financial Plan* will be prepared for each academic year in which the individual is in college training.

D. Students enrolling in a West Virginia public institution of higher learning shall be assigned a residency status for admission, tuition, and fee purposes by the institutional officer designated by the president. West Virginia domicile may be established upon the completion of at least twelve months of continued presence within the state before the

date of registration, provided that such twelve-month presence is not primarily for the purpose of

attendance at any institution of higher education in West Virginia. Establishment of the West Virginia domicile with less than twelve months presence before the date of registration must be supported by evidence of positive and unequivocal action. If there is a question as to domicile, the matter must be brought to the attention of the designated officer at least two weeks before the deadline for the payment of tuition and fees. If the designated officer rules that the individual must pay out-of-state tuition and fees, the individual should request an appeal for relief of the situation before authorization of the higher fee. In the appeal process, the president of the college or university may establish such committees and procedures as are determined to be appropriate for processing the appeal. The decision of the president of the institution may be appealed in writing with supporting documentation to the appropriate governing board according to such procedures as may be prescribed by the board. The District Manager will grant approval before authorizing out-of-state fees to an in-state facility.

3608.2 Out-of-State College.

1. When an out-of-state school is selected, the individual will complete Part 1 of the *Student Financial Plan* and the individual, or if the individual is a minor, the individual's guardian, will sign. The form will be forwarded to the FAO of that college.
2. The Rehabilitation Counselor then will contact the FAO of the college and discuss the amount of financial assistance to be provided the individual and s/he will complete Part 2 of the *Student Financial Plan*.
3. The completed form will be distributed as instructed in the in-state school section.

3609 Supervision of Training. *Supervision of training* means those actions taken by the Rehabilitation Counselor or Liaison Counselor to monitor the individual's progress in receiving training and to solve any problems the individual might experience that would impede his/her training progress.

3609.1 Individual in Non-College Training In State.

- A. When the individual is enrolled at a training facility within or immediately adjacent to the Rehabilitation Counselor's territory, the Rehabilitation Counselor will monitor the individual's training.
- B. When the individual is enrolled in a training facility outside the Rehabilitation Counselor's territory, the Liaison Counselor assigned to that facility will assist the home Rehabilitation Counselor in monitoring the individual's progress while in training.
- C. When the individual is enrolled at the West Virginia Rehabilitation Center, the Center Counselor assigned to the individual will supervise the individual's training, working in conjunction with the individual's instructor and field Rehabilitation Counselor.

3609.2 Individual Enrolled in Training Out of State. When the individual is enrolled in any form of rehabilitation training outside the state, the Rehabilitation Counselor may arrange for a counselor of that state's rehabilitation agency to supervise the training, or the Rehabilitation Counselor may supervise by correspondence, telephone, and personal visit with the individual when the individual is home on vacation.

3609.3 Assignment of Liaison Counselors. The District Manager is responsible for assigning a Rehabilitation Counselor to serve as Liaison Counselor for each training facility located in his/her district. A listing of Liaison Counselor assignments is found at the end of this section. The Liaison Counselor will establish and maintain a close relationship with the training facility and will become thoroughly knowledgeable in the facility's program(s).

A. *Liaison Counselor Duties.* General duties of the Liaison Counselor are:

1. Verifying that the individual is enrolled in the training facility.
2. Checking with the individual as required to monitor his/her attendance and progress.
3. Sending the home Rehabilitation Counselor memorandum reports of contacts with the individual.
4. If the individual drops out of training, advising the home Rehabilitation Counselor when that fact is known.
5. Acting on behalf of the home Rehabilitation Counselor in emergencies. When an oral authorization is required, as in the case of an intercurrent illness, the Liaison Counselor may make such authorization, and then advise the home Rehabilitation Counselor immediately for issuance of the follow-up WVDRS-16, *Authorization*.

B. *Notification to Liaison Counselor and Individual.* Before the individual is enrolled, the Rehabilitation Counselor will notify the Liaison Counselor of the individual's impending enrollment. At a minimum, the Liaison Counselor should be provided the following: individual's name, address, Social Security number, age, sex, and other basic identification data; the individual's in-training address, if known; a copy of the IPE; a description of the individual's disability; and a description of any problems, such as emotional or social condition(s), that may affect the individual. Simultaneously, the Rehabilitation Counselor should advise the individual of the Liaison Counselor's name and address and advise the individual to contact the liaison Counselor should any problem occur, particularly an emergency. See later in this section for liaison Counselor list.

3610 Vocational Training and Required Documentation. The record will contain documentation including the *Training Agreement* and the individual's progress will be documented using the *Training Progress Report* or other similar written documentation when

necessary. Individuals attending colleges, universities, community colleges, business schools, trade schools, and vocational schools will submit a copy of their grades to the Rehabilitation Counselor of record prior to sponsorship of the next semester or quarter. If the individual changes training facilities, the Rehabilitation Counselor will change the facility code on the iECM status page.

3611 Authorization Procedures for Tuition, Books and Training Materials, and Room and Board. Separate authorizations will be issued for: tuition; books and training materials; and room and board.

3611.1 Tuition.

A. *OJT*.

1. Complete the heading of WVDRS-16.
2. Complete "Authorization for Other Goods/Services" as

follows:

- a. Under "Code," enter "903005."
 - b. Under "Description," enter "tuition" and the applicable
- periods.
- c. Omit entries under "Units" and "Unit Cost."
 - d. Under "Total Cost," enter the negotiated tuition.

B. *Distance Learning (Online Coursework or Correspondence Training)*. The Division will pay the published rate for distance learning. Tuition reimbursement will be according to the published tuition rate and reimbursement of the training facility.

1. Complete the heading of WVDRS-16.
2. Complete "Authorization for Other Goods/Services" as

follows:

- a. Under "Code," enter "903010."
 - b. Under "Description," enter "tuition" and the applicable
- periods.
- c. Omit entries under "Units" and "Unit Cost."

- d. Under "Total Cost," enter the published tuition rate.

C. *Tutorial Training.*

1. Complete the heading of WVDRS-16.
2. Complete "Authorization for Other Goods/Services" as

follows:

- a. Under "Code," enter "903011."
- b. Under "Description," enter "tuition" and the applicable
- c. Omit entries under "Units" and "Unit Cost."

periods.

- d. Under "Total Cost," enter the customary fee allowed by the Board of Education in the county where the services are being provided.

D. *College or University Training*

1. Complete the heading of WVDRS-16.
2. Complete "Authorization for Other Goods/Services" as

follows:

- a. Under "Code," enter "903001."
- b. Under "Description," enter "tuition and general fees" and
- c. Omit entries under "Units" and "Unit Cost."
- d. Under "Total Cost," enter the published tuition.

the applicable periods.

3611.2 Fees. General fees will be authorized as part of tuition. Special fees, such as those for laboratory breakage and graduation, will be authorized as follows:

- A. Complete the heading of WVDRS-16.

- B. Complete "Authorization for Other Goods/Services" as follows:

1. Under "Code," enter the code for the particular type of training to which the special fee applies.

2. Under "Description," enter the description of the special fee being authorized and the applicable enrollment period.

3. Omit entries under "Units" and "Unit Cost."

4. Under "Total Cost," enter the cost of the fee, if known. If unknown, enter an approximate maximum cost, such as *"Not to exceed 35.00."* When the invoice is received, the Rehabilitation Counselor will adjust the authorization total to make it agree with the invoiced amount of the fees.

3611.3 Books and Training Materials.

A. Complete the heading of WVDRS-16.

B. Complete "Authorization for other Goods/Services" as follows:

1. Under "Code," enter "903009."

2. Under "Description," enter "books and training materials" and the applicable enrollment period.

3. Omit entries under "Units" and "Unit Cost."

4. Under "Total Cost," enter the exact cost, if known. If unknown, enter an approximate maximum cost, such as *"Not to exceed 150.00."* No more than \$40.00 will be paid for expendable supplies such as pens, pencils, papers and notebooks. When the invoice is received, the Rehabilitation Counselor will adjust the authorization total to make it agree with the invoiced amount of books and training materials.

3611.4 Room and Board. When the individual is to receive room and board from the training facility, the Rehabilitation Counselor will determine with the individual which meal plan is most appropriate for the individual and authorize as follows:

A. Complete the heading of the WVDRS-16.

B. Complete "Authorization for Other Goods/Services" as follows:

1. Under "Code," enter "902001."

2. Under "Description," enter "room and board" and the applicable enrollment period.

3. Omit entries under "Units" and "Unit Costs."

4. Under "Total Cost," enter the cost as determined from published rates of the training facility.

EMPLOYMENT READINESS CURRICULUM OUTLINES

Life Skills Development Curriculum Outline

Phase I

Emphasis is on educational experiences, behavioral modification techniques, coping skills development, and a short experience in a work environment (paid/unpaid) which will better prepare an individual for employment

1. General Work Information: work language and math, understanding of work practices such as payroll deductions, insurance, unions, retirement, and benefits, and job-seeking skills such as interviewing, completing applications, and developing and using job-finding networks and resources
2. Work ethic: attendance and punctuality, grooming skills, rules of the workplace, and unspoken rules of the workplace
3. On-the-job performance skills: work safety, self-esteem, motivation, willingness to learn
4. Work-related Communication Skills: anger management, social interaction, crossover areas, decision making, and problem-solving
5. Personal Barriers to Employment (daycare, housing, family situation, health care, transportation, school, etc.)

Phase II

Emphasis is on work performance skills, i.e. quality of work, quantity of work, and teamwork in a paid work environment under the close direction of the Life Skills Development staff

1. General Work Information: work language and math, understanding of work practices such as payroll deductions, insurance, unions, retirement, and benefits, and job-seeking skills such as interviewing, completing applications, and developing and using job-finding networks and resources
2. Work ethic: attendance and punctuality, grooming skills, rules of the workplace, and unspoken rules of the workplace
3. Work performance skills: quality of work, quantity of work, teamwork, work safety, anger management, social interaction, decision-making, and problem-solving
4. Personal Barriers to Employment: daycare, housing, family situation, health care, transportation, school, etc.

FIGURE 3600-1. Curriculum Outlines

Work Skills Development Curriculum Outline

1. General Work Information: work language and math, understanding of work practices such as payroll deductions, insurance, unions, retirement, and benefits, and job-seeking skills such as interviewing, completing applications, and developing and using job-finding networks and resources
2. Work ethic: attendance and punctuality, grooming skills, rules of the workplace, and unspoken rules of the workplace
3. On-the-job performance skills
4. Quality of work
5. Quantity of work.
6. Work safety
7. Self-esteem
8. Motivation
9. Willingness to learn
10. Personal Barriers to Employment: daycare, housing, family situation, health care, transportation, school, etc.

Job Seeking Skills Curriculum Outline

1. Skill Assessment
2. Grooming
3. Resumes
4. Applications
5. Interviews
6. Job Leads
7. Cover Letters
8. Mock Interviews
9. Work4WV Center Services

FIGURE 3600-1, cont. Curriculum Outlines

Job Search Assistance Program Curriculum Outline

1. Individual's Contract Commitment to Job Search
2. Job search plan
3. Writing resumes and cover letters
4. Job searching (Work4WV Center Services, online resources, employer research, networking, etc)
5. Job search tips and tools
6. Developing interviewing skills
7. Getting and setting up interviews
8. Follow-up and thank you letters
9. Negotiating compensation

FIGURE 3600-1, cont. Curriculum Outlines

**DRS/EMPLOYER/TRAINEE
ON-THE-JOB TRAINING PROGRAM
MEMORANDUM OF AGREEMENT**

This agreement is entered into by:

The *Division of Vocational Rehabilitation* hereinafter referred to as the **Division**;

_____, hereinafter referred to as **Trainee**,

_____, hereinafter referred to as the **Employer**.

The purpose of this memorandum is to identify responsibilities of the above parties in the provision of on-the-job training to the client.

a. The on-the-job training is to prepare the Trainee for the job of

b. The training will commence on or about

c. The training will end on or about

1. The Division agrees to:

- a. To remunerate the employer for the training, supervision, and Workers' Compensation of the client as noted on the attached; *OJT Occupational Cost/Training Plan*.
- b. To provide counseling and support services to the client; and
- c. To provide appropriate training tools and equipment for completion of the training program as noted in the attached *OJT Occupational Cost/Training Plan*. (The Division reserves the right to perform on-site observation of the training without prior notification.)

2. The trainee agrees to:

- a. Adhere to the work schedule;
- b. Communicate to the counselor immediately any problems affecting his training;
- c. Apply himself fully in receiving training provided through formal instruction and in application through work of that instruction; and
- d. Adhere to the trainer's business standards.

3. The employer agrees to:

- a. Provide training that is supervised by qualified personnel;
- b. Provide the client training sufficiently diversified to assure thorough preparation of the client within all aspects of his job;

- c. Provide a worksite, training facility, and training equipment that has acceptable working conditions from the standpoint of space, health and safety;
- d. Observe applicable laws governing employment and working conditions;
- e. Maintain Worker's Compensation coverage during the entire subcontracting period.
- f. Conduct the client's on-the-job training in keeping with the training outline and job description as noted in the attached OJT Occupational Cost/Training Plan
- g. Submit monthly reports on the client's progress and attendance; and
- h. Communicate to the counselor all problems incidental to the client's training;
- i. Ensure that the following documentation is maintained and provided to DRS for reimbursement:
 - i. Invoices for reimbursement, signed by the signatory authority.
 - ii. Proof of actual wages paid per hour to the trainee. This documentation should be a copy of the payroll check or check stub or official payroll printout.
 - iii. Proof of actual hours worked by the trainee. This documentation should be a copy of the payroll check or check stub or official payroll printout verifying hours worked during the pay period.
- j. Remunerate the client in the amount per hour as noted in the attached OJT Occupational Cost/Training Plan.
- k. The Employer is not required to retain the trainee upon training completion. However, the goal is to assist the employer in obtaining qualified workers and every effort will be made to retain trainees upon successful training completion and to maintain a wage at or above the wage paid during training.

This agreement is binding on all three parties, but may be terminated by any one of the parties upon timely written notification to the other parties.

Signatures and Dates:

DRS COUNSELOR	TRAINEE
DATE	DATE

EMPLOYER
DATE

West Virginia Division of Rehabilitation Services
MEMORANDUM OF AGREEMENT
Occupational Cost/Training Outline

OCCUPATIONAL TITLE	TRAINING DATES	STARTING WAGE	ENDING WAGE

(%) OF WAGE PAID BY DRS	NO. TRAINING DAYS PER WEEK	NO. TRAINING HOURS PER DAY	TOTAL NO. OF TRAINING WEEKS

TRAINING OUTLINE (List each specific skill area to be included in the training in sequence)(List additional skill on the reverse)	DAYS/HOURS (To achieve the competency)	ESTIMATED COMPLETION DATES

Tools, Uniforms, supplies or other need for training (Describe the Item)

	Estimated Cost	Purchase by Employer	Purchase by DRS
1.			
2.			
3.			
4.			

ALDERSON-BROADDUS COLLEGE*Nick Biafore*

WV Office Complex
107-109 Adams Street
Fairmont, WV 26554
(304) 367-2714

APPALACHIAN BIBLE COLLEGE*Kelli White*

707 S. Oakwood Avenue, Suite 101
Beckley, WV 25801
(304) 256-6900

BETHANY COLLEGE*Debbie Williams*

217 Three Springs Drive, Suite 3
Weirton, WV 26062
(304) 723-5311

BLUEFIELD STATE COLLEGE*Carol Brewster*

738 Mercer Street
Princeton, WV 24740
(304) 425-1256

MOUNTAIN STATE UNIVERSITY*Nancy Cole*

707 S. Oakwood Avenue, Suite 101
Beckley, WV 25801
(304) 256-6900

CONCORD COLLEGE*Carla Cole*

738 Mercer Street
Princeton, WV 24740
(304) 425-1256

DAVIS AND ELKINS COLLEGE*B. J. Manning*

Seneca Mall, Suite 24
Elkins, WV 26241
(304) 637-0205

EASTERN WV COMM. & TECH COLLEGE*Vanessa Thompson*

HC65, Box 402-1
Moorefield, WV 26836 Phone: (304) 538-2701

FAIRMONT STATE COLLEGE*Amy Darrah*

WV Office Complex
107-109 Adams Street
Fairmont, WV 26554
(304) 367-2714

GLENVILLE STATE COLLEGE*Bud McDonnell*

809 Mineral Road
Glenville, WV 26351
(304) 462-5390

**HUNTINGTON JR. COLLEGE
OF BUSINESS***John Haer*

200 Keith-Albee Building
929½ Fourth Avenue
Huntington, WV 25701
(304) 528-5585

MARSHALL UNIVERSITY*Jerry Meadows*

Prichard Hall, Room 153
Huntington, WV 25755
(304) 696-2394

**NORTHERN WV COMMUNITY
COLLEGE***Judi Bosley*

Central Union Building
40 Fourteenth Street
Wheeling, WV 26003
(304) 238-1092

OHIO VALLEY COLLEGE*Shannon Miller*

State Office Building
400 Fifth Street
Parkersburg, WV 26102
(304) 420-4580

FIGURE 3600-3. Counselor Liaison Representatives for In-State Colleges and Universities.

**POTOMAC STATE COLLEGE OF
WEST VIRGINIA UNIVERSITY**

John Dawson
603 Locust Street
Keyser, WV 26726
(304) 788-2313

SALEM-TEIKYO UNIVERSITY

Elizabeth Carder
John Davis Government Building
153 West Main Street, Suite 406
Clarksburg, WV 26301
(304) 624-0300

SHEPHERD COLLEGE

Kathy White
106 Berkeley Plaza
Martinsburg, WV 25401
(304) 267-0005

**SOUTHERN WV COMMUNITY
COLLEGE AT LOGAN**

Melissa Doss
216 Dingess Street
Logan, WV 25601
(304) 792-7060

**SOUTHERN WV COMMUNITY
COLLEGE AT WILLIAMSON**

Melissa Doss
37 East Third Avenue
Williamson, WV 25661
(304) 235-6005

**SOUTHERN WV COMMUNITY
COLLEGE OF PINEVILLE**

Dylan Saunders
316 Howard Avenue
Mullens, WV 25882
(304) 294-5653

UNIVERSITY OF CHARLESTON

Nadine Davis
WV Rehabilitation Center
Institute, WV 25112
(304) 766-2634

WEST LIBERTY STATE COLLEGE

Burl Anderson
217 Three Springs Drive, Suite 3
Weirton, WV 26062
(304) 723-5311

**WEST VIRGINIA UNIVERSITY
INSTITUTE OF TECHNOLOGY**

Lisa Bennett
217 West Maple Avenue
Fayetteville, WV 25840
(304) 574-0962

WEST VIRGINIA STATE COLLEGE

Wanda Gore
WV Rehabilitation Center
Institute, WV 25112
(304) 766-2634

WEST VIRGINIA UNIVERSITY

Paula Anguilli
124 South High Street
Morgantown, WV 26501
(304) 285-3155

**WEST VIRGINIA UNIVERSITY
AT PARKERSBURG**

Shannon Miller
State Office Building
400 Fifth Street
Parkersburg, WV 26102
(304) 420-4580

WV WESLEYAN COLLEGE

Malea Correia
John Davis Government Building
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Clarksburg, WV 26301
(304) 624-0300

WHEELING JESUIT UNIVERSITY

Judi Bosley
Central Union Building
40 Fourteenth Street
Wheeling, WV 26003
(304) 238-1092

FIGURE 3600-3. Counselor Liaison Representatives for In-State Colleges (continued).

3700 REHABILITATION TECHNOLOGY.

3701 General. Rehabilitation technology services include rehabilitation engineering, assistive technology, vehicle modification, driver evaluation, and environmental modifications. The Division has adopted the Tech Points concept to indicate to Rehabilitation Counselors how rehabilitation technology can be beneficial at different phases of the rehabilitation process.

3702 Referral for Assessment/Consultation. The Rehabilitation Technology Unit (RTU) is located at the West Virginia Rehabilitation Center, and operates an extension services program which provides services in a variety of locations such as in the field, home, work site, school or facility setting, or at any other location convenient for both the individual and the Rehabilitation Counselor. The Rehabilitation Counselor is considered an important member of the team in the evaluation process and s/he is expected to be present for the evaluation if possible. In considering referral, Rehabilitation Counselors should consider the following in determining where the individual should receive services:

3702.1 Field Provided Extension Services. The Rehabilitation Counselor will complete WVDRS-54, *Rehabilitation Technology Referral Form*, and forward to the:

A. Supervisor, Assistive Technology, for either assistive technology services or assistive technology evaluation (as noted on the left side of the form); or,

B. Program Supervisor, Rehabilitation Technology, for either environmental modification services or rehabilitation engineering (as noted on the right side of the form).

3702.2 WVRC Provided Services. The Rehabilitation Counselor will refer the individual to WVRC Admissions for vehicle modification evaluation, driver evaluation, or multiple WVRC services such as rehabilitation technology, occupational therapy, physical therapy, speech and hearing, rehabilitation clinic, vocational evaluation, or optical aids clinic.

3703 Purchase. Rehabilitation technology is purchased only for individuals who are receiving services under an approved Individualized Plan for Employment. It will be purchased through Division and State of West Virginia budgetary and procurement procedures.

3703.1 Considerations. Consideration to purchase rehabilitation technology will be given only when it has been demonstrated that:

A. The individual has a disability with functional limitations affecting communication, sensory, cognitive, or motor skills; and,

B. The rehabilitation technology is prescribed primarily to increase, maintain, or improve the functional capacities of the individual; and,

C. The rehabilitation technology is essential for assessment and/or training of the individual or assistive technology is an essential and permanent device for the vocational adjustment of the individual.

3703.2 Computer Purchase. A request for computer purchases must be reviewed by the Program Supervisor, Rehabilitation Technology Services. Consideration for computer purchase should be given only when:

A. Use of the computer with its alternative access alleviates a functional limitation which impedes the individual from reaching the objectives of the IPE.

B. When the computer is a requirement of a training program, or required as a condition of employment. Within provisions of the Americans with Disabilities Act, it is the responsibility of secondary and post secondary institutions to provide accessibility for printed material and/or computer access for students.

C. The request for a computer, accompanied by the written assessment and/or specifications from the Assistive Technology Unit, must be submitted through channels and to Information Technology Services to be let for bid. All other assistive technology purchases (including software) will follow routine purchasing policy.

3704 Assistive Technology.

3704.1 Provision. The Assistive Technology Section focuses primarily on computer access assessment, but also includes a wide range of services and devices which enhance individual function. It encompasses low, mid, and high technology solutions such as microcomputers and associated hardware/software; augmentative communication devices and communication aids; devices and aids for individuals with sensory impairment(s); and aids to enhance cognitive function. Services include:

- A. Assessment;
- B. Equipment set up;
- C. Training; and,
- D. Follow up.

3704.2 Assessment/Consultation. The assessment/consultation will be provided by an assistive technology service provider and will address the areas indicated on the referral form, WVDRS-54. The service provider will send a report to the referral source which includes a description of skills and limitations related to the objective, a written summary, recommendations (including equipment specifications), and an action plan. Assistive technology consultation and/or assessment may be provided to individuals who are at any phase of the rehabilitation process.

3705 Environmental Modifications.

3705.1 Home Modifications. Home modifications or alterations made to a individual's home must be based upon an evaluation of the individual's need and for the purpose of providing the individual with improved access to the home. Home modifications may be provided as a supportive service when necessary to enable a individual to achieve or maintain a vocational rehabilitation goal. All modifications must meet current local building codes and regulations. Under no circumstances will the Division provide additions or extensions to an existing building, or modifications that involve movement or construction of exterior walls.

A. *When Provided.* Home modifications may be provided following approval of the individual's IPE.

B. *Evaluation of Need.*

1. *Rehabilitation Counselor Action.* In formulating an IPE which may include home modifications, the Rehabilitation Counselor will arrange for an evaluation. Evaluations may be provided by completing WVDRS-54 and forwarding it (with photographs, if available) to the Program Supervisor, Rehabilitation Technology.

2. *Environmental Modification Unit (EMU) Action.* All evaluations will address the type(s) of modifications needed and recommended, specifications, and a materials list, when a list of materials is necessary. A copy of the written evaluation report will be forwarded to the requesting Rehabilitation Counselor. The written evaluation will include recommendations for modifications that are consistent with agency policy, regardless of what other modifications may be requested by the individual. Prior to completing a written report with recommendations, the EMU will contact the Counselor and provide a preliminary list of recommended accommodations. It will be the responsibility of the Counselor to review the preliminary list and determine what services will be provided consistent with the IPE and agency policy. Once an agreement is reached, final written recommendations will be completed by the EMU and forwarded to the Counselor.

C. *Planning.* During the planning and arrangement of a home modification assessment, the Rehabilitation Counselor must ensure the individual understands that the Division is responsible for providing the minimum modification required to allow the individual to achieve accessibility in the home. The Division will provide reasonable accommodations to eligible individuals who need home modification to reach a VR goal. The Division, however, reserves the right to consider cost effectiveness in the provision of all modifications while still ensuring accessibility. Any requested modifications that are not included in the EMU recommendation will be the individual's responsibility. EMU staff may, when appropriate, provide services for home modifications on-site that require less than one

day's work by EMU staff. All other recommendations for modifications must go through the regular state purchasing and/or bidding process.

D. *Special Considerations.* Prior to authorizing home modifications, the Rehabilitation Counselor will consider the following:

1. *Home Ownership.*

a. *Private Property.* Modifications to private homes can be completed with approval of the individual's IPE.

b. *Rental Property.* The Rehabilitation Counselor must obtain written permission from the landlord to make changes to rental property. The land owner must be informed that platform or chair lifts will be removed if or when the individual moves.

2. *Entrance, Driveway, Ramps.*

a. Accessible entrance only;

b. Ramp (if feasible) before considering lift;

c. Ramp with access *only* to driveway (no extra walkways);

d. Decks will be minimum size necessary to accommodate wheelchair for turning (access stairs to the deck may only be built when it is appropriate to replace stairs removed during construction, or when stairs with special riser/tread depth is necessary for accessibility);

e. Only loading and unloading areas of a driveway will be paved.

f. If public transportation is the individual's mode of transportation, the walkway which gives access to this transportation may be paved.

3. *Doorways.* Only doorways requiring individual access will be modified. These may include the front door; individual's personal bedroom; bathroom individual utilizes; individual's eating area; kitchen (if individual prepares meals for himself/herself or others); and main family area. Only one exterior door may be modified.

4. *Kitchen.* Kitchen modifications will be made only for the individual who prepares meals for himself/herself or others, and only if the individual has primary responsibility for meal preparation in the household.

a. Sink. Remove cabinet doors and wrap pipes for safety. Remove kick plate from existing base cabinet if sink needs to be lowered. Replace faucets/fixtures with lever/wand types.

b. Wall Cabinets. Lower wall cabinets, only to the degree necessary for functional use by the individual. This modification will only be considered after all other options are eliminated. Example: Can the individual reach all necessary items from the first shelf in the cabinet(s)?

c. Base Cabinets. Modify primary work area only if necessary.

d. Appliances. Microwave or toaster ovens, electric skillet, slow cooker will be used instead of replacing major appliances when possible.

5. *Laundry*. Laundry area will be modified only if the individual is responsible for the family's laundry, or for his/her own laundry in a single-person household.

6. *Bathroom*. If the bathroom meets minimum standards to be accessible for the individual, no additional change will be made. Minimal modifications may be provided if necessary to make the bathroom accessible for the individual and his/her attendant.

7. *Multi-Level Home*. All floors must house at least one of the individual's major living areas in order to be considered for accessibility purposes.

8. *Environmental Controls*. If the individual is alone in the dwelling a major part of the day and cannot access essential lights, thermostats, door locks, or telephone, the Rehabilitation Counselor may consider environmental controls after evaluation by the Rehabilitation Technology Staff.

9. *Lifts*. Lifts may be considered for home entrance accessibility only after ramp construction has been determined to be infeasible. Stair lifts may be considered for accessibility to a multi-level home only if the lift is required to enable the individual to be independent. Lifts for home modification (both chair and platform) require Environmental Modification Unit evaluation and recommendations. EMU will return its recommendations, including specifications, to the Rehabilitation Counselor.

3705.2 Ramp Construction. Ramp construction services may be provided by licensed contractors or volunteers. Client choice should be considered in vendor selection. If the total cost for materials and labor is less than \$1,000, the Rehabilitation Counselor may prepare WVDRS-16, *Authorization*, utilizing fees and codes that appear in Section 9300. If the total cost exceeds \$1,000, the Rehabilitation Counselor must seek bids from vendors in accordance with state purchasing procedures and complete WVDRS-17, *Case Services Requisition*.

A. Contractors. To provide ramp construction services from a contractor, the Rehabilitation Counselor must:

1. Arrange for an EMU evaluation. All ramp evaluations (surveys) must be performed by EMU personnel. Following the evaluation, the Rehabilitation Counselor will receive a report that includes necessary construction details (if a ramp is appropriate) and a maximum price for the ramp system.

2. Forward the survey report, specifications, and drawing(s) to a contractor(s). The Rehabilitation Counselor will notify the vendor(s) of time requirements for completion of the project. Vendors will respond with a firm price and project start and completion dates.

3. Determine the most appropriate vendor considering client choice, projected timelines, and project cost. The Rehabilitation Counselor will prepare either WVDRS-16 or WVDRS-17, as appropriate.

4. Inspect the ramp upon completion and contact EMU with questions or problems. If the ramp is satisfactory, the Rehabilitation Counselor will process the appropriate paperwork for payment.

B. Volunteer Labor. To provide ramp construction services utilizing volunteer(s), the Rehabilitation Counselor must:

1. Arrange for an EMU evaluation. All ramp evaluations (surveys) must be performed by EMU personnel. Following the evaluation, the Rehabilitation Counselor will receive a report that includes necessary construction details (if a ramp is appropriate) and a maximum price for the ramp system.

2. Forward the survey report, specifications, and drawing(s) to the volunteer(s). If two or more volunteers will participate in the project, a contact person will be designated.

3. Inform the EMU Supervisor of the intention to use volunteer labor. An EMU technician will be assigned to oversee the construction process. The EMU technician will create or review the materials list and assist the volunteer with a timeline and other project details. Project timeline, materials source, and materials price will be forwarded to the Rehabilitation Counselor.

4. Prepare WVDRS-16 or WVDRS-17, as appropriate, to purchase materials and process the appropriate paperwork for payment.

3706 Vehicle Modifications.

3706.1 Provision. Minimum modifications to a vehicle will be purchased for eligible individuals. The Division reserves the right to consider cost effectiveness in the provision of vehicle modifications, while still assuring that the individual can achieve independence as a driver or passenger. Requests for modifications not included by the approved evaluator will not be covered by the Division. The individual may supplement the cost of these additions if desired.

3706.2 Evaluation and Technical Assistance. Prior to the provision of vehicle modification services, all vehicles must be evaluated by a qualified service provider such as an occupational therapist, rehabilitation driver/instructor, or Certified Driver Rehabilitation Specialist (CDRS). The West Virginia Rehabilitation Center Driver Education Unit can provide these assessments. Evaluations from vendors will not be accepted. Recommendations for vehicle modifications will be forwarded to vendors following state procurement procedures including the bidding process. If the proposed vehicle modification exceeds \$10,000, a completed WVDRS-17 with District Manager approval should be forwarded with the evaluation report to the Assistant Director, Client Services, for final approval.

3706.3 Considerations.

A. Vehicle Modifications Less Than \$10,000. Exceptions to the following considerations will require the review and approval of the Senior Manager, Field Services. Vehicle modifications costing less than \$10,000 may be considered with the following limitations:

1. Modifications to a vehicle will not be provided if the individual owns or has use of another vehicle which would meet the individual's transportation needs;
2. Modifications to a van will not be provided if it would be possible to modify an automobile to meet the individual's need for transportation;
3. Modifications to a vehicle for an individual to drive will not be provided if the result of a comprehensive driver's evaluation indicates that the individual is not capable of driving due to the individual's disability;
4. Vehicle modifications may be provided only once every 7 years;
5. Expenditures on vehicles with more than 75,000 miles will not exceed more than two times the wholesale value of the vehicle based on the *Blue Book* value. Any vehicle not meeting that criterion must be evaluated by a mechanic using WVDRS-55, *Used Vehicle Inspection Report* (see Figure 3700-1).
6. Vehicle modifications such as automatic transmission, power steering, power brakes, power windows, and air conditioning, will not be approved for new vehicles purchased by the individual at or near the time of request for Division services. If the

individual is in the process of purchasing or has recently purchased a new vehicle, these features are considered the responsibility of the individual; and,

7. Modifications will not be approved for any vehicle failing to meet the minimum requirements for West Virginia state vehicle inspection.

B. *Vehicle Modifications More Than \$10,000.* Vehicle modifications that total more than \$10,000 will be considered only for those individuals who are unemployed and have a firm written offer of employment. The WVDRS-17 and evaluation report will be forwarded the Assistant Director, Client Services for approval before the service may be provided.

3706.4 Documentation of Need. Prior to the approval and purchase of vehicle modifications, the Rehabilitation Counselor shall document in the record of services the need for vehicle modifications in order for the individual to achieve the rehabilitation goal.

3706.5 Insurance. Individuals who are provided vehicle modification services shall obtain, at their own expense, insurance on such modifications. The Division will not correct or replace motor vehicle modifications that have been:

A. Damaged or destroyed in an accident;

B. Provided by the Division and not insured by the individual. When the modifications are covered by warranty, the Division shall require the vendor to repair or replace defective equipment within the time frame specified under warranty.

C. A copy of the individual's paid insurance policy or verification from the insurance company that the individual is eligible for insurance upon completion of the modification must be submitted to the Rehabilitation Counselor and kept as part of the record.

D. Exceptions to the payment of insurance to cover modifications may be made with approval by the District Manager after careful review of the individual's financial need.

3706.6 Routine Maintenance. The Division shall not be responsible for the maintenance of vehicles for which it has provided modifications.

3706.7 Purchase. Vehicles for individuals, including automobiles, trucks, vans, farm tractors, and other similar self-powered vehicles shall not be purchased.

3706.8 Vehicle Modifications/Adaptive Equipment Purchase. Vehicular modifications are subject to state purchasing procedures, including the bidding process. All vehicle modifications exceeding \$1,000 must be submitted to the Procurement Office on WVDRS-17, *Case Services Requisition*. If the total cost is between \$1,000 and \$4,999, verbal bids are allowable. Costs between \$5,000 and \$9,999 require written bids. If the cost for

modifications exceeds \$10,000, the completed WVDRS-17 first will be forwarded to the Assistant Director, Client Services, for approval before sending the request to the Purchasing Office. The Rehabilitation Counselor will contact a WVRC driver evaluator if the vendor's price varies appreciably from estimates in the evaluation report.

A. *Modifications to Vehicle Owned by Individual.* The Division may provide the minimum adaptive equipment required to make a vehicle accessible to the individual as indicated in the vehicle evaluation report. Used vehicles are subject to limitations previously outlined in this section under *Limitations*. Certain makes of vehicles are easier to modify than others. A qualified driver evaluator should be consulted before the purchase of any new or used vehicle. The evaluator can offer technical advice concerning the best make, model, and options for the individual.

B. *Used Vehicles Already Equipped with Adaptations/Modifications.* The Division may pay for that portion of pre-installed adaptive equipment that is specified in the vehicle evaluation report. Division participation will be based on the installed value of the equipment less 10% depreciation per year old up to a maximum of 70%. A request to purchase used equipment must be accompanied by a document from a vehicle modification vendor stating that the equipment is fully operational and the equipment's condition is consistent with the age of the equipment. Used vehicles are subject to limitations previously outlined in this section under *Limitations*.

C. *New Vehicles Already Equipped with Adaptations/Modifications.* The Division may pay for that portion of pre-installed adaptive equipment that is specified in the vehicle evaluation report. The vendor will be asked to categorize the purchase price of the vehicle as follows: cost of base vehicle with standard equipment (*Blue Book* value), and cost of adaptive equipment. The Division will authorize purchase of the adaptive equipment only.

3706.9 Vehicle Repair. There may be instances when repairs are needed to the vehicle of an individual who is receiving services and the Rehabilitation Counselor has determined that:

A. The service will substantially and directly support the individual's rehabilitation goal; and,

B. No other source exists to finance the needed repairs.

C. In such instances, the record of services and a justification summary will be forwarded to the District Manager for approval.

3707 Driver Evaluation. After completing a driving evaluation, the Certified Driver Rehabilitation Specialist shall provide the Rehabilitation Counselor with a list of recommended equipment such as hand controls, lifts, tie down systems, structural modifications, etc.

3708 Closure as Too Severe.

3708.1 Technology Assessment or Consultation Required. Assessment or consultation in rehabilitation technology is required for any case before it is closed in any status as too severe. Consultations for closures as too severe may be provided via telephone. All telephone conversations will be confirmed with e-mail or memorandum to the Rehabilitation Counselor from the Program Supervisor, Rehabilitation Technology. If it is determined that referral for services is needed, the Rehabilitation Counselor will follow the procedure for referral.

3708.2 Trial and/or Extended Work Experience(s). Consultation in rehabilitation technology is required when the individual participates in trial and/or extended work experience(s) due to the severity of the disability.



West Virginia Division of Rehabilitation Services
VEHICLE MODIFICATION PROGRAM
USED VEHICLE INSPECTION REPORT

DRS Client: _____ Date of inspection: _____

Vehicle Make: _____ Model: _____

Year: _____ VIN _____

Plate Number: _____ Odometer reading _____

Inspector information

Name _____

Business name _____

Address _____

Phone _____

Instructions:

Please inspect and rate the vehicle in all categories listed. An "acceptable" (A) rating denotes that the item in question is in good condition with normal wear and is not in need of replacement. All items that are unsafe, will not pass WV inspection, or are in need of replacement should receive a "not acceptable" (NA) rating.

Any repairs needed to used vehicle must be completed prior to DRS issuing an authorization for vehicle modification. Repairs are to be paid for by client and a receipt for same submitted to DRS Counselor.

****** Inspecting vendor is not to make repairs. ******

FRAME/Unibody

	Yes	No	Comments
1. Is the frame/unibody sound?			
2. Is corrosion level acceptable?			

Steering System/Suspension/Drive Train

	A	NA	Comments
1. Power steering pump & gearbox			
2. Steering Linkage & ball joints			
3. Alignment			
4. Front Springs/struts			
5. Rear Springs			

Body

	A	NA	
1. Door condition			
a. alignment *			
2. Floors condition			
a. rust through			location
b. body mounts condition			
3. Roof post and headers condition			

* The alignment of sliding side doors on vans is particularly critical. Please note problems in detail.

Brake System

Pull all four wheels and inspect for:	A	NA	Comments
Pad/shoe wear			
Rotor/Drum condition			
Master cylinder condition			
Emergency brake cable			

Electrical System

	Yes	No	Comments
Is the wiring in satisfactory condition?			
Is the battery in good condition			Cranking Amps

FIGURE 3700-1. WVDRS-55, *Used Vehicle Inspection Report* (continued).

Power Train

Number of Cylinders	☐ 4	☐ 6	☐ 8	Displacement		☐ Liters, ☐ Cubic Inches
☐ Carburetor, or ☐ EFI						
Compression readings for each cylinder						
1	2		3		4	
5	6		7		8	
General engine condition	☐ A	☐ NA	Note any leaks			

Exhaust

	A	NA	Comments
Muffler/Catalytic converter			
Connecting and tail pipes			

Cooling System

	A	NA	Comments
Radiator			
Hoses (radiator & heater)			
Coolant condition			

Optional Equipment

Equipment			Condition		Comments
	Yes	No	A	NA	
Front air conditioning					
Rear air conditioning					
Power steering					
Power brakes					
Power windows					
Automatic transmission					
Cruise control					

Additional comments:

FIGURE 3700-1. WVDRS-55, *Used Vehicle Inspection Report* (continued).

3800 DIAGNOSTIC AND TREATMENT SERVICES.

3801 General. To the extent that financial support is not readily available from a source (such as through health insurance of the individual or through comparable services and benefits), diagnostic and treatment services may be provided as necessary to correct or substantially modify a physical or mental impairment that constitutes a substantial impediment to employment.

3802 DIAGNOSTIC MEDICAL AND PSYCHOLOGICAL SERVICES.

3802.1 GENERAL When the interview and result of the Health Assessment Questionnaire and subsequent medical evaluation clearly establishes that no vocational impediment arises from the disability or that the resulting vocational impediment does not meet the severity level of "substantial," and the individual clearly understands the absence of impairment, no further evaluation is needed. If however, the individual continues to express a desire to receive consideration for eligibility, the Rehabilitation Counselor will need to obtain necessary medical or psychological information for eligibility determination.

3802.2 HEALTH ASSESSMENT QUESTIONNAIRE. WVDRS-98, *Health Assessment Questionnaire* (HAQ), will be completed in every case. Because of the high cost associated with multiple and extensive diagnostic procedures, the Division does not conduct exhaustive work-ups that follow a medical model of rehabilitation. During the preliminary assessment, diagnostics need only address the applicant's vocationally relevant conditions. Unless a GME is deemed necessary, the HAQ suffices as the appraisal of the applicant's medical health.

A. *Description.* The HAQ is a series of inquiries involving an individual's medical history, previous hospitalizations, physician relationships, medications, medical restrictions or treatments, and a systems check for symptomatology.

B. *When Completed.* The HAQ is to be completed by the Rehabilitation Counselor at the time of the individual's application, based on information received from the individual. If there is any question of the individual's mental competency, as with an individual with a disability of mental impairment who may not have sufficient knowledge of his/her medical history to accurately respond to the HAQ, it will be necessary to obtain this information from the individual's parent, guardian, or representative. If a parent or guardian is not available or if there is also a question of the guardian's mental competency, a GME is required.

3802.3 USE OF EXISTING INFORMATION. Gathering data on existing information is critical in the eligibility determination and rehabilitation planning process. Information acquired from the applicant, along with information obtained from physicians who have treated and are knowledgeable about the applicant, can provide the counselor with invaluable insight into the disability and its limitations that may create obstacles for future

rehabilitation efforts. Acquiring existing information begins with the Counselor's interview with the applicant in completing the HAQ.

A. *The Rehabilitation Counselor interview* with the applicant as recorded on *the HAQ*, ascertains the following:

1. Is there a current medical management program or an existing doctor-patient relationship?

2. Is there existing medical information on file in doctors' offices, hospitals, or elsewhere which may meet part or all of the Division's medical case information needs or, together with results of current evaluations, may give a better understanding of the case?

a. If, in taking the past medical history, the Rehabilitation Counselor learns that hospitalization, examinations, x-ray and laboratory studies may have been done for various symptoms or illnesses, s/he may attempt to get existing medical information from those medical encounters which s/he suspects may be helpful in understanding the individual's general health and disability. The principle criteria of usefulness are recency, the long-term seriousness of the condition, and the extensiveness of the medical encounter.

b. When requesting existing medical information, the Rehabilitation Counselor will obtain the applicant's signature on the appropriate *Request for Information* form.

c. The Division will give the information source adequate guidance on exactly what is requested. A medical file, like a case folder, can be voluminous and it is expensive and unnecessary to duplicate it in its entirety. Hospitals usually have a discharge summary on file which ordinarily meets the Division's informational needs. A physician's office, clinic, or hospital outpatient service will be much more likely to give a useful response when advised exactly what is needed (e.g., "Please advise or duplicate medical records showing diagnosis regarding arthritis and cardiac status." "Please duplicate pathology tissue report and pulmonary function study results."). The information source may be authorized to charge the Division for abstracts and duplicates of medical information. See Section 8300. When requesting information from an agency, obtain and use the patient identifying number to the extent possible.

3. It is preferable to get existing medical information before sending a client to a physician for a GME. That information may:

a. Establish that there is no disability thus removing the necessity for another examination;

b. Give equivalent information thus making reexamination unnecessary; and,

c. Clarify and add to the understanding of the medical situation, thus enabling the physician who subsequently evaluates the individual to reach his/her opinions more quickly, economically (fewer tests), or accurately. Existing medical information should be duplicated and copies provided to all subsequent medical examiners with the applicant's approval and signature on the *Release of Information* form.

4. The decision to defray a physician evaluation until existing medical information arrives should be made according to how long one expects to be in getting that information and how important and relevant it is to key questions.

B. The individual's statement of his/her disability, its duration, and specifically how s/he has experienced it to limit function and prevent him/her from working will be recorded on the HAQ. The foregoing is recorded to enable the examining physician to ascertain the compatibility of the individual's perceived incapacity with the functional loss expected in view of the physical findings. When the interview clearly establishes that no vocational impediment arises from the disability or that the resulting vocational impediment does not meet the severity level of "substantial," and the individual clearly understands the absence of impairment, no work-up is needed. If however, the individual continues to express a desire to receive consideration for eligibility, the Rehabilitation Counselor will need to obtain necessary medical or psychological information for eligibility determination.

3802.4 General Medical Evaluations. The GME assesses the existence, nature, and rehabilitation implications of the disabling condition(s) and the individual's overall health, in addition to the stated functional limitations which may influence the eligibility decision or formulation of the Individualized Plan for Employment (IPE). Vocational implications include the current functional level; the potential for medical treatment to improve function and how much; the probable course which the disorder

A. *Rehabilitation Counselor Actions.* The Rehabilitation Counselor will record on WVDRS-80, *General Medical Evaluation*, the description given by the individual as to how s/he has experienced the impairment to prevent him/her from working. The Rehabilitation Counselor also will record the medical history details (what, when, and current status) of all questionable or positive responses from the HAQ. The Rehabilitation Counselor will enter remarks, questions, or requests for the examining physician. Examples of the type of specific questions/comments that can greatly help the Rehabilitation Counselor include:

1. Are there medical contraindications to a trial work period involving considerable heavy lifting?

2. Does clinical evidence appear to substantiate the individual's statement of inability to stand for more than 5 to 10 minutes?

B. *Examining Physician Actions.* The examining physician will complete WVDRS-80 with the following:

1. A statement as to the individual's medical complaint;
2. Follow-up on any item of possible major current importance revealed by screening the medical history (may be indicated by such entries as further history on the question, comment as to its significance, diagnosis explaining the finding, or a recommendation for further diagnostic study relevant to the question);
3. Distant vision, blood pressure, results of urinalysis and the findings upon physical examination of the body area of the complaint (heart, lungs, abdomen, and limbs);
4. Diagnosis, impressions, or recommended additional medical evaluations needed to reach a diagnosis;
5. Probable functional limitations (unless these are obvious, as in the diagnosis of blindness, deafness, amputation, or paraplegia) to the extent that these can be assessed;
6. Any medically contraindicated functions or environments (often there are none); and,
7. Treatment that may be helpful, if any, or further medical evaluation needed.

3802.5 Specialty Consultations.

A. *General.* The consultation differs from the routine office visit in that the physician must provide an evaluation of the individual condition and a report which includes the diagnosis and prognosis with a treatment plan. Likewise, specific tests such as refraction and audiometry do not constitute consultation.

B. *When Needed.*

1. Specialist consultation is arranged when there are questions about medical aspects of the case with possible vocational significance and those questions are not adequately answered by the GME or existing medical information. The fact that an impairment lies within the subject area of a particular medical specialty does not of itself call for referral to that specialty, except for determination of eligibility for visual and hearing impairments. Questions about an impairment that confidently can be judged to be of no material vocational significance do not require specialty consultation.

2. Normally, specialty consultations are arranged after completion of HAQ and/or receipt of other medical information, because these reports will help identify

consultative needs, if any. When it is highly likely that specialist consultation will be needed, however, it may be arranged without regard to sequence.

3. The GME report may recommend further tests or consultations, usually to refine the diagnosis or to advise or initiate a treatment plan. The Rehabilitation Counselor will determine if these recommendations have vocational significance and, if not, document why the recommendation for further tests or consultations was not followed. If the recommended consultations are vocationally significant, the Rehabilitation Counselor and the individual will select the consultant and determine the specific outcome needed. The Rehabilitation Counselor also will determine if s/he has the critical medical information which is needed to determine eligibility, develop an IPE, and, in a few specific disabilities, meet stated consultative requirements.

C. Obtaining Needed Information.

1. The Rehabilitation Counselor must identify and communicate specifically to the consultant what s/he needs to know. The field medical consultant in many instances can help to identify and pose specific questions.

a. Following is an example of a Rehabilitation Counselor question likely to result in the needed information: "Should we presume that the individual's current seizure frequency is about as good as can be achieved, or are further drug/dosage trials indicated?"

b. Conversely, here is an example of a Rehabilitation Counselor statement that has a high risk of **not** resulting in the needed information: "Neurological opinion is needed to help establish eligibility, vocational objective, and rehabilitation plan."

2. The Rehabilitation Counselor will ascertain that there are no identifiable obstacles to the individual keeping the scheduled appointment, such as transportation, child care, individual's ambivalence on necessity, and location of the specialist's office. S/he will log the appointment in the *Action / Details section of iECM*.

3. The Division is responsible for providing the specialist with a copy of all medical reports on file in the case folder that may bear on his/her evaluation or a synopsis of the relevant reports on file (a desirable alternative if existing medical reports exceed four or five pages), and a written statement to the consultant giving him/her guidance as to the specific question prompting the consultation request.

4. In addition to authorizing the consultation itself, the Rehabilitation Counselor also will authorize any x-ray and/or laboratory procedures usually required in the particular type of consultation.

D. *Specialist Report.*

1. *Elements.* The consultant specialist report should contain the following:

- a. Brief medical history about the impairment;
- b. Brief description of the physical findings relevant to the impaired area;
- c. Diagnostic impression or listing of specific additional evaluation procedures needed to reach a diagnosis;
- d. Listing of specific functional limitations;
- e. Treatment recommendations, if any, or additional evaluative procedures needed to better reach this decision (reporting of the degree of functional or prognostic change anticipated as consequence of treatment should be suggested or recommended to consultants);
- f. Any medically contraindicated environments or situations or functions hazardous to health;
- g. A prediction as to the probable course which the disorder will follow (whether stable, progressive, self-limited or intermittent, and estimated timetable if progressive); and,
- h. Adequate response to specific questions asked by the Rehabilitation Counselor.

2. *Standards.* In most cases, information on all eight of the above items will be needed. However, there are individuals for whom one or more of the above items will have been described adequately in other medical reports, or is self evident, or is irrelevant to the issue prompting the consultation, or is otherwise not needed. Whenever the Division's information needs are met by the consultation report singly or in combination with other reports, the consultation report should be regarded as meeting standards.

E. *Mandatory Specialist Consultations.*

1. *Visual Impairments.* When a visual impairment is the major disabling condition or a significant secondary disability, a specialist consultant or visual examination will be obtained from an ophthalmologist or optometrist, whichever the individual may select. The Counselor for the Blind is not required to purchase additional ophthalmologic testing for individuals who are totally blind. Rehabilitation Counselor judgment allows for additional medical evaluations if circumstances warrant.

a. When disease of the eye is present, any treatment authorized by the Division will be provided by, or under direction of, an ophthalmologist.

b. When blindness is the disability, an audiologist or otologist will evaluate the individual's hearing. If an air conduction audiogram performed under the supervision of either is normal, this requirement necessitates no further evaluative measures.

2. Some ophthalmologists and optometrists include such tests as tonometry and slit lamp examination routinely in patients for whom they perform a refraction. When a practitioner states to the Division that his/her standard includes such procedures for all private patients, for those above a certain age, or for all new patients, the Division will not request him/her to deviate from that standard for its clients. Rehabilitation Counselors will determine the pattern of practitioners used by the Division in their territories. The authorization will contain the full wording from the fee schedule for the scope of service designated.

3. The report received after such examination must relate the findings of each examination component on the authorization in order to be processed at that payment rate. If a lesser scope of examination is reported, payment will be at the level appropriate for that scope and the Rehabilitation Counselor will advise the examiner of the basis for payment.

4. *Hearing aids:* Hearing aids will be purchased only after an individual has had both otological and audiological evaluations indicating the need for hearing aids. A copy of the report(s) must be placed in the record of services. A visual examination is required for all individuals with either a primary or secondary disability impairment code of 03 (Deafness, Primary Communication Visual), 04 (Deafness, Primary Communication Auditory) or 08 (DeafBlindness). Individuals with disability impairment codes of 05 (Hearing Loss, Primary Communication Visual), 06 (Hearing Loss, Primary Communication Auditory), 07 (Other Hearing Impairments) or 09 (Communicative Impairments [expressive/receptive]) also may need visual examinations if any one of the following apply:

- a. at least a 55 dB loss, unaided, speech reception threshold (SRT) in the better ear; or,
- b. at least a 55 dB loss, unaided, pure tone average, (PTA) in the better ear; or
- c. between a 30 to 54 dB loss, unaided, SRT or PTA, in the better ear, with one of the following:

- 1) Speech discrimination less than 50%; or
- 2) A statement from a physician skilled in diseases of the ear indicating a progressive loss.

3803 Restoration and Treatment.

3803.1 Health Maintenance Restrictions. When the individual has long-term health maintenance needs that will continue subsequent to the delivery of planned rehabilitation services, such as ongoing medical management or routine replacement and repair of appliances, the Rehabilitation Counselor shall advise and assist the individual in developing a plan that provides these services in the future. Strategies for setting aside funds on a monthly basis and utilization of community-based services are only two of many options. The Rehabilitation Counselor will document such plan development in the individual's IPE.

3803.2 Special Considerations for Treatment and Services.

A. *Dental Treatment.* Dental disorders such as cavities, gum abscess, or the need for multiple extractions and dentures are not considered a substantial vocational impediment and therefore do not constitute a disabling condition for eligibility purposes. However, dental services may be provided when necessary as a support service to an otherwise eligible individual to enable the individual to complete a rehabilitation program. When dental extraction(s) are required as a portion of an approved service, the mouth will be restored following such extraction(s). Orthodontia is not considered dental treatment and can be underwritten only when needed in support of more critical surgical procedures such as cleft palate, or when the orthodontia is so severe that it comprises a secondary disability. All orthodontia requires approval of the District Manager.

B. *Eyeglasses Purchase.* The purchase of eyeglasses as the only service in addition to counseling and guidance and placement is not normally considered a substantial rehabilitation service requiring an IPE and the professional efforts of a Rehabilitation Counselor. In most instances, the provision of eyeglasses is a routine health care matter requiring the services of an eye care professional and the resources to pay for the eyeglasses.

1. *Purchase of Eyeglasses as Only Service.* The Division will purchase eyeglasses as the only service for an individual with the primary disability impairment code of:

- a. 01 (blindness, both eyes);
- b. 02 (blindness, one eye, other eye defective); or,
- c. 02 (other visual disorders). When an individual is unable to obtain a driver's license due specifically to a substantial loss in vision (20/70 or worse in the better eye after correction), the individual may qualify for eyeglasses.

2. *Job Retention Cases.* In no instance will the Division provide eyeglasses as the only purchased service when the case is job retention. This section was moved from Section 2500 and has no changes.

C. *Hospitalization.* Services provided in a hospital will be purchased only in conjunction with surgery or treatment. Hospitalization will not be provided for diagnostic purposes, or when in conjunction with a diagnostic surgical procedure. When hospitalization is recommended, the Rehabilitation Counselor will obtain from the physician an estimate of the number of days that hospitalization will be required and the services to be provided. A copy of the official hospital report (discharge summary or similar report) will be placed in the case record.

D. *Intercurrent Illness.* Medical care for intercurrent illnesses may be provided by the Division only when acute illnesses or injuries occur during the course of an individual's rehabilitation or trial work experience which, if not cared for, would complicate or delay the individual's program.

E. *Nursing Services.* Nursing services will be purchased only when necessary for medical recuperation within the home as recommended by the attending physician, and only on a time-limited basis. Home health care or home nursing will not be provided for long-term care purposes.

F. *Orthotic Devices.* Orthotic devices will be purchased only when recommended and prescribed by a physician. A copy of the written prescription will be placed in the record.

G. *Physical and Occupational Therapy.* Physical and occupational therapy will be purchased from licensed individuals or facilities only with a prescription from a physician, a copy of which will be placed in the record.

H. *Prescription Drugs.* Prescription drugs may only be authorized by the Counselor when the prescription is directly related to the primary or secondary disabling condition, or when necessary to treat an intercurrent illness that is interfering with the individual's ability to complete the planned services. In either instance, the Counselor will emphasize to the individual that the service is time limited and only for the time necessary to reach a successful rehabilitation outcome. Prescriptions for routine health care that are not related to the disability will be the responsibility of the individual. Examples of routine health medications include seasonal allergy medication, antacids and other digestive aids, cholesterol control medications, hormonal supplements or other drugs prescribed for general health or medical purposes.

I. *Prosthetic Devices.* Prosthetic devices will be purchased to assist an individual to function independently. The following procedures apply:

1. Before authorizing for an initial fitting of a prosthesis, the individual must be examined by a physician and a copy of the recommendation for the prosthesis must be obtained from the examining physician. Replacement of existing prostheses for amputations resulting from conditions other than circulatory disorders does not require physician supervision unless requested by the prosthetist or the individual.

2. Individuals with amputations resulting from diabetes, Buerger's Disease, or other circulation disorders will be examined by a physician specializing in internal medicine before a prosthesis is authorized.

3. Individuals will be referred to approved and certified prosthetic providers after the medical examination is completed.

4. A prescription with specifications and cost of the prosthesis will be obtained from the provider prior to provision of the prosthesis. A copy of the prescription will be placed in the individual's record of services.

J. *Psychotherapy*. Psychotherapy will be purchased for an individual by the Division up to \$2,200 per year and only when the following conditions are met and documented in the record. Amounts exceeding \$2,200 per year require District Manager approval.

1. A written recommendation from a psychiatrist or licensed psychologist is obtained;

2. It is neither possible nor feasible for the individual to receive mental health services from community programs; and,

3. The psychotherapy is provided by a psychiatrist or licensed psychologist.

K. *Renal Dialysis*. Renal dialysis will not be authorized.

L. *Speech and Hearing Therapy*. Medically directed speech and hearing therapy will be purchased from a licensed specialist or qualified speech pathologist to improve or eliminate the individual's disabling condition. A copy of the report shall be placed in the record of services.

M. *Surgical and Medical Treatment*. Surgical procedures will not be provided as a sole service and may be authorized by the Division only to support training services provided under an IPE.

1. Surgical and medical treatment shall require a written report, including recommended procedures, by a licensed physician. It will be the responsibility of the physician to discuss with the individual the recommended procedures, implications, risk, and expected results.

2. Cosmetic surgery or cosmetic procedures may only be done as a support service for training, and only when the vocational goal requires interaction with the public and there is a significant cosmetic defect resulting from either injury, disease, or

congenital malformation that in the counselor's judgment would prevent the individual from obtaining employment.

3. *Exclusions to Surgery.* Certain surgical procedures will not be authorized by the Division under any circumstances. These exclusions include, but are not limited to the following:

- a. Body invasive diagnostic surgical procedures (e.g., heart catheterization, exploratory laparotomy) performed for the purpose of determining a diagnosis or in preparation for another potential surgical procedure;
- b. Sterilization;
- c. Abortions;
- d. Organ transplants;
- e. Operative or other medically prescribed procedures for sex changes;
- f. Prosthetic breast implant;
- g. Hair electrolysis except for eyelashes abrading the cornea;
- and,
- h. Hair transplant.

N. *Wheelchairs.* Wheelchairs will be purchased only when prescribed by a physician. A copy of the wheelchair prescription or written specifications for the wheelchair signed by an authorized prescriber will be placed in the record of services. Authorizing procedures will be followed when purchasing wheelchairs.

O. *Chiropractic Treatment.* Payment for chiropractic services is specifically limited to treatment by means of manual manipulation of the spine (i.e., by use of hands only). No other diagnostic or therapeutic service furnished by a chiropractor or on his/her order may be covered by the Division. Other services such as x-rays, office visits, manipulation of body parts other than the spine, and other diagnoses not related to the spine, are not covered when performed by a chiropractor. Manipulative treatment must be determined medically necessary and recommended by a physician other than the chiropractor and supported by the existence of x-ray documentation. Periodic progress reports will be obtained from the chiropractor to ensure treatments are resulting in medical improvement. Chiropractic treatments may be authorized for a maximum of twelve treatments per calendar year. Treatments beyond the

initial twelve may be provided only upon recommendation from the original referring physician and are limited to a maximum of twenty-four over a period of two calendar years. Under exceptional circumstances, additional treatments may be authorized only after obtaining the written agreement of the field medical consultant and approval by the Senior Manager, Field Services. These restrictions apply whenever consideration for payment by the Division is an issue. They do not apply to clients for whom services are covered by third party payers, such as the Workers' Compensation Fund or insurance carriers.

P. Hearing aids for Homemakers. When the individual's disability is based on a hearing loss, hearing aids will not be purchased for individuals with a PTA/SRT score of 40 dB or less in the better ear. Binaural hearing aids for homemakers will be provided only to those individuals who have a previous history of binaural aid use, are legally blind, have a diagnosed balance disorder, or have primary care responsibilities for children under the age of eight or family members with disabilities. Should binaural hearing aids be recommended for homemakers not meeting the above criteria, the case must be reviewed by the Rehabilitation Program Supervisor, Deaf, Deafblind and Hard of Hearing for approval.

3804 Field Medical Consultant.

3804.1 Role of Field Medical Consultant. Under administrative supervision of the field location supervisor, the field medical consultant provides:

- A. Case consultation on issues such as adequacy of the medical evaluation, need for further tests, opinions, or treatment, interpretation of reports, characteristics of the impairment, and probable functional and prognostic consequences;
- B. Training of field personnel on medical matters necessary to increase their effectiveness;
- C. Communications between field staff and the medical community, interpreting roles, procedures, ethics, referral needs, and related matters each to the other generally and in response to individual needs apparent in the course of operations; and,
- D. Monitoring of the technical quality and necessity of medical services purchased.

3804.2 Consultation. Case consultation will be provided on those cases identified by the Rehabilitation Counselor or supervisor as prompting medical questions about which they need help or advice. During the consultation, the Rehabilitation Counselor will submit to the medical consultant a brief written or verbal summary of the requested guidance and information. The field medical consultant will, in turn, provide the necessary advice or direction in writing to the Rehabilitation Counselor.

3805 Selection of Physical/Mental Restoration Service Provider.

3805.1 Individual's Choice.

A. *Accepting Individual's Selection.* When there are no substantial reasons for a contrary action, the individual's choice of practitioner or facility for either evaluation or treatment will be honored.

B. *Reasons for Not Honoring Individual's Selection.* Reasons for making another selection include:

1. The provider does not meet the standards of licensure; certification, or accreditation;
2. The provider is unequivocally on record with the Division as not wishing to serve Division clients or not serve in the situation at hand, such as a new patient, non-physician referral, or perform a certain surgical procedure; and/or,
3. The provider has been specifically determined as unsatisfactory by the Division on the basis of previous work for reasons which may include falsification of services rendered, inadequate response to Division attempts to get timely reports, inadequate evaluations, and significant shortcomings in competency judged on the basis of careful evaluation by Division medical staff.

3805.2 Selection When No Doctor-Patient Relationship Exists. There will be a number of individuals who neither have a current relationship with a physician nor any preference as to whom to see for needed medical services. In this situation, the Rehabilitation Counselor should suggest a couple of physicians appropriate for the service needed. In making suggestions, s/he should select names of physicians whose history of service to individuals has been highly satisfactory in terms of promptness of appointment and subsequent reports, completeness of evaluation, costs, geographic proximity and quality of performance. The field medical consultant should assist the Rehabilitation Counselor in identifying qualified physicians who are providing highly competent work to Division clients.

3805.3 Change in Physicians. The individual may change physicians at his/her request under Division sponsorship within reasonable limits. Anxiety and loss of confidence not adequately restored by Rehabilitation Counselor explanation may constitute an acceptable reason for change. In general, however, more than one change should prompt limitations on Division sponsorship, since inevitably a change results in some duplication of work and costs. More than one change raises a question of loss of effectiveness because of lack of continuity of care, suggests a need for counseling, and should prompt a careful assessment of whether Division funds are being spent wisely in sponsorship of medical services.

3805.4 Physician's Assistants. Under the following circumstances, licensed physician's assistants may be used for diagnostic and treatment purposes, to verify the existence

of a disabling condition for eligibility purposes, and/or to prescribe medical interventions and treatment regimens. The physician's assistant must be supervised by a designated licensed and qualified physician and the physician must be present on the premises where the service is provided. Billing for services rendered will not be accepted directly from the physician's assistant, but must be submitted by the supervising physician. Payment for services will then be authorized to the supervising physician.

3806 Miscellaneous Provisions

3806.1 Individual's Consent for Surgical and Other Procedures. The burden of responsibility for providing risk information lies with the service provider. The Rehabilitation Counselor should advise the individual that the provider is the authoritative source of information about outcome and risk, and that the Division expects the individual and the provider to go over such matters directly. Any release forms to be signed by the individual will be provided by the practitioner, with the individual's signature attesting to the individual's informed consent for the practitioner to provide the particular service to him/her.

3806.2 Failure to Keep Appointments. By statute, the Division cannot pay for a broken appointment. Every effort will be made by the Rehabilitation Counselor to preclude the individual failing to keep an appointment.

4100 COMMUNITY REHABILITATION PROGRAMS.

4101 General. This section provides the information, guidance, and instructions most often needed by the Rehabilitation Counselor when serving individuals who have significant or most significant disabilities and who need services from Community Rehabilitation Programs (CRPs). This material, in addition to Section 7200 of the *WVDRS Resources Manual*, provides information about the policies and procedures related to the services the Division purchases from approved CRPs within West Virginia.

4102 Overview. An approved CRP can directly provide or facilitate the provision of services for individuals with significant and most significant disabilities which will enable them to maximize their opportunities for employment. The Division, as the designated state agency to administer the CRP, seeks the following vocational rehabilitation services from vendors: assessment for determining eligibility and vocational rehabilitation needs; prevocational services; job development, placement, and retention services; and, supported employment and extended services.

4103 Agency Organization for CRPs.

4103.1 State Office. The primary responsibility for establishing and maintaining formal relations with the state's network of CRPs is vested in Program and Policy Administration, which:

A. Provides guidance and assistance to established CRPs, and assures that these CRPs meet the Division's standards for serving its individuals.

B. Provides technical assistance to potential vendors seeking approval to provide services for Division individuals.

C. Maintains and monitors the Division's vendor approval process, formal agreements, and standards with each approved CRP. The approval process and formal agreements identify the mutual responsibilities of each party and contain information pertaining to authorization of services, payment procedures, and reporting requirements.

D. Annually reviews requests for funding and fees for services. Based on the reviews, the unit makes recommendations for grant funding and for fee schedule modifications.

4103.2 State Advisory Committee on CRPs. By statute, this Committee is composed of private citizens involved and interested in CRPs, representatives of related state agencies, CRP individuals, and selected Division staff. The Committee provides advice and guidance to the Division in relation to planning and promoting CRPs.

4103.3 Division Liaison Representatives to CRPs. In consultation with District Managers, the Senior Manager, Field Services, will assign a liaison representative to each CRP approved to serve Division individuals. The mission of the liaison representative is

to help develop the capability of the CRP to serve rehabilitation individuals, enhance communication between the CRP and the Division at all levels of operation, facilitate utilization of the CRP, and collaborate with CRP staff in serving rehabilitation individuals enrolled in the CRP. Functions frequently performed by liaison representatives include, but are not limited to:

A. Providing information on Division programs, policies, and procedures to the CRP and vice versa, including Extended Supported Employment Services.

B. Apprising Division staff of potential problems which may have a substantial impact on the relationship between the Division and a CRP.

C. Hearing individual complaints and assisting the individual and the CRP (or the individual and the Division, as appropriate) to resolve them.

D. If requested, serving as an advisor or consultant to the governing body (which may include attending meetings of the governing body).

E. Providing information to Division staff members which helps them to utilize the CRP fully and effectively.

4103.4 Vendor Approval to Serve Individuals. Prior to any Division individual being referred to a CRP for vocational services, the CRP must be approved by the Division and be in active compliance with all Division standards which are applicable to its program of services. This is documented by a letter of approval from the Division Director and listing of the CRP in the directory found in Figure 4100-1.

4104 General Casework Guidelines.

4104.1 Overview. In order for the individual/parent, guardian, or legal representative to make an informed choice about his/her goals, objectives, services, and vendors, the decision making and service delivery processes must involve frequent written and spoken communication between the individual, Rehabilitation Counselor, and vendor. Any reference to the individual's decision making opportunities and rights throughout Section 4100 also will mean parent, guardian, or legal representative if the individual is under such legal relationship(s). The following sections outline the roles of the Rehabilitation Counselor and the vendor in facilitating spoken and written communication in order that the individual receives effective and efficient service delivery.

4104.2 Rehabilitation Counselor Responsibilities.

A. *Individual Orientation.* During the case development process, the Rehabilitation Counselor should:

1. Explain why a referral to a CRP is being considered;

2. Describe and explain the services of the approved CRPs in the community which could benefit the individual;

3. Review each CRP's admission criteria;

4. Review each CRP's brochures or other informational materials;
and,

5. Offer to arrange a tour of the CRP(s).

B. *Referral.* Once the individual chooses a CRP, the Rehabilitation Counselor will complete a Referral Letter or the CRP's Application for Service form showing the individual's name, services being requested, and questions/objectives to be addressed. The Rehabilitation Counselor will include with the letter or application form case file information which will enable the individual and CRP staff to develop a *CRP Service Plan*. This information includes, but is not limited to: medical reports; psychological reports or summaries; physical restrictions; medications being taken, and appropriate sections of the individual's Individualized Plan for Employment (IPE).

C. *Pre-Admission Staffing.* If the vendor conducts a pre-admission staffing with the individual, the Rehabilitation Counselor should attend in order to assist in clarifying any questions concerning the individual's program of services.

D. *Authorization For Services.* After the staffing, should the individual wish to participate in the service, the Rehabilitation Counselor will prepare a WVDRS-16, *Authorization*, and send it to the provider prior to the individual's arrival for service. The amount of service to be authorized should be based on the individual's previous employment history, stated preference, and assessed needs. The Rehabilitation Counselor will periodically contact the individual to determine that s/he is satisfied with the service provided by the vendor.

4104.3 Service Provider Responsibilities.

A. *Initial Assessment.* The provider will conduct an initial assessment based on any questions/objectives provided by the Rehabilitation Counselor and individual. The Rehabilitation Counselor and individual must receive a written assessment by the tenth working day after completion of the service.

B. *Service Plan.* Based on the initial assessment, the individual, parent/guardian, or legal representative, and vendor will develop a *CRP Service Plan* identifying specific measurable goals/objectives, the methods/techniques to be used to achieve the goals/objectives, dates for achieving the goals, the staff person(s) assigned to carry out the plan, and regular dates to review the plan with the individual, Rehabilitation Counselor, et al. The Rehabilitation Counselor and individual must receive a copy of the plan by the tenth working day after the individual signs and dates the plan.

C. *Progress Report.* The vendor normally will hold a staffing to review the individual's service plan and progress. The Rehabilitation Counselor, appropriate vendor staff person(s), and the individual should participate in the staffing. The Rehabilitation Counselor and individual must receive a copy of the monthly progress report at the end of each month by the tenth working day of the next month. The report should include:

1. Work and behavioral objectives addressed during the month;
2. Explanation of results achieved;
3. Individual's work productivity (percentage of standard, if applicable) and wages earned;
4. Overall assessment of individual's progress in reaching goals/objectives;
5. The individual's assessment of his/her progress; and,
6. Recommendations.

D. *Service Completion.* Immediately after completion of the service and/or exiting the CRP, the vendor must complete a written Service(s) Completion Summary, listing: the services participated in by the individual; outcomes of those services; and, recommendations for other services. The Rehabilitation Counselor and individual must receive a copy of the summary report by the fifth working day upon completion of a service or upon leaving the CRP.

4105 Extended Employment. Extended employment is work in a non-integrated or sheltered setting for a public or private non-profit agency or organization that provides compensation in accordance with the Fair Labor Standards Act. Individuals choosing to work in an extended employment setting can not be closed as rehabilitated in Status 26 since extended employment does not meet federal guidelines for an employment outcome. If an individual referred to the Division for services makes an informed choice to enter extended employment in a non-integrated setting, the individual will be referred for services to an appropriate extended employment program. If the individual subsequently chooses to pursue employment in an integrated setting, the individual may apply for vocational rehabilitation (VR) services at a later date. Before making the referral, the Rehabilitation Counselor must:

- A. Explain to the individual that the purpose of the VR program is to assist individuals to achieve an employment outcome in an integrated setting;
- B. Provide the individual with information concerning the availability of employment options, and of VR services, in integrated settings;

C. Inform the individual that, if s/he initially chooses not to pursue employment in an integrated setting, s/he can seek services from the Division at a later date; and,

D. Refer the individual, as appropriate, to the Social Security Administration (SSA) in order to obtain information concerning the ability of individuals with disabilities to work while receiving SSA benefits.

Figure 4100-1. CRP Vendor Directory

Figure 4100-1. CRP Vendor Directory, Continued

4200 ATTENDANT CARE SERVICES.

4201 General. This section addresses two types of attendant care services:

A. Supportive attendant care services required to enable an individual to participate in one or more rehabilitation services leading to employment; and,

B. Employment attendant care services to enable adults with significant physical disabilities to enter into or continue in the workforce.

4202 Supportive Attendant Care Program.

4202.1 Policy. Attendant care services may be provided only under an approved Individualized Plan for Employment (IPE) and only as a supportive service. Attendant care must be required to enable the individual to participate in one or more major rehabilitation service(s) that may lead to employment. Attendant care services may be provided only when they are crucial to the success of the vocational rehabilitation (VR) effort. *In no instance will attendant care be provided as the sole service.*

A. Full-time attendant care may be considered only in instances where the individual is enrolled in full-time post secondary training or when the individual is enrolled in training at WVRC. The Rehabilitation Counselor may consider full-time attendant care for a full-time college student requiring dormitory residence.

B. In the case of an individual for whom services include therapy or physical restoration services, attendant care will be restricted to the particular care needs, such as transfer or mobility assistance necessary for the individual to receive the designated services.

C. The individual must be capable of assisting in the selection, training, and supervision of the attendant's scheduled activities.

4202.2 Evaluation of Need. As part of the formulation of any IPE which includes attendant care services, the Rehabilitation Counselor will obtain an evaluation of the individual's attendant care needs through either the West Virginia Rehabilitation Center (WVRC) or other center that is able to provide a comparable evaluation of the individual's activities of daily living needs. The purpose of the evaluation is to assure that any attendant care provided by the Division meets the individual's actual needs. The evaluation report will contain the information described on the *Activities of Daily Living* report form (Figure 4200-1). The actual cost per week will be determined by negotiation up to the maximum indicated later in this section. Applications for attendant care evaluation at WVRC are submitted in the same manner as are applications for other Center services.

4202.3 Individualized Plan for Employment. When developing an IPE which includes attendant care services, the Rehabilitation Counselor will carefully address intermediate objectives necessary for the individual to achieve a vocational goal. Because of the very nature of the handicapping condition of an individual who requires attendant care services, extraordinary efforts must be made to facilitate employment, with one or more employers. The program explanation statement should reflect Rehabilitation Counselor efforts to involve employers.

4202.4 Trial and/or Extended Work Experience(s). In some situations, it may become necessary to provide attendant care services during trial and/or extended work experience(s). The total accumulative attendant care provided during the trial and/or extended work experience(s) will be limited to the amount of time specifically required for the individual to participate in the trial and/or extended work experience(s).

4202.5 Resource Exploration. The case record will include documentation of a thorough exploration of all available resources for acquiring attendant care.

4202.6 Maximum Allowance. The maximum allowance for attendant care is the prevailing hourly minimum wage up to a maximum of \$18 per day or \$252 per fourteen-day maintenance period.

4202.7 Authorizing Attendant Care Services. WVDRS-16A, *Maintenance Authorization*, will be used to authorize maintenance grants for attendant care services. Using those maintenance funds, the individual will be responsible for paying the attendant(s) an agreed upon wage or salary.

4202.8 Economic Need. The provision of attendant care services is not subject to economic need consideration.

4203 Guidance.

4203.1 Resource Exploration. Possible resources to use in obtaining the needed attendant care may include family income, family financial support, grants, scholarships or contributions by potential employers, along with any other comparable benefits or third party resources which might be available to the individual. If the individual will be receiving rehabilitation training, the case record should include evidence of negotiation with the financial aids and/or special needs program office(s) of the training facility regarding assistance in defraying the cost of attendant care services.

4203.2 Documentation. In the *Action/Details* section of ECM the case record will document a clear and detailed agreement established between the Rehabilitation Counselor and the individual regarding the responsibilities of the individual and Rehabilitation Counselor for the recruitment and training of the attendant(s). There should also be documentation of the individual's living arrangements and the exploration and resolution of any problems which

have been anticipated regarding those arrangements, including any assistance to be provided by a training facility.

4203.3 Manner of Payment. The Rehabilitation Counselor should assure that the individual understands that any Division contribution toward payment of the cost of attendant care will be in the form of a maintenance grant to the individual. It is recommended that the attendant be hired as a self employed person. If the attendant is hired as the individual's employee, the individual will become responsible for the legal obligations of an employer, including withholding taxes and other payroll deductions.

4204 Employment Attendant Care Program.

4204.1 Policy. This program was established by the West Virginia State Legislature to enable adults with significant physical disabilities to enter or continue in the workforce. The intent of the program is to enable eligible adults with significant physical disabilities to obtain and maintain regular employment, thereby enhancing opportunities for participation in society, self fulfillment, and economic independence.

4204.2 Initial Evaluation. Otherwise eligible applicants should be informed of arrangements for an initial evaluation of their needs for personal care attendant services at the earliest practical time after the application is received, usually within thirty working days. The evaluation will be conducted by either the WVRC or another evaluation provider. The evaluation will assess the applicant's abilities and required knowledge regarding activities of daily living, self care, and mobility essential for employment; the applicant's ability to manage and supervise an attendant; the amounts and types of personal care attendant services needed; and the expected duration of the applicant's need for such services. The Division also may obtain additional medical, social, vocational, financial, or other information as may be deemed necessary for program administration; including information needed to support determination of eligibility for the program or to fully assess the amount, types, or duration of personal care attendant services essential for employment.

4204.3 Reevaluation. Eligible applicants and recipients of financial assistance for personal care attendant services shall be reevaluated to determine their continuing need for personal care attendant services essential for employment. The Rehabilitation Counselor will determine when reevaluation is necessary, such as when living arrangements or marital status changes. Recipients may request reevaluation of their personal care attendant needs at any time. Reevaluations will be conducted by either the WVRC or other evaluation providers.

4204.4 Eligibility Criteria. To be eligible for financial assistance under the employment attendant care program, the Rehabilitation Counselor must determine that *all* of the following criteria are met:

- A. The applicant is eighteen years of age or older;

B. The applicant has a significant physical impairment which for the applicant, constitutes or results in a substantial impediment to employment;

C. The applicant meets economic criteria for financial assistance;

D. The applicant needs a total of 28 or more hours of approvable personal care attendant services semi-monthly to obtain or maintain employability; and,

E. If not currently employed, there is a reasonable expectation that the applicant will obtain employment within six months. Placement efforts should be substantiated with written documentation from the Rehabilitation Counselor.

4204.5 Eligibility. The eligibility determination will be made at the earliest practical time after receiving the report of the required initial or reevaluation of personal care attendant needs and the completion of other case development as may be required to support an eligibility determination. The applicant will be informed of the eligibility determination within thirty working days after completing case development. The eligibility of every applicant must be determined, unless the case is closed prior to applying the eligibility criteria. The following are reasons for closing an applicant's case prior to applying the eligibility criteria:

A. Death;

B. Movement out of state;

C. Institutionalization;

D. Failure to cooperate;

E. Transfer to another Division;

F. Unable to contact or locate; and,

G. Refused services or further services.

4204.6 Employment Attendant Care Services.

A. Employment Attendant Care Plan. Financial assistance under the employment attendant care program is provided under an approved WVDRS-126, *Employment Attendant Care Plan* (Figure 4200-2), subsequent to completion of all required case development and a certification by the Division that the applicant is eligible to receive such assistance. This plan is not a contract, is subject to supervisory review, and may be administratively approved, disapproved, reversed, modified, or annulled as a result of such review. The plan is jointly developed by the applicant and Rehabilitation Counselor and represents and describes an understanding between the Division and the applicant regarding assistance to be provided, including the following:

1. Maximum hours per semi-monthly period the services are expected to be provided;
2. Maximum amount of financial assistance to be provided by the Division per period;
3. Dates for initiating and terminating financial assistance under the program;
4. Date for reviewing continued eligibility;
5. Attendee's responsibilities under the program; and,
6. Other specific terms and conditions of the assistance, as appropriate.

B. *Types of Services.* Personal care attendant services under the program are limited to those activities of daily living, self care, and mobility which are essential to enable the attendee to obtain and maintain employment. Such services may include, but are not limited to assistance with the following;

1. Routine bodily functions such as bowel and bladder care, routine menstrual care and other non-medical personal care;
2. Bathing, dressing, hygiene, and grooming;
3. Meal preparation and consumption;
4. Ambulating and mobility;
5. Assistance in repositioning and transferring into and out of bed, on and off seats, or in and out of vehicles;
6. Housecleaning, laundry, shopping, removal of yard or walkway hazards;
7. Ambulating, transportation, or other activities necessary for moving the applicant from place to place;
8. Care of or assistance with prosthetic, adaptive, or similar devices or equipment; and,

9. Other similar activities of daily living.

C. *Attendee Responsibilities.* The attendee has primary responsibility for recruiting, selecting, hiring, training, and supervising the attendant, including terminating the attendant's services when appropriate. Further, the attendee has the following responsibilities:

1. Paying the attendant and discharging all applicable legal obligations of an employer under state and federal laws or regulations;
2. Maintaining accurate records of hours and days that personal care attendant services are provided and of wages paid;
3. Preparing and promptly submitting all reimbursement request certifications when due;
4. Reporting changes of financial status or other information which may affect either eligibility for continued financial assistance or the level of such assistance;
5. Reporting changes of employment status or changes for personal care attendant services;
6. Reporting any material problem related to the provisions of financial assistance under the program; and,
7. Reimbursing the Division for any overpayment(s) of financial assistance, when so requested by the Division.
8. Submitting required state and federal tax information within established timeframes.

D. *Attendant Qualifications.* The attendee is primarily responsible for selecting the attendant. The decision to employ or discharge a particular attendant is a private matter not directly subject to Division approval. However, to qualify for financial assistance, the attendant(s) regularly employed by the attendee must be eighteen or older, have the physical and mental capacities required to deliver the services needed by the attendee, and not be a member of the attendee's family. Personal care attendant services provided by members of the attendee's family may be claimed for financial assistance only when a regularly employed attendant is either absent, incapacitated, or otherwise unavailable to perform services included on the Employment Attendant Care Plan, not to exceed 30 days or 250 hours per year, whichever occurs first. For purposes of this program, family members are defined to include a spouse, child, stepchild, parent, stepparent, grandparent, step grandparent, sibling, or in-law, including a spouse's parent, grandparent, or sibling.

E. *Attendant Training.* To the extent that program resources permit, upon request, the Division will provide or arrange for technical consultation or assistance in training the attendant(s) selected by the attendee.

F. *Attendant Management Training.* Upon request by an eligible applicant or attendee, the Division will provide or arrange for training in the management and supervision of personal care attendants. This training should address completion of state and federal forms to pay taxes, FICA, and other related accounting and employment issues.

4204.7 Financial Assistance.

A. *General.* All financial assistance payments under this program will be reviewed and processed in compliance with state law and the administrative policies and procedures established by the Division. Reimbursement payments to attendees will be approved for processing based on the availability of program funds and continued attendee eligibility. Upon determining that sufficient program funds are not available, the Director may implement such administrative measures as may be deemed necessary to assure that the expenditure of remaining program funds does not exceed the amount appropriated for the program. Such measures may include, but are not limited to one or more of the following:

1. Suspending evaluation and/or training services under the program;
2. Suspending initial reimbursement payments to newly eligible applicants;
3. Reducing rates of reimbursement or terminating reimbursement payments to attendees;
4. Implementing an order of selection describing groups of attendees and/or eligible applicants to be served in order of priority; and,
5. Such other administrative measures as the Director may deem warranted.

B. *Order of Selection.* The Division would observe the following categories in administering financial assistance payments under an order of selection in order of priority:

1. Attendees (current recipients) who are currently employed;
2. Employable attendees who will return to employment within six months;

3. Eligible applicants who are currently employed; and,
4. Eligible applicants who will commence specific employment within six months.

C. *Duration of Financial Assistance.* Currently employed attendees may continue to receive financial assistance as long as they continue to meet the eligibility requirements of the program, subject to the availability of funds. Eligible applicants who are not employed may receive financial assistance not to exceed six months from the starting date entered on the Employment Attendant Care Plan.

D. *Exceptional Extensions of Financial Assistance.* Upon determination that such action is required to further the purposes of the program, financial assistance may be extended beyond the usual duration of such assistance; provided that each extension will not exceed three months, and that not more than three extensions will be granted consecutively. Each extension will require a joint staffing with the individual and Rehabilitation Counselor, and documentation of exceptional circumstances for review and approval by the District Manager.

E. *Termination of Financial Assistance.* Financial assistance shall be promptly terminated upon a determination that *any* of the following have occurred:

1. The attendee no longer meets eligibility requirements of the program;
2. The attendee refuses or fails to demonstrate a good faith effort to discharge his/her responsibilities as an employer;
3. The attendee refuses or fails to demonstrate a good faith effort to discharge his/her responsibility as a recipient of financial assistance under this program;
4. The attendee refuses to verify income or provide other required information; or,
5. The attendee willfully submits false information which results in a higher level of financial assistance than otherwise would be applicable.

F. *Economic Need.* The provision of financial assistance to eligible applicants or the continuation of such assistance to current attendees and the level of financial assistance to be provided are conditioned upon consideration of the attendee's economic need. Each attendee's economic need must be reviewed at least annually, but may be reviewed whenever the economic resources or other pertinent circumstances of the attendee change substantially. Division policies should be implemented uniformly and objectively to assure that the level of financial assistance provided is equitable and reasonable, consistent with that provided to other attendees whose economic resources or other pertinent circumstances are

similar. The level of financial assistance will be determined in part, based on the applicant's adjusted income at the time of review.

1. *Applicant's Adjusted Annual Income.* The adjusted annual income will be determined by calculating the applicant's annual net earned income and subtracting any allowable deductions as described later in this section. Only the applicant's income shall be considered; neither the applicant's other financial assets nor the income or assets of a spouse, if any, shall be considered. Earned income includes all money received for personal services, such as wages, salaries, tips, commissions, and fees. Funds received by the applicant from Workers' or Unemployment Compensation, pension, SSDI, SSI, alimony, child support, and other sources will be entered to calculate total income. If the applicant currently is unemployed but is scheduled to begin employment, the Rehabilitation Counselor may exclude any current income that will be discontinued upon the applicant's employment, such as unemployment compensation.

2. *Deductions.* Written verification of deductions should be provided by the applicant. W-2s and income tax returns, as well as itemized listings of disability related expenses should be requested and considered. The difference between Division reimbursement for attendant care services and actual out of pocket expenses for the same services should be examined.

a. *Withholdings.* The total annual earned income will be reduced by the annual amount of all non-elective withholding other than garnishments and by the amount of any elective withholding for medical or hospitalization premiums. Non-elective withholdings are those which are not at the discretion of the wage earner. Garnishments are payments of private debts and therefore are considered as net income.

b. *Dependents.* The applicant's total annual earned income will be reduced by \$3,000 for the first dependent (not including applicant), \$2,000 for the second dependent, and \$1,000 for each dependent thereafter. Each dependent claimed must qualify as a dependent under the United States Internal Revenue Service Code; except that a family member with gross earned income exceeding \$7,500 annually shall not be considered as being dependent upon the applicant.

c. *Disability Related Work Expenses.* The applicant's total annual earned income will be reduced by that amount of the applicant's necessary work expenses related to the disability, if any. Such expenses may include annual costs for medication, medical supplies, adaptive clothing, and similar expenses required to enable the applicant to perform on the job. Non-expendable items such as wheelchairs, braces, van modifications, lifts, ramps, etc., should be depreciated at a rate of 25% per year based on original purchase cost. Items having an original purchase cost of \$1,500 or less may be claimed in a single year at the applicant's election. Only that portion of a disability related work expense not reimbursable by any third party may be claimed.

G. *Amount of Assistance.* The attendee shall receive financial assistance payments on the basis of semi-monthly periods. The amount of the payments shall be determined by multiplying the number of hours of personal care attendant services actually received per period (up to the maximum authorized for reimbursement on the *Plan*) times the cost rate of current federal minimum wage times the reimbursement rate appropriate for the attendee's adjusted annual income under the reimbursement rate schedule. *In no instance shall the maximum payment exceed reimbursement for 75 hours of personal care attendant services per period.*

H. *Request for Reimbursement Certification.* The attendee shall notify the Division when an attendant has been employed. Processing the initial regular reimbursement payment may require three to five weeks. Thereafter, usually the attendee may expect to receive regular reimbursement payments approximately two weeks after the Division receives the request for reimbursement certificate for the period being claimed. Reimbursement assistance payments will not be processed prior to receipt of a properly completed request for payment certificate. The certificate will be submitted promptly after the last day of the period being claimed for reimbursement. The certificate shall include the total number of authorized personal care attendant hours actually delivered during the period and shall be signed by the attendee. The request for reimbursement will be submitted on WVDRS-127, *Reimbursement Billing for Personal Care Attendant* (Figure 4200-3). Attached to WVDRS-127 will be WVDRS-128, *Attendant's Time Log* (Figure 4200-4), signed by the attendant and the attendee.

I. *Reimbursement Rate Schedule.* The Division shall adopt a Reimbursement Rate Schedule (Figure 4200-5). The schedule will be used in calculating all financial assistance payments to attendees and will be recalculated biennially based on changes in the consumer price index.

4204.8 Appeal Process. Because ongoing financial assistance for attendant care is governed by the availability of funding through a state program, the individual's appeal procedures no longer fall under the auspices or requirements of the Rehabilitation Act once the individual's case with the Division has been closed. Therefore, after the individual is no longer a client of the Division, appeals related to the suspension or reduction of ongoing financial assistance will be submitted in writing to the Director of the Division for consideration. The Director will review the appeal and will schedule an appeals meeting within 10 days of receipt of the written appeal. The written and final decision of the Director will be sent to the individual and the individual's representative, as appropriate within five working days of the decision.

4204.9 Case Development Process.

A. *Referral.* The referral for employment attendant care services is entered into the special territory (i.e. 199, 299, etc.). If the referral cannot be located or the contacted referral refuses to apply for employment attendant care services, the file will be closed.

B. *Application.* If the applicant decides to apply for employment attendant care services, the Rehabilitation Counselor will give the applicant a copy of WVDRS-124, *Application Information for Employment Attendant Care Program* (Figure 4200-6). The Rehabilitation Counselor will complete WVDRS-125, *Application for Employment Attendant Care Services* (Figure 4200-7). This form contains the application for employment attendant care services, survey interview, and financial survey. Please note that calculation of the applicant's adjusted annual income differs from the usual determination of economic need. The applicant's adjusted income will be determined as outlined previously.

C. *Rehabilitation Assessment Package.* The Rehabilitation Counselor will complete the social and vocational profiles, including the *Health Assessment Questionnaire*, or use equivalent medical records. If the Rehabilitation Counselor suspects that a medical condition will adversely affect the applicant's vocational goal or employability, the Rehabilitation Counselor will refer the applicant to a general or specialty Rehabilitation Counselor for possible concurrent rehabilitation services.

D. *Determination of Eligibility.* If it is determined that the applicant meets other eligibility requirements, the Rehabilitation Counselor will authorize and arrange for the applicant to receive an initial evaluation of needs for personal care attendant services. Arrangements should be made for the initial evaluation at the earliest practical time after the application is completed. An authorization will be sent to the evaluator for the initial evaluation. Following receipt of the evaluation results, eligibility or ineligibility will be documented accordingly.

E. *Plan Explanation.* After all evaluative and diagnostic information has been obtained; the Rehabilitation Counselor will complete a program explanation prior to formulation of the Employment Attendant Care Plan. The purpose of these comments is to summarize the resulting pertinent information as it relates to or affects the attendee's impediment to employment; establish the foundation for the justification and rationale of plan components; and tie together the resulting case findings at the end of the initial evaluation of personal care attendant needs. The comments should describe how each planned service will result in overcoming the limitations of the attendee's disability to improve employability. There should be a relationship between services rendered and the vocational outcome, in that the services are necessary and have a positive effect on the attendee's preparation for, or placement in, employment. The attendant's name should be included in these comments. Also included should be sufficient information confirming job availability and/or specific employment plans.

F. *Comparable Benefits.* Comparable benefits should be explored, considered, and documented as to availability to the attendee, and whether they can be utilized for total or partial payment of the cost of personal care attendant services. If a potential comparable benefit program is available but not applied, *Action/Details* section of ECM should clearly explain why the resource was not appropriate.

G. *Plan Development.* If the applicant is determined eligible, the Rehabilitation Counselor will move the case into Status 10 and prepare the Employment Attendant Care Plan as follows:

1. Name, address, Social Security number, and territory number are self explanatory;
2. Check "Initial" to indicate that this is the original Employment Attendant Care Plan;
3. The "Reevaluation Date" will be determined by the Rehabilitation Counselor. Reevaluations will be conducted when there is a change in physical, residential, or marital status.
4. Vocational goal and employer's name are self explanatory.
5. *Line 1.* The Rehabilitation Counselor will enter the date financial assistance for employment attendant care services will begin in "Starting Date." The Rehabilitation Counselor will enter the date financial assistance for employment attendant care services will end in "Ending Date." In no instance will the ending date be later than June 30. The Rehabilitation Counselor will complete an amended plan to encumber funds for the next fiscal year.
6. *Line 2.* The Rehabilitation Counselor will enter the maximum number of hours per period for which the attendee will be reimbursed. This figure is determined from results of the attendee's initial evaluation of needs for personal care attendant services. The figure entered here will not be less than 28 or more than 75.
7. *Line 3.* The reimbursement rate entered will be determined based on the attendee's adjusted annual income calculated on the Application for Employment Attendant Care Services and in accordance with the current Reimbursement Rate Schedule.
8. *Line 4.* The amount entered will be calculated by multiplying the number on Line 2 by the current federal minimum wage by the reimbursement rate entered on Line 3. The attendee and Rehabilitation Counselor will sign and date the form in appropriate blocks.
9. *Line 5.* The amount entered will be calculated by multiplying the amount on Line 4 by the number of reimbursement periods remaining until the "Ending Date" entered on Line 1. The attendee and Rehabilitation Counselor will sign and date the form in appropriate blocks.

H. *Plan Approval and Implementation.* The Rehabilitation Counselor will complete the Employment Attendant Care Plan, file the original, and provide the individual with a copy. The Rehabilitation Counselor will furnish the attendee with supplies of

WVDRS-127, *Reimbursement Billing for Personal Care Attendant*, and WVDRS-128, *Attendant's Time Log*. Both forms are self explanatory, but the Rehabilitation Counselor should ensure that the attendee understands how to complete them. Currently employed attendees may continue to receive financial assistance as long as they continue to meet eligibility requirements, subject to the availability of funds. Attendees who are not employed at the time of application may receive financial assistance until they enter employment, not to exceed six months. If the attendee should withdraw from the Employment Attendant Care Plan prior to implementation, the Rehabilitation Counselor will prepare a written notification of case closure. Closed cases should be sent to Program Supervisor, Deaf and Hard of Hearing.

I. *Amending Plan*. If during an annual update of the financial survey or the two year reevaluation, the attendee's reimbursement rate, number of hours, or other information changes, the Rehabilitation Counselor will prepare an amended WVDRS-126 and enter the appropriate amendment number. Approval and routing of the amended plan are as outlined for the initial plan.

J. *Terminating Plan*. Should the attendee be determined ineligible to continue receiving financial assistance or personal care attendant services are no longer needed, the Rehabilitation Counselor will notify the attendee in writing.

K. *Placement on Waiting List*. Should the attendee not be able to receive reimbursement for personal care attendant services because of insufficient funds remaining in the appropriation, the attendee will be placed on a waiting list maintained by the Program Supervisor, Deaf and Hard of Hearing. The attendee will be notified in writing by the Rehabilitation Counselor of this action and the reason(s) therefore. At the time that financial conditions permit, the attendee's Employment Attendant Care Plan will be implemented and the attendee informed of same.

L. *Exceptional Extensions of Financial Assistance*. Upon determination that such action is required to further the purposes of the personal care attendant program, financial assistance under the program may be extended beyond the usual duration of such assistance. However, each additional extension will not exceed three months, and each such extension will require joint staffing with the attendee and the Rehabilitation Counselor, and documentation of exceptional circumstances to be approved by the District Manager.

M. *Joint Cases*. If the attendee is/should be receiving rehabilitation services, a joint case may result. In this instance, Rehabilitation Counselors should work closely together on case development and planned activities to ensure that all actions are in the best interest of the attendee and are not counterproductive. Each Rehabilitation Counselor will maintain a case for the attendee and fulfill reporting requirements as needed.

A. A copy of WVDRS-126, Employment Attendant Plan, will be sent to the Administrative Services Manager, Fiscal Section, for each attendee approved to participate in the program. The plan will specify starting and ending dates, number of hours per period, reimbursement rate, and rate of payment per period.

B. Twice each month, the Administrative Services Manager Fiscal Section, will receive WVDRS-127, Reimbursement Billing for Personal Care Attendant, from the attendee. The first form will cover the billing period from the first to the middle of the month and the second from the middle to the end of the month. Attached to this form will be WVDRS-128, Attendant's Time Log, for each attendant from whom the attendee is claiming reimbursement. WVDRS-127 will be signed by the attendee; likewise WVDRS-128 will be signed by the attendant. The signatures certify that services were provided and received as listed on the forms. The Administrative Services Manager, Fiscal Section, will prepare a check and mail it to the attendee if all information is correct. If any information is incorrect or missing, or if there is insufficient amount of money remaining in the authorization, the Administrative Services Manager, Fiscal Section, will contact the attendee's Rehabilitation Counselor. It is not the responsibility of the Administrative Services Manager, Fiscal Section, to correct the forms or contact the attendee. Any change(s) to WVDRS-126, Employment Attendant Care Plan, will be provided by the Rehabilitation Counselor.

4300 SUPPORT SERVICES.

4301 General. Support services are those which the individual may require during the course of rehabilitation to facilitate the individual's receipt and benefit from major services such as diagnostic and medical treatment, rehabilitation training, counseling and guidance, and placement. Such services may include maintenance, transportation, placement/training equipment, interpreting, notetaking, reading, and services to family members. Prior to expenditure of Division funds, the Rehabilitation Counselor will assure that full consideration is given to all comparable benefits which may be available to the individual.

4302 Economic Need. Supportive services provided for assessment in Status 02, 07, or 10 are not subject to consideration of economic need. Supportive services provided under an Individualized Plan for Employment (IPE) are subject to consideration of economic need, with the exception of auxiliary aids or services, interpreter services, or reader services that an individual with a disability requires to participate in other vocational rehabilitation (VR) services. Additionally, supportive services may be provided without consideration of economic need to individuals who have been determined eligible for benefits from Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI).

4303 Comparable Benefits. Supportive services provided for assessment in Status 02, 07, or 10 are not subject to consideration of comparable benefits. Supportive services provided under an IPE are subject to consideration of comparable benefits, with the exception of counseling and guidance, information and referral services, job search and job placement assistance, rehabilitation technology, including telecommunications, sensory, and other technological aids and devices, and post employment services.

4304 Maintenance.

4304.1 General. Maintenance means money payments to or in behalf of the individual to cover the costs of meals, lodging, and incidental expenses required in the course of receiving a major rehabilitation service such as evaluation of rehabilitation potential, diagnostic and medical treatment, rehabilitation training, or job placement. This payment is not automatic and it will be provided by the Division only when there are no other means of sustaining the individual during the period s/he is receiving a major rehabilitation service. It is not the Division's responsibility to provide the minimal life sustaining services of food, shelter, clothing, and medicine on a long term basis. However, if the individual is participating in a long term training program such as college or other training, the Division can provide a supplement to offset additional expenses. Maintenance may be provided during any phase of the rehabilitation process except the referral phase.

4304.2 Limitations. Travel reimbursement for participation in a training program will not be paid unless the individual lives/commutes over 10 miles to campus (20 miles round trip). In cases where there may be extreme financial hardship to the extent that payment for even short distance travel would constitute an undue burden and may prevent the individual from receiving training, exceptions may be granted by the District Manager. In such

instances, the Rehabilitation Counselor will provide documented evidence of the hardship. Commuting students will not receive maintenance for meals. Further, travel costs for students (living in either on-campus dormitory or off-campus housing) will be reimbursed only for travel home to their permanent residence at the beginning and end of each semester/term or during required breaks (when dormitories are closed).

4304.3 How Provided. The Rehabilitation Counselor will consider an extended maintenance schedule when the service will require more than 60 days to complete (i.e., college and other training). Maintenance paid directly to the individual is planned and provided twice monthly. The inclusive dates of each maintenance period are printed on WVDRS-16A, *Maintenance Authorization*.

A. Maintenance paid directly to the individual will be authorized at a rate which is closest to the individual's actual need as determined by the Rehabilitation Counselor. The Rehabilitation Counselor, with the individual, will determine the actual cost of gasoline required for participation in the training program. Calculations will be based on the average miles per gallon of the individual's vehicle (or an estimate), cost of gasoline, and the number of miles traveled round trip for training. The normal maximum for maintenance paid directly to the individual is \$120 per period. The District Manager may approve payment of not more than \$150 per period when the Rehabilitation Counselor documents extenuating circumstances such as the individual requiring a special diet, living in an extremely high cost of living area, or enrolled in an out-of-state training facility. When maintenance exceeding \$120 per period is approved, the District Manager will sign WVDRS-16A before it is sent to the Case Services Payment Section.

B. Maintenance also may be used for the following:

1. Cost of a uniform or other suitable clothing required for placement;
2. Cost of short term shelter; or,
3. Placement tools.

C. If an in-state facility offers room and board, authorizations may be made to the facility to provide those services to the individual. Authorizations for off-campus housing will not exceed the published fees of the facility for those services during the enrollment period.

D. If an out-of-state facility does not offer room and board or it is more feasible for the individual to make other arrangements for his/her food and lodging, maintenance may be paid directly to the individual.

E. Attendant care maintenance is available to the individual (see Section 4200).

4305 Transportation.

4305.1 General. Transportation is the physical movement of the individual from one place to another for the purpose of receiving a major rehabilitation service such as evaluation of rehabilitation potential, diagnostic and medical treatment, rehabilitation training, placement and follow up, or post employment services. In a fiscal sense, transportation includes only the costs of mileage or commercial carrier fare. Related costs, primarily meals and lodging when required, are authorized through maintenance procedures set forth above.

4305.2 How Provided.

A. *Individual's Personal Vehicle.* If the individual is to receive mileage for use of his/her own personal vehicle, long term maintenance may be authorized on the *Maintenance Authorization*, discussed earlier in this section.

B. *Common Carrier or Third Party.* If the individual will be transported by common carrier or third party, the Rehabilitation Counselor will use WVDRS-16, *Authorization*, for this purpose.

C. *Mileage Limitation.* Payment to either the individual or a third party for mileage will be limited to the actual cost of gasoline required for the individual to participate in the rehabilitation service. Calculations will be based on the average miles per gallon of the individual's (or third party's) vehicle (or an estimate), cost of gasoline, and the number of miles traveled round trip for the rehabilitation service.

4305.3 Types of Transportation.

A. *Short Term Travel.* Short term travel is usually less than 60 days. This will include the actual cost only of gas needed, lodging required, meals, and any other related expenses that are deemed necessary. Short term transportation may be authorized for actual costs up to \$125 per day.

B. *Personal Care Attendant Cost.* Personal care attendant cost covers travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any rehabilitation service (see Section 4200).

C. *Relocation Expenses.* Relocation expenses for a confirmed job to include initial one time costs such as security deposit, charges for the initiation of utilities, or rent moving cost may be provided up to 60 days. The Rehabilitation Counselor can authorize up to \$1,000, but if additional money is needed, the District Manager can approve an additional \$1,000.

4306 Placement/Training Equipment.

4306.1 Training Equipment. Certain items of placement/training equipment may be required for the individual to complete his/her vocational training course. As a rule, the individual taking a vocational training course in a mechanical or repair occupation, such as automobile engine repair, small appliance repair, radio and television servicing, and watch repair will be required to have his/her personal set of hand tools. Additionally, uniforms may be required, as well as certain safety items, such as shoes, helmet, gloves, and goggles. Usually the training facility will prescribe the required equipment. Without guidance from the training facility, the Rehabilitation Counselor may seek the recommendations of WVRC instructors or use the tool kit listings for Center courses contained in Section 7100.

A. *How to Obtain.* The Rehabilitation Counselor will provide the training equipment required by the individual as follows:

1. When the training equipment is included in the cost of tuition, it will be obtained on WVDRS-16, *Authorization*, prepared for the tuition.
2. When there is a separate charge for the training equipment provided by the training facility, a separate WVDRS-16 will be prepared for the training equipment.
3. When the required equipment is not provided by the training facility, the Rehabilitation Counselor will prepare WVDRS-17, *Case Services Requisition*, for the training equipment.
4. When the individual is enrolled in a vocational training course at the Center, if training equipment is required, it will be provided by the Center and its cost included in the tuition.

B. *Conveyance of Ownership.* The Division retains ownership of all placement/training equipment costing at least \$1,000 until ownership is conveyed to the individual at or before the time of case closure.

4306.2 Placement Equipment. As a condition of placement with an employer, the individual may be required to have certain items of placement/training equipment, such as his/her personal set of hand tools, safety shoes, and equipment.

A. *How to Obtain.* The Rehabilitation Counselor will provide the placement/training equipment required by the individual as follows:

1. If the individual completed a vocational training course during which training equipment was provided by the Division, the individual will be expected to use that equipment in his/her placement, provided the job is the same as that for which s/he was trained.

2. If the individual for whom training equipment was provided during vocational training should need new or additional equipment as a condition of placement, the Rehabilitation Counselor will obtain that equipment by completing WVDRS-17.

B. *Conveyance of Ownership.* The Division retains ownership of all placement/training equipment costing at least \$1,000 until ownership is conveyed to the individual at or before the time of case closure.

4307 Services for Individuals Who Have Deafness or Deafblindness.

4307.1 General. Meaningful communication is an essential aspect of the rehabilitation process. The principal handicapping characteristic of deafness and deafblindness is the impairment of communication. Interpreter and/or notetaker services should be provided whenever the absence of such services is likely to impede either full participation in the rehabilitation process or effective and timely delivery of appropriate services to the individual who is deaf, hard of hearing, or deafblind.

4307.2 Preferred Mode of Communication. The communications skills, problems, and needs of persons who are deaf, hard of hearing, or deafblind vary widely. Therefore, it is important that the individual who is deaf, hard of hearing, or deafblind be encouraged and assisted in using the mode of communication in which s/he is most skilled, experienced, and expressive. Every reasonable effort should be made to accommodate the individual's preferred mode of communication. Further, the Rehabilitation Counselor's communications should be limited to those modes of communications in which s/he is proficient and comfortable.

4307.3 Interpreter Services.

A. *Determining Need.* As early as possible in the rehabilitation process, and at least prior to the initiation of diagnostic and/or evaluative services, the Rehabilitation Counselor for the Deaf (RCD) will assess the communication skills, problems, and needs of each person who is deaf, hard of hearing, or deafblind referred to the Division. Considering that assessment, and in conjunction with the individual, the RCD will assist with the provision of appropriate interpreter services or communication assistance.

B. *Selection of Interpreter.* Every reasonable effort should be made to use the most competent and reliable interpreter available when such services are to be provided. Each RCD will maintain a registry of certified interpreters, which can be obtained from the West Virginia Commission for the Deaf and Hard of Hearing. As in any profession, interpreters for the deaf have various levels of training and experience. A person who has completed a course in basic manual communication skills and is able to carry on a limited conversation with a person who is deaf should not be considered an interpreter, but rather a signer. A signer should not be considered a substitute for an interpreter in the rehabilitation process. The RCD will determine whether an available interpreter is qualified for a particular

assignment, after consultation with the individual who is deaf, hard of hearing, or deafblind. However, when more than one qualified interpreter is found to be available, final selection of the interpreter to be used should be made by the individual who is deaf, hard of hearing, or deafblind.

C. *Role of the Interpreter.* It is important that the Rehabilitation Counselor, the interpreter, and the individual who is deaf, hard of hearing, or deafblind develop a mutual understanding of the responsibilities and duties to be discharged by the interpreter during the course of an assignment. The individual should be advised of the Division's expectation that the interpreter will be requested to provide only such services as are required during the course of the assignment and should be instructed in appropriate use of the interpreter's services. In general, the interpreter should not be asked to serve as an advocate, advisor, or attendant. The interpreter should not be expected to screen out potentially offensive communication or to summarize or otherwise explain the intent of any message. The interpreter's role should be viewed as that of a communication facilitator. It should not be presumed that the interpreter is an expert in the area of hearing losses.

D. *Disclosure of Individual Information to or by Interpreter.* With written consent from the individual, the Rehabilitation Counselor may disclose to the interpreter such information regarding the individual who is deaf, hard of hearing, or deafblind as may be reasonably expected to be pertinent to the interpreter's professional activities during the course of an assignment.

E. *Interpreter Conduct and Ethics.*

1. *Conduct.* The RCD will assure that the interpreter understands that s/he is likely to be considered by others as a representative of the Division and that conduct that reflects negatively upon either the Division or upon persons who are deaf or deafblind is not consistent with the Division's expectation of professional behavior.

2. *Ethics.* Since ethical conduct is critical to the role of the interpreter, the RCD should carefully discuss with the interpreter the applicability of the code of ethics set forth by the Registry of Interpreters for the Deaf, Inc., or the National Association of the Deaf, prior to the beginning of the interpreter's initial assignment.

4307.4 Notetaker Services. Notetaker services usually will be provided only to individuals who have a severe hearing loss or have upper extremity involvement that precludes writing/typing and who are receiving rehabilitation training services under an Individualized Plan for Employment (IPE).

A. *Selection of the Notetaker.* It is important that the person selected for notetaking assignments be reliable and competent to perform in a manner meeting the needs of the individual for clear, concise, accurate, and complete notes. Since the success or failure of the individual in a training program may greatly depend on the performance of the notetaker, the individual and Rehabilitation Counselor often will find it helpful to seek recommendations

from the training facility and/or classroom instructor regarding selection of a notetaker. The Rehabilitation Counselor and the individual should assess the need for notetaker services during formulation of the IPE. Considering that assessment, the individual and Rehabilitation Counselor will work with the training facility to determine whether and to what extent notetaker services should be provided. When more than one qualified notetaker is found to be available, final selection of the notetaker to be used should be made by the individual.

B. *Role of the Notetaker.* The notetaker should not be considered as a tutor, although it frequently will be necessary for the individual and the notetaker to review and discuss the notes to ensure individual understanding of their content. Further, the notetaker should not be asked to serve as an advocate, advisor, or attendant. It is important that the Rehabilitation Counselor, the notetaker, and the individual develop a mutual understanding of the duties to be discharged by the notetaker during the course of an assignment. The individual should be instructed in the use of the notetaker's services.

4307.5 Payment for Interpreter or Notetaker Services. The fee for interpreter or notetaker services may be negotiated up to the maximum amount listed in Section 8700. In general, payment of the maximum amount should be reserved for those assignments that require unusually demanding efforts and a higher level of qualification.

A. *Determining Amount of Fee to Be Paid.* The Rehabilitation Counselor will determine the fee to be paid for a particular assignment. The fee will be negotiated based on the following considerations:

1. Level of the interpreting or notetaker skills required (see Figure 4300-1);
2. Nature of the interpreting or notetaking situation;
3. Special academic or technical knowledge which may be necessary; and,
4. Frequency and/or duration of interpreting or notetaking services to be provided during the course of the assignment.

B. *Method of Payment.* The Rehabilitation Counselor will authorize and process payment for interpreter or notetaker services on WVDRS-16, *Authorization*, using the fee codes and descriptions given in Section 8700.

C. *Mileage Reimbursement.* The interpreter or notetaker will be reimbursed for travel that is necessary for an assignment at the current rate established in Section 1600. Mileage may be paid whether or not the interpreting or notetaking services actually are rendered, provided that the interpreter or notetaker is not informed in advance of a cancellation of the assignment and that s/he actually does appear at the time and location agreed upon when the assignment was accepted.

D. *Payment for Services Not Rendered.* State law prohibits the Division from paying for professional or other services not rendered. Therefore, the Division cannot pay an interpreter or notetaker for services not received by the individual. The Rehabilitation Counselor should make every effort to assure the interpreter or notetaker is informed at least 24 hours in advance whenever an assignment must be canceled.

4307.6 Consultation with State Coordinator. The Program Supervisor, Deaf, Hard of Hearing, and Deafblind, will serve as state coordinator of all Division activities regarding interpreter services and/or notetaker services to individuals who are deaf, hard of hearing, or deafblind. This includes activities with other state agencies, organizations, or individuals for the purpose of encouraging and supporting the recruitment or training of qualified interpreters and notetakers. The Program Supervisor will provide consultation and assistance in the negotiation of fees to be paid by the Division for interpreter or notetaker services. When the Rehabilitation Counselor and the interpreter or notetaker cannot agree upon an appropriate fee, the Program Supervisor will determine the maximum amount the Division will authorize to the interpreter or notetaker.

4308 Services for Individuals Who Have Blindness or Visual Impairment.

4308.1 General. These may include orientation and mobility training, supplies, and reader services. Although provided primarily for individuals who have blindness or other visual impairment(s), such services may be needed by other individuals during the course of establishing their eligibility for and ability to receive rehabilitation services.

4308.2 Orientation and Mobility Training. This training may be necessary for individuals with visual impairment(s) to travel outside the home. Orientation and mobility training will be provided by Division employees having such expertise. Otherwise, it will be purchased from approved mobility instructors.

4308.3 Supplies. Basic supplies such as canes and large print or Braille items will be provided at no cost to the individual when used for assessment or in a trial work experience. When such supplies are required to complete the rehabilitation program, they will be provided in accordance with the Division's financial need policy and procedures.

4308.4 Reader Services.

A. *Determining Need.* The principal criterion for determining whether reader services are needed is whether the absence of such services would prevent the individual from receiving appropriate rehabilitation services. Reader services are provided most frequently in conjunction with rehabilitation training; however, needs for reader services may arise during any phase of the rehabilitation process.

B. *Selection of Reader.* Every reasonable effort should be made to use the most competent reader available when such services are to be provided. The Rehabilitation

Counselor will determine whether an available reader is qualified for a particular assignment. However, when more than one qualified reader is found to be available, final selection of the reader to be used should be made by the individual. Volunteer readers are available in some colleges and communities through student and civic groups, libraries, and/or churches. A classmate, graduate student, or college student majoring in speech, drama, journalism, or media communication might provide to be a capable provider of reader services.

C. *Role of the Reader.* It is important that the Rehabilitation Counselor, reader, and individual develop a mutual understanding of the responsibilities and duties to be discharged by the reader during the course of an assignment. The individual should be instructed in appropriate use of the reader's services. In general, the reader should not be asked to serve as a tutor, advocate, advisor, or attendant. The reader should not be expected to screen out potentially offensive language or to explain any material being read.

D. *Disclosure of Individual Information to or by Reader.* With written consent of the individual, the Rehabilitation Counselor may disclose to the reader such information regarding the individual as may be reasonably expected to be pertinent to the reader's activities during the course of an assignment.

4308.5 Payment for Reader Services. The fee for reader services may be negotiated up to the maximum amount listed in Section 8700. District Manager approval is required if the planned cost of the reader services exceeds a total of \$1,000. Cases in which the total exceeds \$2,000 will be submitted for review and approval by the Program Supervisor, Blind and Visually Impaired Services.

A. *Method of Payment.* The Rehabilitation Counselor will authorize and process payment for reader services on WVDRS-16, *Authorization*, using the fee codes and descriptions in Section 8700.

B. *Mileage Reimbursement.* The reader will be reimbursed for travel that is necessary for an assignment at the current rate established in Section 1600. Mileage may be paid whether or not the reading services actually are rendered, provided that the reader is not informed in advance of a cancellation of the assignment and that s/he actually does appear at the time and location agreed upon when the assignment was accepted.

C. *Payment for Services Not Rendered.* State law prohibits the Division from paying for professional or other services not rendered. Therefore, the Division cannot pay a reader for services not received by the individual. The Rehabilitation Counselor should make every effort to assure the reader is informed at least 24 hours in advance whenever an assignment must be canceled.

4308.6 Consultation with State Coordinator. The Program Supervisor, Blind and Visually Impaired Services, will serve as state coordinator of all Division activities regarding reader services, including activities with other agencies, organizations, or individuals for the purpose of encouraging and supporting the recruitment of qualified readers.

The Program Supervisor will provide consultation and assistance in the negotiation of fees to be paid by the Division for reader services. When the Rehabilitation Counselor and the reader cannot agree upon an appropriate fee, the Program Supervisor will determine the maximum amount the Division will authorize to the reader.

4308.7 Visual Training. Visual training will be purchased only when recommended by an ophthalmologist or optometrist to correct orthoptics or pleoptic, and only when the condition can be corrected or modified in a reasonable amount of time. After ten sessions, the physician's report will be filed in the individual's record of services, with a copy forwarded to the Program Supervisor, Blind and Visually Impaired Services, for review. Visual training also may be purchased for the use of optical aids or for increased visual efficiency such as in orientation and mobility training.

4309 Services to Family Members. When required for the individual to obtain full benefit from rehabilitation services, the Division may provide services to members of the individual's family. As a general rule, any reasonable and appropriate service may be provided when it is demonstrated that the service will make a substantial contribution to the individual's rehabilitation (or the lack of which will serve as a detriment to the individual's rehabilitation).

4309.1 Types of Services. As one example, for the individual to be able to assume employment in a new locality, it may be necessary for the Division to assist in defraying moving expenses for the family. In another example, to assist an individual who has a significant or most significant disability in adjusting to the routine at the West Virginia Rehabilitation Center, it may be necessary for the individual's spouse or another adult member of his/her family to accompany the individual when s/he enrolls at WVRC. Finally, counseling and guidance directed to the entire family, not just to the individual, is an important service in this area.

4309.2 Use of Community Resources. Prior to committing Division funds, the Rehabilitation Counselor will verify that all community resources have been exhausted.

4400 WEST VIRGINIA REHABILITATION CENTER.

4401 General. The West Virginia Rehabilitation Center (hereinafter referred to as the Center) is vocationally oriented and uses a team approach in providing comprehensive rehabilitation services to clients. Admission to the Center may be denied because of limitations in programming or expertise. The Center is committed to serving individuals with the most significant disabilities. However, the Division does reserve the right to serve those individuals having the potential to benefit from Center services in terms of planned rehabilitation objectives. To aid in accomplishing its mission, the Center is accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) and the North Central Association of Colleges and Schools (NCA).

4402 Admission Guidelines. The following guidelines are offered to assist the Field Counselor or other referral source in selecting candidates for Center services.

4402.1 Referral. Referral for Center services may be appropriate when:

A. The applicant may need multiple services which would be delivered most appropriately in a comprehensive rehabilitation center setting; and/or,

B. Extenuating circumstances indicate, in the Field Counselor's professional judgment, that Center services would substantially improve the likelihood of the candidate's successful vocational rehabilitation.

4402.2 Ability to Participate. All candidates must meet admissions criteria to participate in the program of choice. Candidates should not constitute a significant hazard to themselves or a disruption to others. Their needs must lie within the capacity of the Center's staff and resources. Their functional levels should be reasonably stabilized so that an assessment of rehabilitation potential will have long-range validity. Examples of inappropriate applicants or persons include those:

A. In body casts;

B. With pressure or bed sores (decubiti) so severe that they cannot participate in a program of evaluation or training;

C. In need of a long-term period of medical convalescence prior to beginning a program of medical evaluation;

D. Who are psychotic or at significant risk of suicide;

E. Involved in substance abuse during the past 90 days;

F. Involved in litigation of a nature which will interfere with his/her participation in a rehabilitation program;

G. With either behavioral, intellectual, or emotional problems too severe to be supervised or treated appropriately in the Center's open setting, considering current staffing levels (i.e., individuals exhibiting self-injurious behavior or those behaviors constituting a threat to the health, safety and welfare of other students or staff; and/or those individuals requiring one on one supervision);

H. Requiring twenty-four hour supervision other than medical;

I. Who cannot bathe or attend to personal toileting needs other than medical; or,

J. Unable to direct an attendant in performing activities of daily living and other attendant care tasks.

4402.3 Priority. Priority will be given to Division clients, individuals with most significant disabilities, order of selection, and other fee for service clients.

4402.4 Waiting Lists. Waiting lists are maintained for each Center area of service. These waiting lists are reviewed quarterly. Clients who have been on the waiting lists for any length of time are contacted, as well as their Field Counselors, in order to inquire as to whether or not they still wish to receive services. Clients are placed on the waiting lists on a first come, first served basis.

4402.5 Evaluation. Students in vocational training programs are under an evaluation period for the first thirty days. Students who withdraw or transfer during this period are not counted in graduation completion rate statistics. Field Counselors are expected to use their professional judgment prior to referring a student to a training program. Their assessment will include an evaluation and consideration of client choice.

4402.6 Eligibility or Acceptability. All candidates referred to the Center by a Field Counselor will be either applicants for rehabilitation services (Status 02) or Division clients (Status 10 and above).

4402.7 Age. All candidates will be of an age such that they will be employable at the time rehabilitation services are expected to be completed.

4403 Referral of Division Clients. The Field Counselor will request the client's admission to the Center by sending the required documentation (see Figure 4400-1) to the Coordinator, Center Admissions. If the client is accepted for admission, both the client and Field Counselor will be notified of the planned admission date and will receive other appropriate information or instructions.

A. *Medical Information.* Required is complete medical information about the client's disability(ies), including report of the general medical evaluation or *Health Assessment Questionnaire* (HAQ); report of medical specialist examination; radiology,

pathology, or other laboratory reports; copies of any special diet(s); dosage and schedule of prescribed medication(s); pertinent hospital records (including discharge summaries); and, reports of psychiatric or behavioral evaluations or other records of diagnosis or treatment of a cognitive, emotional or behavioral disorder. It is not necessary to obtain an audiological evaluation for a blind client or a visual evaluation for a deaf client prior to requesting Center admission, since such evaluations can be performed after the client is admitted.

1. *General Medical Evaluations or HAQ.* General medical evaluations or HAQs completed during the 36 months prior to admission will be considered acceptable, provided the Field Counselor documents that the client's disability is stable or slowly progressive.

2. *Specialist Evaluations.* All specialist evaluations (except psychiatric) completed during the 36 months prior to admission will be considered acceptable, provided the Field Counselor documents that the client's disability is stable. If the client has been seen regularly by a specialist, the most recent report will be required. A six-month recency standard applies to psychiatric evaluations.

3. *Completeness of Medical Information.* Field Counselors may submit cases for review by the Center Admissions Counselor and the client may be admitted prior to receipt of all medical information requested by the Field Counselor. Information regarding any prescription medication(s) used by the client is required. To the extent deemed prudent by the medical staff, the Center will not delay admission of clients in need of services because nonessential medical records are absent from the case folder. The Field Counselor should document carefully what medical information has been requested and promptly forward such information to the Center upon receipt.

B. *Educational Information.* The Field Counselor will submit school records, academic aptitude or achievement testing reports (e.g., IEPs, subtest scores, or other pertinent information).

C. *Psychological Information.* The Field Counselor will submit psychological testing reports.

D. *Vocational/Social History.* The Field Counselor will provide a complete vocational and social history.

4403.1 Counselor Comments. The more specific the information provided, the more relevant the actions of Center staff will be. If the client is to live at the Center, the Field Counselor may recommend that Center services include a structured recreational program; instruction in self care, hygiene, health, and room care; or participation in drug education and treatment programs. The last entry in *Counselor Comments* should include explanations/descriptions of the following (as appropriate):

A. Need for the requested service(s);

B. Anticipated rehabilitation goal(s) or range of goals, if submitted for a preliminary or thorough diagnostic study;

C. Questions to be answered;

D. Behaviors to be modified;

E. Skills to be attained;

F. Arrangements for residence and/or care of the client during Center holidays and at the end of the client's program if client is to reside at the Center;

G. Special instructions to Center staff;

H. Transportation arrangements to and from the Center;

I. Signed statements regarding payment arrangements by relatives or third parties and a current *Economic Survey*; and,

J. Random drug screenings and AA/NA attendance during the Center program for individuals with alcohol/drug addiction.

4403.2 Readmission. The Field Counselor requesting readmission of a client to the Center is not required to resubmit a new case. Division casework standards for justification of requested services will apply in all cases. All narrative documentation and case service forms completed since the date of Center discharge, a narrative justification for the requested service, and an updated *Economic Survey* must be submitted to the Center Admissions Office.

4404 Policy for Minors and those under Guardianship. Since the WVRC is an open campus, clients are free to leave campus in the evenings and on weekends in accordance with curfews and guidelines unless they are minors or under guardianship. Although staff members are on duty 24 hours a day, the Center cannot provide one on one supervision to any client.

4404.1 Center Rules and Regulations. All minors and those under guardianship MUST adhere to all Center rules, regulations and Standards of Conduct found in the Center Student Handbook. These include but are not limited to:

A. Dormitory clients are not allowed to visit in Hospital rooms. Visitation should take place in the Hospital Solarium.

B. Sexual activity is not permitted on campus.

C. No possession, use or distribution of alcohol or illegal drugs will be permitted.

D. No dorm students are allowed in the hospital after visiting hours unless they are ill or scheduled to pick up medication.

E. Possession of fireworks, knives, explosives, firearms or weapons of any kind will not be permitted.

4404.2 Special Considerations for Minors and Those Under Guardianship. Counselors must inform applicants or eligible individuals and the parent or guardian of the following special considerations for WVRC admission for those who are minors or under guardianship:

A. Clients must be at least 16 years old to reside at the WVRC.

B. Minors and those under guardianship residing in the dormitory will be on the first floor of the dormitory.

C. If a designated room is not available, the minor/those under guardianship will need to wait to enter WVRC.

D. Minors/those under guardianship will not be housed with adults in the hospital or in the dormitory rooms.

E. All cases (Skeleton, Medical File and Center File) will be flagged with labels indicating minor and/or guardianship status. The I.D. badges for minors will be marked with red labels; the I.D. badges for those under guardianship will be marked with orange labels.

F. The rehabilitation counselor will explain all required forms with the parent/guardian. The parent and/or guardian will acknowledge that he/she has read and understands the policy and limitations on supervision of a minor family member or individual under guardianship by signing ALL forms.

G. An orientation will be provided to the parents/guardians of minors and those under guardianship. Guardians and/or parents MUST attend this orientation. If the parent/guardian cannot attend, the orientation may be rescheduled for another date.

H. Staff on duty in the Hospital and Dorm will check the rooms of minors a minimum of twice per shift.

I. If a hospital minor patient or patient who is under guardianship wants to visit in the first floor dorm lounge, he/she must inform a nurse and sign in with the dorm Resident Advisor. Visitation above the first floor is not permitted.

J. Minors and those under guardianship residing in the hospital **may not** visit in dorm rooms. Any visitation in the hospital must take place in the Hospital Solarium, Recreation or first floor dorm lobby.

K. Minors and those under guardianship residing in the dormitory may not visit in another student's dorm room unless permission is granted by the Shift Supervisor or Evening Counselor.

L. WV Code 16-9A-3 says "No person under the age of 18 years shall have on or about his/her person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; or, any pipe, snuff, chewing tobacco or tobacco product.." In accordance with this law, minors are not permitted to possess, use or distribute tobacco products.

M. The parent/guardian will be contacted when an emergency occurs, the client is non-compliant with policy or discipline must be considered.

N. If a complaint falls under mandatory reporting statutes (abuse, sexual assault, rape, neglect) WVDHHR Child Protective Services will be notified and the police department will be contacted immediately by the person receiving the complaint. The WVRC Administrator or designee will be notified immediately. If the complaint occurs during the work day, the WVRC Administrator or designee and the Patient Rights Representative or designee will be notified immediately. If the complaint occurs on a week-end or after 4:45 p.m. on a week day, the WVRC Administrator or designee and the Patient Rights Representative or designee, will be notified the following work day.

O. Minors and those under guardianship will be restricted to Center grounds. However, minors and those under guardianship may participate in off campus Center supervised activities with written parental or guardian approval when possible. If it is not possible or practical to obtain written approval, verbal approval will be acceptable and documented as appropriate.

P. Curfew for minors and those under guardianships is as follows:

1. By 10:15 p.m. Sunday through Thursday minors and/or those under guardianship must be in their own room or in the lobby of the first floor and must be in their room by 11:30.

2. Friday and Saturday nights minors and those under guardianship must be in their room or the lobby of the first floors by 11:00 p.m. and must be in their rooms by 2:00 a.m.

3. Minor Hospital patients and those under guardianships must be in their hospital room or the Hospital Solarium by 10:00 p.m. seven days per week unless otherwise instructed by the charge nurse.

4404.3 Counselor Responsibility. The counselor must submit a copy of the guardianship or power of attorney/legal documents at the time of referral to WVRC for services. In addition, the rehabilitation counselor will explain all required WVRC forms with the parent/guardian. The parents and/or guardians will acknowledge that they have read and understand the policy and limitations on supervision of a minor family member or individual under guardianship by signing ALL forms. The parent or guardian's signature on these forms verifies that the individual has read and understands the policy and the limitations on supervision of his/her minor family member or individual under guardianship. Policy for minors/those under guardianship cannot be waived by parents/guardians. The counselor should emphasize that failure to comply with WVRC policy/regulations or Minor/Guardianship policy after admission to WVRC may result in disciplinary actions up to and including discharge. The following WVRC forms must be signed by the parent/legal guardian prior to submitting the case for Center services.

- A. *Minor/Guardianship Policy,*
- B. *Assignment of Benefits/Insurance,*
- C. *Alcohol/Drug-Free Workplace,*
- D. *Consent to Photograph,*
- E. *Consent for Medical Treatment,*
- F. *Notice of Privacy Practices,*
- G. *Campus Security and Completion/Persistence Rate Document*
- H. *Release of Information,*
- I. *Statement of Parent and Legal guardian and*
- J. *Client Medication Policy.*

4405 Application Procedures for Direct Referrals. The Field Counselor will submit:

- A. A statement specifying the Center services desired;
- B. A signed statement by a responsible party specifying to what degree the referral source and/or other sources will assume financial sponsorship of desired Center services, including ancillary and emergency services;
- C. All claim, identification, or other numbers or information needed by the Center to obtain payment for Center services rendered to the referral;
- D. A completed WVDRS-61, *WVRC Application;*
- E. Complete and current medical information about the referral's disability(ies), including: general medical evaluations; medical specialist evaluations; radiology, pathology,

or other laboratory reports; special diet(s); dosage and schedule of prescribed medication(s); pertinent hospital records (including discharge summaries); reports of psychiatric or behavioral evaluations; and, records of diagnosis or treatment of a cognitive, emotional, or behavioral disorder (36 months recency for medical; 6 months for psychiatric);

F. School records, academic aptitude, or achievement testing reports (e.g., IEPs, subtest scores, or other pertinent information);

G. Psychological testing reports;

H. Complete vocational information and social history;

I. A chronological narrative report maintained by the referral agency summarizing progress; and,

J. Special instructions for working effectively with the referral.

4405.1 Non-Medical Direct Referrals. Direct referrals are requests for Center programs from a referral source who is willing and able to assume complete responsibility for financial sponsorship. Types of cases that may be served as direct referrals include: Veterans Administration; insurance or private pay for therapy services; Disability Determination Section; and, medical hospital referrals. If Division sponsorship of any portion of the program is desired, referral will be made through the Field Counselor. The referral source should be prepared to cover the cost of laboratory, medical, or other needed services required during the course of the referral's stay at the Center which are not covered by the Center's per diem charges or which must be purchased outside the Center. The case will be reviewed by the Admissions Counselor using the same criteria as for Division referrals. The referral source, referral, and Field Counselor will be notified of disposition of the application and, if accepted, will be notified when an admission date is established. For direct referrals, the referral source will request the referral's admission by submitting information regarding the referral's history to the Coordinator, Center Admissions. Direct referrals from the Veterans Administration become joint clients of the Division and Veterans Administration upon admission to the Center. A Center Counselor develops the case using Division criteria. The Center Counselor will provide the Field Counselor with copies of information developed with the client and will forward the original casework documentation to the Field Counselor.

4405.2 Direct Referrals of Non-Division Clients for Outpatient Services. A procedure or service needed for a client of another public agency sometimes can be provided in the geographic area only by specialized technical staff at the Center. Direct referrals for outpatient services from another agency will be directed to the Center's Admissions Office. All of the following criteria must be met:

A. The applicant is referred by and is a client of an agency of the government of the State of West Virginia;

B. Division staff clearly have the expertise to provide the service; and,

C. The requesting agency is willing to pay for the service at total direct and indirect costs to the Center.

4405.3 Priority to Division Clients. Direct referrals for Center services (whether inpatient or outpatient) will be admitted only when their admission would not delay or prevent provision of needed services to Division clients.

4406 Acceptance Procedure. Center Admissions Counselors have the authority and responsibility for reviewing each admission application and for deciding on the acceptability and timing of admission of each applicant. The Admissions Counselor reviews the case with respect to criteria regarding candidates for admission and adherence to application procedures. Applicants within each priority classification will be admitted in chronological order of acceptance and scheduled based on Division priorities, special projects, and Center staffing considerations. Special considerations for scheduling (school clients to be served in a group or during the summer months) should be stated by the Field Counselor in *Counselor Comments*.

4407 Medical Rehabilitation Comprehensive Inpatient Rehabilitation Program.

4407.1 General. Admission to the Medical Rehabilitation Unit is made upon the recommendation of licensed physicians who have staff privileges in this facility. Admission is based upon the need for a comprehensive interdisciplinary coordinated team approach for a client/patient with a significant neuromuscular skeletal impairment. Primary issues to be addressed in the Comprehensive Inpatient Rehabilitation Program are problems in self care, sphincter control, mobility, locomotion, communication, and social cognition. The severity of the problem can be measured by identifying whether or not the assistance of another person is required, and if so, to what extent. Ordinarily, those requiring comprehensive inpatient rehabilitation care need the assistance of others. Progress will be measured through use of the Functional Independence Measure prepared by the Data Management Service of the Uniform Data System for Medical Rehabilitation. The Medical Rehabilitation Unit does not accept involuntary admissions. Each individual who wishes to receive treatment at our facility must complete the application process with a Field Counselor. If a person is under 18 years of age, under a guardianship, or over 18 years old but not physically or mentally capable of giving his/her consent to receive services, the parent or guardian must sign the application. Center handbooks detailing client/patient rights and responsibilities are distributed to and discussed with prospective patients/clients and their families prior to facility entry. The medical chart will contain a signed statement of client/patient rights and responsibilities.

4407.2 Admission Criteria. The client/patient must be able or have the potential to comprehend verbal or gestural directions to the extent that s/he can actively participate in a rehabilitation program. Inpatient admission requires the need for:

A. Medical supervision;

- B. Rehabilitation nursing; and,
- C. The potential to improve in identified problem areas.

4407.3 Medical Case Record/Direct Transfer Procedures.

A. *Therapy Cases in Status 10.* In order to prepare the client's IPE in a timely manner, the counseling supervisor (or designee) will determine at each Rehabilitation Clinic which referrals the Medical Director is recommending for therapy. This person immediately will contact the Field Counselor to advise him/her of this recommendation. The Field Counselor may, if appropriate at that time, develop an IPE. Therapy may be provided in Status 10 as a diagnostic service.

B. *Field Client Database Input.* The Center Registrar enter direct referrals into the field client database. This procedure insures that authorizations and other critical transactions can be completed quickly.

C. *Direct Referral Medical Information.* The admissions secretary will copy the Medical Director and Medical Counselor with medical information received on direct transfers. The Medical Counselor will staff the case with the Field Counselor to expedite case work up and management.

D. Direct Transfer Procedure.

1. *Admissions Counselor Actions.* When a direct transfer is received, the Admissions Counselor will complete a direct transfer memorandum for review by the Medical Director. The Admissions Counselor will request the following information from the referring social worker:

- a. History and physical;
- b. X-ray reports;
- c. Operative reports;
- d. Consultant and physicians' reports;
- e. Therapists' reports; and,

f. A comprehensive social summary that includes information concerning possible substance abuse, the support system, discharge plans, in addition to any other significant social issue(s).

2. Additional Center Actions.

a. Center nursing staff will contact the hospital to discuss the patient with the referring hospital's nursing staff.

b. The Medical Director will review information from the hospital but will not make a decision until the comprehensive social summary is received.

c. Upon receipt of the referral, the field office nearest the referring hospital will be contacted. The hospital liaison will be asked to visit the referral while hospitalized in order to determine eligibility and appropriateness of the applicant and to initiate the casework process.

d. A copy of the medical information will be sent to the Director of Nursing for review and filing, with a copy of medical records forwarded to the Medical Counselors.

e. A copy of the medical information received from the hospital will be mailed to the Field Counselor. If a field case is not available, the receiving Medical Counselor will develop the case record and will forward original casework with the medical information. The Medical Counselor will consult with the Field Counselor prior to determining eligibility and/or prior to IPE development.

4407.4 Intake Procedures. Intake occurs through a coordinated effort between the Field Counselor and Center Admissions Office. All admissions to the comprehensive Medical Rehabilitation Unit are made based upon the recommendation of the Medical Director (or designee). Referral sources include Rehabilitation Counselors; hospitals and physicians, clients/patients and their families; other state and/or federal agencies; and any other source not previously identified. The referral source will be directed to the appropriate personnel who will initiate the application process. The case, with all appropriate information, then will be submitted to the Center Admissions Office for review.

A. Screening. With assistance from the Medical Director, the Admissions Office will screen the case based on available information. Except direct hospital referrals, all referrals for medical rehabilitation will be seen in the rehabilitation clinic for evaluation by the Medical Director. During the screening process an appraisal of the strengths and assets, deficits/disabilities, need for rehabilitative services, and the potential for functional improvement will be made. Based on the review, a decision will be made to accept or deny admission. One factor that will be considered will be the ability of Center staff to effectively serve the applicant. For example, the applicant who has minimal or no potential to improve in functional independence may be denied. After screening, the referral source will be notified of the admissions decision.

B. Admissions Outcome.

1. *Accepted.* Clients/patients who are accepted for inpatient rehabilitation services will be categorized based on the severity of impairment and the degree of nursing care required. Categories include those who need admission to the nursing unit, dormitory residents, and commuters. Clients/patients who are accepted for services will be admitted in accordance with bed availability and the capacity of the staff to effectively serve the client.

2. *Denied.* Clients/patients who are denied services will be assisted by the referral source and Admissions with regard to alternative resources available in the community.

4407.5 Evaluation. Upon admission, the client/patient will receive a multidisciplinary evaluation consisting of one or more of the following evaluations: medical; physiatric; physical therapy; occupational therapy; rehabilitation nursing; speech and language therapy; hearing and audiology; optometric; psychological; and, counseling. Upon completion of the evaluation, an interdisciplinary team staffing will be conducted for those patients/clients receiving one week therapy or stroke evaluation or regular medical rehabilitation services. In addition to all service providers and the Medical Director, the client and family, as well as the referral source, will attend the staffing if possible. If, based upon evaluations using the functional independence measure, there is a reasonable expectation for significant functional improvement, the client/patient will be accepted for continued therapy services and an estimated completion date will be identified.

4407.6 West Virginia Rehabilitation Hospital Discharge. The client/patient will be discharged when:

A. The client/patient achieves the goals identified at the completion of the initial evaluation (or as amended);

B. S/he is unable to reach established objectives or progress is too slow (plateaus for a two-week period) to justify further inpatient rehabilitation;

C. His/her medical/psychiatric condition deteriorates to the point of being medically unstable requiring acute medical care (transfer to an appropriate acute care facility will be arranged);

D. S/he develops complications requiring medical/surgical care that cannot be provided at the Center (transfer to an appropriate acute care facility will be arranged);

E. S/he does not meaningfully participate in therapy program (due to lack of motivation) and attempts on the part of the staff to positively influence the level of participation fail; or,

F. His/her behavior becomes disruptive to the program or compromises quality of care for other patients/clients.

4407.7 Eligibility for Medicaid Disproportionate Share (DSH) Sponsorship of Inpatient Medical Rehabilitation Services. In order to qualify, the referral must have a valid Medicaid card, be 20 years or younger, and the medical necessity and appropriateness of the inpatient setting must be demonstrated.

4407.8 Inpatient Medical Rehabilitation.

A. *Requirements.* Two basic requirements for inpatient hospital stays must be met for the rehabilitation care to be covered. They are:

1. The services must be reasonable and necessary (in terms of efficacy, duration, frequency and amount) for the treatment of the patient's condition; and,
2. It must be reasonable and necessary to furnish the care on an inpatient hospital basis rather than in a less intensive setting such as a skilled nursing facility (SNF), an SNF level of care in a swing bed hospital, or on an outpatient basis.

B. *PRO Screening.* The Professional Review Organization (PRO) utilizes the following screening criteria to determine that the patient requires a rehabilitative hospital level of care:

1. *Close Medical Supervision by Physician With Specialized Training or Experience in Rehabilitation.* A patient's condition must require the 24-hour availability of a physician with specialized training or experience in the field of rehabilitation.
2. *Twenty-Four Hour Nursing Care.* The patient requires the 24-hour availability of a registered nurse with specialized training or experience in rehabilitation.
3. *Relatively Intense Level of Rehabilitation Services.* The general threshold for establishing the need for inpatient hospital rehabilitation services is that the patient must require and receive at least three hours a day of physical and/or occupational therapy. This may include other rehabilitation treatment modalities, such as speech-language pathology services or prosthetic-orthotic services.
4. *Multidisciplinary Team Approach to Program Delivery.* At a minimum, the team must include a physician, rehabilitation nurse, and a therapist.
5. *Coordinated Program of Care.* The patient's needs must reflect evidence of a coordinated program (documentation that periodic team conferences were held at least every two weeks) to assess the individual's progress or problems impeding progress;

consider possible resolutions to such problems; and, reassess the validity of the rehabilitation goal(s) initially established. Decisions made during such conferences must be recorded in the clinical record.

6. *Significant Practical Improvement.* Hospitalization after the initial assessment is covered only in those cases where the initial assessment results in a conclusion by members of the rehabilitation team that a significant practical improvement can be expected within a reasonable time period. It is not necessary that there be reasonable expectation of complete independence in activities of daily living, but there must be a reasonable expectation of improvement that will be of practical value to the patient, measured against his/her condition when the rehabilitation program began.

7. *Realistic Goals.* The aim of treatment is to achieve the maximum level of function possible.

8. *Rehabilitation Program Length.* Coverage ends when further progress toward the established rehabilitation goal is unlikely or it can be achieved in a less intensive setting. In deciding if further care can be carried out in a less intensive setting, both the degree of improvement which has occurred and the type of program required to achieve further improvement must be considered. In some cases, an individual may be expected to improve under an outpatient program. There are other situations where further improvement in the individual's ability to function relatively independently in activities of daily living can be expected only if a multidisciplinary team effort is continued.

4408 Screening Actions. The Admissions Counselor determines the appropriateness of Center services for each applicant. The Admissions Counselor is guided by provisions of Division policy and the Rehabilitation Act of 1973, as amended. The determination will be communicated to the Field Counselor or referral source in writing via memorandum, electronic transmission, or fax. The Admissions Counselor may:

A. *Accept.* Upon acceptance, the client is scheduled to enter the Center by the Coordinator, Center Admissions. If there is a waiting list for the desired service, the client's name is placed on that list. As soon as the service can be scheduled, the client, Field Counselor, and referral source are notified of the entrance date. Inquiries regarding actual or projected time of admission should be made to the Coordinator, Center Admissions. If a client misses two call ins, the Admissions Coordinator will return the case to the field.

2. *Pend.* Recommendations might contraindicate requested services because of the client's disability, intellectual ability, aptitudes, motivational factors, or other considerations. The Admissions Counselor may recommend a change in program and will explain in detail the reasons for same. All pended cases are reviewed every 30 days.

3. *Refer.* The Admissions Counselor may refer the application to a specific Center staff member (such as a psychiatrist or physiatrist) for assessment and recommendations.

4. *Reject.* The Admissions Counselor may reject the application after consultation with administrative staff or the service provider. The Admissions Counselor will identify the reasons for rejection and, if indicated, any conditions under which the likelihood of acceptance would be enhanced. The Admissions Counselor also may recommend alternative resources which could be explored to benefit the client.

4408.1 Reconsiderations. The Field Counselor, applicant, or referral source has the right to request reconsideration of any decision of the Admissions Counselor. The request should be made in writing to the Supervisor of Admissions and should specify the reasons for the request. The applicant should appeal through the Field Counselor. The Field Counselor should clarify points the Admissions Counselor may have overlooked and present any new information which was not previously available. It is recognized that changes in the client's situation might occur through provision of services such as counseling and guidance, medical, psychiatric treatment, or passage of time.

4408.2 Appeal Procedure. In the event of a continuing difference of opinion between the referring Field Counselor, applicant, and the Admissions Counselor as to acceptability of the applicant, the referring Field Counselor and the applicant may review the case with the District Manager. The Field Counselor also will advise the client of his/her right to due process and services of the Client Assistance Project. If the Field Counselor, applicant, and District Manager agree, the Senior Manager, Center Services, will be requested to rule on the applicant's suitability for admission. If the difference occurs between another referral source, applicant, and the Admissions Counselor, the referral source or applicant may appeal the Admissions Counselor's decision to the Senior Manager, Center Services.

4409 Client Preparation. It is the Field Counselor's responsibility to prepare the client for the experience of living in the Center environment. The Field Counselor will provide the client/applicant with complete and thorough information regarding Center services and Center life so that the client/applicant can make an informed decision as to whether or not to participate in services at the Center. Clients will be instructed to bring to the Center any currently used wheelchairs, braces, appliances, glasses, or prosthetic devices. Clients entering for vocational training should bring appropriate clothing and footwear. Leather shoes/steel-toed shoes, for example, are required in mechanical training areas. If the client cannot afford appropriate clothing or footwear, the Field Counselor should purchase these prior to entry. The Field Counselor should inform Admissions of circumstances occurring after case acceptance that may have direct influence on the provision of Center services. If necessary, services can be rescheduled for a later time when the client can perform at an optimum level. Clients scheduled to live on the Treatment Unit will be advised to bring street clothing in addition to sleepwear. *Counselor Comments* entries will indicate any problems encountered during preparation of the client for Center living and steps taken to resolve such problems. If problems remain unsolved, the record should indicate their nature. Center staff will work as a team to reinforce the counseling program initiated by the Field Counselor. The Field Counselor will assure that all clients who will receive Center services are prepared for Center admission by:

- A. Thoroughly discussing why the client will receive services at the Center;
- B. Reviewing Center *Client Handbook* and Center brochures with the client;
- C. Encouraging the client to make effective use of the Center Recreation Unit's scheduled activities;
- D. Informing the client that s/he may be scheduled to participate in structured activities determined to be appropriate by Center staff;
- E. Discussing the client's rights and responsibilities for participation in a Center program;
- F. Alerting the client that if his/her progress or behavior is unacceptable, the s/he may be asked to leave the Center;
- G. Ensuring with the client that adequate living arrangements are available for him/her during Center holidays, program interruptions, and upon conclusion of his/her program;
- H. Counseling the client regarding community or dormitory living (including standards of cleanliness expected, clothing requirements, responsibility to fellow dormitory occupants, and care of community property);
- I. Encouraging and arranging (through the office of the Admissions Supervisor) a pre-admission tour; and,
- J. Informing clients who have a primary or secondary disability code of alcohol or drug dependency that they will be required to abide by the Center's alcohol/drug policy, consent to the conditions set forth in this policy, and sign the *Acknowledgement and Consent Form for Clients with a Disability of Drug and Alcohol Abuse*. Clients who enter the Center and/or who are later identified as having a drug/alcohol dependency problem will be subject to the sanctions specified in the drug/alcohol policy. Failure to participate may result in discharge from the Center. An intermediate objective on the client's IPE (if completed) should indicate that random drug/alcohol testing will occur.

4410 Tours. The Center welcomes the opportunity to host tours of its facility and programs. A tour can be especially helpful to a client and/or his/her family in deciding whether to apply for Center admission. In order to provide a successful visit for potential clients, Field Counselors should contact the Admissions Supervisor's office before advising the client about when a tour might be conducted. The Field Counselor is asked to provide the office with information about the client's disability, any special needs, appointments, need for overnight accommodations or transportation, and Center areas which might be of particular interest. If the client will be traveling by bus to Charleston, the Field Counselor should obtain the bus schedule before attempting to arrange date and time of the tour. If the client will need

transportation from and/or to a bus station in Charleston, those arrangements must be made in advance. Arrangements for other types of tours (such as civic, educational, and individual) also may be made through the office of the Admissions Supervisor. In arranging tours, every effort should be made to allow a 30-day advance notice. The Admissions Secretary will send confirmation letters to those planning to tour the Center and to the referral source.

4411 Center Holiday Calendar. The Center operates on a year-round basis. The Senior Manager, Center Services, will announce dates for holidays to be observed by the Center during each calendar year.

4412 Transportation. The Transportation Department will provide transportation to clients for: program related appointments; family emergencies (if no other option is available); Center closure (if no other option is available); Center admission and discharge (if no other option is available); and, to and from public transportation terminals upon admission, discharge, and

Center closure. The Field Counselor will plan all transportation likely to be needed during the client's stay at the Center. If the client commutes, the Field Counselor will authorize transportation. If the client is to reside at the Center, the Field Counselor will plan transportation for the beginning and end of the Center program and for Center holidays. The Center provides transportation to and from public transportation terminals in Charleston only for those planned trips. All other transportation will be at the client's expense, unless approved by the Senior Manager, Center Services, (or designee). The Center is served by local bus transportation.

4413 Incidental Maintenance. Incidental maintenance up to the amount of \$12 per pay period may be authorized for those clients who have no third-party resources. The Program Supervisor, Center Living Services, may make exceptions based on the economic need of the client. The client must be a Center resident. Clients receiving vocational evaluation and rehabilitation technology services are not eligible to receive incidental maintenance. Eligibility for incidental maintenance can change during the client's program. The Center Counselor will be responsible for changes.

4414 Minor Medication and Medical Supplies. Minor medication and medical supplies will be provided to all clients admitted to the Center (whether in residence or commuting).

4415 Invoices and Financial Aid.

A. *Division Clients.* Invoices are not prepared for Center services to Division clients, except when the client's IPE/ILP specifies that the client or a third party will participate financially in the rehabilitation program. However, when a client completes his/her stay at the Center (or upon completion of evaluation), the Field Counselor is provided with a copy of WVDRS-62, *WVRC Client Services Cost Report*, based upon the Center fee schedule. The report shows the cost of Center services received by the client. Questions about report should be directed to the Accounts Receivable Office. Expenditures of project funds are specifically identified on the report. This information should be used by the Field Counselor to prepare cost entries on WVDRS-102 and 103, *Case Services Report*. Vocational training areas at the Center are approved for the U. S. Department of Education's Pell Grant Program. Pell Grant awards help undergraduate clients pay for their education after high school. Pell Grants are not loans and therefore do not have to be repaid. Applications will be made for every eligible client entering a Center vocational training area. The client's parent(s), spouse, or legal guardian may be requested to help complete this application process. The Center's Pell Grant program uses the *Application for Federal Client Aid* supplied by the U. S. Department of Education. Copies of a number of documents are required to validate the information on the application. Examples include federal and state income tax returns or a signed statement that these were not filed for the year in question. It also may be necessary to secure income and benefit statements from other agencies such as Veterans Administration, Social Security Administration, Workers' Compensation, etc. Every effort will be made to operate the client financial aid program utilizing Center staff. Field

staff assistance will be sought only as a resource or last resort. Both the client and Field Counselor will be advised through appropriate documentation of the outcome of the client's financial aid application process. The Center also operates the Supplemental Education

Opportunity Grant (SEOG) program and the College Work Study program. While Pell and SEOG are handled as paper transfer of funds to the Division to offset costs of client training, College Work Study is a program wherein clients are actually paid minimum wage for work performed for the Center. In order to be eligible for College Work Study, a student must meet the following criteria:

1. We must receive a valid Student Aid Report back from the processing center;
2. The student must be eligible for Pell (eligibility is based on income);
3. The student must be enrolled in a vocational training program; and,
4. The student must maintain a "C" average in his/her course work.

B. *Invoicing.* Invoices are prepared monthly for Center services provided to non-Division clients, such as those referred directly to the Center by Workers' Compensation, Veterans Administration, and third parties.

4416 Drug and Alcohol Program. In order to foster a rehabilitation environment and in recognition that substance abuse interferes with a person's ability to benefit from rehabilitation services, the following policies have been developed to address this issue.

4416.1 Center Alcohol Use Policy/Individuals Having a Primary or Secondary Disability of Substance Abuse. The Center offers a rehabilitative environment 24 hours a day and is a drug and alcohol free school zone. We recognize that substance abuse interferes with a person's ability to benefit from rehabilitation services. The use, possession, or distribution of alcohol on Center property, in Center vehicles, at Center functions, or being under the influence of alcohol is prohibited. A violation of this policy is considered a serious incident and will result in either discharge or disciplinary review. Should other serious rules infractions occur while the client is under the influence of alcohol, the Center reserves the right to enforce immediate disciplinary action related to the more serious infraction, which may result in suspension or discharge. The Center reserves the right to administer alcohol screenings at the Centers discretion. Refusal to undergo the screening will be considered a positive finding.

A. *Pre-Admission Agreement.* All clients coded with a primary or secondary disability of substance abuse resulting from alcohol use and referred to the Center for any service will be required to sign a pre-admission agreement stating that they will abstain from possession, use, and distribution of alcohol, will participate in Alcoholics Anonymous or other recognized substance abuse programs and will agree to undergo alcohol screenings at the Center's discretion. A signed agreement is required regardless of the length of time of abstinence.

1. If the client violates the agreement, the first infraction will constitute a serious incident and result in referral to the Discipline Review Team to determine if it is appropriate for the client's program to continue.

2. A second infraction will result in automatic discharge. The client will be referred back to the Field Counselor for development of a community treatment plan. Center readmission will be considered on a case by case basis but no sooner than 90 days. Clients applying for re-admission will be required to submit documentation of continued participation in a community support group such as Alcoholics Anonymous and provide a negative alcohol screening. If readmitted, the client will be required to undergo an additional alcohol screen as part of the initial medical screening. If this alcohol screen is positive, the client will be immediately discharged from the Center and referred back to the Field Counselor for further counseling.

4416.2 Center Alcohol Use Policy for Individuals other than those coded with a Primary or Secondary Disability of Substance Abuse. The Center offers a rehabilitative environment 24 hours a day and is a drug and alcohol free school zone. We recognize that substance abuse interferes with a person's ability to benefit from rehabilitation services. The use, possession, or distribution of alcohol on Center property, in Center vehicles, at Center functions, or being under the influence of alcohol is prohibited. A violation of this policy is considered a serious incident and will result in either discharge or disciplinary review. Should other serious rules infractions occur while the client is under the influence of alcohol, the Center reserves the right to enforce immediate disciplinary action related to the more serious infraction, which may result in suspension or discharge. The Center reserves the right to administer alcohol screenings at the Center's discretion. Refusal to undergo screenings will be considered a positive finding.

Discipline Process:

1. A first infraction will be addressed through counseling and review by the Discipline Review Team.

2. The second infraction will result in mandatory referral to alcohol assessment and education for a minimum of eight weeks and referral to the Discipline Review Team.

3. A third infraction will result in referral to the Discipline Review Team to determine if it is appropriate for the client's program to continue.

4. If the client refuses to abide by sanctions at earlier stages, she/he will automatically advance to the third infraction level.

5. Referral to Alcoholics or Narcotics Anonymous or the Center's Treatment Program can occur at any level.

4416.3 Appeal Process. The Division's client appeal process is available to any person affected by this policy.

4416.4 Possession and Use of Illegal Drugs/Illegal possession and use of a Controlled Substance while at the Center. The possession, sale, distribution, or illegal use (determined via drug screen) of illegal drugs and/or controlled substances on Center property, in Center vehicles, or at Center functions is prohibited. A violation of this policy is considered a serious incident and will result in a maximum sanction of an Administrative Discharge from the Center dormitory, program and grounds. The client will be referred back to the Field Counselor for development of a community treatment plan. Center readmission will be considered on an individual basis. Client's applying for re-admission will be required to submit documentation of continued participation in a community support group such as Narcotics Anonymous and provide a negative drug screen. If re-admitted, the client will be required to undergo an additional drug screen as part of the initial medical screening. If this drug screen is positive, the client will be immediately discharged from the Center and referred back to the Field Counselor for further counseling. Refusal to undergo screenings will be considered a positive finding.

A. Pre-Admission Agreement. All clients coded with a primary or secondary disability of substance abuse resulting from drug use and referred to the Center for any service will be required to sign a pre-admission agreement stating that they will abstain from use, possession, and distribution of illegal drugs, will participate in either Narcotics Anonymous or other recognized substance abuse programs, and will agree to undergo drug screenings at the Center's discretion. A signed agreement is required regardless of the length of time of abstinence. If the client violates the agreement, he/she will be administratively discharged.

B. Drug Counseling at the Center. The Center is not a substance abuse treatment center. However, in order to foster a rehabilitation environment and in recognition that substance abuse interferes with a person's ability to benefit from rehabilitation services, a relapse prevention program is offered which provides drug education. This program is offered in the evening hours and is provided by Counseling and Residential Living staff. Individual and Group counseling; psychiatric/psychological services are also available upon self referral to the program or if referred by the counselor or physician. Community support groups such as Narcotics Anonymous are available and transportation is provided for clients attending these groups in the community.

4416.5 Appeal Process. The Division's client appeal process is available to any person affected by this policy.

4417 Life Skills Training.

4417.1 CORE. This program is designed to improve self confidence, teach appropriate interpersonal behaviors, and enhance independent living skills. Individuals entering the program receive instruction in interpersonal relations, survival living, vocational/job findings, dormitory living, leisure time use, and work development/laboratory experience. Given an opportunity to learn skills in these areas, the client should be better prepared to participate in a training program or return to the community for placement or other services as needed. An

integral part of this program is a structured evening activities program which involves one or two hours of the client's time up to four nights a week.

A. *Evaluation.* The client will undergo a comprehensive evaluation that includes psychosocial adjustment; intellectual ability; achievement; interests; leisure and recreation; independent living skills; and, career exploration. The evaluation is completed within the first thirty days and an interdisciplinary team staffing is held to develop and initiate a plan of services in accordance with the client's needs.

B. *Requirements.* The client must be capable of receiving and retaining instructions regarding class assignments. S/he should be capable of handling personal hygiene and grooming, room maintenance, preparation of some meals, limited management of money, and shared maintenance of the residence. The client may lack confidence and experience in independent living and have limited decision making and/or strategy building skills. In order to benefit fully from the total program, residency on campus is required.

C. *Duration.* The duration of the program ranges up to four months.

D. *Content.* A client completing a four month program will receive: survival and dormitory living skills; interpersonal relations and socialization skills; and vocational exploration.

E. *Documentation.* Counselors are requested to state specific areas of concern or interest to be addressed by Life Skills Training Staff in *Counselor Comments*.

4417.2 Blind and Visually Impaired. This program is designed to assist the person who is blind or visually impaired to accept blindness or visual loss and to gain or regain independence. Adjustment, communication, and mobility should be resolved prior to entering a vocational training program or employment. An individualized pre-vocational personal adjustment program focuses on survival living, adjustment to disability, orientation and mobility, communications, assistive devices, and vocational exploration skills. Clients may reside in Center dormitories, commute, or in some cases be served on an itinerant/homebound basis.

A. *Evaluation.* During the first two weeks of the program, clients are assessed and evaluated. An initial staffing is held with the client, Counselor, and service providers in order to determine the client's needs, short and long term goals, staff responsible for service provision, estimated completion date for services, and client staffing and review dates.

B. *Requirements.* The client must have a significant visual problem that hinders functioning in the areas described above. The client should be capable of receiving and retaining instructions regarding class assignments.

C. *Duration.* The duration of services varies according to the client's needs, capabilities, potential, and severity/degree of visual impairment. Clients receiving full benefit of the majority of services can expect to be in the program two to three months.

D. *Content.* The program is developed to meet the client's need. Therefore, only those courses deemed necessary to obtain the client's goals and objectives are included. In an average two to three month program, the client can expect to be involved in 210 to 320 hours of instruction in: computer literacy; orientation and mobility training; communication skills; life skills management; and, adjustment to disability counseling.

E. *Documentation.* Counselors are requested to state specific areas of concern or interest to be addressed by the Life Skills Training Staff in *Counselor Comments*.

F. *Use of Dog Guides at Center.* The Center adheres to state and federal laws regarding use of dog guides. The law enables and encourages people who are blind to participate in the social and economic life of the state and nation to engage in remunerative employment. People who are blind have a right to be accompanied by a dog guide, if the dog is wearing a harness and has been trained for the purpose, in any place of public accommodation. The person who is blind must present credentials verifying the dog has been trained by an accepted school for training dog guides. The person who is blind is liable for any damage done by the dog guide to persons or property. When a person who is blind is to be accompanied to the Center by a dog guide, this fact will be noted in *Counselor Comments*. Field and Center Counselors will inform the person who is blind of the rights and responsibilities under the law regarding the use of a dog guide at the Center.

4417.3 Deaf/Hearing Impaired. This program is designed to assist the client in improving skills in academics, survival living, vocational awareness, and interpersonal relationships. Given the opportunity to learn and improve upon these skills, the client should be better prepared to participate in vocational evaluation, a training program, or job placement.

A. *Evaluation.* During the first two weeks of the program, clients are assessed and evaluated. An initial staffing is held with the client and staff working directly with the client in order to determine client's needs, short and long-term goals, staff responsible for services, estimated completion date for services, and client staffing/review dates. Once the client's goals and objectives are defined, instruction and practice are provided in developing community awareness; cooking and food shopping; clothing; living in the community; money management; travel; health education; self awareness; human sexuality; career exploration; work awareness; sign language; driver education; manual review (if applicable); reading comprehension; language development; and, mathematics computation.

B. *Requirements.* The client must have a significant hearing problem that hinders functioning in the areas described above. The client should be capable of receiving and retaining instructions regarding class assignments.

C. *Duration*. The duration of the course can range up to six months depending on the needs of the client.

D. *Content*. A client completing a six-month program can expect to receive instruction in survival academics; vocational exploration; survival living; interpersonal relationships; and, communication devices.

E. *Documentation*. Counselors are requested to state specific areas of concern or interest to be addressed by the Life Skills Training Staff in *Counselor Comments*.

4418 Career Development Services.

4418.1 General Admission Policy for Vocational Training. Anyone meeting Division eligibility requirements for training is a possible candidate for Center vocational training services. A prospective student coming to the Center may need services that are difficult or impossible to obtain otherwise. The applicant may need multiple, coordinated services and/or have extenuating circumstances indicating that Center services would substantially improve his/her likelihood of successful vocational rehabilitation. The following criteria are strong indicators of a client's ability to successfully complete a particular training area. However, these criteria are not all inclusive and other prospective students may be considered on an individual basis. Students not meeting this criteria may be considered provided that clear documentation and justification is included when the case is submitted to the Admissions Office.

4418.2 Systematic Evaluation. Students are informed of quantitative and qualitative requirements for graduation. Use of a *Student Progress Report* insures that accurate records are kept and that all course work is judged on predetermined standards. A thirty day evaluation occurs on each entering student using consistent evaluative measures to judge if the course is feasible for the student.

4418.3 Safety, Health, and Fire Prevention. Fire and safety drills are held on a regular basis, and instruction on the use of fire and safety equipment is taught.

4418.4 Specifics for Each Training Program.

Business Education:

Cognitive - It is desirable that the student function on the seventh to tenth grade level considering specific areas, i.e., accounting, clerical, etc.

Class Capacity - 30 students

Call Ins - Quarterly

Requirements for Graduation - Approximately 6 to 12 months depending on course(s) taken.

CAD Drafting:

Cognitive - It is desirable that students function on the tenth grade level or above in reading, spelling and mathematics.

Class Capacity - 12 students

Call Ins - As space is available. For the welfare of the student, it is very important that the instructor be contacted well in advance to discuss placement feasibility of the potential student. It is always preferable to also arrange for the student/instructor telephone meetings at this time as well, and/or actual visits to the program. In certain cases it may well be advisable to elect job shadowing for a determined period of time as opposed to placement for the 30-day evaluative period.

Requirements for Graduation - 15 months or 1,950 hours for the total program. Computer Assisted Drafting and Technical Hand Sketching are taught simultaneously throughout the entire course length. The primary emphasis for job placement in this area and beyond is for MicroStation CAD skills, and this will be the dominant focus of learning for the second half of the course.

Computer Assisted Instruction (CAI) Laboratory:

Cognitive - The student should be motivated and show strong interest in the use of a personal computer.

Class Capacity - 9 students

Referrals - Students are accepted on an individual basis from within the Center as openings are available.

Developmental Education:

Adult Basic Education:

Cognitive - Wide Range Achievement Test (WRAT) or similar test scores should be available upon entrance into Developmental Education. It is desirable that the client function on GED Level 2 in reasoning, mathematics, and language. The ABE program is designed for the client who has a reading score lower than 8.3 and a mathematics score less than 7.0.

General Educational Development (GED):

Cognitive - Wide Range Achievement Test (WRAT) or similar test scores should be available upon entrance into Developmental Education. It is desirable that the client function on at least GED Level 3 in reasoning, mathematics, and language. The client should have a reading score of 8.3 and a mathematics score of 7.0. Clients not attaining the recommended grade levels in both reading and mathematics should initially be recommended for ABE with the intent to possibly advance to GED.

SAT or ACT:

Cognitive - A client should possess a high school diploma or GED certificate before entrance into this program. Special consideration will be given to junior year college preparatory curriculum.

Vocational Training Supplement:

Client must meet the selection criteria for the specific training area to which s/he is assigned to participate in this aspect of Developmental Education.

Course Duration - Course duration is determined by the progress of the client. In most cases the program should not exceed 6 months.

Call Ins - As space is available

Class Capacity - 30 students

Classroom Day - The classroom day for a client in Developmental Education will be Monday through Friday, 8:15 a.m. to 12 Noon and 1:00 to 3:45 p.m. A fifteen-minute break will be given in the morning and afternoon.

Note: If a client demonstrates a variance greater than two (2) grade levels on the WRAT or comparable scores from what the minimum selection criteria is for a Center training program, an initial referral should be made to Developmental Education prior to that training.

Electronic And Computer Technology:

Cognitive - It is desirable and preferred that the student have a high school diploma or equivalent prior to class entry. WRAT scores should be at or above the seventh grade level. Minnesota Paper Form Board scores should be at least above the fiftieth percentile. Bennett Mechanical test scores should be at least above the fortieth percentile. Vocabulary, spelling, and word usage should be at or above the seventh grade level. Reading comprehension should be at or above the seventh grade level.

Class Capacity - Up to 12 students

Call Ins - As space is available

Requirements for Graduation - Students may graduate at one of five levels of competencies depending upon choice and on the level of course completion in the time allowed. 80% completion of competencies in the chosen specialization is required.

Other - Beyond the technical knowledge requirements, interpersonal skills, time management, customer relations, and the business end of the electronics service industry are stressed in an on-the-job work environment. Private industry field experience is provided when possible.

Facilities Maintenance/Construction Training:

Cognitive - It is desirable that the student function on the sixth grade level in mathematics, spelling, and reading. Clients below these levels will be considered on an individual basis. The student should demonstrate an ability to follow moderately complex oral and written instructions.

Other - Individual should score at least at the twentieth percentile on the Bennett Mechanical Comprehension and the Revised Minnesota Paper Form Board Tests.

Class Capacity - 12 students

Call Ins - As vacancies are available

Safety, Health, and Clothing - Safety is constantly emphasized. All students are required to wear proper safety equipment including eye protection, hearing protection, and protective clothing which is provided. It is recommended that students wear work type shoes or boots with hard soles. No sneaker or tennis type shoes will be authorized. Individual dress should be appropriate for a shop-type atmosphere.

Requirements for Graduation - Students should maintain at least a "C" average and complete at least 80% of required competencies.

Food Service:

Cognitive - It is desirable that the student function on or above the sixth grade level on reading, mathematics, and spelling. The student should demonstrate an ability to follow and carry out directions and follow written instructions. Students will learn to write customer orders and make change.

Class Capacity - 20 students

Call Ins - As space is available

Requirements for Graduation - Students must complete at least 80% proficiency on competency-based education standards.

Heating/Air Conditioning/Major Appliance/Commercial Refrigeration Installation and Service:

Cognitive - It is recommended that a student function on the sixth grade level in reading, mathematics, and spelling.

Other - Individual should score at least at the twentieth percentile on the Bennett Mechanical Comprehension and the Revised Minnesota Paper Form Board Tests.

Class Capacity - 12 students

Call Ins - As space is available

Requirements for Graduation - Students must complete at least 80% proficiency on competency-based education standards.

Home Health Care Aide:

Cognitive - It is desirable that the student function on or above the fifth grade level in reading, mathematics, and spelling. A high school diploma or GED is desirable. The student should demonstrate an ability to understand and execute simple instructions and be able to observe and record details relative to patient care. It is desirable that the student be certified in first aid and CPR.

Class Capacity - 10 students

Call Ins - January, March, May, July, September, and November

Requirements for Graduation - Students must complete at least 80% proficiency on competency-based education standards.

Hotel-Motel/Janitorial Training:

Cognitive - No academic requirements. The student should demonstrate an ability to maintain simple records, e.g., through the Bennett Mechanical Comprehension Form, Direction Following Section.

Class Capacity - 24 students

Call Ins - As space is available

Requirements for Graduation - Students must complete at least 80% proficiency on competency-based education standards.

Nursing Assistant:

Cognitive - It is desirable that the student function on the seventh grade level in reading, mathematics, and spelling. A high school diploma or GED is desirable, as it is required by most employers. The student should demonstrate an ability to understand and execute simple instructions and be able to observe and record details relative to patient care. It is desirable that the student become certified in first aid and CPR.

Class Capacity - 10 students

Call-Ins - January, May and September

Skill Proficiency - Each student is given extensive hands-on practice on various nursing assistant techniques and is tested on each by means of a performance examination.

Requirements for Graduation - Students must complete at least 80% proficiency on competency-based education standards.

Small Engine Repair:

Cognitive - It is desirable that the student function on or above the sixth grade level in reading, mathematics, and spelling.

Class Capacity - 12 students

Call Ins - As space is available

Requirements for Graduation - Student must complete at least 80% proficiency on competency-based education standards.

4419 Attendance Policy.

4419.1 Education and Training Department Attendance Requirements.

Inherent in both the intent and spirit of the Rehabilitation Act and the philosophy and mission of the Center, the legal concept of reasonable accommodation of severe disabilities clearly applies to all academic programs at the Center. However, there is likewise a strong need to maintain academic integrity and to ensure that consumers are recipients of quality training services. Therefore, these attendance requirements are intended to provide for the type of academic environment that will assist our consumers in the necessary skills development required for success in today's world of work.

4419.2 Attendance Overview. Classes are from 8:15 a.m. to 12:00 Noon and from 1:00 to 3:45 p.m. for full-time students on Monday through Friday. Part-time students will be scheduled in accordance with the referral. Regular attendance and punctuality will help students develop good habits necessary for successful careers. Attendance is established when students are present in the assigned classroom or training area for the scheduled amount of time. Teachers will keep a record of class attendance and report it to the Principal and appropriate Center Counselor. The Career Development Services Unit does not permit students to make up absences that accumulate on their attendance record. There will be no allowance or recognition of accrued time. Students are encouraged to schedule medical, dental, or Treatment Unit appointments during hours that would have the least impact on their training program attendance. They should notify the teacher when they plan to be absent. Students visiting their Center Counselor are encouraged to arrange appointments that consider the counselor's, teacher's, and student's best use of time. More than two visits per week during instructional time will constitute an early departure. Students who need significantly more than two weekly treatments or conferences may, through inadequate program progress, jeopardize their continuation in vocational training. This decision will ultimately be determined by the teacher after consulting with counselors and the Principal.

4419.3 General Principles.

- A. Students are expected to be in the assigned classroom or training area 100% of the scheduled time of any course or program.
- B. Absences will include tardiness and early departures.
- C. Students who do not attend for at least 51% of the day's scheduled class time will be considered absent for the day.
- D. Students who have been absent without notice from all of their scheduled classes for ten consecutive school days (not including scheduled holidays) will be referred to the Center Discipline Committee.

4419.4 Intervention Steps.

- A. Students receive a monthly progress report which they sign and acknowledge their total hours of absences for the month.
- B. After three consecutive unaccounted absences, an attempt will be made to contact the student to determine the cause for the absences.
- C. Students will first be put on notice by their teacher for their poor attendance when 5% of their total program hours have been counted absent. This notice will be distributed to the student, appropriate Center Counselor, Principal, and appropriate Field Counselor.
- D. The above procedure will be repeated if a student is absent from 8% percent of his/her total program hours. In addition, a conference with the student and the aforementioned staff members will be held to determine the nature of the absences and what, if anything, can be done to improve attendance. If, in the opinion of the participating staff members, a determination is made that a majority number of absences were appropriate and unavoidable, then a corresponding number of hours will not be counted in determining any disciplinary action.
- E. The above procedure will be repeated if a student is absent from 10% or more of his/her total program hours. A conference will be held with the same aforementioned staff members plus the Program Supervisor of Center Living Services to determine if valid extenuating circumstances were involved in the absence of the student. If, in the opinion of the participating staff members, a determination is made that a majority number of absences were appropriate and unavoidable, then a corresponding number of hours will not be counted in determining any disciplinary action. However, if the staff members determine that a majority of the absences were without merit, then a recommendation will be made to the Center Discipline Committee.

F. If the total number of clock hours for a training area is 1,560, then 5% absence would be when 78 hours were absent ($8\% = 125$; $10\% = 156$; etc.).

4419.5 Tardiness/Early Departure. Students who arrive for class ten minutes or more after the scheduled start time will receive a tardy on their attendance record. Students who depart from class before the scheduled completion time will receive an early departure on their attendance record. Students who accumulate a total of three tardies and/or early departures will earn one day of absence on their attendance record. One day of absence is equal to 6.5 hours of absence.

4419.6 Reentry Policy. Students who have been dismissed for violating the attendance policy may apply for readmission after six months with approval of their Field Counselor. Approval reentry will be granted only once.

4419.7 Make-Up Work. Students are required to make up all assignments and work missed as a result of absence. Arrangements to take any tests missed because of an absence must be made with the instructor.

4419.8 Veterans and Workers' Compensation Students. The Department of Veterans Affairs and Workers' Compensation Fund students have additional attendance requirements set forth by their respective agency. The Career Development Services Unit can provide this information upon request.

4419.9 Study Time. In order to complete required class assignments, students are expected to spend study time outside of the normal classroom. The amount of time needed will vary according to individual student program and abilities. Students are responsible for reading all study materials issued by their instructors and must turn in assignments at the designated time.

4420 Center Management Information System. The Center operates a management information system. In order to maintain accurate information, it is necessary that the case be updated promptly as possible. This will enable the Center's information to coincide with that in the Division's field database. Examples of information included are: client demographic information; Center costs; program attendance; training competencies achieved; grades; and, financial aid information.

4421 Discharge Standards.

A. *General.* A client's program may be terminated when the client has completed his/her program; when the client is not making satisfactory progress; when the client's attendance is irregular; or when the client's conduct is not consistent with the best interests of either the client or the Center. Authority to terminate a client's Center program rests with the Senior Manager, Center Services, (or designee). Responsibility for securing appropriate community living arrangements following termination of the client's Center program is the joint responsibility of the client, the Field Counselor, and the Center Counselor.

B. *Discharge Categories.*

1. Completed program with certificate and placement services provided;
2. Completed program with certificate;
3. Completed non-certificate program;
4. Medical;
5. Maximum benefit;
6. Self discharge;
7. Disciplinary; or,
8. Death.

C. *Discharge Planning.* Discharge planning begins when the case is prepared for admission. Discharge alternatives should be identified in case narratives. Admissions Counselors will review discharge plans to alert Center Counselors of problems. Upon admission, the Field Counselor will work closely with Center Counselors on continued discharge planning. It will be the Field Counselor's responsibility to advise the Center Counselor of changes in pre-admission discharge planning. The Center will be responsible for coordination of the client's discharge from the Center. The major components of this discharge process include suitable arrangements for housing and meals and ample notice of discharge to the client, family, and Field Counselor.

4422 Attendant Care Services while receiving services at WVRC

4422.1 Attendant Care Services provided by WVRH staff.

The WVRH staff will provide attendant care services via the Attendant Care Rooms only and when the needs lie within the capacity of the Hospital staff and resources.

A. *Casework Documentation Requirements.* When requesting admission to the Attendant Care Rooms the Field Counselor will complete with the individual, the individual's guardian, or representative, the Attendant Care Checklist. See Figure 4400-4. This checklist will be used to determine WVRH staffing needs in order to assure that services are in place to support the individual upon admission to WVRC.

The counselor will also complete the Medical Questionnaire for Providing Attendant Care Services and submit the questionnaire and supporting medical documentation requested so that

WVRC/WVRH staff can insure that services are in place for this individual prior to being admitted to WVRC; See Figure 4400-5.

The Checklist and Medical Questionnaire will accompany the otherwise required information to the Admission's Office of WVRC.

4422.2 Individuals providing for their Attendant Care Services at WVRC

A. *General Information.* The responsibility of attaining, training, supervising, payment, and possible replacement of an attendant belongs to the individual receiving care. Should an attendant discontinue the services to the individual, every attempt will be made to move the individual to an Attendant Care Room. Should an Attendant Care Room not be available, the individual will be discharged from WVRC until a replacement attendant can be hired by the individual. Should the individual not find replacement, he/she may seek re-admission to WVRC and request admission to the Attendant Care Rooms and those procedures would apply.

B. *Housing.* The individual and the attendant may stay in the same room and will be housed on the first floor of the women's or men's dorm. Should the attendant be the opposite sex of the individual, housing will be in the Intern Wing of the Women's dorm as space permits.

Should it be determined that the individual may be in need of medical services that cannot be provided routinely by the attendant, the individual and attendant may be housed in the Attendant Care Rooms and those guidelines would prevail.

C. *Dormitory Rules.* All dormitory rules will apply. It is expected that the Attendant will assist the individual in those areas where, due to physical limitations, he/she cannot comply. Example: Room and Clothing Care. The attendant will complete the Drug Free Work Place notice and is expected to conform to all rules and regulations while at the Center.

D. *Case Work Documentation Requirements.* When requesting admission the Field Counselor will complete with the individual, the individual's guardian, or representative, the Attendant Care Checklist. See Figure 4400-4. The individual and the attendant are required to sign the Attendant Care Checklist indicating an understanding of the provisions of Attendant Care services while receiving services at WVRC. This checklist is necessary in order to assure that services are in place to support the individual upon admission to WVRC.

The counselor will also complete the Medical Questionnaire for Providing Attendant Care Services and submit the questionnaire and supporting medical documentation requested so that WVRC/WVRH staff can insure that services are in place for this individual prior to being admitted to WVRC; See Figure 4400-5.

The Checklist and Medical Questionnaire will accompany the otherwise required information to the Admission's Office of WVRC.

Attendant Care Checklist

The following checklist is for the purpose of planning care routines and setting up expectations and responsibilities between the attendant and the attendee. It is very important that the attendee check all items necessary for his/her care. This information is used to determine the appropriate care level.

CLIENT NAME: _____

DATE: _____

Dressing/Undressing:				Bladder Care Continued:			
Underwear		(6 minutes)		Change sheets if necessary			
Pants, slacks, dress		(6 minutes)		Other, explain _____			
Shirt, blouse		(6 minutes)					
Tie, belts, shoes		(6 minutes)					
Socks, Stockings		(6 minutes)		Bathing: Check bathing or shower, add all areas			
				Shower-Frequency		Week	(15 min.)
				Bed/bath-Frequency		Week	(15 min.)
Shower:				Wash hair		(3 min.)	
Braces, prosthesis		(5 minutes)		Wash upper body		(3 min.)	
Other, explain _____				Wash lower body		(3 min.)	
				Dry body		(3 min.)	
				Push to and from		(3 min.)	
Personal Care:				Other, explain _____		(0.5 min.)	
Brush teeth		(8 minutes)					
Brush, comb, style hair		(30 minutes)					
Wash face		(4 minutes)					
Shaving		(10 minutes)		Transfer: (20 minutes)			
Face	Legs	Underarms		Full body lift			
Clip nails		(1 minute)		Standing (pivot) transfer			
Apply cosmetics, deodorant		(6 minutes)		Minimum transfer assistance			
Change sanitary napkin, tampon		(60 min.)		Bed to wheelchair			
Care of pressure sores				Wheelchair to bed			
Dispense medical		Day	(10 minutes)	Bed to shower chair			
Feeding/Food Cutting		(120 minutes)		Shower chair to bed			
Wound Care				Wheelchair to toilet seat			
Other, explain _____				Toilet seat to wheelchair			
Maximum 228 minutes				Other, explain _____			
Bowel Care:		(60 minutes)					
Suppository-frequency		week					
Digital Stimulation							
Manual removal				Miscellaneous: (For screening purposes only)			
Colostomy care bed				Packing, unpacking clothes			
				Materials ready			
Bladder Care:		(60 minutes)		Laundry			
Indwelling				Room clean-up			
Change	week &	daily		Positioning			
Irrigate	day			Getting books			
External Change		day					
Empty leg bag							
Rinse leg bag				Total=	÷60=		
Rinse bed bag				Minutes		Hours per day	
Change disposable protective shield							

SIGNATURE REQUIRED ON BACK.....

FIGURE 4400-4. Attendant Care Checklist

Signature is required for individuals providing for their own attendant care

I understand that my attendant is responsible for providing the attendant care services as listed above. I understand that I am responsible for providing all medically necessary equipment such as wheelchair, walkers etc. I understand that I am responsible for providing all of my medical supplies, such as catheters, etc. I also understand that if my attendant is unable to provide the attendant care services as listed above, every attempt will be made to move me into the Attendant Care Rooms. If there are no Attendant Care Rooms available, neither the West Virginia Rehabilitation Center staff nor the West Virginia Rehabilitation Hospital staff will be responsible for providing the attendant care services and my attendant and I will be discharged from the West Virginia Rehabilitation Center.

Name of Student/Guardian/Representative

Date

I understand that I am responsible for providing the attendant care services as listed above. I also understand that if I am unable to provide the attendant care services as listed above, every attempt will be made to move my attendee into the Attendant Care Rooms and I will be dismissed from the West Virginia Rehabilitation Center. If there are no Attendant Care Rooms available, neither the West Virginia Rehabilitation Center staff nor the West Virginia Rehabilitation Hospital staff will be responsible for providing the attendant care services and my attendee and I will be discharged from the West Virginia Rehabilitation Center.

Name of Attendant

Date

TO BE COMPLETED BY WVRC STAFF

Level
Determined

Figure 4400-4. Attendant Care Checklist ..continued

MEDICAL QUESTIONNAIRE FOR PROVIDING ATTENDANT CARE SERVICES	
Has this individual received a medical diagnosis from a physician? Example Diabetes, etc.	
☐	Yes Please provide the specific diagnosis from the individual's treating physician. This must be documented in the case record.
Diagnosis:	
☐	No
Is this individual receiving medical treatment that will need to be continued while receiving services at WVRC? Example: wound care, etc.	
☐	Yes Please provide a prescription for the specific treatment needs from the individual's treating physician.
☐	No
Is this individual on prescribed medication/medications that will need to be continued while receiving services at WVRC?	
☐	Yes Please provide an original prescription for all medications.
☐	No

FIGURE 4400-5. Medical Questionnaire for Providing Attendant Care Services

6800 DEFINITIONS.

Italics indicate supported employment definitions.

A

American Indian: An individual who is a member of an Indian tribe.

Appeal Hearing: The procedure, at the level of the Division Director, to review determinations made by a Rehabilitation Counselor upon the request of an applicant for or recipient of rehabilitation services.

Applicant: An individual who submits an application for rehabilitation services. An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate, has completed and signed an Application for Rehabilitation Services, or has otherwise requested services, provided information necessary to initiate an assessment to determine eligibility and priority for services, and is available to complete the assessment process.

Appropriate Modes of Communication: Specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

Assessment for Determining Eligibility and Priority for Services: A review of existing data to determine whether an individual is eligible for rehabilitation services and to assign a priority under an order of selection, when appropriate.

Assistive Technology Device: Any item, piece of equipment or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

Assistive Technology Service: Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

1. The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his/her customary environment;
2. Purchasing, leasing or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

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

5. Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and,

6. Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

C

Center for Independent Living: A consumer controlled, community based, cross disability, non-residential, private non-profit agency that is designed and operated within a local community by individuals with disabilities, and provides an array of independent living (IL) services.

Clear and Convincing Evidence: The state agency shall have a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The "clear and convincing" standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term "clear" means unequivocal. Given these requirements, a review of existing information generally would not provide clear and convincing evidence. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of "clear and convincing evidence" must include, if appropriate, a functional assessment of skill development (including assistive technology) in real life settings.

Client Assistance Program (CAP): Program administered by the West Virginia Advocates (WVA), to provide assistance in informing and advising all applicants for, and recipients of, Division services about all available benefits under the Rehabilitation Act, and, upon request, to assist and advocate for individuals in their relationships with projects, programs, and facilities providing services to them under the Act. This includes assistance and advocacy in pursuing legal, administrative, or other appropriate remedies to ensure the protections of the rights of individuals with disabilities receiving services under the Act and to facilitate access to the services funded under this Act through individual and systemic advocacy. CAP provides information on Title I of the

Americans with Disabilities Act and may provide assistance and advocacy with respect to services that are directly related to facilitating the employment of an individual with a disability.

Community Rehabilitation Program (CRP): Program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

1. Medical, psychiatric, psychological, social, and vocational services that are provided under one management;
2. Testing, fitting, or training in the use of prosthetic and orthotic devices;
3. Recreational therapy;
4. Physical and occupational therapy;
5. Speech, language, and hearing therapy;
6. Psychiatric, psychological, and social services, including positive behavior management;
7. Assessment for determining eligibility and vocational rehabilitation needs;
8. Rehabilitation technology;
9. Job development, placement, and retention services;
10. Evaluation or control of specific disabilities;
11. Orientation and mobility services for individuals who are blind;
12. Extended employment;
13. Psychosocial rehabilitation services;
14. Supported employment and extended services;
15. Services to family members, if necessary, to enable the applicant or eligible individual to achieve an employment outcome;
16. Personal assistance services; and,
17. Services similar to 1 through 16, above.

Comparable Services and Benefits: Services and benefits that are provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits. These benefits and services must be available to the individual at the time needed to achieve the intermediate rehabilitation objectives in the individual's Individualized Plan for Employment (IPE)/Independent Living Plan (ILP). These benefits and services must be commensurate to the services that the individual would otherwise receive from the vocational rehabilitation agency.

Competitive Employment: Work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting. The individual must be compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who do not have disabilities.

Core Services: For the purpose of the order of selection, the term "core services" is defined to include physical restoration, mental health services, rehabilitation training, counseling, placement, rehabilitation technology, and assessment.

D

Disability (for Vocational Rehabilitation): A physical or mental impairment that constitutes or results in a substantial impediment to employment.

Disability Determination Section (DDS): Organizational unit of the Division which is contracted by the Social Security Administration to make disability determinations in Social Security Disability Insurance (Title II of the Social Security Act) and Supplemental Security Income (Title XVI of the Social Security Act) disability claims in West Virginia.

Discrete Post Employment Services: *Services that have been unanticipated, are unavailable from an extended service provider, and are necessary to maintain the job placement. Discrete post employment services are provided by the Division after the individual transitions to extended services.*

Division of Rehabilitation Services: State agency designated to administer the Title I Vocational Rehabilitation Program, Title VI-C Supported Employment Program, and Title VII Independent Living Program authorized by the Rehabilitation Act of 1973, as amended. Also referred to as the "Division" or "Agency."

Durable Medical Equipment: Those items purchased by the Division for eligible individuals including items such as canes, crutches, walkers, raised toilet seats, bathtub rails, wheelchair pads, dressing aids, catheters, suppository tools, etc.

E

Economic Need: Evaluation of whether an individual will be required to participate financially in the cost of extended evaluation or rehabilitation services provided or sponsored by the Division under an IPE or ILP.

Eligible Individual: An applicant for vocational rehabilitation (VR) services who meets the following requirements:

1. It has been determined that the applicant has a physical or mental impairment;
2. It has been determined that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment;
3. It can be presumed that the applicant can benefit in terms of an employment outcome from the provision of VR services; and,
4. It has been determined that the applicant requires VR services to prepare for, enter into, engage in, or retain gainful employment consistent with the applicant's strengths, abilities, capabilities, and informed choice.

Employment Outcome: With respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self employment, telecommuting, business ownership, homemaker, or unpaid family worker that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Extended Employment: Work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

Extended Services: *Ongoing support and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment after time-limited services have been provided by the Division.*

Extreme Medical Risk: Risk of substantially increasing functional impairment or risk of death if medical services (including mental health services) are not provided expeditiously.

H

Hearing Officer: Impartial individual who:

1. Is not a Division employee;
2. Has not been involved in any previous decision regarding the furnishing or denial of rehabilitation services to the individual;

3. Has knowledge of the delivery of rehabilitation services;
4. Has no personal or financial interest that would be in conflict with his/her objectivity;
5. Is not a member of the State Rehabilitation Council;
6. Is selected from among a pool of qualified persons, identified jointly by the designated State unit and members of the State Rehabilitation Council; and,
7. Has received training to carry out these duties.

Homemaker: Any individual in a single or multiple person unit whose impairment seriously limits or prevents the functioning and performance of tasks in the following areas of home management: meal planning and nutrition; marketing; food preparation; meal service and clean up; laundry; cleaning; child care; and financial management. The impairment(s) must substantially limit the individual's ability to perform the majority (50% or more) of the preceding tasks.

Illegal Use of Drugs: The use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. The term does not include the use of prescribed drugs taken under supervision of a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of federal law.

Independent Living Services: Any appropriate rehabilitation service (as defined under Section 7 (30) of the Rehabilitation Act) and any other service that will enhance the ability of an individual with disabilities to live independently and function within the family and community and, if appropriate, secure and maintain appropriate employment.

Indian Tribe: Any federal or state Indian tribe, band, ranchero, pueblo, colony, or community, including any Alaskan native village or regional village corporation.

Individual's Representative: Any representative chosen by an applicant or eligible individual, including a parent, guardian, other family member, or advocate, unless a

representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

Individual with a Disability: An individual:

1. Who has a physical or mental impairment;

2. Whose impairment constitutes or results in a substantial impediment to employment; and,

3. Who can benefit in terms of an employment outcome from the provision of rehabilitation services.

Individual with a Disability (for Requirements for a State Rehabilitation Council): An individual who:

1. Has a physical or mental impairment that substantially limits one or more major life activities;

2. Has a record of such an impairment; or,

3. Is regarded as having such an impairment.

Individual with a Most Significant Disability (for VR Program): An individual who has a significant physical or mental disability that seriously limits two or more functional capacities (mobility, communication, self care, self direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and whose vocational rehabilitation can be expected to require multiple services (two or more core services) over an extended period of time (nine months or more).

Individual with a Most Significant Disability (for IL Program): An individual who has a significant physical or mental disability that seriously limits two or more functional capacities (mobility, communication, self care, self direction, interpersonal skills, work tolerance, or work skills) in terms of independent living; and whose rehabilitation can be expected to require multiple services (two or more core services).

Individual with a Significant Disability (for VR Program): An individual with a disability:

1. Who has a significant physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self care, self direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and,

2. Whose VR can be expected to require multiple VR services over an extended period of time (six months or more); and,

3. Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, 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, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and VR needs to cause comparable substantial functional limitation; or,

4. Who is a Social Security Disability Income (SSDI) beneficiary; or,

5. Who is a Supplemental Security Income (SSI) recipient.

Individual with a Significant Disability (for IL Program): An individual with a significant physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living (IL) services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment.

Individual with Disabilities Education Act (IDEA): The Individuals with Disabilities Education Act, assures that all children, 0-21 years of age, with disabilities have available to them, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist states and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities.

Individual Education Plan (IEP): That plan developed by the Department of Education that outlines all of the services and accommodations to which students are entitled.

Institution of Higher Education: University, college, community/junior college, vocational school, technical institute, or hospital school of nursing.

Integrated Setting:

1. With respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

2. With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

Integrated Work Setting: *Job sites where:*

1. *Most employees are not disabled; and,*

a. An individual with a significant disability interacts on a regular basis, in the performance of job duties, with employees who are not disabled; and,

b. If an individual with a significant disability is part of a distinct work group of only individuals with disabilities, the work group consists of no more than eight individuals; or,

2. *If there are no other employees or the only other employees are individuals who are part of a work group of only individuals with disabilities, the individual with a significant disability interacts on a regular basis, in the performance of job duties, with the individuals who are not disabled, including members of the general public.*

Interaction requirements are not satisfied by contact between an individual with a significant disability and individuals who provide ongoing support services at the job site.

Intercurrent Illness: Acute illness or injury occurring during the course of an individual's rehabilitation or extended evaluation program and which, if not cared for, would complicate or delay the individual's program.

J Job Coaching (for Titles I and VI-C): Provision of community based services needed to assist an individual with a disability in maintaining employment such as job skills training, monitoring, follow along, and case management.

Job Skills Training: Provision of a set of specific activities enabling an individual with a disability to become proficient on the job. Job skills training when needed to maintain the employment may be provided by a job coach, skilled job trainers, co-workers and other qualified individuals. Job skills training must be provided at the job site.

L Local Workforce Investment Board (LWIB): A board established in each local workforce area and certified by the Governor that includes Local Elected Officials, representatives of business, education, labor, community based organizations (including organizations representing individuals with disabilities and veterans), economic development agencies, and representatives of one stop partners. The LWIB sets policies, develops local plans, certifies one stop operators, and identifies eligible providers of training and intensive services provided under Title I of the Workforce Investment Act.

•M Maintenance: Monetary support provided to an eligible individual or an individual participating in a trial work experience for those expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in a program of rehabilitation services.

N

Natural Supports: Supports that already exist, not artificial; formal or informal mechanism that provides temporary or permanent assistance and whose usage depends upon the individual and the situation.

Nonprofit: With respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501c(3) of the Internal Revenue Code of 1954.

O

One Stop Service Delivery: The mechanism in local workforce areas to provide employment and training activities for adults and dislocated workers that include core services and access to intensive training services. Core services include eligibility determinations, outreach, intake, orientation, initial assessment of skill levels, aptitudes, abilities and supportive service needs, job search and placement assistance, employment statistics that include job vacancy listings and demand occupations, performance and cost information on eligible training providers, information about adult education, vocational education, youth programs, providers of vocational rehabilitation activities and welfare to work activities, information on supportive services such as child care and transportation, and how to file unemployment compensation claims. One stop service delivery in our state is found at Work4WV Career Centers.

Ongoing Support Services: *As used in the definition of "supported employment:"*

1. Means services that are:

a. Needed to support and maintain an individual with the most significant disability in supported employment;

b. Identified based on a determination of the individual's needs as specified in an IPE; and,

c. Furnished by the Division from the time of job placement until transition to extended services, unless post employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements, if those placements are being provided under a program of transitional employment;

2. Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the work site that are needed to maintain stability based on:

a. At a minimum, twice monthly monitoring at the work site of each individual in supported employment; or,

b. If, under special circumstances, especially at the request of the individual, the IPE provides for off-site monitoring, twice monthly meetings with individual;

3. Consists of:

a. Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs;

b. The provision of skilled job trainers who accompany the individual for intensive job skill training at the worksite;

c. Job development and placement;

d. Social skills training;

e. Regular observation or supervision of the individual;

f. Follow up services including regular contact with employers, the individuals, parents, family members, guardians, advocates, or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

g. Facilitation of natural supports at the work site;

h. Any other service identified in the scope of VR services for individuals;
and,

i. Any service similar to the foregoing services.

P

Permanent Functional Limitation: An impairment of physical or mental activities or functions which either is not amenable to or is not likely to be eliminated through the provision of surgical or other medical services. This use of the term seeks to differentiate between those physical or mental conditions that usually are remedied through the provision of physical or mental health services and those other conditions that impose, or are likely to impose, a permanent loss or substantial reduction in activities or functions regardless of medical intervention. Sometimes, of course, it is not possible to ascertain the probable result(s) of future medical intervention(s). Therefore, an impairment should be considered as being permanent whenever the Rehabilitation Counselor determines that there is substantial doubt about whether or not the impairment is amenable to and/or likely to be eliminated through medical intervention. Examples of permanent functional limitations might include those resulting from amputations of body extremities, most significant visual disorders, and

mental retardation. Examples of conditions resulting in functional limitations which, with medical treatment, usually are not permanent might include simple myopia, inguinal hernia, and gall stones.

Physical Rehabilitation (for IL): The Division will authorize only two types of medical services. Therapy services such as physical, occupational, speech, or psychotherapy may be provided. Additionally, orthotics, prosthetics, and other aids and devices including hearing aids and durable goods that may assist in increasing the individual's level of IL.

Physical and Mental Health Services:

1. Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a physical or mental impairment that constitutes a substantial impediment to employment;
2. Diagnosis of, and treatment for, mental emotional disorders by qualified personnel in accordance with state licensure laws;
3. Dentistry;
4. Nursing services;
5. Necessary hospitalization (either inpatient or outpatient) in connection with surgery or treatment and clinic services;
6. Drugs and supplies;
7. Prosthetic, orthotic, or other assistive devices, including hearing aids;
8. Eyeglasses and visual services, including visual training, and examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel who are qualified in accordance with state licensure laws;
9. Podiatry;
10. Physical therapy;
11. Occupational therapy;
12. Speech or hearing therapy;
13. Mental health services;

14. Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental health services, or that are inherent in the condition under treatment;

15. Special services for treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and,

16. Other medical or medically related rehabilitation services.

Physical or Mental Impairment: Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Placement and Relocation Expenses: Costs associated with relocation such as food, housing, travel, moving expenses, utilities, and rent. A individual who must relocate in order to accept employment may be eligible to receive an allotment to assist in defraying costs of such move.

Post Employment Services: One or more services that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests. Post employment services are intended to ensure that the employment outcome remains consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, a new rehabilitation effort should be considered. Post employment services are to be provided under an amended IPE; thus, a re-determination of eligibility is not required. The provision of post employment services is subject to the same requirements as provision of any other VR service. Post employment services are available to assist an individual to maintain employment (the individual's employment is jeopardized because of conflicts with supervisors or co-workers and the individual needs mental health services and counseling to maintain the employment); to regain employment (the individual's job is eliminated through reorganization and new placement services are needed); and to advance in employment (the employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests).

R

Record of Services: Official record of information held by the Division pertaining to an applicant for, or recipient of, rehabilitation services; also referred to as "case" or "record."

Rehabilitation Counselor: Division employee responsible for determining eligibility and providing or arranging rehabilitation services for applicants or recipients of these services.

Rehabilitation Engineering: Systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and substitute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communication, hearing, vision, and cognition, and in activities associated with employment, IL, education, and integration into the community.

Rehabilitation Services: Vocational rehabilitation services and independent living rehabilitation services.

Rehabilitation Technology: Systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address barriers confronted by, individuals with disabilities in areas which include education, rehabilitation, employment, transportation, IL, and recreation. It includes rehabilitation engineering, assistive technology devices, and assistive technology services.

S

Social Security Disability Insurance (SSDI): Insurance program often referred to as Disability Insurance Program (DIP). It is supported by Social Security contributions that are made by most workers in the United States. It is designed to replace earnings lost because of disability or blindness. During the working years, employers and employees contribute to the Social Security Trust Fund. These funds can be used to pay monthly cash benefits to replace partial earnings. SSDI benefits are work related. A recipient is called a beneficiary.

State Plan: Division's annual plan for:

1. VR and supported employment services required by Sections 101 and 635 of the Rehabilitation Act of 1973 (Public Law 93-112), as amended; and,
2. IL rehabilitation services required by Section 704 of the Rehabilitation Act of 1973 (Public Law 93-112), as amended.

State Workforce Investment Board (SWIB): A state board established by the Governor that includes members of the State Legislature, business owners, chief elected officials representing cities and counties, labor organizations, organizations that have experience with youth activities, and lead State agency officials and organizations that have experience and expertise in the delivery of workforce investment activities. The SWIB develops the Unified Workforce Plan that describes the system of workforce

activities that are provided through a one stop delivery system, ensures linkages and coordination, ensures nonduplication, reviews LWIB plans, develops continuous improvement and state performance measures, and reports annually to the Governor.

Substantial Impediment to Employment: Physical or mental impairment (in light of medical, psychological, vocational, educational, and other related factors) which hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

Substantial Vocational Rehabilitation Services: Substantial vocational rehabilitation services are those services, which provided in the context of the counseling relationship, contribute in an identifiably positive way to the achievement of an employment outcome consistent with the informed choice of the individual.

Supplemental Security Insurance (SSI): Program which provides a minimum income for individuals who are aged, blind or disabled who do not have enough income or resources to maintain a minimum standard of living. This program is funded by general funds from the Treasury.

Supported Employment:

1. Competitive employment in an integrated setting or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities;

a. For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and,

b. Who, because of the nature and severity of their disabilities, need intensive supported employment services from the Division and extended services after transition in order to perform this work; or,

2. Transitional employment for individuals with the most significant disabilities due to mental illness.

Supported Employment Services: *Ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment:*

1. For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the Rehabilitation Counselor jointly agree to

extend the time in order to achieve the rehabilitation objectives identified in the IPE; and,

2. Following transition, post employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

T **Telecommunications and Sensory Aids:** Aids characterized by electronic, electrical, magnetic, or mechanical capabilities for the active detection, passive reception, transmission or emission of light, sound, or tactile stimuli. Sensory aids augment or substitute for one or more of the human senses. Telecommunications aids permit instantaneous communication of information over an intervening distance through the use of electromagnetic technology. Hearing aids, low vision aids, and canes for mobility purposes are sensory aids, while telecommunication devices for the Deaf (TDDs) are telecommunication aids.

Time-Limited Services (ongoing support services provided by Division):

1. For a period not to exceed 18 months, unless a longer period to achieve job stabilization has been established in the IPE, before an individual with the most significant disability makes the transition to extended services; and/or,

2. Discrete post employment services following transition that are unavailable from an extended service provider and that are necessary to maintain the job placement, such as job station redesign, repair, and maintenance of assistive technology, and replacement of prosthetic and orthotic devices.

Title I Vocational Rehabilitation Program: Section in the Rehabilitation Act that includes authority for the Vocational Rehabilitation Program, State Rehabilitation Council, and the Client Assistance Program.

Title VI Employment Opportunities for Individuals with Disabilities: Section in the Rehabilitation Act that includes authority for Projects with Industry and the Supported Employment Program.

Title VII Independent Living Services and Centers for Independent Living: Section in the Rehabilitation Act that includes authority for the Statewide Independent Living Council, Independent Living Services, Centers for Independent Living, and Independent Living Services for Older Individuals Who are Blind.

Transition Services: Coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including post secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, IL, or community participation. The coordinated set of activities must be

based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives identified in the student's IPE.

Transitional Employment (for supported employment): *Series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.*

Transportation: Travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a rehabilitation service. The following are examples of expenses that would meet the definition of transportation. The examples are purely illustrative, do not address all possible circumstances, and are not intended to substitute for individual Rehabilitation Counselor judgment.

Example 1: Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any rehabilitation service.

Example 2: Short-term travel-related expenses, such as food and shelter, incurred by an applicant participating in evaluation or assessment services, including a trial work experience, that necessitates travel.

Example 3: Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

Trial Work Experience: Vocational exploration and assessment services conducted in integrated work settings for the purpose of evaluating the individual's abilities, capabilities, and capacities to perform in work situations.

Tutorial Services: Instruction presented to the individual by a tutor (person who is knowledgeable in the particular subject). It is conducted independent of a training institution, usually in the individual's home or tutor's office or home on a "one-on-one" basis, with the tutor and the individual only as a class of one.

Workers' Compensation Claimant: Individual who has sustained a compensable injury or occupational disease and filed a claim with the Workers' Compensation Fund.

Workforce Investment System: Statewide and local workforce activities that increase the employment, retention, and earnings of participants, increases occupational skill attainment and improves the quality of the workforce, reduces welfare dependency, and enhances the productivity and competitiveness of the nation.

Work4WV Career Centers: Name of one stop locations throughout West Virginia that deliver employment and training services provided by the Workforce Investment Act (WIA). At least one comprehensive center, affiliate sites, and self service access points comprise the one stop service delivery system.