

# PROGRAM REGULATIONS AND SELECTION CRITERIA FOR 84.132 CENTERS FOR INDEPENDENT LIVING AND ARRA 84.400

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34 CFR 366.27

## **§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.

(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.

(Authority: 29 U.S.C. 796f-1(d)(2)(B))

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

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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 record keeping 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 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))

Unserviced 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 reallocated 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.

(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. (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.

(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.

(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.

(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.

(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. (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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.  
(Authority: 29 U.S.C. 796c(k))  
Cross-reference: See 34 CFR 366.30(a).

§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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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. (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. (Authority: 29 U.S.C. 711(c), 796c(e)-(f), and 796f-4(b)(2))  
Cross-reference: See 34 CFR Part 365.  
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.

(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).

(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 and for each individual receiving IL services, 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.

(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.

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

## **PART 366--CENTERS FOR INDEPENDENT LIVING**

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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.

(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.

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

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

#### §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 Deleted (Not relevant to Competition)**

### **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

The assurances required by section 725(c) of the Act and Subpart F of this part.  
(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.

(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.

(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.

(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.

(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.

(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.

(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.

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

#### **Subpart D -- Deleted (Not relevant to 722 Competition)**

#### **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.

(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).

(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.

(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.

(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.

(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.

(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.

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

## **Subpart G--Standards and Indicators**

### **§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)

### **§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 §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))

### **§366.62 What are the requirements for continuation funding?**

(a) To be eligible to receive a continuation award for the third or any 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 §366.60 (Cross-reference: See §§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)

§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 §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.

(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.

(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)