

4000-01-P

DEPARTMENT OF EDUCATION

34 CFR Parts 364, 365, 366, and 367

RIN 1820-AB18

Independent Living Services Programs

AGENCY: Department of Education

ACTION: Final Regulations

SUMMARY: The Secretary issues new regulations and amends existing regulations governing the State Independent Living Services (SILS), Centers for Independent Living (CIL), and Independent Living Services for Older Individuals Who Are Blind (OIB) programs. These regulations are needed to implement Chapters 1 and 2 of Title VII of the Rehabilitation Act of 1973 (Act), as amended.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT: John Nelson, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3326, Mary E. Switzer Building, Washington, D.C. 20202-2741.

SUPPLEMENTARY INFORMATION: These regulations add a new Part 364 and revise Parts 365, 366, and 367 of the regulations governing the SILS, CIL, and OIB programs. The Secretary will issue final regulations on Subpart G of Part 366 in a separate notice in the FEDERAL REGISTER.

The SILS, CIL, and OIB programs are an important part of the National Education Goals. These programs support the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

On May 12, 1994, the Secretary published a notice of proposed rulemaking (NPRM) in the FEDERAL REGISTER (59 FR 24814) proposing to issue new regulations and to amend existing regulations for the SILS, CIL, and OIB programs. The major issues related to these programs were discussed in the preamble to the NPRM.

In general, the commenters agreed with the NPRM. However, in response to public comments, there are some changes between the NPRM and the final regulations. The final regulations clarify the joint responsibility for the development of the State plan for IL; clarify that a State may submit only one State plan for IL; require a service provider to review a determination that an applicant is ineligible for IL services whenever the service provider determines that the applicant's status has materially changed; add as a selection criterion the extent to which consumers are involved in developing a center's application for a grant; and strengthen a consumer's control over the release of personal information by a service provider.

The final regulations also clarify that an existing center that applies for a grant as a new center by establishing a separate center at a new location does not need to establish a separate governing

board for that new center; and impose a deadline of 90 days after the end of the fiscal year for submitting the annual performance report required for continuation funding.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 40 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. General comments are discussed first, followed by comments on specific sections of the regulations.

Technical and other minor changes--and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority--are not addressed.

General Comments

Comments: One commenter suggested that the 30-day comment period on the NPRM be extended.

Discussion: The Secretary considered a 30-day comment period necessary because a longer comment period would not have left enough time to make competitive awards for new centers for independent living (centers) under the CIL program for fiscal year (FY) 1994. The Secretary also considered a 30-day comment period adequate because of the extensive opportunity for input and comment that was afforded to the public prior to publishing the NPRM.

Changes: None.

Comments: Two commenters agreed and two commenters disagreed with changing the term "severe" to "significant." Several commenters approved of the regulations as written, without specifically addressing the change in terms. The remainder of the commenters did not address this issue, although they did address other issues.

Discussion: The Secretary published a notice of proposed rulemaking on the nomenclature change from "severe" to "significant" on October 27, 1993 (58 FR 57938). In its response to that nomenclature NPRM, the independent living (IL) community expressed support for the change. Therefore, the Secretary does not believe a change is necessary.

Changes: None.

Part 364

Definitions ('364.4)

Comments: One commenter was concerned that the proposed definition of "advocacy" may be interpreted to mean that only an attorney may be an advocate or representative for a consumer. Another commenter suggested a broader definition of "advocacy" that takes into account different "levels of advocacy."

Discussion: The definition of "advocacy" in these regulations does not require an advocate to be an attorney except in those situations where State law or the rules of an agency require that an advocate representing another individual be an attorney. In addition, the definition of "advocacy" includes "individual advocacy," "systemic advocacy," and "self advocacy," which the Secretary believes are sufficient to encompass all situations.

Changes: None.

Comments: Commenters suggested that the proposed definition of "attendant care" be revised to allow this service to be provided on the job and in the community, as well as at home.

Discussion: The Secretary believes that the definition of "attendant care" provides adequate flexibility to allow attendant care in a variety of situations.

Changes: None.

Comments: Commenters questioned why the words "cognitive" and "sensory" do not appear in the proposed definition of "significant disability." Another commenter suggested deleting the words "cognitive" and "sensory" from the proposed definition of an "individual with a disability" to make this definition consistent with the Americans with Disabilities Act and section 504 of the Act.

Discussion: The Secretary agrees that the definitions of "individual with a disability," "individual with a significant disability," and "significant disability" should be consistent with each other and also that these definitions should be consistent with the definitions in the Act. The Secretary believes that the concepts of "physical" and "mental" impairments in the statutory definitions include the concepts of "sensory" and "cognitive" impairments, respectively. Therefore, inclusion of the terms is not inconsistent.

Changes: The Secretary has added the words "cognitive" and "sensory" to the definitions of "individual with a significant disability" and "significant disability" in the final regulations.

Comments: One commenter suggested revising the definition of "nonresidential" to allow centers to own and operate rental housing that is available to the general public if the center has received a residential facility as a bequest or trust intended primarily to enable the center to benefit from the income of the property.

Discussion: The definition of "center for independent living" in section 702(1) of the Act and the definition of "eligible agency" in section 726 of the Act both include the term "nonresidential." Congress clearly intended centers and eligible agencies that receive funds under Chapter 1 of Title VII of the Act to be "nonresidential."

The Secretary believes that the definition of "nonresidential" in the final regulations accurately reflects the intent of Congress. This definition prohibits a center from receiving funds under Title VII of the Act if the center operates or manages housing or shelter for individuals with significant disabilities as an IL service on either a temporary or long-term basis, unless the housing or shelter is incidental to the overall operation of the center, necessary so that the individual may receive an IL service, and limited to a period not to exceed eight weeks during any six-month period. Therefore, a center may not operate or manage a residential facility in a manner that is inconsistent with this definition.

Changes: None.

Allowable Costs ('364.5)

Comments: Commenters objected to the limitation in proposed '364.5 on reallocating expenditures after the initiation of an audit or compliance review. These commenters considered this limitation punitive and contrary to ordinary accounting procedures.

Discussion: The Secretary does not intend to require accounting practices that are not widely practiced and acceptable. In addition, the Secretary has decided that the policy on offsetting costs that have been disallowed as a result of an audit or a monitoring review should be uniform for all U.S. Department of Education (Department) programs. No rationale exists for treating IL programs differently from other Department programs.

Changes: The Secretary has deleted proposed '364.5.
Program Income ('364.5)

Comments: Commenters questioned whether funds raised by centers pursuant to their statutory obligation to develop funding resources other than Chapter 1 of Title VII of the Act are program income.

Discussion: The definition of program income in '364.5 includes gross income received by a grantee under Title VII of the Act that is directly generated by an activity supported under 34 CFR Parts 365, 366, or 367. The Secretary does not believe any adequate reason exists to exempt funds raised by centers pursuant to their statutory obligation to develop funding resources other than Chapter 1 of Title VII of the Act from this definition.

Changes: The Secretary has deleted proposed '364.6(c) to clarify that the carryover provision in section 19(a)(2) of the Act applies to program income received under the IL programs.

Obligation of Federal Funds and Program Income ('364.6)

Comment: Commenters suggested that the resource development requirement in evaluation standard 7 in section 725(b)(7) of the Act should be interpreted to permit centers to accumulate funds over several years to create, among other long-term financial instruments, endowments and reserves.

Discussion: Pursuant to '364.6, which implements section 19(a)(2) of the Act, any program income received by a center that is not obligated and expended prior to the beginning of the fiscal year succeeding the fiscal year in which these funds were received remains available for obligation and expenditure by the center during the succeeding fiscal year. Therefore, program income, which includes funds received by a center through fundraising activities carried out with Title VII funds, may be available for obligation and expenditure for a maximum of almost two years after it is received.

The Secretary agrees that centers should be allowed to use program income to establish or augment endowments and other similar financial instruments if the principal and income generated from the endowment and other similar financial instruments are used solely to carry out the purposes of the CIL program authorized under Part C of Chapter 1 of Title VII of the Act. However, any program income received by a center must be obligated and expended in accordance with '364.6(b).

The Secretary recognizes that the notice inviting applications for new awards (application notice) published in the FEDERAL REGISTER on July 6, 1994 (59 FR 34597) indicated that the Secretary anticipated revising proposed '364.5 and 364.6. However, because nothing in the proposed regulations prohibited centers from establishing or augmenting endowments or other similar instruments, the Secretary has decided that '364.5 and 364.6 do not need to be revised for this purpose. This action does not affect the competition for new awards under the CIL program.

Changes: None.

Approval of State Plans ('364.12)

Comments: Commenters expressed concern that paragraphs (c), (d), and (e) of proposed '364.12 refer only to the designated State unit (DSU) or the State and do not properly reflect the role of the Statewide Independent Living Council (SILC) in the development of the State plan. Similar concerns were expressed with respect to various provisions in proposed '364.13 and 364.20.

Discussion: The Secretary has reviewed '364.12, 364.13, and 364.20 of the proposed regulations to ensure that the final regulations reflect the appropriate role of the SILC.

Changes: The Secretary has added language to '364.12(c), 364.13(c) and 364.20(e), (g), (h), and (i) of the final regulations to clarify the SILC's role in the development of the State plan.

Withholding, Reduction, Limitation, or Termination ('364.13)

Comments: One commenter found the references to the "Department's final decision" in proposed '364.13(h) and to the "Secretary's final decision" in proposed '364.13(i) inconsistent and confusing.

Discussion: The references to the final decisions of the Department and the Secretary in '364.13(h) and (i) of these regulations are consistent with 34 CFR 81.44, which applies to all Department programs. The Secretary finds no reason to change these references for the IL programs.

Changes: None.

Comments: One commenter suggested that proposed '364.13(f) be revised to allow the SILC to seek review of an administrative law judge's initial decision.

Discussion: Only a recipient of grant funds that receives a written notice of a disallowance decision may appeal the Department's attempt to recover grant funds. Pursuant to 34 CFR 81.7, a non-party (i.e., a non-recipient) may apply to participate in a recovery of funds proceeding under 34 CFR Part 81. Section 364.13(f) is consistent with 34 CFR Part 81.

Changes: None.

Comments: One commenter asked whether the reference to "State" in proposed '364.13(i) means the DSU, the SILC, or both.

Discussion: The reference to "State" in '364.13(i) means only the DSU.

Changes: None.

State Plan Requirements ('364.20)

Comments: Two commenters objected to the prohibition against separate State plans in those States in which one State agency is responsible for providing vocational rehabilitation (VR) services to the general population and a separate agency is responsible for providing VR services to individuals who are blind. One commenter suggested that the definitions in the Act and the long-established policy of the Rehabilitation Services Administration allow a separate State plan for providing VR services to individuals who are blind. Other commenters noted that, although the preamble to the proposed regulations indicates that only a single State plan is permitted under Title VII (even in States with an agency that provides VR services to individuals who are blind), the proposed regulations are not as clear on this issue.

Discussion: Section 704 of the Act requires "a State plan" that addresses how IL services will be provided to all individuals with a significant disability in the State. The words "a State plan" indicate a single State plan for IL, not two or more State plans for IL, regardless of the existence of two or more agencies that may provide services to different groups of individuals with a significant disability in the State.

In addition, a State plan that only addresses the IL services to be provided to individuals with a significant disability who are blind could not be comprehensive enough to satisfy the requirement in section 704(g) of the Act that the State plan include a design for the establishment of a statewide network of centers that comply with the standards and assurance in section 725 of the Act.

An agency that is authorized to provide VR services to individuals who are blind may not provide IL services to individuals with a significant disability who are not blind. Section 725(b)(2) requires that centers provide IL services on a "cross-disability basis." This means that a center may not restrict the services that it provides to individuals with any particular type or combination of types of disabilities. An agency that is authorized to provide VR services to individuals who are blind could not comply with this requirement. Therefore, an agency that is authorized to provide VR services to individuals who are blind may not submit a separate State plan for IL.

Changes: The Secretary has added language to '364.22(c) of the final regulations to clarify that an agency that is authorized to provide VR services to individuals who are blind may not submit a separate State plan for IL.

Comments: Commenters recommended that proposed '364.20(e) be amended to require that the Director of the Client Assistance Program (CAP) be given the opportunity to participate in public hearings or contribute as a member of the SILC. Two commenters suggested that the Director of the CAP should not be involved in the review of the State plan.

Discussion: Nothing in '364.20(e) or any other section of these regulations prevents the Director of the CAP from participating at any public hearings held by either the DSU or SILC on the development of the State plan.

Changes: None.

Statewide Independent Living Council ('364.21)

Comments: One commenter suggested that the regulations should contain a dispute resolution process to resolve impasses between a SILC, a DSU, and the Office of the Governor. This commenter was concerned that, as a result of the single State plan provision, a smaller State agency for individuals who are blind may hold up IL services for all individuals with a significant disability in the State because it disagrees with the State plan.

Discussion: The resolution of issues that may arise between the DSU and the SILC during the development of the State plan should be resolved at the State level.

Changes: None.

Comments: One commenter recommended adding a provision to allow the public to challenge the qualifications of SILC members appointed by the Governor.

Discussion: If a question arises whether a SILC member appointed by the Governor meets the qualifications in '364.21(c), the issue may be raised to the Governor or to the Secretary in the same manner as any other question regarding the proper implementation of these regulations.

Changes: None.

Comments: Commenters suggested that the conflict of interest provision in proposed '364.21(l) either be deleted or revised to exempt SILC members who are affiliated with a center. These commenters considered this provision to be too broad and easily subject to abuse.

Discussion: The Secretary agrees that it is unnecessary to have a conflict of interest provision for IL programs that differs from the conflict of interest provision applicable to all Department programs.

Changes: The Secretary has revised '364.21(l) of the final regulations to apply the code of conduct provisions in 34 CFR 74.162 and the conflict of interest provisions in 34 CFR 75.524 and 75.525 to members of the SILC.

Staffing Requirements ('364.23)

Comments: One commenter objected to the requirement in proposed '364.23(b)(2) that each center provide non-English language interpreters.

Discussion: The Secretary believes that centers should be required, to the maximum extent feasible, to make available personnel able to communicate in the native languages of individuals with significant disabilities whose English proficiency is limited and who apply for or receive IL services under Title VII of the Act. A center is not required to hire non-English language interpreters as full-time employees. However, a center is required to ensure that someone is available as needed to comply with this requirement.

Changes: None.

Staff Development ('364.24)

Comments: One commenter objected to the requirement in proposed '364.24 that each center provide staff development programs.

Discussion: The Secretary believes that staff development programs are necessary for the proper and efficient administration of IL programs funded under Chapter 1 of Title VII of the Act.

Changes: None.

IL Services for Older Individuals Who Are Blind ('364.28)

Comments: One commenter recommended including older individuals who are blind in the selection of new methods and approaches for the provision of IL services pursuant to proposed '364.28.

Discussion: The selection and incorporation into the State plan of any new approaches for the provision of IL services to older individuals who are blind requires a revision to the State plan. Because '366.20(g) requires the DSU and the SILC to hold public hearings prior to the submission of the State plan to the Secretary and prior to any revisions to the State plan, the Secretary believes that the views of older individuals who are blind will be adequately addressed by this requirement.

Changes: None.

Outreach ('364.32)

Comments: One commenter objected to proposed '364.32, which the commenter believes permits SILCs to define the "unserved" and "underserved" groups for which individual centers must provide "aggressive outreach."

Discussion: Section 364.32(b) of these regulations requires that the State plan must identify the "unserved and underserved" populations to be designated for targeted outreach efforts and the geographic areas in which these populations reside. Both the DSU and the SILC are jointly responsible for the development of the State plan. In addition, the DSU and the SILC must give the public an opportunity to comment on the State plan before it is submitted to the Secretary for approval. Therefore, it is inaccurate to state that the SILC is permitted to define "unserved and underserved populations" for purposes of '364.32(b).

Changes: None.

Access to Records ('364.37)

Comments: Commenters expressed concern that the access to records proposed in '364.37(c) may be unnecessarily intrusive and inconsistent with commitments that providers make to their consumers. These commenters also suggested that the regulations should permit centers to expunge personal information from consumer case records or files.

Discussion: Access to individual case records or files, or consumer service records, including personal information that may be included in those records or files, is necessary for the proper and efficient administration and monitoring of IL programs. Section 364.37(c) limits this access to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives for the purpose of conducting audits, examinations, and compliance reviews. The Secretary does not believe that this access is unreasonable.

Changes: None.

Assurances Regarding Eligibility ('364.41)

Comments: One commenter objected to proposed '364.41(b), which the commenter characterized as requiring every center to serve every person who requests services regardless of the person's residence. This commenter stated that this requirement is an unfair cost burden and will force centers to incur the costs of serving persons who should be served by other centers.

Discussion: The Secretary believes that a service provider should provide IL services to any individual who is present in a State and who is otherwise eligible for IL services. This policy is consistent with section 101(a)(14) of the Act and with most other Federal programs.

Changes: None.

Objectives and Information in the State Plan ('364.42)

Comments: Commenters suggested that proposed '364.42(a)(2) be amended to include identification of the various funding sources that the State plans to use to fund the various activities under the State plan.

Discussion: The Secretary agrees that identification of the various funding sources that the State plans to use to fund the various activities under the State plan will assist the Department in determining the effectiveness of the State's compliance with section 704(j) and (k) of the Act. Section 704(j) is implemented by '364.27 of these regulations and requires the coordination of IL services with other services to avoid unnecessary duplication with other Federal, State, and local programs. Section 704(k) of the Act is implemented by '364.29 of these regulations and requires the coordination of Federal and State funding for centers and IL services also to avoid unnecessary duplication with other Federal, State, and local programs. Requiring the identification of the Federal and non-Federal funds that the DSU intends to use to meet the objectives of the State plan will assist the Secretary in determining a State's compliance with '364.27 and 364.29.

Changes: The Secretary has revised '364.42(a)(2) of the final regulations to provide that the financial plan required under this section must include the identity and amounts of other Federal and non-Federal funds that the DSU anticipates using to meet the objectives in the State plan.

Determinations of Eligibility or Ineligibility ('364.51)

Comments: Commenters were concerned that the requirement in proposed '364.51(b)(2)(i) that an advocate or representative must be "legally authorized" may be misinterpreted to require an advocate or representative to be an attorney or legal guardian. Another commenter suggested that proposed '364.51(b)(2)(i) be amended to permit the consumer to choose as an advocate or representative an individual who may not be technically "legally authorized" to act on behalf of the consumer.

Discussion: An individual's authority to represent or advocate on behalf of an individual with significant disabilities is determined pursuant to State law. Similarly, a consumer may choose as an advocate or representative an individual who may not be technically "legally authorized" to the extent such a choice is permitted by State law. Nothing in '364.51(b)(2) of these regulations requires that an advocate or representative must be an attorney or legal guardian. However, the Secretary recognizes that clarification of this issue is necessary.

Changes: The Secretary has added a definition of "legally authorized advocate or representative" to '364.4 of the final regulations. This new definition recognizes that non-attorneys may advocate for or represent a consumer if permitted by State law.

Comments: One commenter suggested that language should be added to proposed '364.51(c) to require a service provider to review an ineligibility determination if the individual's status changes. This commenter was concerned that a service provider could satisfy the review requirement in proposed '364.51(c) by conducting a review of the ineligibility determination on the same day that the determination is made and, thus, circumvent the intent of this provision.

Discussion: The Secretary agrees that a service provider must review an ineligibility determination whenever there has been a material change in an applicant's status.

Changes: The Secretary has added language to '364.51(c) of the final regulations that requires a service provider to review a determination of ineligibility whenever the service provider determines that the applicant's status has materially changed but no less than once within 12 months after making the ineligibility determination.

IL Plan ('364.52)

Comments: Two commenters objected to the absence of requirements in proposed '364.52 regarding the content of a waiver. One of these commenters also suggested that the service provider be required to advise the consumer, before obtaining a waiver, of the need for and importance of an IL plan and how an IL plan helps to protect a consumer's rights. Another commenter suggested deleting proposed '364.52(d) or revising it to allow the consumer to choose whether or not to comply with this provision, which requires that the development of a consumer's IL plan and the provision of IL services be coordinated with the individualized written rehabilitation program (IWRP) for VR services, the individualized habilitation program (IHP) prepared under the Developmental Disabilities Assistance and Bill of Rights Act, and the individualized education program (IEP) prepared under Part B of the Individuals with Disabilities Education Act.

Discussion: The Secretary does not believe it is necessary to prescribe what should be included in the waiver permitted by '364.52(a)(2) of these regulations. However, the Secretary agrees that it is important to add safeguards to this provision to prevent the possibility of service providers coercing consumers to sign waivers. Finally, the Secretary believes that requiring service providers to coordinate a consumer's IL plan with the consumer's IWRP, IHP, and IEP is necessary to avoid unnecessary duplication of services provided by these programs.

Changes: The Secretary has added the words "knowingly and voluntarily" before the word "signs" in '364.52(a)(2) of the final regulations.

Maintenance of Records ('364.53)

Comments: Commenters suggested that proposed '364.53 be revised to recognize the fact that records may be electronic as well as written.

Discussion: The Secretary recognizes that records may be produced electronically and supports the recording of information by electronic means.

Changes: The Secretary has revised '364.53 in the final regulations to clarify that records may be maintained either electronically or in written form, except that all IL plans, if consumers choose to develop one, and all waivers of an IL plan, if consumers choose to sign one, must be in writing.

Comments: One commenter objected to the recordkeeping requirements in proposed '364.53. This commenter believed that "a simple record showing that an identified consumer has one or more identified disabilities and received specific services on a specific date is sufficient."

Discussion: The Secretary believes that the recordkeeping requirements in '364.53 of these regulations are necessary for the proper and efficient administration of IL programs funded under Title VII of the Act. In addition, the Secretary believes these requirements are necessary to ensure that determinations of eligibility are made in accordance with the Act and these regulations; service providers comply with the IL plan and waiver requirements; the IL services provided to consumers are the IL services requested by consumers; and service providers record the IL goals and objectives established and achieved by consumers. However, the Secretary does not believe a center should be required to maintain a case service record for individuals who seek or receive only information and referral services from a center.

Changes: The Secretary has revised '364.53 of the final regulations to exempt individuals who seek or receive only information and referral services from the requirement that a center maintain consumer service records for individuals who apply for or receive IL services.

Standards for Service Providers ('364.55)

Comments: Commenters suggested that the standards developed by the DSU pursuant to proposed '364.55(a) should not exceed the standards in section 725 of the Act.

Discussion: The standards referred to in proposed '364.55 are the standards that the DSU is required to develop pursuant to '365.31 for those service providers that are not centers and for centers that are providing specialized IL services under a contract with the DSU. These standards may or may not exceed the standards in section 725 of the Act.

Changes: The Secretary has revised '365.31 of the final regulations to clarify that State standards developed pursuant to this section may differ from the standards in section 725 of the Act and may apply to centers that are providing specialized IL services under a contract with the DSU.

Protection, Use, and Release of Personal Information ('364.56)

Comment: One commenter suggested deleting proposed '364.56(a)(3)(v) or specifying the agencies that will routinely receive personal information about a consumer.

Discussion: The Secretary does not believe it is necessary or possible to identify in these regulations the agencies to which each service provider may routinely release information.

Changes: None.

Comments: One commenter objected to the words "other information" in proposed '364.56(c)(2) because service providers may use this language to withhold information from a consumer.

Discussion: Section 364.56(c)(2) of these regulations does not permit a service provider to withhold information from a consumer. Section 364.56(c)(2) merely requires that, if a service provider determines that releasing medical, psychological, or other information may be harmful if released directly to the consumer, the service provider shall release this information to the consumer through a qualified medical or psychological professional or the individual's legally authorized representative.

Changes: None.

Comments: One commenter suggested deleting proposed '364.56(e)(2) because this provision does not provide consumer control over personal information that is maintained by a service provider. This commenter also noted that routine release of information to other agencies is contrary to the IL philosophy of consumer control.

Discussion: The Secretary agrees that a consumer should have control over the release (pursuant to '364.56(e)(2) of these regulations) of medical or psychological information to another agency or organization by a service provider.

Changes: The Secretary has revised '364.56(e)(2) of the final regulations to require a consumer's informed written consent to release to another agency or organization medical or psychological information.

Financial Needs Test ('364.59)

Comments: One commenter suggested that proposed '364.59 be revised to clarify that a State may choose whether or not to adopt a financial needs test for receiving IL services.

Discussion: Implicit in proposed '364.59 was the fact that a State is neither required nor prohibited from requiring consumers to contribute to the costs of the IL services they seek from a service provider. Also implicit in proposed '364.59 was the fact that, if a State chooses to require consumers to contribute to the costs of the IL services they seek from a service provider, a State is neither required nor prohibited from applying a financial needs test to determine the amount that a particular consumer may be required to contribute to the costs of the IL services he or she seeks from a service provider. The Secretary agrees with the need to revise proposed '364.59 to clarify its meaning.

Changes: The Secretary has revised '364.59 of the final regulations to clarify that the decision to allow service providers to charge consumers for the cost of providing IL services or to allow service providers to apply a financial needs test to determine the amount of a particular consumer's participation in the costs of IL services must be made in accordance with the State plan.

Part 365

Funds to Provide IL Core Services ('365.22) and Additional IL Services ('365.21)

Comments: One commenter suggested revising proposed '365.21 to clarify that a State does not have to provide the IL core services with funds made available under Part B of Chapter 1 of Title VII of the Act, if the State is providing the IL core services with other resources. The same commenter suggested a similar revision to proposed '364.22.

Discussion: The Secretary agrees with the commenters that proposed ''365.21(a) and 365.22 should be revised as they suggest.

Changes: The Secretary has amended ''365.21(a) and 365.22 of the final regulations to make it clear that a State may use either funds provided under Part B of Chapter 1 of Title VII of the Act or other funds to provide the IL core services and other additional IL services.

Comments: One commenter asked whether a State can award a grant or subgrant on a non-competitive basis.

Discussion: The requirements applicable to the awarding of subgrants by grantees pursuant to the regulations in 34 CFR Part 365 are addressed in 34 CFR 76.51, which gives a State wide latitude on how to award subgrants.

Changes: None.

Part 366

Eligibility for Assistance Under the CIL Program ('366.2)

Comments: None.

Discussion: Since publication of the NPRM, the Secretary has reviewed this section and wants to clarify that a center may serve a community within the State in which the center is located or a community in a bordering State. The Secretary also wants to clarify that a center that is not receiving funds under Part C of Chapter 1 of Title VII of the Act may apply as a new center, even if the center receives funds under Part B of Chapter 1 of Title VII of the Act. Finally, the Secretary feels that it is important to clarify that a center that proposes the expansion of an existing center through the establishment of a separate and complete center does not need to establish a separate governing board for the new center. The governing board of the existing center may serve as the governing board for the new center.

Changes: The Secretary has revised '366.2(a)(1)(i), (b)(1), (b)(2), and (b)(3) of the final regulations to reflect these changes. The Secretary made similar corresponding changes to '366.28(a) and 366.29(a) of the final regulations.

Activities the Secretary Funds ('366.3)

Comments: One commenter suggested that the word "such" be included in proposed '366.3(b)(4) because its absence makes this provision unclear and may lead centers to believe that an IL plan is necessary before a consumer may receive IL services.

Discussion: The Secretary agrees that the omission of the word "such" from proposed '366.3(b)(4) leaves the meaning of this provision unclear. An eligible agency is not required to facilitate the development and achievement of IL goals for an individual with a significant disability who does not seek assistance to develop and achieve IL goals. In addition, section 704(e) of the Act specifically allows a consumer to waive the development of an IL plan. However, the waiver of an IL plan does not preclude a consumer from developing and seeking to achieve IL goals with assistance from the center.

Changes: The Secretary has revised '366.3(b)(4) of the final regulations to clarify that an eligible agency may use funds awarded under Subparts C and D of 34 CFR Part 366 to facilitate the development and achievement of IL goals selected by individuals with significant disabilities who seek assistance in the development and achievement of IL goals.

Order of Priorities ('366.22)

Comments: Commenters observed that, if any funds are left over after the Secretary awards grants to existing centers under Part C of Chapter 1 of Title VII of the Act, proposed '366.22(b) allows the Secretary to use these excess funds to assist existing centers or to reallocate these excess funds to another State. These commenters suggested that, under these circumstances, proposed '366.22(b) should be amended to require the Secretary to consult with the DSU and the SILC before making this decision.

Discussion: The Secretary may use excess funds only to assist existing centers in the State or for reallocation if these funds are insufficient to fund a new center in the State. The Secretary will make any decision to use excess funds to assist existing centers in a State in a manner that is consistent with the State plan of the State in which the excess funds exist. The Secretary believes this will ensure that a State's concerns will be adequately addressed and that it is not necessary to include in these final regulations any requirement that the Secretary consult with the DSU or the SILC.

Changes: The Secretary has revised '366.22(b)(1) of the final regulations to require that the use of excess funds to assist existing centers in a State will be consistent with the State plan. Selection Criteria ('366.27)

Comments: One commenter suggested revising the selection criteria in proposed '366.27 to require that the governing board be reflective of the localities to be served by the proposed center.

Discussion: Section 702(1)(A) of the Act requires that a center be "designed and operated within a local community." The Secretary believes that this requirement provides sufficient safeguard to ensure that a center's governing board will be reflective of the localities the center proposes to serve.

Changes: None.

Comments: One commenter suggested that the selection criteria in proposed '366.27 should include a requirement that centers take affirmative action to hire and promote individuals with significant disabilities.

Discussion: Pursuant to section 725(c)(5) of the Act, the State plan required by section 704(a)(1) of the Act must include satisfactory assurances that all recipients of financial assistance under Parts B and C of Chapter 1 of Title VII of the Act will take 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 of the Act. The Secretary does not believe it is necessary to include this requirement as a selection criterion, which a center could then choose whether or not to address in its application.

Changes: None.

Comments: One commenter believed that the selection criterion on need in proposed '366.27(a)(2) is too vague and suggested that it be expanded to "not appear to be the traditional 'needs assessment' that creates more service providers." This commenter suggested that the criterion should be based on how supportive a center is of IL and of advocating for change.

Discussion: The Secretary believes that the criterion adequately explains how an applicant can be expected to identify the need for a new center in a community and how the applicant plans to address this identified need. The Secretary also believes that there is adequate emphasis on advocacy in the regulations.

Changes: None.

Comments: One commenter objected that the selection criteria, particularly '366.27(a) through (c), place too much emphasis on past performance.

Discussion: Only the selection criterion in '366.27(b) of these regulations addresses an applicant's past performance. In addition, this selection criterion accounts for only 5 points out of a total of 100 points.

Changes: None.

Comments: Commenters suggested reducing the points allotted to "plan of operation" and increasing points for "involvement of individuals with significant disabilities" in the selection criteria in proposed '366.27(g) and (h), respectively. Commenters also felt that the proposed selection criteria should include the involvement of individuals with significant disabilities in the preparation of a center's application.

Discussion: The Secretary believes that the points assigned to the "plan of operation" selection criterion appropriately reflect its value. The Secretary also believes that '366.27(h)(2) of these regulations sufficiently covers the involvement of individuals with significant disabilities in conducting center activities. However, the Secretary agrees that participation of individuals with significant disabilities in the preparation of applications is important and should be emphasized.

Changes: The Secretary has substituted the phrase "developing the center's application" for the phrase "conducting center activities" in '366.27(h)(1) of the final regulations.

Order of Priorities ('366.34)

Comments: One commenter suggested that the order of priorities for funding in proposed '366.34(a) be listed in the State plan to ensure that the expenditure of funds meets the requirements and purposes of Title VII of the Act.

Discussion: The Secretary agrees that requiring a State that administers the CIL program pursuant to section 723 of the Act to include in its State plan the order of priorities for allocating funds within the State is important.

Changes: Because the suggested change is to the State plan requirements, the Secretary has revised '364.39 of the final regulations to require that, in States in which State funding for centers equals or exceeds the amount of funds allotted to the State under Part C of Title VII of the Act, as determined pursuant to 34 CFR 366.29 and 366.31, and in which the State elects to administer the CIL program as provided in section 723 of the Act, the State plan must include policies, practices, and procedures, including the order of priorities that the State may establish pursuant to 34 CFR 366.34(a)

Comments: Commenters suggested that the Director of the DSU should be required to consult with the SILC before determining how excess funds should be used.

Discussion: Whether a Director of the DSU consults with the SILC before determining, pursuant to '366.34(b), how excess funds should be used is an issue that should be resolved at the State level, preferably during the joint development of the State plan by the DSU and the SILC that is mandated by section 705(c)(1) of the Act. To the extent that this situation is addressed by the State plan, the consultation will already have taken place. If the State plan does not address this issue, the Director of the DSU should ensure that the use of any excess funds is consistent with the State plan.

Changes: The Secretary has revised '366.34(b)(1) of the final regulations to require the Director of the DSU, if the DSU plans to use excess funds to assist existing centers in a State, to use these funds in a manner consistent with the State plan.

Enforcement ('366.39)

Comments: One commenter recommended that a corrective action plan should require a center to comply with the standards and assurances within six months after a center receives approval of its plan.

Discussion: The Secretary believes that the length of a corrective action plan must be determined on a case-by-case basis. In some cases, immediate corrective action may be required. In other cases, six months may be unrealistically short. The Secretary believes it would be unwise to establish a rigid timeframe for corrective action plans.

Changes: None.

Assurances ('366.50)

Comments: None.

Discussion: Although no parties commented on proposed '366.50(n), the Secretary believes it is important to establish a deadline for the submission of the annual performance report because it is necessary to enable the Secretary to make timely continuation grants. A 90-day period before the end of the fiscal year is consistent with other reporting requirements in the Education Department General Administrative Regulations.

Changes: The Secretary has revised '366.50 in the final regulations to require that the annual performance report be submitted within 90 days of the end of the fiscal year.

Part 367

Definitions ('367.5)

Comments: One commenter recommended adding a definition of "capacity building" to proposed '367.5.

Discussion: Section 725(b)(6) of the Act describes "activities to increase community capacity" as activities "to increase the capacity of communities . . . to meet the needs of individuals with [significant] disabilities." The Secretary believes that the term "capacity building" should be interpreted in a manner consistent with section 725(b)(6) of the Act and does not need to be further defined.

Changes: None.

Selection Criteria('367.22)

Comments: One commenter suggested that the list of services under the selection criterion in proposed '367.22(g) should be the same as that provided in proposed '367.3(b).

Discussion: The Secretary agrees that the list of services in these referenced provisions should be consistent. The services listed in '367.22(g) include the services listed in '367.3(b).

Changes: The Secretary has changed '367.3(b) and 367.22(g) (2) in the final regulations to clarify that the services listed in '367.22 include the services listed in '367.3(b).

Comments: One commenter suggested that proposed '367.22(g) should be clarified to allow a designated State agency (DSA) to use funds received under Chapter 2 of Title VII of the Act in a way that will not duplicate services that the State may be providing with other funds.

Discussion: The Secretary agrees that Chapter 2 funds should be used in a way that will supplement, rather than duplicate, services that may already be available through other sources.

Changes: The Secretary has revised '367.22(g) (2) of the final regulations to clarify that an application will be evaluated on the extent to which the DSA will use Chapter 2 funds to meet the unmet IL needs of individuals in the State.

Awarding Grants or Contracts ('367.41)

Comments: Two commenters recommended deleting proposed '367.41(b), which restricts a DSA's flexibility to enter into procurement contracts with public and private nonprofit agencies.

Discussion: Although section 752(i) (2) (A) of the Act is a general provision that allows the DSA to operate or administer this program either directly or through grants or contracts, section 752(g) of the Act specifically requires that a State's awards to public and private nonprofit agencies and organizations under this program be made only through grants.

Changes: None.

Intergovernmental Review

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

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 364, 365, 366, and 367

Aged, Blind, Disabled, Grant programs - education, Independent living services, Reporting and recordkeeping requirements.

Dated:

Richard W. Riley
Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.132 Centers for Independent Living; 84.169 State Independent Living Services; and 84.177 Independent Living Services for Older Individuals Who Are Blind.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 364 and by revising Parts 365, 366, and 367 to read as follows:

PART 364--STATE INDEPENDENT LIVING SERVICES PROGRAM AND CENTERS FOR INDEPENDENT LIVING PROGRAM: GENERAL PROVISIONS

Subpart A--General

Sec.

- 364.1 What programs are covered?
- 364.2 What is the purpose of the programs authorized by Chapter 1 of Title VII?
- 364.3 What regulations apply?
- 364.4 What definitions apply?
- 364.5 What is program income and how may it be used?
- 364.6 What requirements apply to the obligation of Federal funds and program income?

Subpart B--What Are the Application Requirements?

- 364.10 What are the application requirements?
- 364.11 When must the State plan be submitted for approval?
- 364.12 How does the Secretary approve State plans?
- 364.13 Under what circumstances may funds be withheld, reduced, limited, or terminated?

Subpart C--What Are the State Plan Requirements?

- 364.20 What are the general requirements for a State plan?
- 364.21 What are the requirements for the statewide Independent Living Council (SILC)?
- 364.22 What is the State's responsibility for administration of the programs authorized by Chapter 1 of Title VII?
- 364.23 What are the staffing requirements?
- 364.24 What assurances are required for staff development?
- 364.25 What are the requirements for a statewide network of centers for independent living?
- 364.26 What are the requirements for cooperation, coordination, and working relationships?
- 364.27 What are the requirements for coordinating independent living (IL) services?

- 364.28 What requirements relate to IL services for older individuals who are blind?
- 364.29 What are the requirements for coordinating Federal and State sources of funding?
- 364.30 What notice must be given about the Client Assistance Program (CAP)?
- 364.31 What are the affirmative action requirements?
- 364.32 What are the requirements for outreach?
- 364.33 What is required to meet minority needs?
- 364.34 What are the fiscal and accounting requirements?
- 364.35 What records must be maintained?
- 364.36 What are the reporting requirements?
- 364.37 What access to records must be provided?
- 364.38 What methods of evaluation must the State plan include?
- 364.39 What requirements apply to the administration of grants under the Centers for Independent Living program?
- 364.40 Who is eligible to receive IL services?
- 364.41 What assurances must be included regarding eligibility?
- 364.42 What objectives and information must be included in the State plan?
- 364.43 What requirements apply to the provision of State IL services?

Subpart D--What Conditions Must Be Met After an Award?

- 364.50 What requirements apply to the processing of referrals and applications?
- 364.51 What requirements apply to determinations of eligibility or ineligibility?
- 364.52 What are the requirements for an IL plan?
- 364.53 What records must be maintained for the individual?
- 364.54 What are the durational limitations on IL services?
- 364.55 What standards shall service providers meet?
- 364.56 What are the special requirements pertaining to the protection, use, and release of personal information?
- 364.57 What functions and responsibilities may the State delegate?
- 364.58 What appeal procedures must be available to consumers?
- 364.59 May an individual's ability to pay be considered in determining his or her participation in the costs of IL services?

AUTHORITY: 29 U.S.C. 796-796f-5, unless otherwise noted.

Subpart A--General

'364.1 What programs are covered?

(a) This part includes general requirements applicable to the conduct of the following programs authorized under Title VII of the Rehabilitation Act of 1973, as amended:

- (1) The State Independent Living Services (SILS) program (34 CFR Part 365).
- (2) The Centers for Independent Living (CIL) program (34 CFR Part 366).

(b) Some provisions in this part also are made specifically applicable to the Independent Living Services for Older Individuals Who Are Blind (OIB) program (34 CFR Part 367).
(Authority: 29 U.S.C. 711(c) and 796-796f-5)

'364.2 What is the purpose of the programs authorized by Chapter 1 of Title VII?

The purpose of the SILS and CIL programs authorized by Chapter 1 of Title VII of the Act is to promote a philosophy of independent living (IL), including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, to maximize the leadership, empowerment, independence, and productivity of individuals with significant disabilities, and to promote and maximize the integration and full inclusion of individuals with significant disabilities into the mainstream of American society by providing financial assistance to States--

(a) For providing, expanding, and improving the provision of IL services;

(b) To develop and support statewide networks of centers for independent living (centers); and

(c) For improving working relationships among--

(1) SILS programs;

(2) Centers;

(3) Statewide Independent Living Councils (SILCs) established under section 705 of the Act;

(4) State vocational rehabilitation (VR) programs receiving assistance under Title I and under Part C of Title VI of the Act;

(5) Client assistance programs (CAPs) receiving assistance under section 112 of the Act;

(6) Programs funded under other titles of the Act;

(7) Programs funded under other Federal laws; and

(8) Programs funded through non-Federal sources.

(Authority: 29 U.S.C. 796)

'364.3 What regulations apply?

The following regulations apply to the SILS and CIL programs:

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

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), with respect to grants or subgrants to an eligible agency that is not a State or local government or Indian tribal organization.

(2) 34 CFR Part 75 (Direct Grant Programs), with respect to grants under Subparts B and C of 34 CFR Part 366.

(3) 34 CFR Part 76 (State-Administered Programs), with respect to grants under 34 CFR Part 365 and Subpart D of 34 CFR Part 366.

(4) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), with respect to grants to an eligible agency that is a State or local government or Indian tribal organization.

(7) 34 CFR Part 81 (General Education Provisions Act--Enforcement).

(8) 34 CFR Part 82 (New Restrictions on Lobbying).

(9) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 364.

(c) The regulations in 34 CFR Parts 365 and 366 as applicable.

(Authority: 29 U.S.C. 711(c))

'364.4 What definitions apply?

(a) Definitions in EDGAR. The following terms used in this part and in 34 CFR Parts 365, 366, and 367 are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Nonprofit
Private
Project
Public
Secretary

(b) Other definitions. The following definitions also apply to this part and to 34 CFR Parts 365, 366, and 367:

Act means the Rehabilitation Act of 1973, as amended.

Administrative support services mean assistance to support IL programs and the activities of centers and may include financial and technical assistance in planning, budget development, and evaluation of center activities, and support for financial management (including audits), personnel development, and recordkeeping activities.

(Authority: 29 U.S.C. 796c(c)(2))

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. To the extent permitted by State law or the rules of the agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. Advocacy may--

(1) Involve representing an individual--

(i) Before private entities or organizations, government agencies (whether State, local, or Federal), or in a court of law (whether State or Federal); or

(ii) In negotiations or mediation, in formal or informal administrative proceedings before government agencies (whether State, local, or Federal), or in legal proceedings in a court of law; and

(2) Be on behalf of--

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

(ii) A group or class of individuals, in which case it is systems (or systemic) advocacy; or

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

Attendant care means a personal assistance service provided to an individual with significant disabilities in performing a variety of tasks required to meet essential personal needs in areas such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

(Authority: 20 U.S.C. 706(30)(B)(vi))

Center for independent living means a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency that--

(1) Is designed and operated within a local community by individuals with disabilities; and

(2) Provides an array of IL services.

(Authority: 29 U.S.C. 796a(1))

Consumer control means, with respect to a center or eligible agency, that the center or eligible agency vests power and authority in individuals with disabilities, including individuals who are or have been recipients of IL services.

(Authority: 29 U.S.C. 796a(2))

Cross-disability means, with respect to a center, that a center provides IL services to individuals representing a range of significant disabilities and does not require the presence of one or more specific significant disabilities before determining that an individual is eligible for IL services.

(Authority: 29 U.S.C. 796a(1))

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

(Authority: 29 U.S.C.. 706(3) and 721(a)(1)(A))

Designated State unit means either--

(1) The State agency or the bureau, division, or other organizational unit within a State agency that is primarily concerned with the vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities and that is responsible for the administration of the VR program of the State agency; or

(2) The independent State commission, board, or other agency that has the vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities as its primary function.

(Authority: 29 U.S.C. 706(3) and 721(a)(2)(A))

Eligible agency means a consumer-controlled, community-based, cross-disability, nonresidential, private, nonprofit agency.

(Authority: 29 U.S.C. 796f-5)

Independent living core services mean, for purposes of services that are supported under the SILS or CIL programs--

(1) Information and referral services;

(2) IL skills training;

(3) Peer counseling, including cross-disability peer counseling; and

(4) Individual and systems advocacy.

(Authority: 29 U.S.C. 706(29))

Independent living services includes the independent living core services and--

(1) Counseling services, including psychological, psychotherapeutic, and related services;

(2) Services related to securing housing or shelter, including services related to community group living, that are supportive of the purposes of the Act, and adaptive housing services, including appropriate accommodations to and modifications of any space used to serve, or to be occupied by, individuals with significant disabilities;

(3) Rehabilitation technology;

(4) Mobility training;

(5) Services and training for individuals with cognitive and sensory disabilities, including life skills training and interpreter and reader services;

(6) Personal assistance services, including attendant care and the training of personnel providing these services;

(7) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(8) Consumer information programs on rehabilitation and IL services available under the Act, especially for minorities and other individuals with significant disabilities who have traditionally been unserved or underserved by programs under the Act;

(9) Education and training necessary for living in a community and participating in community activities;

(10) Supported living;

(11) Transportation, including referral and assistance for transportation;

(12) Physical rehabilitation;

(13) Therapeutic treatment;

(14) Provision of needed prostheses and other appliances and devices;

(15) Individual and group social and recreational services;

(16) Training to develop skills specifically designed for youths who are individuals with significant disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

(17) Services for children;

(18) 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 significant disabilities;

(19) Appropriate preventive services to decrease the need of individuals with significant disabilities assisted under the Act for similar services in the future;

(20) Community awareness programs to enhance the understanding and integration into society of individuals with significant disabilities; and

(21) Any other services that may be necessary to improve the ability of an individual with a significant disability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment and that are not inconsistent with any other provisions of the Act.

(Authority: 29 U.S.C. 796e-2(1))

Individual with a disability means an individual who--

(1) Has a physical, mental, cognitive, or sensory impairment that substantially limits one or more of the individual's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(Authority: 29 U.S.C. 706(8)(B))

Individual with a significant disability means an individual with a severe physical, mental, cognitive, or sensory 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 IL services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment.

(Authority: 29 U.S.C. 706(15)(B))

Legally authorized advocate or representative means an individual who is authorized under State law to act or advocate on behalf of another individual. Under certain circumstances, State law permits only an attorney, legal guardian, or individual with a power of attorney to act or advocate on behalf of another individual. In other circumstances, State law may permit other individuals to act or advocate on behalf of another individual.

(Authority: 29 U.S.C. 711(c))

Minority group means Alaskan Natives, American Indians, Asian Americans, Blacks (African Americans), Hispanic Americans, Native Hawaiians, and Pacific Islanders.

Nonresidential means, with respect to a center, that the center, as of October 1, 1994, does not operate or manage housing or shelter for individuals as an IL service on either a temporary or long-term basis unless the housing or shelter is--

(1) Incidental to the overall operation of the center;

(2) Necessary so that the individual may receive an IL service;

and

(3) Limited to a period not to exceed eight weeks during any six-month period.

(Authority: 29 U.S.C. 796a, 796f-1(f) and 706f-2(f))

Peer relationships mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.

Peer role models mean individuals with significant disabilities whose achievements can serve as a positive example for other individuals with significant disabilities.

Personal assistance services mean a range of IL services, provided by one or more persons, designed to assist an individual with a significant 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. These IL services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(Authority: 29 U.S.C. 706(11))

Service provider means--

(1) A designated State unit (DSU) that directly provides IL services to individuals with significant disabilities;

(2) A center that receives financial assistance under Parts B or C of Chapter 1 of Title VII of the Act; or

(3) Any other entity or individual that meets the requirements of '364.43(e) and provides IL services under a grant or contract from the DSU pursuant to '364.43(b).

(Authority: 29 U.S.C. 711(c) and 796(e))

Significant disability means a severe physical, mental, cognitive, or sensory impairment that substantially limits an individual's ability to function independently in the family or community or to obtain, maintain, or advance in employment.

State means, except for sections 711(a)(2)(A) and 721(c)(2)(A) and where otherwise specified in the Act, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect).

(Authority: 29 U.S.C. 706(16))

State plan means the State IL plan required under section 704 of Title VII of the Act.

Transportation means travel and related expenses that are necessary to enable an individual with a significant disability to benefit from another IL service and travel and related expenses for an attendant or aide if the services of that attendant or aide are necessary to enable an individual with a significant disability to benefit from that IL service.

(Authority: 29 U.S.C. 706(30)(B)(xi) and 711(c))

Unserved and underserved groups or populations, with respect to groups or populations of individuals with significant disabilities in a State, include, but are not limited to, groups or populations of individuals with significant disabilities who--

(1) Have cognitive and sensory impairments;

(2) Are members of racial and ethnic minority groups;

(3) Live in rural areas; or

(4) Have been identified by the eligible agency as unserved or underserved within a center's project area.

(Authority: 29 U.S.C. 706, 711(c), and 796f-796f-5)

'364.5 What is program income and how may it be used?

(a) Definition. Program income means gross income received by a grantee under Title VII of the Act that is directly generated by an activity supported under 34 CFR Part 365, 366, or 367.

(b) Sources. Sources of program income include, but are not limited to, payments received from workers' compensation funds or fees for services to defray part or all of the costs of services provided to particular consumers.

(c) Use of program income. (1) Program income, whenever earned, must be used for the provision of IL services or the administration of the State plan, as appropriate.

(2) A service provider is authorized to treat program income as--

(i) A deduction from total allowable costs charged to a Federal grant, in accordance with 34 CFR 80.25(g)(1); or

(ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2).

(3) Program income may not be used to meet the non-Federal share requirement under 34 CFR 365.12(b).

(Authority: 29 U.S.C. 711(c); 34 CFR 80.25)

'364.6 What requirements apply to the obligation of Federal funds and program income?

(a) Except as provided in paragraph (b) of this section, any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under 34 CFR Part 365, 366, or 367 that are not obligated or expended by the DSU or center prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended by the DSU or center prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the DSU or center during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year under Part B of Chapter 1 and under Chapter 2 of Title VII of the Act remain available for obligation in the succeeding fiscal year only to the extent that the DSU complied with any matching requirement by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: 29 U.S.C. 718)

Subpart B--What Are the Application Requirements?

'364.10 What are the application requirements?

To receive a grant from a State's allotment of funds under Parts B and C of Chapter 1 of Title VII of the Act and 34 CFR Parts 365 and 366, a State shall submit to the Secretary, and obtain approval of, a three-year State plan meeting the requirements in Subpart C of this part.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(a)(1))

'364.11 When must the State plan be submitted for approval?

The designated State unit (DSU) shall submit to the Secretary for approval the three-year State plan no later than July 1 of the year preceding the first fiscal year of the three-year period for which the State plan is submitted.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(a)(4))

'364.12 How does the Secretary approve State plans?

(a) General. The Secretary approves a State plan that the Secretary determines meets the requirements of section 704 of the Act and Subparts B through D of this part and disapproves a plan that does not meet these requirements.

(b) Informal resolution. If the Secretary intends to disapprove the State plan, the Secretary attempts to resolve disputed issues informally with State officials.

(c) Notice of formal hearing. If, after reasonable effort has been made to resolve the dispute informally, no resolution has been reached, the Secretary provides written notice to the DSU and the SILC of the intention to disapprove the State plan and of the opportunity for a hearing.

(d) Hearing. (1) If the DSU requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the Department's administration of the programs authorized by Title VII of the Act, to conduct a hearing.

(2) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(e) Judicial review. A State may appeal the Secretary's decision to disapprove its State plan 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.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c) and 796d-1(a))

'364.13 Under what circumstances may funds be withheld, reduced, limited, or terminated?

(a) When withheld, reduced, limited, or terminated. Payments to a State under Chapter 1 of Title VII of the Act may be withheld, reduced, limited, or terminated as provided by section 107(c) of the Act if the Secretary finds that--

(1) The State plan has been so changed that it no longer conforms with the requirements of section 704 of the Act; or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of the plan.

(b) Informal resolution. If the Secretary intends to withhold, reduce, limit, or terminate payment of funds to a State under Title VII of the Act as provided by section 107(c) of the Act, the Secretary attempts to resolve disputed issues informally with State officials.

(c) Notice of formal hearing. If, after reasonable effort has been made to resolve the dispute informally, no resolution has been reached, the Secretary provides written notice to the DSU and SILC of the intention to withhold, reduce, limit, or terminate payment of funds under Title VII of the Act and of the opportunity for a hearing.

(d) Hearing. If the DSU requests a hearing, the Secretary designates an administrative law judge (ALJ) in the Office of Administrative Law Judges to conduct a hearing in accordance with the provisions of 34 CFR Part 81, Subpart A.

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

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

(g) Review by the Secretary. The Secretary reviews an ALJ's initial decision in accordance with 34 CFR 81.43.

(h) Final decision of the Department. The ALJ's initial decision becomes the final decision of the Department in accordance with 34 CFR 81.44.

(i) Judicial review. A State may appeal the Secretary's final decision to withhold, reduce, limit, or terminate payment of funds to a State under Title VII of the Act 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.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 727(c)-(d) and 796d-1(a))
Subpart C--What Are the State Plan Requirements?

'364.20 What are the general requirements for a State plan?

(a) Form and content. The State plan must contain, in the form prescribed by the Secretary, the information required by this part and any other information requested by the Secretary.

(b) Duration. (1) The State plan must cover a three-year period and must be amended whenever necessary to reflect any material change in State law, organization, policy, or agency operations that affects the administration of the State plan.

(2) The Secretary may require a State to submit an interim State plan for a period of less than three years following a reauthorization of the Act and prior to the effective date of final regulations.

(c) Joint development-single agency. The State plan must be jointly--

(1) Developed by the DSU and the SILC; and

(2) Signed by the--

(i) Director of the DSU (Director); and

(ii) Chairperson of the SILC, acting on behalf of and at the direction of the SILC.

(d) Joint development-separate agency for individuals who are blind. If a separate State agency is authorized by State law as the sole State agency with authority to administer or supervise the administration of that part of the State plan relating to the

vocational rehabilitation of individuals who are blind, the State plan must be jointly--

(1) Developed by the DSU, the SILC, and the separate State agency authorized to provide VR services for individuals who are blind; and

(2) Signed by the--

(i) Director;

(ii) Director of the separate State agency authorized to provide VR services for individuals who are blind; and

(iii) Chairperson of the SILC, acting on behalf of and at the direction of the SILC.

(3) Cross-reference: See '364.22(c).

(e) The State plan must assure that, as appropriate, the DSU and SILC actively consult in the development of the State plan with the Director of the CAP authorized under section 112 of the Act.

(f) Periodic review and revision. The State plan must provide for the review and revision of the plan, at least once every three years, to ensure the existence of appropriate planning, financial support and coordination, and other assistance to appropriately address, on a statewide and comprehensive basis, the needs in the State for--

(1) Providing State IL services;

(2) Developing and supporting a statewide network of centers;

and

(3) Working relationships between--

(i) Programs providing IL services and supporting or establishing centers; and

(ii) The VR program established under Title I of the Act, and other programs providing services for individuals with disabilities.

(g) Public hearings. (1) The State plan must assure that the DSU and SILC conduct public meetings to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its submission to the Secretary and on any revisions to the approved State plan. The DSU and SILC may meet the public participation requirement by holding the public meetings before a preliminary draft State plan is prepared or by providing a preliminary draft State plan for comment at the public meetings.

(2) The State plan must assure that the DSU and SILC establish and maintain a written description of procedures for conducting public meetings in accordance with the following requirements:

(i) The DSU and SILC shall provide appropriate and sufficient notice of the public meetings. Appropriate and sufficient notice means notice provided at least 30 days prior to the public meeting through various media available to the general public, such as newspapers and public service announcements, and through specific contacts with appropriate constituency groups and organizations identified by the DSU and SILC.

(ii) The DSU and SILC shall make reasonable accommodation to individuals with disabilities who rely on alternative modes of communication in the conduct of the public meetings, including providing sign language interpreters and audio-loops.

(iii) The DSU and SILC shall provide the notices of the public meetings, any written material provided prior to or at the public meetings, and the approved State plan in accessible formats for individuals who rely on alternative modes of communication.

(h) The State plan must assure that, at the public meetings to develop the State plan, the DSU and SILC identify those provisions in the State plan that are State-imposed requirements. For purposes of this section, a State-imposed requirement includes any State law, regulation, rule, or policy relating to the DSU's administration or operation of IL programs under Title VII of the Act, including any rule or policy implementing any Federal law, regulation, or guideline, that is beyond what would be required to comply with the regulations in 34 CFR Parts 364, 365, 366, and 367.

(i) The State plan also must address how the specific requirements in '364.21 through 364.43 and in '364.56 and 364.59 will be met.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c) and 796c(a) and (m)(6))

'364.21 What are the requirements for the Statewide Independent Living Council (SILC)?

(a) Establishment. (1) To be eligible to receive assistance under Chapter 1 of Title VII of the Act, each State shall establish a SILC that meets the requirements of section 705 of the Act.

(2) The SILC may not be established as an entity within a State agency, including the designated State agency or DSU. The SILC shall be independent of the DSU and all other State agencies.

(b) Appointment and composition. (1) Appointment. Members of the SILC must be appointed by the Governor or the appropriate entity within the State responsible, in accordance with State law, for making appointments.

(2) Composition. (i) The SILC must include--

(A) At least one director of a center chosen by the directors of centers within the State; and

(B) As ex officio, nonvoting members, a representative from the DSU and representatives from other State agencies that provide services to individuals with disabilities.

(ii) The SILC may include--

(A) Other representatives from centers;

(B) Parents and legal 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.

(iii) A majority of the members of the SILC must be individuals with disabilities, as defined in '364.4(b), and not employed by any State agency or center.

(c) Qualifications. The SILC must be composed of members--

(1) Who provide statewide representation;

(2) Who represent a broad range of individuals with disabilities; and

(3) Who are knowledgeable about centers and IL services.

(d) Voting members. A majority of the voting members of the SILC must be individuals with disabilities, as defined in '364.4(b), and not employed by any State agency or center.

(e) Chairperson. (1) In general. Except as provided in paragraph (e)(2) of this section, the SILC shall select a chairperson from among the voting membership of the SILC.

(2) 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 SILC to serve as the chairperson of the SILC or shall require the SILC to so designate a voting member.

(f) Terms of appointment. Each member of the SILC shall serve for term of three years, except that--

(1) A member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed must be appointed for the remainder of that term;

(2) The terms of service of the members initially appointed must be (as specified by the appointing authority) for the fewer number of years as will provide for the expiration of terms on a staggered basis; and

(3) No member of the SILC may serve for more than two consecutive full terms.

(g) Duties. The SILC shall--

(1) Jointly develop and sign (in conjunction with the DSU) the State plan required by section 704 of the Act and '364.20;

(2) Monitor, review, and evaluate the implementation of the State plan;

(3) Coordinate activities with the State Rehabilitation Advisory Council established under section 105 of the Act 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 SILC are open to the public and sufficient advance notice is provided; and

(5) Submit to the Secretary all periodic reports as the Secretary may reasonably request and keep all records, and afford access to all records, as the Secretary finds necessary to verify the periodic reports.

(h) Hearings. The SILC is authorized to hold any hearings and forums that the SILC determines to be necessary to carry out its duties.

(i) Resource plan. (1) The SILC shall prepare, in conjunction with the DSU, a resource plan for the provision of resources, including staff and personnel, made available under Parts B and C of Chapter 1 of Title VII of the Act, Part C of Title I of the Act, and from other public and private sources that may be necessary to carry out the functions of the SILC under this part.

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

(3) No conditions or requirements may be included in the SILC's resource plan that may compromise the independence of the SILC.

(4) The SILC is responsible for the proper expenditure of funds and use of resources that it receives under the resource plan.

(5) A description of the SILC's resource plan required by paragraph (i)(1) of this section must be included in the State plan.

(j) Staff. (1) The SILC shall, consistent with State law, supervise and evaluate its staff and other personnel as may be necessary to carry out its functions under this section.

(2) While assisting the SILC in carrying out its duties, staff and other personnel made available to the SILC by the DSU may not be assigned duties by the designated State agency or DSU, or any other agency or office of the State, that would create a conflict of interest.

(k) Reimbursement and compensation. The SILC may use the resources described in paragraph (i) of this section to reimburse members of the SILC for reasonable and necessary expenses of attending SILC meetings and performing SILC duties (including child care and personal assistance services) and to pay compensation to a member of the SILC, if the member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing SILC duties.

(l) Conflict of interest. The code of conduct provisions in 34 CFR 74.162 and the conflict of interest provisions in 34 CFR 75.524 and 75.525 apply to members of the SILC. For purposes of this paragraph and 34 CFR 74.162, 75.524, and 75.525, a SILC is not considered a government, governmental entity, or governmental recipient.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796d)

'364.22 What is the State's responsibility for administration of the programs authorized by Chapter 1 of Title VII?

(a) General. The State plan must identify the DSU as the entity that, on behalf of the State, shall--

(1) Receive, account for, and disburse funds received by the State under Part B of Chapter 1 and section 723 of Title VII of the Act (and 34 CFR Parts 365 and 366, as applicable) based on the plan;

(2) Provide, as applicable, administrative support services for the SILS and CIL programs under Part B of Chapter 1 and section 723 of Title VII of the Act, respectively, and 34 CFR Parts 365 and 366, respectively;

(3) Keep records and afford access to these records as the Secretary finds to be necessary with respect to the SILS and CIL programs; and

(4) Submit additional information or provide assurances as the Secretary may require with respect to the SILS and CIL programs.

(b) Provision of administrative support services. The State plan must describe the administrative support services to be provided by the DSU under paragraph (a)(2) of this section.

(c) Designation of State unit for individuals who are blind.
The State plan may designate a State agency or the organizational unit of a State agency that is authorized under State law to provide VR services to individuals who are blind under a State VR plan as the DSU to administer that part of the State IL plan under which IL services are provided to individuals who are blind. However, a State agency designated pursuant to this paragraph may not submit a separate State plan.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(c))

'364.23 What are the staffing requirements?

(a) General staffing requirement. The State plan must assure that the staff of the service provider includes personnel who are specialists in the development and provision of IL services and in the development and support of centers.

(b) Alternative communication needs staffing. The State plan must also assure that, to the maximum extent feasible, the service provider makes available personnel able to communicate--

(1) With individuals with significant disabilities who rely on alternative modes of communication, such as manual communication, nonverbal communication devices, Braille, or audio tapes, and who apply for or receive IL services under Title VII of the Act; and

(2) In the native languages of individuals with significant disabilities whose English proficiency is limited and who apply for or receive IL services under Title VII of the Act.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

'364.24 What assurances are required for staff development?

The State plan must assure that the service provider establishes and maintains a program of staff development for all classes of positions involved in providing IL services and, if appropriate, in administering the CIL program. The staff development program must emphasize improving the skills of staff directly responsible for the provision of IL services, including knowledge of and practice in the IL philosophy.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

'364.25 What are the requirements for a statewide network of centers for independent living?

(a) The State plan must include a design for the establishment of a statewide network of centers that comply with the standards and assurances in section 725(b) and (c) of the Act and Subparts F and G of 34 CFR Part 366.

(b) The design required by paragraph (a) of this section must identify unserved and underserved areas and must provide an order of priority for serving these areas.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c) and 796c(g))

'364.26 What are the requirements for cooperation, coordination, and working relationships?

(a) The State plan must include steps that will be taken to maximize the cooperation, coordination, and working relationships among--

(1) The SILS program, the SILC, and centers; and

(2) The DSU, other State agencies represented on the SILC, other councils that address the needs of specific disability populations and issues, and other public and private entities determined to be appropriate by the SILC.

(b) The State plan must identify the entities to which the DSU and the SILC will relate in carrying out the requirements of paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(i))

'364.27 What are the requirements for coordinating independent living (IL) services?

The State plan must describe how IL services funded under Chapter 1 of Title VII of the Act will be coordinated with, and complement, other services, to avoid unnecessary duplication with other Federal, State, and local programs, including the OIB program authorized by Chapter 2 of Title VII of the Act, that provide IL- or VR-related services. This description must include those services provided by State and local agencies administering the special education, vocational education, developmental disabilities services, public health, mental health, housing, transportation, and veterans' programs, and the programs authorized under Titles XVIII through XX of the Social Security Act within the State.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(j) and 752(i)(2)(C))

'364.28 What requirements relate to IL services for older individuals who are blind?

The State plan must include an assurance that the DSU will seek to incorporate into and describe in the State plan any new methods or approaches for the provision to older individuals who are blind of IL services that are developed under a project funded under Chapter 2 of Title VII of the Act and that the DSU determines to be effective.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c), 796c(j), and 796k(h))

'364.29 What are the requirements for coordinating Federal and State sources of funding?

(a) The State plan must describe efforts to coordinate Federal and State funding for centers and IL services.

(b) The State plan must identify the amounts, sources, and purposes of the funding to be coordinated under paragraph (a) of this section, including the amount of State funds earmarked for the general operation of centers.

(c) Cross-reference: See 34 CFR 366.30(a).

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(k))

'364.30 What notice must be given about the Client Assistance Program (CAP)?

The State plan must include satisfactory assurances that all service providers will use formats that are accessible to notify individuals seeking or receiving IL services under Chapter 1 of Title VII about--

(a) The availability of the CAP authorized by section 112 of the Act;

(b) The purposes of the services provided under the CAP; and

(c) How to contact the CAP.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 718a and 796c(m)(1))

'364.31 What are the affirmative action requirements?

The State plan must include satisfactory assurances that all recipients of financial assistance under Parts B and C of Chapter 1 of Title VII of the Act will take 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 of the Act.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(m)(2))

'364.32 What are the requirements for outreach?

(a) With respect to IL services and centers funded under Chapter 1 of Title VII of the Act, the State plan must include steps to be taken regarding outreach to populations in the State that are unserved or underserved by programs under Title VII, including minority groups and urban and rural populations.

(b) The State plan must identify the populations to be designated for targeted outreach efforts under paragraph (a) of this section and the geographic areas (i.e., communities) in which they reside.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(l))

'364.33 What is required to meet minority needs?

The State plan must demonstrate how the State will address the needs of individuals with significant disabilities from minority group backgrounds.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c), 718b(b), and 796c(l))

'364.34 What are the fiscal and accounting requirements?

In addition to complying with applicable EDGAR fiscal and accounting requirements, the State plan must include satisfactory assurances that all recipients of financial assistance under Parts B and C of Chapter 1 of Title VII of the Act will adopt those fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of and accounting for those funds.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(m)(3))

'364.35 What records must be maintained?

In addition to complying with applicable EDGAR record-keeping requirements, the State plan must include satisfactory assurances that all recipients of financial assistance under Parts B and C of Chapter 1 of Title VII of the Act will maintain--

(a) Records that fully disclose and document--

(1) The amount and disposition by the recipient of that financial assistance;

(2) The total cost of the project or undertaking in connection with which the financial assistance is given or used; (3) The amount of that portion of the cost of the project or undertaking supplied by other sources; and

(4) Compliance with the requirements of Chapter 1 of Title VII of the Act and this part; and

(b) Other records that the Secretary determines to be appropriate to facilitate an effective audit.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(m)(4))

'364.36 What are the reporting requirements?

With respect to the records that are required by '364.35, the State plan must include satisfactory assurances that all recipients of financial assistance under Parts B and C of Chapter 1 of Title VII of the Act will submit reports that the Secretary determines to be appropriate.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(m)(4)(D))

'364.37 What access to records must be provided?

For the purpose of conducting audits, examinations, and compliance reviews, the State plan must include satisfactory assurances that all recipients of financial assistance under Parts B and C of Chapter 1 and Chapter 2 of Title VII of the Act will provide access to the Secretary and the Comptroller General, or any of their duly authorized representatives, to--

(a) The records maintained under '364.35;

(b) Any other books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under Chapter 1 of Title VII of the Act; and

(c) All individual case records or files or consumer service records of individuals served under 34 CFR Parts 365, 366, or 367, including names, addresses, photographs, and records of evaluation included in those individual case records or files or consumer service records.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c) and 796c(m)(4)(c) and (5))

'364.38 What methods of evaluation must the State plan include?

The State plan must establish a method for the periodic evaluation of the effectiveness of the plan in meeting the objectives established in '364.42, including evaluation of satisfaction by individuals with significant disabilities who have participated in the program.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(n))

'364.39 What requirements apply to the administration of grants under the Centers for Independent Living program?

In States in which State funding for centers equals or exceeds the amount of funds allotted to the State under Part C of Title VII of the Act, as determined pursuant to 34 CFR 366.29 and 366.31, and in which the State elects to administer the CIL program as provided in section 723 of the Act, the State plan must include policies, practices, and procedures, including the order of priorities that the State may establish pursuant to 34 CFR 366.34(a), that are consistent with section 723 of the Act to govern the awarding of grants to centers and the oversight of these centers.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(g) and (h), 796f-1(d), and 796f-2(d)).

'364.40 Who is eligible to receive IL services?

The State plan must assure that--

(a) Any individual with a significant disability, as defined in '364.4(b), is eligible for IL services under the SILS and CIL programs authorized under Chapter 1 of Title VII of the Act;

(b) Any individual may seek information about IL services under these programs and request referral to other services and programs for individuals with significant disabilities, as appropriate; and

(c) The determination of an individual's eligibility for IL services under the SILS and CIL programs meets the requirements of '364.51.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 706(15)(B) and 796b)

'364.41 What assurances must be included regarding eligibility?

(a) The State plan must assure that the service provider applies eligibility requirements without regard to age, color, creed, gender, national origin, race, religion, or type of significant disability of the individual applying for IL services.

(b) The State plan must assure that the service provider does not impose any State or local residence requirement that excludes under the plan any individual who is present in the State and who is otherwise eligible for IL services from receiving IL services. (Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

'364.42 What objectives and information must be included in the State plan?

(a) The State plan must specifically describe--

(1) The objectives to be achieved;

(2) The financial plan for the use of Federal and non-Federal funds to meet these objectives. The financial plan must identify the source and amounts of other Federal and non-Federal funds to be used to meet these objectives; and

(3) How funds received under sections 711, 721, and 752 of the Act will further these objectives.

(b) The objectives required by paragraph (a) of this section must address--

(1) The overall goals and mission of the State's IL programs and services;

(2) The various priorities for the types of services and populations to be served; and

(3) The types of services to be provided.

(c) In developing the objectives required by paragraph (a) of this section, the DSU and the SILC shall consider, and incorporate if appropriate, the priorities and objectives established by centers pursuant to section 725(c)(4) of the Act.

(d) The State plan must establish timeframes for the achievement of the objectives required by paragraph (a) of this section.

(e) The State plan must explain how the objectives required by paragraph (a) of this section are consistent with and further the purpose of Chapter 1 of Title VII of the Act, as stated in section 701 of the Act and '364.2.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(d))

'364.43 What requirements apply to the provision of State IL services?

(a) The State plan must describe the extent and scope of IL services to be provided under Title VII of the Act to meet the objectives stated in '364.42.

(b) The State plan must provide that the State directly, or through grants or contracts, will provide IL services with Federal, State, or other funds.

(c) Unless the individual signs a waiver stating that an IL plan is unnecessary, IL services provided to individuals with significant disabilities must be in accordance with an IL plan that meets the requirements of '364.52 and that is mutually agreed upon by--

(1) An appropriate staff member of the service provider; and

(2) The individual.

(d) If the State provides the IL services that it is required to provide by paragraph (b) of this section through grants or contracts with third parties, the State plan must describe these arrangements.

(e) If the State contracts with or awards a grant to a center for the general operation of the center, the State shall delegate to the center the determination of an individual's eligibility for services from that center. If the State contracts with or awards a grant to a third party to provide specific IL services, the State may choose to delegate to the IL service provider the determination of eligibility for these services and the development of an IL plan for individuals who receive these services.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c), 796c(e)-(f), and 796f-4(b)(2))

Subpart D--What Conditions Must Be Met After an Award?

'364.50 What requirements apply to the processing of referrals and applications?

The service provider shall apply the standards and procedures established by the DSU pursuant to 34 CFR 365.30 to ensure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

(Authority: 29 U.S.C. 711(c) and 796-796f-5)

'364.51 What requirements apply to determinations of eligibility or ineligibility?

(a) Eligibility. (1) Before or at the same time as an applicant for IL services may begin receiving IL services funded under this part, the service provider shall determine the applicant's eligibility and maintain documentation that the applicant has met the basic requirements specified in '364.40.

(2) The documentation must be dated and signed by an appropriate staff member of the service provider.

(b) Ineligibility. (1) If a determination is made that an applicant for IL services is not an individual with a significant disability, the service provider shall provide documentation of the ineligibility determination that is dated and signed by an appropriate staff member.

(2)(i) The service provider may determine an applicant to be ineligible for IL services only after full consultation with the applicant or, if the applicant chooses, the applicant's parent, guardian, or other legally authorized advocate or representative, or after providing a clear opportunity for this consultation.

(ii) The service provider shall notify the applicant in writing of the action taken and inform the applicant or, if the applicant chooses, the applicant's parent, guardian, or other legally authorized advocate or representative, of the applicant's rights and the means by which the applicant may appeal the action taken.

(Cross-reference: See '364.58(a).)

(iii) The service provider shall provide a detailed explanation of the availability and purposes of the CAP established within the State under section 112 of the Act, including information on how to contact the program.

(iv) If appropriate, the service provider shall refer the applicant to other agencies and facilities, including the State's VR program under 34 CFR Part 361.

(c) Review of ineligibility determination. (1) If an applicant for IL services has been found ineligible, the service provider shall review the applicant's ineligibility at least once within 12 months after the ineligibility determination has been made and whenever the service provider determines that the applicant's status has materially changed.

(2) The review need not be conducted in situations where the applicant has refused the review, the applicant is no longer present in the State, or the applicant's whereabouts are unknown.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c) and 796c(e))

'364.52 What are the requirements for an IL plan?

(a) General. (1) Unless the individual who is to be provided IL services under this part signs a waiver in accordance with paragraph (a)(2) of this section, the service provider, in collaboration with the individual with a significant disability, shall develop and periodically review an IL plan for the individual in accordance with the requirements in '364.43(c) and paragraphs (b) through (e) of this section.

(2) The requirements of this section with respect to an IL plan do not apply if the individual knowingly and voluntarily signs a waiver stating that an IL plan is unnecessary.

(3) Subject to paragraph (a)(2) of this section, the service provider shall provide each IL service in accordance with the IL plan.

(b) Initiation and development of an IL plan.

(1) Development of an individual's IL plan must be initiated after documentation of eligibility under '364.51(a) and must indicate the goals or objectives established, the services to be provided, and the anticipated duration of the service program and each component service.

(2) The IL plan must be developed jointly and signed by the appropriate staff member of the service provider and the individual with a significant disability or, if consistent with State law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative.

(3) A copy of the IL plan, and any amendments, must be provided in an accessible format to the individual with a significant disability or, if consistent with State law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative.

(c) Review. (1) The IL plan must be reviewed as often as necessary but at least on an annual basis to determine whether services should be continued, modified, or discontinued, or whether the individual should be referred to a program of VR services under 34 CFR Part 361 or to any other program of assistance.

(2) Each individual with a significant disability or, if consistent with State law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate

or representative, must be given an opportunity to review the IL plan and, if necessary, jointly redevelop and agree by signature to its terms.

(d) Coordination with vocational rehabilitation, developmental disabilities, and special education programs. The development of the IL plan and the provision of IL services must be coordinated to the maximum extent possible with any individualized--

(1) Written rehabilitation program for VR services for that individual;

(2) Habilitation program for the individual prepared under the Developmental Disabilities Assistance and Bill of Rights Act; and

(3) Education program for the individual prepared under Part B of the Individuals with Disabilities Education Act.

(e) Termination of services. If the service provider intends to terminate services to an individual receiving IL services under an IL plan, the service provider shall follow the procedures in '364.51(b)(2)(ii) through (iv) and (c).

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c) and 796c(e) and (j))

'364.53 What records must be maintained for the individual?

For each applicant for IL services (other than information and referral) and for each individual receiving IL services (other than information and referral), the service provider shall maintain a consumer service record that includes--

(a) Documentation concerning eligibility or ineligibility for services;

(b) The services requested by the consumer;

(c) Either the IL plan developed with the consumer or a waiver signed by the consumer stating that an IL plan is unnecessary;

(d) The services actually provided to the consumer; and

(e) The IL goals or objectives--

(1) Established with the consumer, whether or not in the consumer's IL plan; and

(2) Achieved by the consumer.

(f) A consumer service record may be maintained either electronically or in written form, except that the IL plan and waiver must be in writing.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c), 712 and 796c(m)(4)(B))

'364.54 What are the durational limitations on IL services?

The service provider may not impose any uniform durational limitations on the provision of IL services, except as otherwise provided by Federal law or regulation.

(Authority: 29 U.S.C. 711(c) and 796-796f-5)

'364.55 What standards shall service providers meet?

In providing IL services to individuals with significant disabilities, service providers shall comply with--

(a) The written standards for IL service providers established by the DSU pursuant to 34 CFR 365.31; and

(b) All applicable State or Federal licensure or certification requirements.

(Authority: 29 U.S.C. 711(c) and 796-796f-5)

'364.56 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) General provisions. The State plan must assure that each service provider will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that--

(1) Specific safeguards protect current and stored personal information;

(2) All applicants for, or recipients of, IL services and, as appropriate, those individuals' legally authorized representatives, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for gaining access to and releasing this information;

(3) All applicants or their legally authorized representatives are informed about the service provider's need to collect personal information and the policies governing its use, including--

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

(ii) Explanation of the principal purposes for which the service provider intends to use or release the information;

(iii) Explanation of whether providing requested information to the service provider is mandatory or voluntary and the effects to the individual of not providing requested information;

(iv) Identification of those situations in which the service provider requires or does not require informed written consent of the individual or his or her legally authorized representative before information may be released; and

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

(4) Persons who are unable to communicate in English or who rely on alternative modes of communication must be provided an explanation of service provider policies and procedures affecting personal information through methods that can be adequately understood by them;

(5) At least the same protections are provided to individuals with significant disabilities as provided by State laws and regulations; and

(6) Access to records is governed by rules established by the service provider and any fees charged for copies of records are reasonable and cover only extraordinary costs of duplication or making extensive searches.

(b) Service provider use. All personal information in the possession of the service provider may be used only for the purposes directly connected with the provision of IL services and the administration of the IL program under which IL services are provided. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for the provision of IL services or the administration of the IL program under which IL services are

provided. In the provision of IL services or the administration of the IL program under which IL services are provided, the service provider may obtain personal information from other service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) Release to recipients of IL services. (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by a recipient of IL services, the service provider shall release all information in that individual's record of services to the individual or the individual's legally authorized representative in a timely manner.

(2) Medical, psychological, or other information that the service provider determines may be harmful to the individual may not be released directly to the individual, but must be provided through a qualified medical or psychological professional or the individual's legally authorized representative.

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

(d) Release for audit, evaluation, and research. Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research activities only for purposes directly connected with the administration of an IL program, or for purposes that would significantly improve the quality of life for individuals with significant disabilities 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 personally identifying information without the informed written consent of the involved individual or the individual's legally authorized representative.

(e) Release to other programs or authorities. (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's legally authorized representative, the service provider may release personal information to another agency or organization for the latter's program purposes only to the extent that the information may be released to the involved individual and only to the extent that the other agency or organization demonstrates that the information requested is necessary for the proper administration of its program.

(2) Medical or psychological information may be released pursuant to paragraph (e)(1) of this section if the other agency or organization assures the service provider that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The service provider shall release personal information if required by Federal laws or regulations.

(4) The service provider shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to judicial order.

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

(Authority: 29 U.S.C. 711(c))

'364.57 What functions and responsibilities may the State delegate?

A DSU may carry out the functions and responsibilities described in ''364.50, 364.51 (subject to 364.43(d)), 364.52, 364.53, and 364.56 or, except as otherwise provided, may delegate these functions and responsibilities to the appropriate service provider with which the DSU subgrants or contracts to provide IL services.

(Authority: 29 U.S.C. 711(c), 796c(f) and 796e-2)

'364.58 What appeal procedures must be available to consumers?

Each service provider shall--

(a) Establish policies and procedures that an individual may use to obtain review of decisions made by the service provider concerning the individual's request for IL services or the provision of IL services to the individual; and

(b) Use formats that are accessible to inform each individual who seeks or is receiving IL services from the service provider about the procedures required by paragraph (a) of this section.

(Authority: 29 U.S.C. 711(c))

'364.59 May an individual's ability to pay be considered in determining his or her participation in the costs of IL services?

(a) No Federal requirement or prohibition.

(1) A State is neither required to allow nor prohibited from allowing service providers to charge consumers for the cost of IL services.

(2) If a State allows service providers to charge consumers for the cost of IL services, a State is neither required to allow nor prohibited from allowing service providers to consider the ability of individual consumers to pay for the cost of IL services in determining how much a particular consumer must contribute to the costs of a particular IL service.

(b) State plan requirements. If a State chooses to allow service providers to charge consumers for the cost of IL services or if a State chooses to allow service providers to consider the ability of individual consumers to pay for the cost of IL services, the State plan must--

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

(2) Assure that any consideration of financial need is applied uniformly so that all individuals who are eligible for IL services are treated equally.

(c) Financial need. Consistent with paragraph (b) of this section, a service provider may choose to charge consumers for the cost of IL services or may choose to consider the financial need of an individual who is eligible for IL services.

(d) Written policies and documentation. If the service provider chooses to consider financial need--

(1) It shall maintain written policies covering the specific types of IL services for which a financial need test will be applied; and

(2) It shall document the individual's participation in the cost of any IL services, including the individual's financial need. (Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c))

PART 365--STATE INDEPENDENT LIVING SERVICES

Subpart A--General

Sec.

365.1 What is the State Independent Living Services (SILS) program?

365.2 Who is eligible for an award?

365.3 What regulations apply?

Subpart B--How Does the Secretary Make a Grant to a State?

365.10 How does a State apply for a grant?

365.11 How is the allotment of Federal funds for State independent living (IL) services computed?

365.12 How are payments from allotments for IL services made?

365.13 What requirements apply if the State's non-Federal share is in cash?

365.14 What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?

365.15 What requirements apply if the State's non-Federal share is in kind?

365.16 What requirements apply to refunds and rebates?

Subpart C--For What Purpose Are Funds Authorized or Required To Be Used?

365.20 What are the authorized uses of funds?

365.21 What funds may the State use to provide the IL core services?

365.22 What additional IL services may the State provide?

365.23 How does a State make a subgrant or enter into a contract?

Subpart D--What Conditions Must Be Met After an Award?

365.30 What are the standards for processing referrals and applications?

365.31 What are the standards for service providers?

AUTHORITY: 29 U.S.C. 796e-796e-2, unless otherwise noted.

Subpart A--General

'365.1 What is the State Independent Living Services (SILS) program?

The Secretary provides financial assistance to States under the SILS program authorized by Part B of Chapter 1 of Title VII of the Act to--

(a) Provide the resources described in the resource plan required by section 705(e) of the Act and 34 CFR 364.21(d) relating to the Statewide IL Council (SILC);

(b) Provide to individuals with significant disabilities the independent living (IL) services required by section 704(e) of the Act;

(c) Demonstrate ways to expand and improve IL services;

(d) Support the operation of centers for independent living (centers) that are in compliance with the standards and assurances in section 725(b) and (c) of the Act and Subparts F and G of 34 CFR Part 366;

(e) Support activities to increase the capacities of public or nonprofit agencies and organizations and other entities to develop comprehensive approaches or systems for providing IL services;

(f) 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 policy makers in order to enhance IL services for individuals with significant disabilities;

(g) Train individuals with significant disabilities, individuals with disabilities, individuals providing services to individuals with significant disabilities, and other persons regarding the IL philosophy; and

(h) Provide outreach to populations that are unserved or underserved by programs under Title VII of the Act, including minority groups and urban and rural populations.

(Authority: 29 U.S.C. 796e)

'365.2 Who is eligible for an award?

Any designated State unit (DSU) identified by the State pursuant to 34 CFR 364.22 is eligible to apply for assistance under this part in accordance with 34 CFR 364.10 and 364.11.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(a)(1) and (c) and 796e(a))

'365.3 What regulations apply?

The following regulations apply to this part:

(a) The regulations in 34 CFR Part 364.

(b) The regulations in this Part 365.

(Authority: 29 U.S.C. 711(c) and 796e)

Subpart B--How Does the Secretary Make a Grant to a State?

'365.10 How does a State apply for a grant?

To receive a grant under this part, a State shall submit to the Secretary and obtain approval of a State plan that meets the requirements of Part A of Title VII of the Act and Subparts B and C of 34 CFR Part 364.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 796c(a)(1) and (c) and 796e(a))

'365.11 How is the allotment of Federal funds for State independent living (IL) services computed?

(a) The allotment of Federal funds for State IL services for each State is computed in accordance with the requirements of section 711(a)(1) of the Act.

(b) The allotment of Federal funds for Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau is computed in accordance with section 711(a)(2) of the Act.

(c) If the State plan designates, pursuant to '364.22(c), a unit to administer the part of the plan under which State IL services are provided for individuals who are blind and a separate or different unit to administer the rest of the plan, the division of the State's allotment between these two units is a matter for State determination.

(Authority: 29 U.S.C. 711(c) and 796e(a))

'365.12 How are payments from allotments for IL services made?

(a) From the allotment of a State for a fiscal year under '365.11, the Secretary pays to the State the Federal share of the expenditures incurred by the State during the year in accordance with the State plan approved under section 706 of the Act. After any necessary adjustments resulting from previously made overpayments or underpayments, the payments may be made in advance or by reimbursement, in installments, and on conditions that the Secretary may determine.

(b)(1) The Federal share with respect to any State for any fiscal year is 90 percent of the expenditures incurred by the State during that fiscal year under its State plan approved under section 706 of the Act.

(2) 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.

(Authority: U.S.C. 796e-1)

'365.13 What requirements apply if the State's non-Federal share is in cash?

(a) Except as further limited by paragraph (b) of this section, expenditures that meet the requirements of 34 CFR 80.24(a) through (b)(6) may be used to meet the non-Federal share matching requirement under section 712(b) of the Act if--

(1) The expenditures are made with funds made available by appropriation directly to the designated State agency or with funds made available by allotment or transfer from any other unit of State or local government;

(2) The expenditures are made with cash contributions from a donor that are deposited in the account of the designated State agency in accordance with State law for expenditure by, and at the sole discretion of, the DSU for activities identified or described in the State plan and authorized by '365.20; or

(3) The expenditures are made with cash contributions from a donor that are earmarked for meeting the State's share for--

(i) Providing particular services (e.g., personal assistance services);

(ii) Serving individuals with certain types of disabilities (e.g., older individuals who are blind);

(iii) Providing services to specific groups that State or Federal law permits to be targeted for services (e.g., children of migrant laborers); or

(iv) Carrying out particular types of administrative activities permissible under State law.

(b) Cash contributions are permissible under paragraph (a)(3) of this section only if the cash contributions are not used for expenditures that benefit or will benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest.

(c) The receipt of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act from the DSU is not considered a benefit to the donor of a cash contribution for purposes of paragraph (b) of this section if the grant, subgrant, or contract was awarded under the State's regular competitive procedures.

(d) For purposes of this section, a donor may be a private agency, a profit-making or nonprofit organization, or an individual. (Authority: 29 U.S.C. 711(c) and 796e-1(b))

'365.14 What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?

(a) A State may not condition the award of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act on the requirement that the applicant for the grant or subgrant make a cash or in-kind contribution of any particular amount or value to the State.

(b) An individual, entity, or organization that is a grantee or subgrantee of the State, or has a contract with the State, may not condition the award of a subgrant or subcontract under section 713 of the Act or section 723 of the Act on the requirement that the applicant for the subgrant or subcontract make a cash or in-kind contribution of any particular amount or value to the State or to the grantee or contractor of the State.

(Authority: 29 U.S.C. 711(c) and 796e-1(b))

'365.15 What requirements apply if the State's non-Federal share is in kind?

Subject to '365.14, in-kind contributions may be--

(a) Used to meet the matching requirement under section 712(b) of the Act if the in-kind contributions meet the requirements of 34 CFR 80.24(b)(7) through (g) and if the in-kind contributions would be considered allowable costs under this part, as determined by the cost principles made applicable by either Subpart Q of 34 CFR Part 74 or 34 CFR 80.22, as appropriate; and

(b) Made to the program or project by the State or by a third party (i.e., an individual, entity, or organization, whether local, public, private, for profit, or nonprofit), including a third party that is a grantee, subgrantee, or contractor that is receiving or will receive assistance under sections 713 or 723 of the Act.

(Authority: 29 U.S.C. 711(c) and 796e-1(b))

'365.16 What requirements apply to refunds and rebates?

The following must be treated as a reduction of expenditures charged to the grant, subgrant, or contract awarded under this part and may not be used for meeting the State's matching requirement under section 712(b) of the Act:

(a) Rebates, deductions, refunds, discounts, or reductions to the price of goods, products, equipment, rental property, real property, or services.

(b) Premiums, bonuses, gifts, and any other payments related to the purchase of goods, products, equipment, rental property, real property, or services.

(Authority: 29 U.S.C. 711(c), 796e-1(b), and OMB Circulars A-87 and A-122)

Subpart C--For What Purpose Are Funds Authorized or Required To Be Used?

'365.20 What are the authorized uses of funds?

The State may use funds received under this part to support the activities listed in '365.1 and to meet its obligation under section 704(e) of the Act and 34 CFR 364.43(b).

(Authority: 29 U.S.C. 796e-2)

'365.21 What funds may the State use to provide the IL core services?

(a) In providing IL services as required under section 704(e) of the Act and 34 CFR 364.43(b), a State may use funds provided under this part to provide directly, or through grants or contracts, the following IL core services:

(1) Information and referral services.

(2) IL skills training.

(3) Peer counseling, including cross-disability peer counseling.

(4) Individual and systems advocacy.

(b) Information and referral services may be provided independently of the other services described in paragraph (a) of this section and without regard to Subpart G of 34 CFR Part 366.

(Authority: 29 U.S.C. 711(c) and 796c(e))

'365.22 What additional IL services may the State provide?

In addition to the IL core services that the State may provide pursuant to '365.21(a) with funds received under Part B of Chapter 1 of Title VII of the Act, the State also may use funds received under Part B of Chapter 1 of Title VII of the Act to provide other IL services defined in 34 CFR 364.4 (Independent living services).

(Authority: 29 U.S.C. 796e-2(1))

'365.23 How does a State make a subgrant or enter into a contract?

If a State makes a subgrant or enters into a contract to provide IL services to meet its obligation under section 704(e) of the Act--

(a) The provisions of this part apply to both the State and the entity or individual to whom it awards a subgrant or with whom it enters into a contract; and

(b) The provisions concerning the administration of subgrants and contracts in 34 CFR Parts 76 and 80 apply to the State.

(c) Cross-reference: See 34 CFR Parts 74, 76, and 80.

(Authority: 29 U.S.C. 711(c), 796c(f), and 796e-2)

Subpart D--What Conditions Must Be Met After an Award?

'365.30 What are the standards for processing referrals and applications?

The DSU shall develop, establish, and maintain written standards and procedures to be applied by service providers to assure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c) and 796e)

'365.31 What are the standards for service providers?

(a) The DSU shall develop, establish, make available to the public, maintain, and implement written minimum standards for the provision of--

(1) IL services to be met by service providers that are not centers; and

(2) Specialized IL services to individuals with significant disabilities by centers under a contract with the DSU.

(b) The minimum standards developed pursuant to paragraph (a)(2) of this section may differ from the standards and assurances in section 725 of the Act and Subparts F and G of 34 CFR Part 366.

(c) The DSU shall assure that participating service providers meet all applicable State licensure or certification requirements.

(Approved by the Office of Management and Budget under control number 1820-0527.)

(Authority: 29 U.S.C. 711(c))

PART 366--CENTERS FOR INDEPENDENT LIVING

Subpart A--General

Sec.

366.1 What is the Centers for Independent Living (CIL) program?

366.2 What agencies are eligible for assistance under the CIL program?

366.3 What activities may the Secretary fund?

366.4 What regulations apply?

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- 366.21 What are the application requirements for existing eligible agencies?
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- 366.26 How does the Secretary evaluate an application?
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- 366.32 Under what circumstances may the DSU make grants?
- 366.33 What are the application requirements for existing eligible agencies?
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- 366.45 What must a Director do upon receipt of a copy of a center's formal written appeal to the Secretary?
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- 366.50 What assurances shall a center provide and comply with?
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AUTHORITY: 29 U.S.C. 796f through 796f-5, unless otherwise noted.

Subpart A - General

'366.1 What is the Centers for Independent Living (CIL) program?

The CIL program provides financial assistance for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725(b) and (c) of the Act, consistent with the design included in the State plan pursuant to 34 CFR 364.25 for establishing a statewide network of centers.

(Authority: 29 U.S.C. 796f, 796f-1(a)(2), and 796f-2(a)(1)(A)(ii))

'366.2 What agencies are eligible for assistance under the CIL program?

(a) In any State in which the Secretary has approved the State plan required by section 704 of the Act, an applicant may receive a grant under Subparts C or D of this part, as applicable, if the applicant demonstrates in its application submitted pursuant to '366.21, 366.24, 366.33, 366.35, or 366.36 that it--

(1) Has the power and authority to--

(i) Carry out the purpose of Part C of Title VII of the Act and perform the functions listed in section 725(b) and (c) of the Act and Subparts F and G of this part within a community located within that State or in a bordering State; and

(ii) Receive and administer--

(A) Funds under this part;

(B) Funds and contributions from private or public sources that may be used in support of a center; and

(C) Funds from other public and private programs; and

(2) Is able to plan, conduct, administer, and evaluate a center consistent with the standards and assurances in section 725(b) and (c) of the Act and Subparts F and G of this part.

(b) An applicant that meets the requirements of paragraph (a) of this section is eligible to apply as a new center under '366.24 or 366.36 if it--

(1) Is not receiving funds under Part C of Chapter 1 of Title VII of the Act; or

(2) Proposes the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) at a different geographical location; and

(3) Meets the requirements of '366.24;

(c) A State that received assistance in fiscal year (FY) 1993 to directly operate a center in accordance with section 724(a) of the Act is eligible to continue to receive assistance under this part to directly operate that center for FY 1994 or a succeeding fiscal year if, for the fiscal year for which assistance is sought--

(1) No nonprofit private agency submits and obtains approval of an acceptable application under sections 722 or 723 of the Act or '366.21 or '366.24 to operate a center for that fiscal year before a date specified by the Secretary; or

(2) After funding all applications so submitted and approved, the Secretary determines that funds remain available to provide that assistance.

(d) Except for the requirement that the center be a private nonprofit agency, a center that is operated by a State that receives assistance under paragraph (a), (b), or (c) of this section shall comply with all of the requirements of Part C of Title VII of the Act and the requirements in Subparts C or D, as applicable, and F of this part.

(e) Eligibility requirements for assistance under Subpart B of this part are described in '366.10.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c), 796f-1(b) and (d) (3), 796f-2(b), and 796f-3(a) (2) and (b))

'366.3 What activities may the Secretary fund?

(a) An eligible agency may use funds awarded under Subpart B of this part to carry out activities described in '366.11(b).

(b) An eligible agency may use funds awarded under Subparts C and D of this part to--

(1) Plan, conduct, administer, and evaluate centers that comply with the standards and assurances in section 725(b) and (c) of the Act;

(2) Promote and practice the independent living (IL) philosophy in accordance with Evaluation Standard 1 ("Philosophy");

(3) Provide IL services (including IL core services and, as appropriate, a combination of any other IL services specified in section 7(30)(B) of the Act) to individuals with a range of significant disabilities in accordance with Evaluation Standards 2 and 5 ("Provision of services" and "Independent living core services," respectively);

(4) Facilitate the development and achievement of IL goals selected by individuals with significant disabilities who seek assistance in the development and achievement of IL goals from the center in accordance with Evaluation Standard 3 ("Independent living goals");

(5) Increase the availability and improve the quality of community options for independent living in order to facilitate the development and achievement of IL goals by individuals with

significant disabilities in accordance with Evaluation Standard 4 ("Community options");

(6) Increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities in accordance with Evaluation Standard 6 ("Activities to increase community capacity");

(7) Conduct resource development activities to obtain funding from sources other than Chapter 1 of Title VII of the Act in accordance with Evaluation Standard 7 (Resource development activities); and

(8) Conduct activities necessary to comply with the assurances in section 725(c) of the Act, including, but not limited to the following:

(i) Aggressive outreach regarding services provided through the center in an effort to reach populations of individuals with significant disabilities that are unserved or underserved by programs under Title VII of the Act, especially minority groups and urban and rural populations.

(ii) Training for center staff on how to serve unserved and underserved populations, including minority groups and urban and rural populations.

(9) Cross-reference: See '366.71 in Subpart G.

(Authority: 29 U.S.C. 796f through 796f-4)

'366.4 What regulations apply?

The following regulations apply to the CIL program:

(a) The regulations in 34 CFR Part 364.

(b) The regulations in this Part 366.

(Authority: 29 U.S.C. 711(c) and 796f-796f-5)

'366.5 How are program funds allotted?

(a) The Secretary allots Federal funds appropriated for FY 1994 and subsequent fiscal years for the CIL program to each State in accordance with the requirements of section 721 of the Act.

(b)(1) After the Secretary makes the reservation required by section 721(b) of the Act, the Secretary makes an allotment, from the remainder of the amount appropriated for a fiscal year to carry out Part C of Title VII of the Act, to each State whose State plan has been approved under section 706 of the Act and 34 CFR Part 364.

(2) The Secretary makes the allotment under paragraph (b)(1) of this section subject to sections 721(c)(1)(B) and (C), 721(c)(2) and (3), and 721(d) of the Act.

(Authority: 29 U.S.C. 796f)

Subpart B--Training and Technical Assistance

'366.10 What agencies are eligible for assistance to provide training and technical assistance?

Entities that have experience in the operation of centers are eligible to apply for grants to provide training and technical assistance under section 721(b) of the Act to eligible agencies, centers, and Statewide Independent Living Councils (SILCs).

(Authority: 29 U.S.C. 796f(b)(1))

'366.11 What financial assistance does the Secretary provide for training and technical assistance?

(a) From funds, if any, reserved under section 721(b)(1) of the Act to carry out the purposes of this subpart, the Secretary makes grants to, and enters into contracts, cooperative agreements, and other arrangements with, entities that have experience in the operation of centers.

(b) An entity receiving assistance in accordance with paragraph (a) of this section shall provide training and technical assistance to eligible agencies, centers, and SILCs to plan, develop, conduct, administer, and evaluate centers.

(Authority: 29 U.S.C. 796f(b)(1)-(3))

'366.12 How does the Secretary make an award?

(a) To be eligible to receive a grant or enter into a contract or other arrangement under section 721(b) of the Act and this subpart, an applicant shall submit an application to the Secretary containing a proposal to provide training and technical assistance to eligible agencies, centers, and SILCs and any additional information at the time and in the manner that the Secretary may require.

(b) The Secretary provides for peer review of grant applications by panels that include persons who are not Federal government employees and who have experience in the operation of centers.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796f(b))

'366.13 How does the Secretary determine funding priorities?

In making awards under this section, the Secretary determines funding priorities in accordance with the training and technical assistance needs identified by the survey of SILCs and centers required by section 721(b)(3) of the Act.

(Authority: 29 U.S.C. 796f(b)(3))

'366.14 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant under this subpart on the basis of the criteria in '366.15.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 796f(b)(3))

'366.15 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate applications for new awards for training and technical assistance:

(a) Meeting the purposes of the program (30 points). The Secretary reviews each application to determine how well the project will be able to meet the purpose of the program of providing training and technical assistance to eligible agencies, centers, and SILCs with respect to planning, developing, conducting, administering, and evaluating centers, including consideration of--

(1) The objectives of the project; and

(2) How the objectives further training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers.

(b) Extent of need for the project (20 points). The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in Title VII of the Act, including consideration of--

- (1) The needs addressed by the project;
- (2) How the applicant identified those needs;
- (3) How those needs will be met by the project; and
- (4) The benefits to be gained by meeting those needs.

(c) Plan of operation (15 points). The Secretary reviews each application for information that shows the quality of the plan of operation for the project, including--

- (1) The quality of the design of the project;
- (2) The extent to which the plan of management ensures proper and efficient administration of the project;
- (3) How well the objectives of the project relate to the purpose of the program;
- (4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and
- (5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) Quality of key personnel (7 points).

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project, including--

- (i) The qualifications of the project director, if one is to be used;
- (ii) The qualifications of each of the other management and decision-making personnel to be used in the project;
- (iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project;

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including members of racial or ethnic minority groups, women, persons with disabilities, and elderly individuals.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers--

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(e) Budget and cost effectiveness (5 points). The Secretary reviews each application for information that shows the extent to which--

- (1) The budget is adequate to support the project; and
- (2) Costs are reasonable in relation to the objectives of the project.

(f) Evaluation plan (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation--

- (1) Are appropriate to the project;
- (2) Will determine how successful the project is in meeting its goals and objectives; and
- (3) Are objective and produce data that are quantifiable.
- (4) Cross-reference: See 34 CFR 75.590.

(g) Adequacy of resources (3 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) Extent of prior experience (15 points). The Secretary reviews each application to determine the extent of experience the applicant has in the operation of centers and with providing training and technical assistance to centers, including--

- (1) Training and technical assistance with planning, developing, and administering centers;
- (2) The scope of training and technical assistance provided, including methods used to conduct training and technical assistance for centers;
- (3) Knowledge of techniques and approaches for evaluating centers; and
- (4) The capacity for providing training and technical assistance as demonstrated by previous experience in these areas.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796f(b))
Subpart C - Grants to Centers for Independent Living (Centers) in States in Which Federal Funding Exceeds State Funding

'366.20 When does the Secretary award grants to centers?

The Secretary awards grants to centers in a State in a fiscal year if--

(a) The amount of Federal funds allotted to the State under section 721(c) and (d) of the Act to support the general operation of centers is greater than the amount of State funds earmarked for the same purpose, as determined pursuant to '366.29 and 366.31; or

(b) The Director of a designated State unit (DSU) does not submit to the Secretary and obtain approval of an application to award grants under section 723 of the Act and '366.32(a) and (b).

(Authority: 29 U.S.C. 796f-1 and 796f-2(a)(2))

'366.21 What are the application requirements for existing eligible agencies?

To be eligible for assistance, an eligible agency shall submit--

(a) An application at the time, in the manner, and containing the information that is required;

(b) An assurance that the eligible agency meets the requirements of '366.2; and

(c) The assurances required by section 725(c) of the Act and Subpart F of this part.
(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 796f-1(b))

'366.22 What is the order of priorities?

(a) In accordance with a State's allotment and to the extent funds are available, the order of priorities for allocating funds among centers within a State is as follows:

(1) Existing centers, as described in '366.23, that comply with the standards and assurances in section 725(b) and (c) of the Act and Subparts F and G of this part first receive the level of funding each center received in the previous year. However, any funds received by an existing center to establish a new center at a different geographical location pursuant to proposed '366.2(b)(2) are not included in determining the level of funding to the existing center in any fiscal year that the new center applies for and receives funds as a separate center.

(2) Existing centers that meet the requirements of paragraph (a)(1) of this section then receive a cost-of-living increase in accordance with procedures consistent with section 721(c)(3) of the Act.

(3) New centers, as described in '366.2(b), that comply with the standards and assurances in section 725(b) and (c) of the Act and Subparts F and G of this part.

(b) If, after meeting the priorities in paragraphs (a)(1) and (2) of this section, there are insufficient funds under the State's allotment under section 721(c) and (d) of the Act to fund a new center under paragraph (a)(3) of this section, the Secretary may--

(1) Use the excess funds in the State to assist existing centers consistent with the State plan; or

(2) Reallot these funds in accordance with section 721(d) of the Act.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796f-1(e))

'366.23 What grants must be made to existing eligible agencies?

(a) In accordance with the order of priorities established in '366.22, an eligible agency may receive a grant if the eligible agency demonstrates in its application that it--

(1) Meets the requirements in '366.21 or '366.24;

(2) Is receiving funds under Part C of Title VII of the Act on September 30, 1993; and

(3) Is in compliance with the program and fiscal standards and assurances in section 725(b) and (c) of the Act and Subparts F and G of this part. (The indicators of minimum compliance in Subpart G of this part are used to determine compliance with the evaluation standards in section 725(b) of the Act.)

(b) For purposes of this section, an eligible agency is receiving funds under Part C of Title VII of the Act on September 30, 1993, if it was awarded a grant on or before that date, i.e., during FY 1993.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 796f-1(c))

'366.24 How is an award made to a new center?

(a) To apply for a grant as a new center, an eligible agency shall--

(1) Meet the requirements of '366.2(b);

(2) Submit an application that meets the requirements of '366.21; and

(3) Meet the requirements of this section.

(b) Subject to the order of priorities established in '366.22, a grant for a new center may be awarded to the most qualified eligible agency that applies for funds under this section, if--

(1)(i) No center serves a geographic area of a State; or

(ii) A geographic area of a State is underserved by centers serving other areas of the State;

(2) The eligible agency proposes to serve the geographic area that is unserved or underserved in the State; and

(3) The increase in the allotment of the State under section 721 of the Act for a fiscal year, as compared with the immediately preceding fiscal year, is sufficient to support an additional center in the State.

(c) The establishment of a new center under this subpart must be consistent with the design included in the State plan pursuant to 34 CFR 364.25 for establishing a statewide network of centers.

(d) An applicant may satisfy the requirements of paragraph (c) of this section by submitting appropriate documentation demonstrating that the establishment of a new center is consistent with the design in the State plan required by 34 CFR 364.25.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 796f-1(d))

'366.25 What additional factor does the Secretary use in making a grant for a new center under '366.24?

In selecting from among applicants for a grant under '366.24 for a new center, the Secretary considers comments regarding the application, if any, by the SILC in the State in which the applicant is located.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 796f-1(d)(1))

'366.26 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant under this subpart on the basis of the criteria in '366.27.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 796f(b)(3))

'366.27 What selection criteria does the Secretary use?

In evaluating each application for a new center under this part, the Secretary uses the following selection criteria:

(a) Extent of the need for the project (20 points).

(1) The Secretary reviews each application for persuasive evidence that shows the extent to which the project meets the specific needs for the program, including considerations of--

(i) The needs addressed by the project;

(ii) How the applicant identified those needs (e.g., whether from the 1990 census data or other current sources);

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary looks for information that shows that the need for the center has been established based on an assessment of the ability of existing programs and facilities to meet the need for IL services of individuals with significant disabilities in the geographic area to be served.

(3) The Secretary looks for information that shows--

(i) That the applicant proposes to establish a new center to serve a priority service area that is identified in the current State plan; and

(ii) The priority that the State has placed on establishing a new center in this proposed service area.

(b) Past performance (5 points). The Secretary reviews each application for information that shows the past performance of the applicant in successfully providing services comparable to the IL core services and other IL services listed in section 7(29) and (30) of the Act and 34 CFR 365.21 and 365.22 and other services that empower individuals with significant disabilities.

(c) Meeting the standards and the assurances (25 points). The Secretary reviews each application for information that shows--

(1) Evidence of demonstrated success in satisfying, or a clearly defined plan to satisfy, the standards in section 725(b) of the Act and Subpart G of this part; and

(2) Convincing evidence of demonstrated success in satisfying, or a clearly defined plan to satisfy, the assurances in section 725(c) of the Act and Subpart F of this part.

(d) Quality of key personnel (10 points).

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project, including--

(i) The qualifications of the project director, if one is to be used;

(ii) The qualifications of each of the other management and decision-making personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project;

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for

employment from persons who are members of groups that have been traditionally under-represented, including--

- (A) Members of racial or ethnic minority groups;
- (B) Women;
- (C) Persons with disabilities; and
- (D) Elderly individuals.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers--

- (i) Experience and training in fields related to the objectives of the project; and
- (ii) Any other qualifications that pertain to the objectives of the project.

(e) Budget and cost effectiveness (10 points). The Secretary reviews each application for information that shows the extent to which--

- (1) The budget is adequate to support the project; and
- (2) Costs are reasonable in relation to the objectives of the project.

(f) Evaluation plan (5 points). The Secretary reviews each application for information that shows the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation--

- (1) Are appropriate for the project;
 - (2) Will determine how successful the project is in meeting its goals and objectives; and
 - (3) Are objective and produce data that are quantifiable.
- (4) Cross-reference: See 34 CFR 75.590.

(g) Plan of operation (20 points). The Secretary reviews each application for information that shows the quality of the plan of operation for the project, including--

- (1) The quality of the design of the project;
- (2) The extent to which the plan of management ensures proper and efficient administration of the project;
- (3) How well the objectives of the project relate to the purpose of the program;
- (4) The quality and adequacy of the applicant's plan to use its resources (including funding, facilities, equipment, and supplies) and personnel to achieve each objective;
- (5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability; and

(6) A clear description of how the applicant will provide equal access to services for eligible project participants who are members of groups that have been traditionally under-represented, including--

- (i) Members of racial or ethnic minority groups;
- (ii) Women;
- (iii) Elderly individuals; and
- (iv) Children and youth.

(h) Involvement of individuals with significant disabilities (5 points).

(1) The Secretary reviews each application for information that shows that individuals with significant disabilities are appropriately involved in the development of the application.

(2) The Secretary looks for information that shows that individuals with significant disabilities or their parents, guardians, or other legally authorized advocates or representatives, as appropriate, will be substantially involved in planning, policy direction, and management of the center, and, to the greatest extent possible, that individuals with significant disabilities will be employed by the center.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 796f-1(d) (2) (B))

'366.28 Under what circumstances may the Secretary award a grant to a center in one State to serve individuals in another State?

(a) The Secretary may use funds from the allotment of one State to award a grant to a center located in a bordering State if the Secretary determines that the proposal of the out-of-State center to serve individuals with significant disabilities who reside in the bordering State is consistent with the State plan of the State in which these individuals reside.

(b) An applicant shall submit documentation demonstrating that the arrangements described in paragraph (a) of this section are consistent with the State plan of the State in which the individuals reside.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796f(c) and (d))

Subpart D--Grants to Centers in States in Which State Funding Equals or Exceeds Federal Funding

DETERMINING WHETHER STATE FUNDING EQUALS
OR EXCEEDS FEDERAL FUNDING

'366.29 When may the Director of the designated State unit (DSU) award grants to centers?

(a) The Director of the DSU (Director) may award grants under section 723 of the Act and this subpart to centers located within the State or in a bordering State in a fiscal year if--

(1) The Director submits to the Secretary and obtains approval of an application to award grants for that fiscal year under section 723 of the Act and '366.32(a) and (b); and

(2) The Secretary determines that the amount of State funds that were earmarked by the State to support the general operation of centers meeting the requirements of Part C of Chapter 1 of Title VII of the Act in the second fiscal year preceding the fiscal year for which the application is submitted equaled or exceeded the amount of funds allotted to the State under section 721(c) and (d) of the Act (or Part B of Title VII of the Act as in effect on October 28, 1992) for that preceding fiscal year.

(b) For purposes of section 723(a)(1)(A)(iii) of the Act and this subpart, the second fiscal year preceding the fiscal year for which the State submits an application to administer the CIL program is considered the "preceding fiscal year." Example: If FY 1995 is the fiscal year for which the State submits an application to administer the CIL program under this subpart, FY 1993 is the "preceding fiscal year." In determining the "preceding fiscal year" under this subpart, the Secretary makes any adjustments necessary to accommodate a State's multi-year funding cycle or fiscal year that does not coincide with the Federal fiscal year.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 796f-2(a)(3))

'366.30 What are earmarked funds?

(a) For purposes of this subpart, the amount of State funds that were earmarked by a State to support the general operation of centers does not include--

(1) Federal funds used for the general operation of centers;

(2) State funds used to purchase specific services from a center, including State funds used for grants or contracts to procure or purchase personal assistance services or particular types of skills training;

(3) State attendant care funds; or

(4) Social Security Administration reimbursement funds.

(b) For purposes of this subpart, "earmarked funds" means funds appropriated by the State and expressly or clearly identified as State expenditures in the relevant fiscal year for the sole purpose of funding the general operation of centers.

(Authority: 29 U.S.C. 711(c) and 796f-2(a)(1)(A))

'366.31 What happens if the amount of earmarked funds does not equal or exceed the amount of Federal funds for a preceding fiscal year?

If the State submits an application to administer the CIL program under section 723 of the Act and this subpart for a fiscal year, but did not earmark the amount of State funds required by '366.29(a)(2) in the preceding fiscal year, the State shall be ineligible to make grants under section 723 of the Act and this subpart after the end of the fiscal year succeeding the preceding fiscal year and for each succeeding fiscal year. Example: A State meets the earmarking requirement in FY 1994. It also meets this requirement in FY 1995. However, in reviewing the State's application to administer the CIL program in FY 1998, the Secretary determines that the State failed to meet the earmarking requirement in FY 1996. The State may continue to award grants in FY 1997 but may not do so in FY 1998 and succeeding fiscal years.

(Authority: 29 U.S.C. 796f-2(a)(1)(B))

AWARDING GRANTS

'366.32 Under what circumstances may the DSU make grants?

(a) To be eligible to award grants under this subpart and to carry out section 723 of the Act for a fiscal year, the Director must submit to the Secretary for approval an application at the time and in the manner that the Secretary may require and that includes, at a minimum--

(1) Information demonstrating that the amount of funds earmarked by the State for the general operation of centers meets the requirements in '366.29(a)(1); and

(2) A summary of the annual performance reports submitted to the Director from centers in accordance with '366.50(n).

(b) If the amount of funds earmarked by the State for the general operation of centers meets the requirements in '366.29(a)(1), the Secretary approves the application and designates the Director to award the grants and carry out section 723 of the Act.

(c) If the Secretary designates the Director to award grants and carry out section 723 of the Act under paragraph (b) of this section, the Director makes grants to eligible agencies in a State, as described in '366.2, for a fiscal year from the amount of funds allotted to the State under section 721(c) and (d) of the Act.

(d)(1) In the case of a State in which there is both a DSU responsible for providing IL services to the general population and a DSU responsible for providing IL services for individuals who are blind, for purposes of Subparts D and E of this part, the "Director" shall be the Director of the general DSU.

(2) The State units described in paragraph (d)(1) of this section shall periodically consult with each other with respect to the provision of services for individuals who are blind.

(e) The Director may enter into assistance contracts with centers to carry out section 723 of the Act. For purposes of this paragraph, an assistance contract is an instrument whose principal purpose is to transfer funds allotted to the State under section 721(c) and (d) of the Act and this part to an eligible agency to carry out section 723 of the Act. Under an assistance contract, the DSU shall assume a role consistent with that of the Secretary under section 722 of the Act. If the DSU uses an assistance contract to award funds under section 723 of the Act, the DSU may not add any requirements, terms, or conditions to the assistance contract other than those that would be permitted if the assistance contract were a grant rather than an assistance contract. Under an assistance contract, as defined in this paragraph, the role of the DSU is to ensure that the terms of the assistance contract, which are established by Chapter 1 of Title VII of the Act and the implementing regulations in this part and 34 CFR Part 364, are satisfied.

(f) The Director may not enter into procurement contracts with centers to carry out section 723 of the Act. For purposes of this paragraph, a procurement contract is an instrument whose principal purpose is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the DSU. Under a procurement contract, the DSU prescribes the specific services it intends to procure and the terms and conditions of the procurement.

(g) In the enforcement of any breach of the terms and conditions of an assistance contract, the DSU shall follow the procedures established in '366.40 through 366.45.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796f-2(a)(2))

'366.33 What are the application requirements for existing eligible agencies?

To be eligible for assistance under this subpart, an eligible agency shall comply with the requirements in '366.21.
(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 796f-2(b))

'366.34 What is the order of priorities?

(a) Unless the Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC, jointly agree on another order of priorities, the Director shall follow the order of priorities in '366.22 for allocating funds among centers within a State, to the extent funds are available.

(b) If the order of priorities in '366.22 is followed and, after meeting the priorities in '366.22(a)(1) and (2), there are insufficient funds under the State's allotment under section 721(c) and (d) of the Act to fund a new center under '366.22(a)(3), the Director may--

(1) Use the excess funds in the State to assist existing centers consistent with the State plan; or

(2) Return these funds to the Secretary for reallocation in accordance with section 721(d) of the Act.

(Authority: 29 U.S.C. 711(c) and 796f-2(e))

'366.35 What grants must be made to existing eligible agencies?

In accordance with the order of priorities established in '366.34(a), an eligible agency may receive a grant under this subpart if the eligible agency meets the applicable requirements in '366.2, 366.21, and 366.23.

(Authority: 29 U.S.C. 796f-2(c))

'366.36 How is an award made to a new center?

To be eligible for a grant as a new center under this subpart, an eligible agency shall meet the requirements for a new center in '366.2(b) and 366.24, except that the award of a grant to a new center under this section is subject to the order of priorities in '366.34(a).

(Authority: 29 U.S.C. 796f-2(d))

'366.37 What procedures does the Director of the DSU (Director) use in making a grant for a new center?

(a) In selecting from among applicants for a grant for a new center under '366.24 of this subpart--

(1) The Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC, shall jointly appoint a peer review committee that shall rank applications in accordance with the standards and assurances in section 725(b) and (c) of the Act and Subparts F and G of this part and any criteria jointly established by the Director and the chairperson or other designated individual;

(2) The peer review committee shall consider the ability of each applicant to operate a center and shall recommend an applicant to receive a grant under this subpart, based on either the selection criteria in '366.27 or the following:

(i) Evidence of the need for a center, consistent with the State plan.

(ii) Any past performance of the applicant in providing services comparable to IL services.

(iii) The plan for complying with, or demonstrated success in complying with, the standards and the assurances in section 725(b) and (c) of the Act and Subparts F and G of this part.

(iv) The quality of key personnel of the applicant and the involvement of individuals with significant disabilities by the applicant.

(v) The budget and cost-effectiveness of the applicant.

(vi) The evaluation plan of the applicant.

(vii) The ability of the applicant to carry out the plans identified in paragraphs (a)(2)(iii) and (vi) of this section.

(b) The Director 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.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 796f-2(d)(2))

'366.38 What are the procedures for review of centers?

(a) The Director shall, in accordance with section 723(g)(1) and (h) of the Act, periodically review each center receiving funds under section 723 of the Act to determine whether the center is in compliance with the standards and assurances in section 725(b) and (c) of the Act and Subparts F and G of this part.

(b) The periodic reviews of centers required by paragraph (a) of this section must include annual on-site compliance reviews of at least 15 percent of the centers assisted under section 723 of the Act in that State in each year.

(c) Each team that conducts an on-site compliance review of a center shall include at least one person who is not an employee of the designated State agency, who has experience in the operation of centers, and who is jointly selected by the Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC.

(d) A copy of each review under this section shall be provided to the Secretary and the SILC.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796f-2(g)(1) and (h))

Subpart E--Enforcement and Appeals Procedures

'366.39 What procedures does the Secretary use for enforcement?

(a) If the Secretary determines that any center receiving funds under this part is not in compliance with the standards and assurances in section 725(b) and (c) of the Act and Subparts F and G of this part, the Secretary immediately notifies the center, by certified mail, return receipt requested, or other means that provide proof of receipt, that the center is out of compliance. The Secretary also offers technical assistance to the center to develop a corrective action plan to comply with the standards and assurances.

(b) The Secretary terminates all funds under section 721 of the Act to that center 90 days after the date of the notification required by paragraph (a) of this section unless--

(1) The center submits, within 90 days after receiving the notification required by paragraph (a) of this section, a corrective action plan to achieve compliance that is approved by the Secretary; or

(2) The center requests a hearing pursuant to paragraph (c) or (d) of this section.

(c) If the Secretary does not approve a center's corrective action plan submitted pursuant to paragraph (b)(1) of this section, the center has 30 days from receipt of the Secretary's written notice of disapproval of the center's corrective action plan to request a hearing by submitting a formal written request that gives the reasons why the center believes that the Secretary should have approved the center's corrective action plan.

(d) If the center does not submit a corrective action plan to the Secretary, the center has 90 days after receiving the notification required by paragraph (a) of this section to request a hearing by submitting a formal written request that gives the reasons why the center believes that the Secretary should have found the center in compliance with the standards and assurances in section 725(b) and (c) of the Act and Subparts F and G of this part.

(e) The date of filing a formal written request for a hearing to the Secretary under paragraph (c) or (d) of this section is determined in a manner consistent with the requirements of 34 CFR 81.12.

(f) The Secretary issues a written decision to terminate funds to the center if, after providing reasonable notice and an opportunity for a hearing, the Secretary finds that--

(1) The center receiving funds under this part is not in compliance with the standards and assurances in section 725(b) and (c) of the Act and Subparts F and G of this part; or

(2) The center's corrective action plan submitted under paragraph (b)(1) of this section cannot be approved.

(g) The Secretary's decision to terminate funds to a center pursuant to paragraph (f) of this section takes effect upon issuance. (Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796f-1(g))

'366.40 How does the Director initiate enforcement procedures?

(a) If the Director determines that any center receiving funds under this part is not in compliance with the standards and assurances in section 725(b) and (c) of the Act and Subparts F and G of this part, the Director shall immediately provide the center, by certified mail, return receipt requested, or other means that provide proof of receipt, with an initial written notice that the center is out of compliance with the standards and assurances and that the Director will terminate the center's funds or take other proposed significant adverse action against the center 90 days after the center's receipt of this initial written notice. The Director shall provide technical assistance to the center to develop a corrective action plan to comply with the standards and assurances.

(b) Unless the center submits, within 90 days after receiving the notification required by paragraph (a) of this section, a corrective action plan to achieve compliance that is approved by the Director or, if appealed, by the Secretary, the Director shall terminate all funds under section 723 of the Act to a center 90 days after the later of--

(1) The date that the center receives the initial written notice required by paragraph (a) of this section; or

(2) The date that the center receives the Secretary's final decision issued pursuant to '366.46(c) if--

(i) The center files a formal written appeal of the Director's final written decision pursuant to '366.44(a); or

(ii) The center files a formal written appeal of the decision described in the Director's initial written notice pursuant to '366.44(b).

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796f-2(g) and (i))

'366.41 What must be included in an initial written notice from the Director?

The initial written notice required by '366.40(a) must--

(a) Include, at a minimum, the following:

(1) The name of the center.

(2) The reason or reasons for proposing the termination of funds or other significant adverse action against the center, including any evidence that the center has failed to comply with any of the evaluation standards or assurances in section 725(b) and (c) of the Act and Subparts F and G of this part.

(3) The effective date of the proposed termination of funds or other significant adverse action against the center;

(b) Be given 90 days in advance of the date the Director intends to terminate a center's funds or take any other significant adverse action against the center;

(c) Inform the center that it has 90 days from the date the center receives the notice to submit a corrective action plan;

(d) Inform the center that it may seek mediation and conciliation in accordance with '366.40(a) to resolve any dispute with the Director within the 90 days before the proposed termination of funds or other significant adverse action against the center; and

(e) Inform the center that, if mediation and conciliation are not successful and the Director does not issue a final written decision pursuant to '366.42, the center may appeal to the Secretary the decision described in the Director's initial written notice on or after the 90th day, but not later than the 120th day, after the center receives the Director's initial decision.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796f-2(g) and (i))

'366.42 When does a Director issue a final written decision?

(a) If the center submits a corrective action plan in accordance with '366.40(b), the Director shall provide to the center, not later than the 120th day after the center receives the Director's initial written notice, a final written decision approving or disapproving the center's corrective action plan and informing the center, if appropriate, of the termination of the center's funds or any other proposed significant adverse action against the center.

(b) The Director shall send the final written decision to the center by registered or certified mail, return receipt requested, or other means that provide a record that the center received the Director's final written decision.

(c) A Director's final written decision to terminate funds or take any other adverse action against a center may not take effect until 30 days after the date that the center receives it.

(d) If a center appeals pursuant to '366.44(a), the Director's final written decision to terminate funds or take any other adverse action against a center does not take effect until the Secretary issues a final decision.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796f-2(g) and (i))

'366.43 What must be included in the Director's final written decision?

The Director's final written decision to disapprove a center's corrective action plan required by '366.42 must--

(a) Address any response from the center to the Director's initial written notice to terminate funds or take other significant adverse action against the center;

(b) Include a statement of the reasons why the Director could not approve the corrective action plan; and

(c) Inform the center of its right to appeal to the Secretary the Director's final written decision to terminate funds or take any other significant adverse action against the center.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796f-2(g) and (i))

'366.44 How does a center appeal a decision included in a Director's initial written notice or a Director's final written decision?

(a) To obtain the Secretary's review of a Director's final written decision to disapprove a center's corrective action plan submitted pursuant to '366.40(b), the center shall file, within 30 days from receipt of the Director's final written decision, a formal written appeal with the Secretary giving the reasons why the center believes that the Director should have approved the center's corrective action plan. (Cross-reference: See '366.42.)

(b) To obtain the Secretary's review of a decision described in a Director's initial written notice, a center that does not submit a corrective action plan to a Director shall file, in accordance with paragraph (c)(1)(i) of this section, a formal written appeal with the Secretary giving the reasons why the center believes that the Director should have found the center in compliance with the

standards and assurances in section 725(b) and (c) of the Act and Subparts F and G of this part.

(c) To appeal to the Secretary a decision described in a Director's initial written notice or a Director's final written decision to disapprove a center's corrective action plan and to terminate or take other significant adverse action, a center shall file with the Secretary--

(1) A formal written appeal--

(i) On or after the 90th day but not later than the 120th day following a center's receipt of a Director's initial written notice; or

(ii) On or before the 30th day after a center's receipt of the Director's final written decision to disapprove a center's corrective action plan and to terminate or take other significant adverse action;

(2) A copy of the corrective action plan, if any, submitted to the Director; and

(3) One copy each of any other written submissions sent to the Director in response to the Director's initial written notice to terminate funds or take other significant adverse action against the center.

(d) The date of filing a formal written appeal to the Secretary under paragraph (c) of this section is determined in a manner consistent with the requirements of 34 CFR 81.12.

(e) If the center files a formal written appeal with the Secretary, the center shall send a separate copy of this appeal to the Director by registered or certified mail, return receipt requested, or other means that provide a record that the Director received a separate copy of the center's written appeal.

(f) The center's formal written appeal to the Secretary must state why--

(1) The Director has not met the burden of showing that the center is not in compliance with the standards and assurances in section 725(b) and (c) of the Act and in Subparts F and G of this part;

(2) The corrective action plan, if any, should have been approved; or

(3) The Director has not met the procedural requirements of '366.40 through 366.45.

(g) As part of its submissions under this section, the center may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(h) A Director's decision to terminate funds that is described in an initial written notice or final written decision is stayed as of the date (determined pursuant to paragraph (d) of this section) that the center files a formal written appeal with the Secretary. (Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796f-2(g)(2) and (i))

'366.45 What must a Director do upon receipt of a copy of a center's formal written appeal to the Secretary?

(a) If the center files a formal written appeal in accordance with '366.44(c), the Director shall, within 15 days of receipt of the center's appeal, submit to the Secretary one copy each of the following:

(1) The Director's initial written notice to terminate funds or take any other significant adverse action against the center sent to the center.

(2) The Director's final written decision, if any, to disapprove the center's corrective action plan and to terminate the center's funds or take any other significant adverse action against the center.

(3) Any other written documentation or submissions the Director wishes the Secretary to consider.

(4) Any other information requested by the Secretary.

(b) As part of its submissions under this section, the Director may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796f-2(g)(2) and (i))

'366.46 How does the Secretary review a center's appeal of a decision included in a Director's initial written notice or a Director's final written decision?

(a) If either party requests a meeting under ''366.44(g) or 366.45(b), the meeting is to be held within 30 days of the date of the Secretary's receipt of the submissions from the Director that are required by '366.45(a). The Secretary promptly notifies the parties of the date and place of the meeting.

(b) Within 30 days of the informal meeting permitted under paragraph (a) of this section or, if neither party has requested an informal meeting, within 60 days of the date of receipt of the submissions required from the Director by '366.45(a), the Secretary issues to the parties the Secretary's decision.

(c) The Secretary reviews a decision included in a Director's initial written notice or a Director's final written decision to disapprove the center's corrective action plan and to terminate the center's funds or take any other significant adverse action against the center based on the record submitted under ''366.44 and 366.45 and may affirm or, if the Secretary finds that the decision included in a Director's initial written notice or a Director's final written decision is not supported by the evidence or is not in accordance with the law, may--

(1) Remand the appeal for further findings; or

(2) Reverse the decision described in the Director's initial written notice or the Director's final written decision to disapprove the center's corrective action plan and to terminate funds or take any other significant adverse action against the center.

(d) The Secretary sends copies of his or her decision to the parties by registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

(e) If the Secretary affirms the decision described in a Director's initial written notice or the Director's final written decision, the Director's decision takes effect on the date of the Secretary's final decision to affirm.

(Authority: 29 U.S.C. 711(c) and 796f-2(g)(2) and (i))

Subpart F--Assurances for Centers

'366.50 What assurances shall a center provide and comply with?

To be eligible for assistance under this part, an eligible agency shall provide satisfactory assurances that--

(a) The applicant is an eligible agency;

(b) 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 must be composed of individuals with significant disabilities;

(c) The applicant will comply with the standards in Subpart G;

(d) The applicant will establish clear priorities through--

(1) Annual and three-year program and financial planning objectives for the center, including overall goals or a mission for the center;

(2) A work plan for achieving the goals or mission, specific objectives, service priorities, and types of services to be provided; and

(3) A description that demonstrates how the proposed activities of the applicant are consistent with the most recent three-year State plan under section 704 of the Act;

(e) 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 of the Act;

(f) The applicant will ensure that the majority of the staff, and individuals in decision-making positions, of the applicant are individuals with disabilities;

(g) The applicant will practice sound fiscal management, including making arrangements for an annual independent fiscal audit;

(h) The applicant will conduct an annual self-evaluation, prepare an annual performance report, and maintain records adequate to measure performance with respect to the standards in Subpart G;

(i) The annual performance report and the records of the center's performance required by paragraph (h) of this section must each contain information regarding, at a minimum--

(1) The extent to which the center is in compliance with the standards in section 725(b) of the Act and Subpart G of this part (Cross-reference: See ''366.70(a)(2) and 366.73);

(2) The number and types of individuals with significant disabilities receiving services through the center;

(3) The types of services provided through the center and the number of individuals with significant disabilities receiving each type of service;

(4) The sources and amounts of funding for the operation of the center;

(5) The number of individuals with significant disabilities who are employed by, and the number who are in management and decision-making positions in, the center;

(6) The number of individuals from minority populations who are employed by, and the number who are in management and decision-making positions in, the center; and

(7) A comparison, if appropriate, of the activities of the center in prior years with the activities of the center in most recent years;

(j) 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;

(k) 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 Title VII of the Act, especially minority groups and urban and rural populations;

(l) Staff at centers will receive training on how to serve unserved and underserved populations, including minority groups and urban and rural populations;

(m) The center will submit to the SILC a copy of its approved grant application and the annual performance report required under paragraph (h) of this section;

(n) The center will prepare and submit to the DSU, if the center received a grant from the Director, or to the Secretary, if the center received a grant from the Secretary, within 90 days of the end of each fiscal year, the annual performance report that is required to be prepared pursuant to paragraph (h) of this section and that contains the information described in paragraph (i) of this section; and

(o) An IL plan as described in section 704(e) of the Act will be developed for each individual who will receive services under this part unless the individual signs a waiver stating that an IL plan is unnecessary.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 796f-4)

PART 367--INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

Subpart A--General

Sec.

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- 367.41 When may a DSA award grants or contracts?
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AUTHORITY: 29 U.S.C. 796k, unless otherwise noted.

Subpart A--General

'367.1 What is the Independent Living Services for Older Individuals Who Are Blind program?

This program supports projects that--

- (a) Provide any of the independent living (IL) services to older individuals who are blind that are described in '367.3(b);
- (b) Conduct activities that will improve or expand services for these individuals; and
- (c) Conduct activities to help improve public understanding of the problems of these individuals.

(Authority: 29 U.S.C. 796k(a) and (b))

'367.2 Who is eligible for an award?

Any designated State agency (DSA) is eligible for an award under this program if the DSA--

- (a) Is authorized to provide rehabilitation services to individuals who are blind; and

(b) Submits to and obtains approval from the Secretary of an application that meets the requirements of section 752(i) of the Act and '367.10 and 367.11.

(Authority: 29 U.S.C. 796k(a)(2))

'367.3 What activities may the Secretary fund?

(a) The DSA may use funds awarded under this part for the activities described in '367.1 and paragraph (b) of this section.

(b) For purposes of '367.1(a), IL services for older individuals who are blind include--

(1) Services to help correct blindness, such as--

(i) Outreach services;

(ii) Visual screening;

(iii) Surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions; and

(iv) Hospitalization related to these services;

(2) The provision of eyeglasses and other visual aids;

(3) The provision of services and equipment to assist an older individual who is blind to become more mobile and more self-sufficient;

(4) Mobility training, Braille instruction, and other services and equipment to help an older individual who is blind adjust to blindness;

(5) Guide services, reader services, and transportation;

(6) Any other appropriate service designed to assist an older individual who is blind in coping with daily living activities, including supportive services and rehabilitation teaching services;

(7) IL skills training, information and referral services, peer counseling, and individual advocacy training; and

(8) Other IL services, as defined in section 7(30) of the Act and as listed in 34 CFR 365.22.

(Authority: 29 U.S.C. 796k(d) and (e))

'367.4 What regulations apply?

The following regulations apply to the Independent Living Services for Older Individuals Who Are Blind program:

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

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), with respect to subgrants to an entity that is not a State or local government or Indian tribal organization.

(2) 34 CFR Part 75 (Direct Grant Programs), with respect to grants under Subpart C.

(3) 34 CFR Part 76 (State-Administered Programs), with respect to grants under Subpart D.

(4) 34 CFR Part 77 (Definitions That Apply to Department Regulations).

(5) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(7) 34 CFR Part 81 (General Education Provisions Act--Enforcement).

(8) 34 CFR Part 82 (New Restrictions on Lobbying).

(9) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 367.

(c) The following provisions in 34 CFR Part 364:

(1) Section 364.4 (What definitions apply?).

(2) Section 364.5 (What is program income and how may it be used?)

(3) Section 364.6 (What requirements apply to the obligation of Federal funds and program income?)

(4) Section 364.30 (What notice must be given about the Client Assistance Program (CAP)?).

(5) Section 364.37 (What access to records must be provided?).

(6) Section 364.56 (What are the special requirements pertaining to the protection, use, and release of personal information?).

(d) The following provisions in 34 CFR Part 365:

(1) Section 365.13 (What requirements apply if the State's non-Federal share is in cash?).

(2) Section 365.14 (What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?).

(3) Section 365.15 (What requirements apply if the State's non-Federal share is in kind?).

(4) Section 365.16 (What requirements apply to refunds and rebates?).

(Authority: 29 U.S.C. 711(c) and 796k)

'367.5 What definitions apply?

In addition to the definitions in 34 CFR 364.4, the following definitions also apply to this part:

Independent living services for older individuals who are blind means those services listed in '367.3(b).

Older individual who is blind means an individual age fifty-five or older whose severe visual impairment makes competitive employment extremely difficult to obtain but for whom IL goals are feasible.

(Authority: 29 U.S.C. 711(c) and 796j)

Subpart B--What Are the Application Requirements?

'367.10 How does a designated State agency (DSA) apply for an award?

To receive a grant under section 752(i) or a reallocation grant under section 752(j) (4) of the Act, a DSA must submit to and obtain approval from the Secretary of an application for assistance under this program at the time, in the form and manner, and containing the agreements, assurances, and information, that the Secretary determines to be necessary to carry out this program.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 796k(c) (2) and (i) (1))

'367.11 What assurances must a DSA include in its application?

An application for a grant under section 752(i) or a reallocation grant under section 752(j) (4) of the Act must contain an assurance that--

(a) Grant funds will be expended only for the purposes described in '367.1;

(b) With respect to the costs of the program to be carried out by the State pursuant to this part, the State will make available, directly or through donations from public or private entities, non-Federal contributions toward these costs in an amount that is not less than \$1 for each \$9 of Federal funds provided in the grant;

(c) In carrying out '367.1(a) and (b), and consistent with 34 CFR 364.28, the DSA will seek to incorporate into and describe in the State plan under section 704 of the Act any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded under this part and that the DSA determines to be effective;

(d) At the end of each fiscal year, the DSA will prepare and submit to the Secretary a report, with respect to each project or program the DSA operates or administers under this part, whether directly or through a grant or contract, that contains, information that the Secretary determines necessary for the proper and efficient administration of this program, including--

(1) The number and types of older individuals who are blind, including older individuals who are blind from minority backgrounds, and are receiving services;

(2) The types of services provided and the number of older individuals who are blind and are receiving each type of service;

(3) The sources and amounts of funding for the operation of each project or program;

(4) The amounts and percentages of resources committed to each type of service provided;

(5) Data on actions taken to employ, and advance in employment, qualified--

(i) Individuals with significant disabilities;

(ii) Older individuals with significant disabilities who are blind;

(iii) Individuals who are members of racial or ethnic minority groups;

(iv) Women; and

(v) Elderly individuals;

(6) A comparison, if appropriate, of prior year activities with the activities of the most recent year; and

(7) Any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded under this part;

(e) The DSA will--

(1) Provide services that contribute to the maintenance of, or the increased independence of, older individuals who are blind; and

(2) Engage in--

(i) Capacity-building activities, including collaboration with other agencies and organizations;

(ii) Activities to promote community awareness, involvement, and assistance; and

(iii) Outreach efforts;

(f) The application is consistent with the State plan for providing IL services required by section 704 of the Act and Subpart C of 34 CFR Part 364; and

(g) The applicant has been designated by the State as the sole State agency authorized to provide rehabilitation services to individuals who are blind.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 711(c) and 796k(d), (f), (h), and (i))
Subpart C--How Does the Secretary Award Discretionary Grants on a Competitive Basis?

'367.20 Under what circumstances does the Secretary award discretionary grants on a competitive basis to States?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is less than \$13,000,000, the Secretary awards discretionary grants under this part on a competitive basis to States.

(b) Subparts A, B, C, and E of this part govern the award of competitive grants under this part.

(Authority: 29 U.S.C. 796k(b)(1))

'367.21 How does the Secretary evaluate an application for a discretionary grant?

(a) The Secretary evaluates an application for a discretionary grant on the basis of the criteria in '367.22.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1))

'367.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a discretionary grant:

(a) Extent of need for the project (20 points).

(1) The Secretary reviews each application to determine the extent to which the project meets the specific needs of the program, including consideration of--

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary reviews each application to determine--

(i) The extent that the need for IL services for older individuals who are blind is justified, in terms of complementing or expanding existing IL and aging programs and facilities; and

(ii) The potential of the project to support the overall mission of the IL program, as stated in section 701 of the Act.

(b) Plan of operation (25 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including--

(1) The quality of the design of the project;

(2) The extent to which the plan of management ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality and adequacy of the applicant's plan to use its resources (including funding, facilities, equipment, and supplies) and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability;

(6) A clear description of how the applicant will provide equal access to services for eligible project participants who are members of groups that have been traditionally under-represented, including members of racial or ethnic minority groups; and

(7) The extent to which the plan of operation and management includes involvement by older individuals who are blind in planning and conducting program activities.

(c) Quality of key personnel (10 points).

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including--

(i) The qualifications of the project director;

(ii) The qualifications of each of the other management and decision-making personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1)(i) and (ii) of this section will commit to the project;

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including--

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Persons with disabilities; and

(D) Elderly individuals.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers--

(i) Experience and training in fields related to the scope of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(d) Budget and cost effectiveness (5 points). The Secretary reviews each application to determine the extent to which--

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant demonstrates the cost-effectiveness of project services in comparison with alternative services and programs available to older individuals who are blind.

(e) Evaluation plan (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation--

- (1) Accurately evaluate the success and cost-effectiveness of the project;
 - (2) Are objective and produce data that are quantifiable; and
 - (3) Will determine how successful the project is in meeting its goals and objectives.
 - (4) Cross-reference: See 34 CFR 75.590.
 - (f) Adequacy of resources (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including accessibility of facilities, equipment, and supplies.
 - (g) Service comprehensiveness (20 points).
 - (1) The Secretary reviews each application to determine the extent to which the proposed outreach activities promote maximum participation of the target population within the geographic area served by the project.
 - (2) The Secretary reviews each application to determine the extent to which the DSA addresses the unmet IL needs in the State of older individuals with varying degrees of significant visual impairment. In making this determination, the Secretary reviews the extent to which the DSA makes available appropriate services listed in '367.3(b), which may include any or all of the following services:
 - (i) Orientation and mobility skills training that will enable older individuals who are blind to travel independently, safely, and confidently in familiar and unfamiliar environments.
 - (ii) Skills training in Braille, handwriting, typewriting, or other means of communication.
 - (iii) Communication aids, such as large print, cassette tape recorders, and readers.
 - (iv) Training to perform daily living activities, such as meal preparation, identifying coins and currency, selection of clothing, telling time, and maintaining a household.
 - (v) Provision of low-vision services and aids, such as magnifiers to perform reading and mobility tasks.
 - (vi) Family and peer counseling services to assist older individuals who are blind adjust emotionally to the loss of vision as well as to assist in their integration into the community and its resources.
 - (h) Likelihood of sustaining the program (10 points). The Secretary reviews each application to determine--
 - (1) The likelihood that the service program will be sustained after the completion of Federal project grant assistance;
 - (2) The extent to which the applicant intends to continue to operate the service program through cooperative agreements and other formal arrangements; and
 - (3) The extent to which the applicant will identify and, to the extent possible, use comparable services and benefits that are available under other programs for which project participants may be eligible.
- (Approved by the Office of Management and Budget under control number 1820-0018.)
- (Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1))

'367.23 What additional factor does the Secretary consider?

In addition to the criteria in '367.22, the Secretary considers the geographic distribution of projects in making an award.

(Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1))

Subpart D--How Does the Secretary Award Contingent Formula Grants?

'367.30 Under what circumstances does the Secretary award contingent formula grants to States?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is equal to or greater than \$13,000,000, grants under this part are made to States from allotments under section 752(c)(2) of the Act.

(b) Subparts A, B, D, and E of this part govern the award of formula grants under this part.

(Authority: 29 U.S.C. 796k(c))

'367.31 How are allotments made?

(a) For purposes of making grants under section 752(c) of the Act and this subpart, the Secretary makes an allotment to each State in an amount determined in accordance with section 752(j) of the Act.

(b) The Secretary makes a grant to a DSA in the amount of the allotment to the State under section 752(j) of the Act if the DSA submits to and obtains approval from the Secretary of an application for assistance under this program that meets the requirements of section 752(i) of the Act and '367.10 and 367.11.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: 29 U.S.C. 796k(c)(2))

'367.32 How does the Secretary reallocate funds under section 752(j)(4) of the Act?

(a) From the amounts specified in paragraph (b) of this section, the Secretary may make reallocation grants to States, as determined by the Secretary, whose population of older individuals who are blind has a substantial need for the services specified in section 752(d) of the Act and '367.3(b), relative to the populations in other States of older individuals who are blind.

(b) The amounts referred to in paragraph (a) of this section are any amounts that are not paid to States under section 752(c)(2) of the Act and '367.31 as a result of--

(1) The failure of a DSA to prepare, submit, and receive approval of an application under section 752(i) of the Act and in accordance with '367.10 and 367.11; or

(2) Information received by the Secretary from the DSA that the DSA does not intend to expend the full amount of the State's allotment under section 752(c) of the Act and this subpart.

(c) A reallocation grant to a State under paragraph (a) of this section is subject to the same conditions as grants made under section 752(a) of the Act and this part.

(d) Any funds made available to a State for any fiscal year pursuant to this section are regarded as an increase in the allotment of the State under '367.31 for that fiscal year only.

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(Authority: 29 U.S.C. 796k(j)(4))

Subpart E--What Conditions Must Be Met After an Award?

'367.40 What matching requirements apply?

(a) Non-Federal contributions required by '367.11(b) may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(b) For purposes of non-Federal contributions required by '367.11(b), 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 non-Federal contributions.

(Authority: 29 U.S.C. 796k(f))

'367.41 When may a DSA award grants or contracts?

(a) A DSA may operate or administer the program or projects under this part to carry out the purposes specified in '367.1, either directly or through--

(1) Grants to public or private nonprofit agencies or organizations; or

(2) Contracts with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations.

(b) Notwithstanding paragraph (a) of this section, a DSA may enter into assistance contracts, but not procurement contracts, with public or private nonprofit agencies or organizations in a manner consistent with 34 CFR 366.32(e).

(Authority: 29 U.S.C. 796k(g) and (i)(2)(A))

'367.42 When does the Secretary award noncompetitive continuation grants?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is less than \$13,000,000, the Secretary awards noncompetitive continuation grants for a multi-year project to pay for the costs of activities for which a grant was awarded--

(1) Under Chapter 2 of Title VII of the Act; or

(2) Under Part C of Title VII of the Act, as in effect on October 28, 1992.

(b) To be eligible to receive a noncompetitive continuation grant under this part, a grantee must satisfy the applicable requirements in this part and in 34 CFR 75.253.

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(Authority: 29 U.S.C. 796k(b)(2))