

support services must include continuing sequential job placements until job permanency is achieved.

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

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

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

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

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

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

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

(ii) [Reserved]

(58) *Vocational rehabilitation services*—

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

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

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

EFFECTIVE DATE NOTE: At 66 FR 7252, Jan. 22, 2001, §361.5 was amended by revising paragraphs (b)(16) and (b)(19), effective Oct. 1, 2001. For the convenience of the user, the superseded text is set forth below.

§ 361.5 Applicable definitions.

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(b)

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

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

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

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

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

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

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

meet the State plan requirements in this part.

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

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

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

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

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

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

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

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

(3) The State is not required to submit policies, procedures, or descriptions required under this part that have been previously submitted to the Secretary and that demonstrate that

the State meets the requirements of this part, including any policies, procedures, or descriptions submitted under this part that are in effect on August 6, 1998.

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

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

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

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

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

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

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

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

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

(8) *Judicial review.* A State may appeal the Secretary's decision to disapprove the State plan by filing a petition for review with the United States Court of Appeals for the circuit in

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which the State is located, in accordance with section 107(d) of the Act.

(Approved by the Office of Management and Budget under control number 1820-0500.)

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

EFFECTIVE DATE NOTES: 1. At 66 FR 7253, Jan. 22, 2001, §361.10 was amended by adding “(Approved by the Office of Management and Budget under control number 1820-0500)”, effective Oct. 1, 2001.

§361.11 Withholding of funds.

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

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

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

(b) *Informal resolution.* Prior to withholding or limiting payments in accordance with this section, the Secretary attempts to resolve disputed issues informally with State officials.

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

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

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

(f) *Petition for review of an initial decision.* The State agency may seek the

Secretary’s review of the initial decision in accordance with 34 CFR 81.42.

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

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

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

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

ADMINISTRATION

§361.12 Methods of administration.

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

(Approved by the Office of Management and Budget under control number 1820-0500.)

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

EFFECTIVE DATE NOTES: 1. At 66 FR 7253, Jan. 22, 2001, §361.12 was amended by adding “(Approved by the Office of Management and Budget under control number 1820-0500)”, effective Oct. 1, 2001.

§361.13 State agency for administration.

(a) *Designation of State agency.* The State plan must designate a State agency as the sole State agency to administer the State plan, or to supervise its administration in a political subdivision of the State by a sole local agency, in accordance with the following requirements:

(1) *General.* Except as provided in paragraphs (a)(2) and (3) of this section, the State plan must provide that the designated State agency is one of the following types of agencies: