

CFR 364.22 is eligible to apply for assistance under this part in accordance with 34 CFR 364.10 and 364.11.

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

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

§ 365.3 What regulations apply?

The following regulations apply to this part:

(a) The regulations in 34 CFR part 364.

(b) The regulations in this part 365.

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

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

§ 365.10 How does a State apply for a grant?

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

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

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

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

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

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

(c) If the State plan designates, pursuant to § 364.22(c), a unit to administer the part of the plan under which State IL services are provided for individuals who are blind and a separate or different unit to administer the rest of the plan, the division of the State's al-

lotment between these two units is a matter for State determination.

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

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

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

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

(2) The non-Federal share of the cost of any project that receives assistance through an allotment under this part may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.

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

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

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

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

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

§ 365.14

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

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

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

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

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

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

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

(d) For purposes of this section, a donor may be a private agency, a profit-making or nonprofit organization, or an individual.

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

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

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

(b) An individual, entity, or organization that is a grantee or subgrantee of the State, or has a contract with the

34 CFR Ch. III (7-1-02 Edition)

State, may not condition the award of a subgrant or subcontract under section 713 of the Act or section 723 of the Act on the requirement that the applicant for the subgrant or subcontract make a cash or in-kind contribution of any particular amount or value to the State or to the grantee or contractor of the State.

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

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

Subject to § 365.14, in-kind contributions may be—

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

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

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

§ 365.16 What requirements apply to refunds and rebates?

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

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

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

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