

## **Sec. 107.**

### **Monitoring and Review**

#### **(a) In General**

##### **(1) Duties**

In carrying out the duties of the Commissioner under this title, the Commissioner shall—

**(A)** provide for the annual review and periodic onsite monitoring of programs under this title; and

**(B)** determine whether, in the administration of the State plan, a State is complying substantially with the provisions of such plan and with evaluation standards and performance indicators established under section 106.

##### **(2) Procedures for reviews**

In conducting reviews under this section the Commissioner shall consider, at a minimum—

**(A)** State policies and procedures;

**(B)** guidance materials;

**(C)** decisions resulting from hearings conducted in accordance with due process;

**(D)** State goals established under section 101(a) (15) and the extent to which the State has achieved such goals;

**(E)** plans and reports prepared under section 106(b);

**(F)** consumer satisfaction reviews and analyses described in section 105(c) (4);

**(G)** information provided by the State Rehabilitation Council established under section 105, if the State has such a Council, or by the commission described in section 101(a) (21) (A) (i), if the State has such a commission;

**(H)** reports; and

**(I)** budget and financial management data.

##### **(3) Procedures for monitoring**

In conducting monitoring under this section the Commissioner shall conduct—

- (A) onsite visits, including onsite reviews of records to verify that the State is following requirements regarding the order of selection set forth in section 101(a) (5) (A);
- (B) public hearings and other strategies for collecting information from the public;
- (C) meetings with the State Rehabilitation Council, if the State has such a Council or with the commission described in section 101(a) (21) (A) (i), if the State has such a commission;
- (D) reviews of individual case files, including individualized plans for employment and ineligibility determinations; and
- (E) meetings with qualified vocational rehabilitation counselors and other personnel.

#### **(4) Areas of inquiry**

In conducting the review and monitoring, the Commissioner shall examine—

- (A) the eligibility process;
- (B) the provision of services, including, if applicable, the order of selection;
- (C) such other areas as may be identified by the public or through meetings with the State Rehabilitation Council, if the State has such a Council or with the commission described in section 101(a) (21) (A) (i), if the State has such a commission; and
- (D) such other areas of inquiry as the Commissioner may consider appropriate.

#### **(5) Reports**

If the Commissioner issues a report detailing the findings of an annual review or onsite monitoring conducted under this section, the report shall be made available to the State Rehabilitation Council, if the State has such a Council, for use in the development and modification of the State plan described in section 101.

#### **(b) Technical Assistance**

The Commissioner shall—

- (1) provide technical assistance to programs under this title regarding improving the quality of vocational rehabilitation services provided; and
- (2) provide technical assistance and establish a corrective action plan for a program under this title if the Commissioner finds that the program fails to comply substantially with the provisions of the State plan, or with evaluation standards or performance indicators established under section 106, in order to ensure that such failure is corrected as soon as practicable.

## **(c) Failure To Comply With Plan**

### **(1) Withholding payments**

Whenever the Commissioner, after providing reasonable notice and an opportunity for a hearing to the State agency administering or supervising the administration of the State plan approved under section 101, finds that—

**(A)** the plan has been so changed that it no longer complies with the requirements of section 101(a); or

**(B)** in the administration of the plan there is a failure to comply substantially with any provision of such plan or with an evaluation standard or performance indicator established under section 106, the Commissioner shall notify such State agency that no further payments will be made to the State under this title (or, in the discretion of the Commissioner, that such further payments will be reduced, in accordance with regulations the Commissioner shall prescribe, or that further payments will not be made to the State only for the projects under the parts of the State plan affected by such failure), until the Commissioner is satisfied there is no longer any such failure.

### **(2) Period**

Until the Commissioner is so satisfied, the Commissioner shall make no further payments to such State under this title (or shall reduce payments or limit payments to projects under those parts of the State plan in which there is no such failure).

### **(3) Disbursal of withheld funds**

The Commissioner may, in accordance with regulations the Secretary shall prescribe, disburse any funds withheld from a State under paragraph (1) to any public or nonprofit private organization or agency within such State or to any political subdivision of such State submitting a plan meeting the requirements of section 101(a). The Commissioner may not make any payment under this paragraph unless the entity to which such payment is made has provided assurances to the Commissioner that such entity will contribute, for purposes of carrying out such plan, the same amount as the State would have been obligated to contribute if the State received such payment.

## **(d) Review**

### **(1) Petition**

Any State that is dissatisfied with a final determination of the Commissioner under section 101(b) or subsection (c) may file a petition for judicial review of such determination in the United States Court of Appeals for the circuit in which the State is located. Such a petition may be filed only within the 30-day period beginning on the date that notice of such final determination was received by the State. The clerk of the court shall transmit a copy of the petition to the Commissioner or to any officer designated by the Commissioner for that purpose. In accordance with section 2112 of title 28, United States Code, the Commissioner shall file with

the court a record of the proceeding on which the Commissioner based the determination being appealed by the State. Until a record is so filed, the Commissioner may modify or set aside any determination made under such proceedings.

## **(2) Submissions and determinations**

If, in an action under this subsection to review a final determination of the Commissioner under section 101(b) or subsection (c), the petitioner or the Commissioner applies to the court for leave to have additional oral submissions or written presentations made respecting such determination, the court may, for good cause shown, order the Commissioner to provide within 30 days an additional opportunity to make such submissions and presentations. Within such period, the Commissioner may revise any findings of fact, modify or set aside the determination being reviewed, or make a new determination by reason of the additional submissions and presentations, and shall file such modified or new determination, and any revised findings of fact, with the return of such submissions and presentations. The court shall thereafter review such new or modified determination.

## **(3) Standards of review**

### **(A) In general**

Upon the filing of a petition under paragraph (1) for judicial review of a determination, the court shall have jurisdiction—

**(i)** to grant appropriate relief as provided in chapter 7 of title 5, United States Code, except for interim relief with respect to a determination under subsection (c); and

**(ii)** except as otherwise provided in subparagraph (B), to review such determination in accordance with chapter 7 of title 5, United States Code.

### **(B) Substantial evidence**

Section 706 of title 5, United States Code, shall apply to the review of any determination under this subsection, except that the standard for review prescribed by paragraph (2) (E) of such section 706 shall not apply and the court shall hold unlawful and set aside such determination if the court finds that the determination is not supported by substantial evidence in the record of the proceeding submitted pursuant to paragraph (1), as supplemented by any additional submissions and presentations filed under paragraph (2).