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TITLE 34--EDUCATION

CHAPTER III--OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION

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Authority: 29 U.S.C. 796d-1(b) and 796f-796f-6, unless otherwise noted.

Source: 59 FR 41900, Aug. 15, 1994, unless otherwise noted.

Subpart A--General

- Sec. 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))

- Sec. 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 subpart C or D of this part, as applicable, if the applicant demonstrates in its application submitted pursuant to Sec. 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

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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 Secs. 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 Sec. 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 section 722 or 723 of the Act or Sec. 366.21 or Sec. 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 Sec. 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))

Sec. 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 Sec. 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

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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 Sec. 366.71 in subpart G.

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

Sec. 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)

Sec. 366.5 What definitions apply to this program?

Decisionmaking position means the executive director, any supervisory position, and any other policymaking position within the center.

Staff position means a paid non-contract position within the center that is not included within the definition of a ``decisionmaking position.''

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

[60 FR 39221, Aug. 1, 1995]

Sec. 366.6 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)

[59 FR 41900, Aug. 15, 1994. Redesignated at 60 FR 39221, Aug. 1, 1995]

Subpart B--Training and Technical Assistance

Sec. 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))

Sec. 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))

Sec. 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))

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Sec. 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))

Sec. 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 Sec. 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))

Sec. 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--

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(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

Sec. 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 Secs. 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 Sec. 366.32(a) and (b).

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

Sec. 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 Sec. 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))

Sec. 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 Sec. 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

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an existing center to establish a new center at a different geographical location pursuant to proposed Sec. 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 Sec. 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))

Sec. 366.23 What grants must be made to existing eligible agencies?

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

(1) Meets the requirements in Sec. 366.21 or Sec. 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))

Sec. 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 Sec. 366.2(b);

(2) Submit an application that meets the requirements of

Sec. 366.21; and

(3) Meet the requirements of this section.

(b) Subject to the order of priorities established in Sec. 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))

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

In selecting from among applicants for a grant under Sec. 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))

Sec. 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 Sec. 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))

Sec. 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;

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(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))

Sec. 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))

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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

Sec. 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 Sec. 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))

Sec. 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))

Sec. 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 Sec. 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))

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Awarding Grants

Sec. 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 Sec. 366.29(a)(1); and

(2) A summary of the annual performance reports submitted to the Director from centers in accordance with Sec. 366.50(n).

(b) If the amount of funds earmarked by the State for the general operation of centers meets the requirements in Sec. 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 Sec. 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 Secs. 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))

Sec. 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 Sec. 366.21.

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

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

Sec. 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,

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jointly agree on another order of priorities, the Director shall follow the order of priorities in Sec. 366.22 for allocating funds among centers within a State, to the extent funds are available.

(b) If the order of priorities in Sec. 366.22 is followed and, after meeting the priorities in Sec. 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 Sec. 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))

Sec. 366.35 What grants must be made to existing eligible agencies?

In accordance with the order of priorities established in Sec. 366.34(a), an eligible agency may receive a grant under this subpart if the eligible agency meets the applicable requirements in Secs. 366.2, 366.21, and 366.23.

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

Sec. 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 Secs. 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 Sec. 366.34(a).

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

Sec. 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 Sec. 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 Sec. 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))

Sec. 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

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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

Sec. 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))

Sec. 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

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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 Sec. 366.46(c) if--

(i) The center files a formal written appeal of the Director's final written decision pursuant to Sec. 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 Sec. 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))

Sec. 366.41 What must be included in an initial written notice from the Director?

The initial written notice required by Sec. 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 Sec. 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 Sec. 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))

Sec. 366.42 When does a Director issue a final written decision?

(a) If the center submits a corrective action plan in accordance with Sec. 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 Sec. 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))

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Sec. 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 Sec. 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))

Sec. 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 Sec. 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 Sec. 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 Secs. 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

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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))

Sec. 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 Sec. 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))

Sec. 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 Secs. 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 Sec. 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 Sec. 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 Secs. 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

Sec. 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

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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 Secs. 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

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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)

Subpart G--Evaluation Standards and Compliance Indicators

Source: 60 FR 39221, Aug. 1, 1995, unless otherwise noted.

Sec. 366.60 What are the project evaluation standards?

To be eligible to receive funds under this part, an applicant must agree to comply with the following evaluation standards:

(a) Evaluation standard 1--Philosophy. The center shall promote and practice the IL philosophy of--

(1) Consumer control of the center regarding decisionmaking, service delivery, management, and establishment of the policy and direction of the center;

(2) Self-help and self-advocacy;

(3) Development of peer relationships and peer role models;

(4) Equal access of individuals with significant disabilities to all of the center's services, programs, activities, resources, and facilities, whether publicly or privately funded, without regard to the type of significant disability of the individual; and

(5) Promoting equal access of individuals with significant disabilities to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, on the same basis that access is provided to other individuals with disabilities and to individuals without disabilities.

(b) Evaluation standard 2--Provision of services. (1) The center shall provide IL services to individuals with a range of significant disabilities.

(2) The center shall provide IL services on a cross-disability basis (i.e., for individuals with all different types of significant disabilities, including individuals with significant disabilities who are members of populations that are unserved or underserved by programs under title VII of this Act).

(3) The center shall determine eligibility for IL services. The center may not base eligibility on the presence of any one specific significant disability.

(c) Evaluation standard 3--Independent living goals. The center shall 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.

(d) Evaluation standard 4--Community options. The center shall conduct activities to increase the availability and improve the quality of community options for IL to facilitate the development and achievement of IL goals by individuals with significant disabilities.

(e) Evaluation standard 5--Independent living core services. The center shall provide IL core services and, as appropriate, a combination of any other IL services specified in section 7(30)(B) of the Act.

(f) Evaluation standard 6--Activities to increase community capacity. The center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities.

(g) Evaluation standard 7--Resource development activities. The center shall conduct resource development activities to obtain funding from sources other than chapter 1 of title VII of the Act.

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

Sec. 366.61 What are the compliance indicators?

(a) The compliance indicators establish the activities that a center shall carry out to demonstrate minimum compliance with the evaluation standards in Sec. 366.60.

(b) If a center fails to satisfy any one of the indicators, the center is out of compliance with the evaluation standards.

(Authority: 20 U.S.C. 796d-1(b))

Sec. 366.62 What are the requirements for continuation funding?

(a) To be eligible to receive a continuation award for the third or any

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subsequent year of a grant, a center shall--

(1) Have complied fully during the previous project year with all of the terms and conditions of its grant;

(2) Provide adequate evidence in its most recent annual performance report that the center is in minimum compliance with the evaluation standards in Sec. 366.60 (Cross-reference: See Secs. 366.50 (h) and (i) and 34 CFR 75.118(a)); and

(3) Meet the requirements in this part 366.

(b) If a recipient receives funding for more than one center, each individual center that receives a continuation award shall meet the requirements of paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820-0606)

(Authority: 29 U.S.C. 711(c), 796d-1(b), 796e, and 796f-4)

Sec. 366.63 What evidence must a center present to demonstrate that it

is in minimum compliance with the evaluation standards?

(a) Compliance indicator 1--Philosophy--(1) Consumer control. (i) The center shall provide evidence in its most recent annual performance report that--

(A) Individuals with significant disabilities constitute more than 50 percent of the center's governing board; and

(B) Individuals with disabilities constitute more than 50 percent of the center's--

(1) Employees in decisionmaking positions; and

(2) Employees in staff positions.

(ii) A center may exclude personal assistants, readers, drivers, and interpreters employed by the center from the requirement in paragraph (a)(1)(B) of this section.

(iii) The determination that over 50 percent of a center's employees in decisionmaking and staff positions are individuals with disabilities must be based on the total number of hours (excluding any overtime) for which employees are actually paid during the last six-month period covered by the center's most recent annual performance report. However, a center must include in this determination its employees who are on unpaid family or maternity leave during this six-month period.

(2) Self-help and self-advocacy. The center shall provide evidence in its most recent annual performance report that it promotes self-help and self-advocacy among individuals with significant disabilities (e.g., by conducting activities to train individuals with significant disabilities in self-advocacy).

(3) Development of peer relationships and peer role models. The center shall provide evidence in its most recent annual performance report that it promotes the development of peer relationships and peer role models among individuals with significant disabilities (e.g., by using individuals with significant disabilities who have achieved IL goals [whether the goals were achieved independently or through assistance and services provided by a center] as instructors [volunteer or paid] in its training programs or as peer counselors).

(4) Equal access. The center shall provide evidence in its most recent annual performance report that it--

(i) Ensures equal access of individuals with significant disabilities, including communication and physical access, to the center's services, programs, activities, resources, and facilities, whether publicly or privately funded. Equal access, for purposes of this paragraph, means that the same access is provided to any individual with a significant disability regardless of the individual's type of significant disability.

(ii) Advocates for and conducts activities that promote the equal access to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, for individuals with significant disabilities. Equal access, for purposes of this paragraph, means that the same access provided to individuals without disabilities is provided in the center's service area to individuals with significant disabilities.

(5) Alternative formats. To ensure that a center complies with Sec. 366.63(a)(4) and for effective communication, a center shall make available in alternative formats, as appropriate, all of its written policies and materials and IL services.

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(b) Compliance indicator 2--Provision of services on a cross-disability basis. The center shall provide evidence in its most recent annual performance report that it--

(1) Provides IL services to eligible individuals or groups of individuals without restrictions based on the particular type or types of significant disability of an individual or group of individuals, unless the restricted IL service (other than the IL core services) is unique to the significant disability of the individuals to be served;

(2) Provides IL services to individuals with a diversity of significant disabilities and individuals who are members of populations

that are unserved or underserved by programs under title VII of the Act; and

(3) Provides IL core services to individuals with significant disabilities in a manner that is neither targeted nor limited to a particular type of significant disability.

(c) Compliance indicator 3--Independent living goals. (1) The center shall provide evidence in its most recent annual performance report that it--

(i) Maintains a consumer service record that meets the requirements of 34 CFR 364.53 for each consumer;

(ii) Facilitates the development and achievement of IL goals selected by individuals with significant disabilities who request assistance from the center;

(iii) Provides opportunities for consumers to express satisfaction with the center's services and policies in facilitating their achievement of IL goals and provides any results to its governing board and the appropriate SILC; and

(iv) Notifies all consumers of their right to develop or waive the development of an IL plan (ILP).

(2) The center shall provide evidence in its most recent annual performance report that the center maintains records on--

(i) The IL goals that consumers receiving services at the center believe they have achieved;

(ii) The number of ILPs developed by consumers receiving services at the center; and

(iii) The number of waivers signed by consumers receiving services at the center stating that an ILP is unnecessary.

(d) Compliance indicator 4--Community options and community capacity. The center shall provide evidence in its most recent annual performance report that, during the project year covered by the center's most recent annual performance report, the center promoted the increased availability and improved quality of community-based programs that serve individuals with significant disabilities and promoted the removal of any existing architectural, attitudinal, communication, environmental, or other type of barrier that prevents the full integration of these individuals into society. This evidence must demonstrate that the center performed at least one activity in each of the following categories:

(1) Community advocacy.

(2) Technical assistance to the community on making services, programs, activities, resources, and facilities in society accessible to individuals with significant disabilities.

(3) Public information and education.

(4) Aggressive outreach to members of populations of individuals with significant disabilities that are unserved or underserved by programs under title VII of the Act in the center's service area.

(5) Collaboration with service providers, other agencies, and organizations that could assist in improving the options available for individuals with significant disabilities to avail themselves of the services, programs, activities, resources, and facilities in the center's service area.

(e) Compliance indicator 5--IL core services and other IL services. The center shall provide evidence in its most recent annual performance report that it provides--

(1) Information and referral services to all individuals who request this type of assistance or services from the center in formats accessible to the individual requesting these services; and

(2) As appropriate in response to requests from individuals with significant disabilities who are eligible for IL services from the center, the following services:

(i) IL skills training.

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(ii) Peer counseling (including cross-disability peer counseling).

(iii) Individual and systems advocacy.

(iv) A combination, as appropriate, of any two or more of the IL services defined in section 7(30)(B) of the Act.

(f) Compliance indicator 6--Resource development activities. The center shall provide evidence in its most recent annual performance report that it has conducted resource development activities within the period covered by the performance report to obtain funding from sources other than chapter 1 of title VII of the Act.

(Approved by the Office of Management and Budget under control number 1820-0606)

(Authority: 29 U.S.C. 711(c), 796d-1(b), and 796f-4)