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**RSA Monitoring Redesign Initiative
Informational Booklet #1**

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U.S. Department of Education
Office of Special Education and Rehabilitative Services
Rehabilitation Services Administration

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FOREWORD

This informational booklet contains background materials regarding the Rehabilitation Services Administration (RSA) initiative to redesign its monitoring system. The booklet is intended to expand the knowledge and understanding of those individuals selected to participate in the RSA-sponsored monitoring conference that was held Aug. 24 and 25, 2005, and to inform other interested stakeholders of the progress being made in this important endeavor.

A primary objective of the monitoring redesign effort is to ensure that the new process not only meets federal goals and legislative requirements but also takes into account the needs and priorities of stakeholders of the public VR system, including state VR agencies, consumer and advocacy groups, community partners and providers, state rehabilitation councils and other relevant federal agencies. The objective of the August monitoring conference was to obtain input from these stakeholder groups on RSA's monitoring process.

This booklet contains basic information regarding 1) the legislative basis for RSA monitoring activities and 2) the recent RSA restructuring.

REDESIGN OF THE REHABILITATION SERVICES ADMINISTRATION MONITORING AND PROGRAM IMPROVEMENT SYSTEM

Overview

The U.S. Department of Education's Rehabilitation Services Administration (RSA) is undertaking a major initiative to substantially redesign its program monitoring and improvement system. The overriding goal is to improve vocational rehabilitation (VR) services and employment outcomes for individuals with disabilities through the development of a new monitoring system that involves key stakeholders, is performance-based and which establishes a state-level network of partners who assist in identifying improvements and who support the provision of resources and technical assistance necessary to achieve those improvements.

An important phase of this initiative is focused on obtaining the input, involvement and support of key stakeholder groups including state VR directors, consumer and advocacy groups, community partners and providers, state rehabilitation councils (SRCs), RSA staff and other interested federal agencies. To achieve this objective, a two-day monitoring conference was conducted in Washington, D.C., on Aug. 24 and 25, 2005. Approximately 200 individuals participated in the event, including federal representatives, national experts, state VR agencies, SRCs, consumer and advocacy groups, community partners and provider organizations and other key stakeholders.

The goal of the two-day conference was to obtain input on the issues, outcomes and focus areas that are important to RSA's stakeholders. RSA is implementing a new organizational structure that will include a division devoted to monitoring and program improvement. Staffed by individuals from this new division, state teams will make periodic on-site visits and carry out annual reviews consistent with the requirements of the *Rehabilitation Act of 1973*. The new organizational structure will identify those who will make up the state teams, the type of background information that RSA staff will use during their monitoring and review activities, and the way in which the results of these activities will be processed to help state agencies improve their performance. The input generated by this conference is enabling RSA to understand the concerns and priorities its stakeholders assign to its new monitoring process.

The information contained in this booklet was designed to establish a common level of knowledge and understanding among those individuals who participated in the August conference. It has been organized into two categories of information, providing background information regarding the legislative mandate for RSA monitoring and program review activities and providing an overview of the RSA restructuring effort as it relates to monitoring.

UNDERSTANDING THE LEGISLATIVE BASIS FOR RSA MONITORING ACTIVITIES

This portion of the informational booklet was designed to give conference attendees an overview of the basic elements of the *Rehabilitation Act of 1973* that relate to RSA monitoring activities. The relevant sections of the act are provided in Appendix A.

Overview of the *Rehabilitation Act of 1973*

The act provides the legislative basis for programs and activities that assist individuals with disabilities in the pursuit of gainful employment, independence, self-sufficiency and full integration into community life. RSA is the principal agency for carrying out Titles I, III, VI, and VII, as well as specified portions of Title V of the act.

By far, the largest program administered by RSA is the State VR Services Program, authorized under Title I, Sections 100-111, of the act. This formula grant program provides financial assistance to states to cover the cost of program administration and employment-related services for individuals with disabilities in order to maximize their employability, independence and integration into the workplace and the community.

Grant funds are administered by VR agencies designated by each state and territory. All 56 states and territories have VR agencies. Twenty-four states also have separate agencies serving individuals who are blind or visually impaired. In addition, the American Indian VR Services Program (AIVRS), authorized under Section 121 of the act, is supported by funds allocated under Section 110 of Title I. The AIVRS program provides grants to governing bodies of Indian tribes to deliver VR services to American Indians with disabilities that live on or near federal or state reservations.

Monitoring

The three primary sections of the act related to monitoring are Sections 107, 106 and 101(a)(15). Section 107 of the act requires the RSA commissioner to conduct annual reviews and periodic on-site monitoring of programs authorized under Title I. According to the act, the overall goal of RSA monitoring activities is to determine compliance with the assurances made in the VR agency's state plan, as required under Section 101(a)(15) of the act, and with the Evaluation Standards and Performance Indicators established under Section 106.

The information provided below provides an overview of Sections 107, 106 and 101(a)(15), and highlights those elements specifically related to the monitoring process.

Section 107—Monitoring and Review

Section 107 of the *Rehabilitation Act of 1973* provides the legislative basis for the RSA commissioner to conduct: 1) annual reviews and 2) periodic on-site monitoring of programs authorized under Title I of the act.

While reviews and monitoring activities share a common purpose, common areas of inquiry and common reporting requirements, the act prescribes different procedures and timetables for each.

Common Purpose

The annual reviews and periodic on-site monitoring are conducted in order to enable RSA to determine whether, in the administration of the state plan, a state is complying substantially with the provisions of such plan and with the evaluation standards and performance indicators established under Section 106.

Common Areas of Inquiry

Both **monitoring** and **review** activities examine common areas of inquiry:

- Consumer eligibility for services;
- Provision of services, including, if applicable, the order of selection;
- Other programmatic focus areas identified through public input or in the meetings conducted with the agency's SRC or the Consumer Control Commissions Board (CCCB); and
- Other programmatic focus areas designated by the RSA commissioner.

Common Report Requirements

Any report developed by RSA detailing findings of an annual review or monitoring process must be made available to the state agency and the SRC or CCCB, and is used in the development or modification of the state plan.

Unique Procedures for Annual Reviews

To meet the annual review requirements of Section 107, the RSA commissioner must consider:

- State policies and procedures;
- Guidance materials;
- State agency compliance with goals established in the state plan and the extent to which the agency achieved those goals;
- State agency compliance with the Title I evaluation standards and performance indicators;
- Decisions resulting from due process hearings;
- Consumer satisfaction reviews and analyses;
- Information provided by the SRC or CCCB;
- Reports; and

- Budget and financial management data.

Unique Procedures for Monitoring

To meet the monitoring requirements under Section 107, RSA must conduct:

- On-site reviews of records to verify the state agency is following requirements regarding the order of selection;
- Public hearings and other forums to obtain public input;
- Meetings with the SRC or CCCB;
- Reviews of individual case files, including Individual Plans of Employment (IPEs) and ineligibility determinations; and
- Meetings with VR counselors and other personnel.

Comparing Review Procedures with Monitoring Procedures

The act envisions reviews as essentially an analysis of documents, and monitoring as essentially on-site activities.

Comparing Timetables for Reviews and Monitoring

Reviews must be conducted annually.

On-site monitoring must be conducted periodically.

Technical Assistance

Under Section 107, RSA is authorized to provide technical assistance to the state agency and to work collaboratively with that agency to establish a corrective action plan if any part of the state agency program fails to comply substantially with the state plan or with the Title I evaluation standards and performance indicators.

Failure to Comply

Section 107 gives RSA authority to withhold, reduce or limit payments if the plan has been so changed that it no longer complies with the requirements of Section 101(a); or if in the administration of the plan there is a failure to comply substantially with any provision of such plan or with an evaluation standard or performance indicator established under Section 106.

Section 106—Evaluation Standards and Performance Indicators

In fiscal year 2000, RSA implemented Title I program evaluation standards and corresponding performance indicators to measure performance under the State VR Services Program. Final regulations implementing the evaluation standards and performance indicators were published on June 5, 2000 (65 FR 35791-35891). The standards and indicators are considered a crucial part of a comprehensive, integrated system of accountability for the State VR Services Program. The 1998 amendments to the act require state VR agencies to use the Title I standards and indicators as a basis for developing the state plan and programmatic goals and priorities.

Evaluation Standard 1—Employment Outcomes. Each state VR agency must assist eligible individuals, including individuals with significant disabilities, to obtain, maintain or regain high-quality employment.

Performance Indicator 1.1: The number of individuals exiting the VR program who achieved an employment outcome (got a job) during the current performance period, compared with the number of individuals exiting the VR program after achieving an employment outcome during the previous performance period.

Performance Indicator 1.2: Of all of the individuals who exit the VR program after having received services, the percentage of those individuals who are determined to have achieved an employment outcome.

Performance Indicator 1.3: Of all of the individuals determined to have achieved an employment outcome, the percentage who exit the VR program and enter into competitive, self- or BEP (Business Enterprise Program, also known as the Vending Facility Program) employment with earnings equivalent to at least the minimum wage.

Performance Indicator 1.4: Of all of the individuals who exit the VR program and enter into competitive, self- or BEP employment with earnings equivalent to at least the minimum wage, the percentage who are individuals with significant disabilities.

Performance Indicator 1.5: The average hourly earnings of all of the individuals who exit the VR program and enter into competitive, self- or BEP employment with earnings levels equivalent to at least the minimum wage as a ratio of the state's average hourly earnings for all individuals in the state who are employed (as derived from the Bureau of Labor Statistics report, "State Average Annual Pay," for the most recent available year).

Performance Indicator 1.6: Of all of the individuals who exit the VR program and enter into competitive, self- or BEP employment with earnings equivalent to at least the minimum wage, the difference between the percentage who report their own income as the largest single source of economic support at the time they exit the VR program and the percentage who report their own income as the largest single source of support at the time they apply for VR services.

Evaluation Standard 2—Equal Access to Services. Each state VR agency must ensure that individuals from minority backgrounds have equal access to VR services.

Performance Indicator 2.1: This indicator is a ratio of the service rate for all individuals with disabilities from minority backgrounds to the service rate for all nonminority individuals with disabilities.

At the close of each fiscal year, RSA collects and analyzes data related to the Title I evaluation standards and performance indicators from each of the 80 state VR agencies. This includes 56 general and combined agencies and 24 state agencies for the blind. Due to the nature of the work being performed, there are different performance expectations for general and combined agencies and for those agencies serving the blind and visually impaired

For those states that are found to be performing below the standards, RSA provides technical assistance and works directly with the state VR agency to develop a program improvement plan outlining the specific actions to be taken for the agency to improve program performance. Future monitoring reviews focus on performance in those improvement areas.

Section 101(a)(15)—Title I State Plan

For a state to participate in the State VR Services Program authorized under Title I of the act, and the State Supported Employment Services Program under Title VI, Part B, it must have an approved Title I State Plan and Title VI, Part B, supplement to the Title I plan.

The Title I state plan and its Title VI, Part B, supplement reflect a state's commitment to administer these two formula grant programs in compliance with the provisions of the plan and its supplement, and federal statutory, regulatory and policy requirements. The plan and its supplement also describe a state's activities related to various administrative and operational considerations connected with these programs. As such, the plan and its supplement serve as key elements in RSA's monitoring of a state's administration of these two programs.

The key elements of the state plan that are considered in the monitoring and review process are:

- Annual goals, including reports of the extent to which those goals were achieved, a description of the strategies that contributed to meeting the goals, the extent to which goals were not met and a description of contributing factors to not meeting the goals;
- State agency performance under the Title I evaluation standards and performance indicators;
- Results of the comprehensive, statewide needs assessment, including a description of the VR needs of individuals in the state, in particular, individuals with the most significant disabilities, individuals with disabilities who are minorities, individuals with disabilities who have been unserved or underserved and individuals with disabilities served through other components of the statewide workforce investment system;
- Outreach procedures and strategies to identify and serve individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the state's VR program; and
- Needs related to community rehabilitation programs within the state, and where necessary, the plan for establishing, developing or improving those programs.

The state plan must also include estimates of:

- The number of individuals in the state who are eligible for services;
- The number of such individuals who will receive services provided with funds under Part B and under Part B of Title VI; and
- If under an order of selection, the number of individuals to be served under each priority category within the order and the costs of the services for each priority category within the order.

The plan must also address other available information on the operation and the effectiveness of the VR program, including:

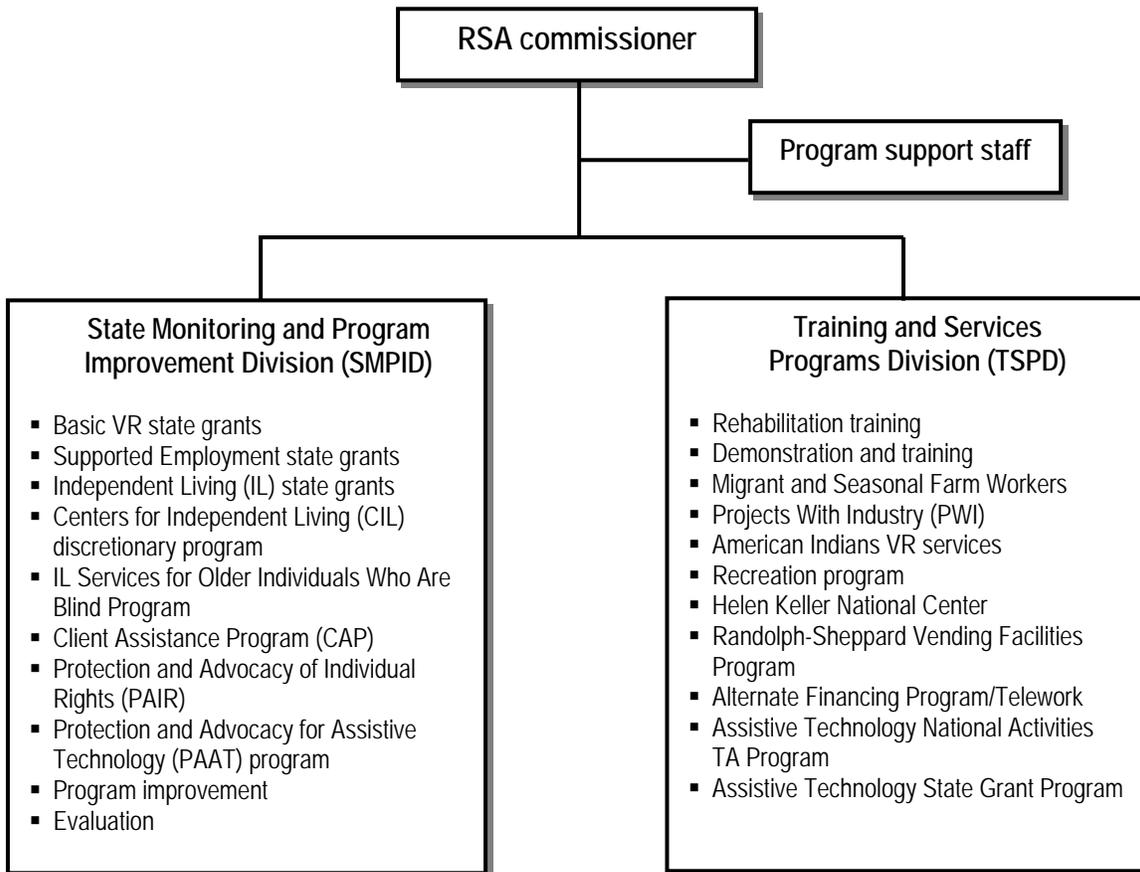
- Reports from the SRC;
- Findings and recommendations from previous monitoring activities;
- Methods to be used to expand and improve services to individuals with disabilities, including a broad range of assistive technology services and assistive technology devices; and

- Strategies for assisting entities carrying out other components of the statewide workforce investment system, other than the state VR program, in assisting individuals with disabilities.

RSA RESTRUCTURING

The Rehabilitation Services Administration (RSA) is in the process of reorganizing, including consolidating the regional offices to the RSA central office. Under the new structure, the RSA commissioner will provide overall direction, coordination and leadership to a program support staff and two divisions: the State Monitoring and Program Improvement Division (SMPID) and the Training and Service Programs Division (TSPD).

Exhibit 1: Reorganized Structure of the Rehabilitation Services Administration



Reorganized Structure of the Rehabilitation Services Administration

Under the new structure (as shown in Exhibit 1), the RSA commissioner will provide overall direction, coordination and leadership to a program support staff and two divisions: the State Monitoring and Program Improvement Division (SMPID), and the Training and Service Programs Division (TSPD).

The State Monitoring and Program Improvement Division (SMPID) will have the following responsibilities:

- Monitoring Basic VR state grants;
- Monitoring Supported Employment state grants;
- Monitoring Independent Living (IL) state grants;
- Monitoring the Centers for Independent Living (CILs) discretionary program;
- Monitoring the IL Services for Older Individuals Who Are Blind program;
- Monitoring the Client Assistance Program (CAP);
- Monitoring the Protection and Advocacy of Individual Rights (PAIR);
- Monitoring the Protection and Advocacy for Assistive Technology program;
- Overseeing program improvement; and
- Overseeing evaluation.

The Training and Service Programs Division (TSPD) will be responsible for:

- Rehabilitation Training;
- Demonstration and Training;
- The Migrant and Seasonal Farm Workers program;
- Projects With Industry;
- American Indians VR Services;
- The Recreation program;
- The Helen Keller National Center;
- The Randolph-Sheppard Vending Facilities program;
- The Alternate Financing Program/Telework program;
- The Assistive Technology National Activities TA program; and
- The Assistive Technology state grant program.

The State Monitoring and Program Improvement Division (SMPID)

For the purposes of this informational booklet, it is particularly important to understand the role and responsibilities of the SMPID. A more complete description of the overall restructuring changes RSA is undergoing, including information regarding the TSPD is available through the RSA Web site, at: www.ed.gov/about/offices/list/osers/rsa/rsa_consolidation_fact_sheet.html.

The SMPID will be responsible for monitoring seven of RSA's formula grant programs to ensure consistency with federal requirements and to ensure that states continue to implement programs designed to improve results for individuals with disabilities. The SMPID will also be responsible for state plan review and approval.

The SMPID is divided into functional units and state teams. Each staff person in the SMPID is assigned to one of five functional units: Data Collection and Analysis, Fiscal, VR Program, Independent Living (IL) and Technical Assistance (TA).

Each state team is made up of one or more individuals from each of the five functional units. Each state grantee is assigned a state team.

SMPID Functional Units

As mentioned above, there are five functional units reflecting the following areas of focus:

- 1) Data Collection and Analysis
- 2) Fiscal
- 3) VR Program
- 4) Independent Living (IL)
- 5) Technical Assistance (TA)

The activities of the five functional units enable the state teams to monitor and assist states in improving their programs. Each SMPID staff member is assigned to one of the five functional units.

In addition to supporting state teams, each functional unit will be responsible for administrative activities involving one or more of the division's programs (e.g., the Independent Living (IL) Unit will have primary administrative responsibility for the Independent Living State Grants Program, the Independent Living Discretionary Program and the Independent Living Services for Older Individuals Who Are Blind Program.)

The purposes of each of the five functional units are highlighted below.

Data Collection and Analysis Unit

The purposes of the Data Collection and Analysis Unit are to:

- Review and improve RSA databases and work with state VR agencies to maintain those databases on all state grantees, enabling the VR Program Unit to develop individual profiles for each state grantee;
- Support the VR Program Unit and the IL Unit in the development of program performance profiles;
- Develop and implement an annual evaluation plan; and
- Provide support to state teams in their data analysis activities.

Fiscal Unit

The purposes of the Fiscal Unit are to:

- Develop and maintain a fiscal performance data profile of each state VR grantee and CIL Discretionary Program grantee;
- Improve and maintain a fiscal monitoring process that state teams will use to determine if state grantees and CIL Discretionary Program grantees are meeting their fiscal obligations under their respective statutes;
- Oversee the resolution of audit findings (single audits, IG audits, GAO reports) including grantbacks, primary and collateral determinations; and
- Support the fiscal monitoring reviews and audit resolution activities carried out by the state teams.

VR Program Unit

The purposes of the VR Program Unit are to:

- Develop and maintain a program performance profile on each VR state grantee that includes an organizational description of how each agency operates;
- Develop and implement systems for the review of state plan submissions and for coordinating with other offices, as necessary;
- Improve and maintain the state VR grant monitoring process used by state teams to identify improvements that state VR grantees should make in order to improve performance and meet program obligations;
- Support state teams in the state plan approval, monitoring processes and program improvement efforts;
- Coordinate with the Office of the Assistant Secretary (OAS) policy team in development and dissemination of policy guidance, regulations and program guidance in all areas of responsibility;
- Coordinate with the Department in implementation of integrated monitoring activities;
- Develop program performance measures used to evaluate and monitor grantees;
- Provide TA to the state grant programs in the Division of Training and Services Program (DTSP); and
- Oversee administrative activities involving the Basic VR State Grants and Supported Employment State Grants.

Independent Living (IL) Unit

The purposes of the Independent Living (IL) Unit are to:

- Develop and maintain a program performance profile on each state's IL grantees that includes an organizational description of how each agency operates;
- Develop and implement systems for the review of IL state plan submissions and IL Services for Older Individuals Who Are Blind Program applications, and for coordinating with other offices, as necessary;
- Improve and maintain the IL grant monitoring process used by state teams to identify improvements that IL state grantees should make to improve their performance and meet their program obligations;
- Manage the discretionary award process for the CIL program, including development of priorities, review, evaluation and documentation of all applications for funding;
- Coordinate with the Department, the implementation of the Department's integrated monitoring activities;
- Participate in the development and dissemination of policy guidance, regulations and program guidance in all areas of responsibility;
- Support the state teams in their IL state plan approval, monitoring processes and program improvement efforts;
- Develop program performance measures which are used to evaluate and monitor grantees; and

- Oversee administrative activities involving the IL State Grants Program, IL Discretionary Program and the IL Services for Older Individuals Who Are Blind Program.

Technical Assistance (TA) Unit

The purposes of the Technical Assistance (TA) Unit are to:

- Develop and maintain a database of TA resources;
- Develop networks of partners in each state made up of consumers, providers, state agency representatives, SRCs, SILCs, federal agencies and any other interested parties that wish to participate in the state team's monitoring and program improvement activities;
- Assist state network partners to understand the legal and programmatic requirements of the statutes;
- Collaborate with the Training and Services Programs Division (TSPD) to identify resources that will assist grantees in program improvement efforts;
- Provide support to state teams in their efforts to achieve identified improvements in each state;
- Provide TA to the state grant programs in TSPD;
- Administer funds, authorized under Section 12 of the act, to provide TA and support services to programs funded under the act; and
- Oversee administrative activities involving the CAP, PAIR and Protection and Advocacy for Assistive Technology (PAAT) Program.

SMPID State Teams

Each state team is made up of one or more persons from each of the five functional units.

A state team will be assigned to every state and is responsible for all of the SMPID's formula and Centers for Independent Living Discretionary Program grantees that operate in that state.

A designated state team member, *the state liaison*, chairs the work of the state team. Each person in the division is assigned responsibility as the state liaison for one or more states. The state liaison leads and organizes the activities of the state team. The state liaison is the single point of contact with the state agencies but will bring in expertise from other functional units and department personnel, as needed.

A *state teams coordinator* works with all the state teams to assist them in carrying out all of their activities in a timely and effective manner.

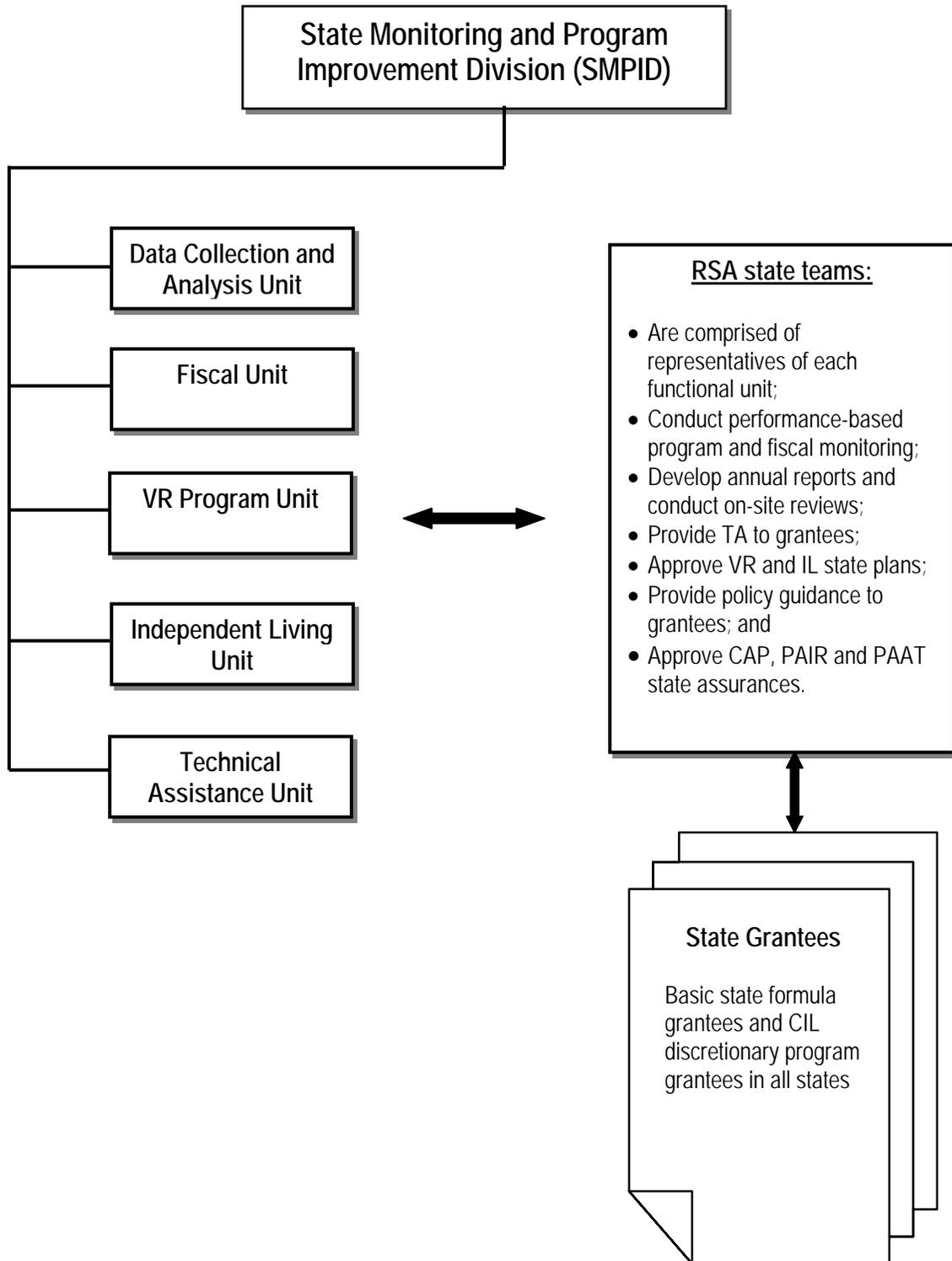
State teams will work collaboratively with VR consumers, disability advocates, community partners, state agencies, SRCs, Consumer Control Commission Boards and other interested parties.

To carry out the following seven core activities, state teams will:

- 1) Implement a continuous process of performance-based program and fiscal monitoring to identify areas of improvement, as well as areas of noncompliance that require corrective action by the grantee.
- 2) Develop and issue annual reports, carry out periodic on-site reviews and other monitoring activities required by statute.
- 3) Provide technical assistance to all grantees to assist them in making improvements and taking corrective actions identified in the monitoring process.
- 4) Review and approve VR and IL state plans including preparing state plan approval letters and providing appropriate technical assistance to states to ensure consistency with federal requirements and a timely release of federal funds.
- 5) Provide policy guidance to grantees.
- 6) Review and approve CAP, PAIR and Protection and Advocacy for Assistive Technology (PAAT) Program state assurances.
- 7) Carry out audit resolution activities including single audits, inspector general audits, grantbacks and primary and collateral determinations.

The graphic on the following page depicts the interrelationship between the SMPID functional units, state teams and state grantees as it has been described above.

Exhibit 2: Structure of the State Monitoring and Program Improvement Division



Structure of the State Monitoring and Program Improvement Division

Under its new structure, the State Monitoring and Program Improvement Division (SMPID) is divided into five functional units and state teams (as shown in Exhibit 2). Each staff person in the SMPID is assigned to one of the following five functional units:

- The Data Collection and Analysis Unit;
- The Fiscal Unit;
- The VR Program Unit;
- The Independent Living (IL) Unit; or
- The Technical Assistance Unit.

Each state team is made up of one or more individuals from each of the five above referenced functional units. The elements of the SMPID interact with the RSA state teams. These state teams:

- Are comprised of representatives from each functional unit;
- Conduct performance-based program and fiscal monitoring;
- Develop annual reports and conduct on-site reviews;
- Provide technical assistance to grantees;
- Approve vocational rehabilitation and IL state plans;
- Provide policy guidance to grantees; and
- Approve the Client Assistance Program (CAP), Protection and Advocacy of Individual Rights (PAIR) program; and the Protection and Advocacy for Assistive Technology (PAAT) program state assurances.

Each state grantee is assigned a state team. The RSA state teams interact with the state grantees including basic state formula grantees and CILs discretionary program grantees in all states. The interaction of all these entities is continuous, collaborative and performance driven.

APPENDIX A

Section 107—Monitoring and Review

(a) In General

(1) Duties

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

(A) provide for the annual review and periodic on-site monitoring of programs under this title; and

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

(2) Procedures for reviews

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

(A) State policies and procedures;

(B) guidance materials;

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

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

(E) plans and reports prepared under Section 106(b);

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

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

(H) reports; and

(I) budget and financial management data.

(3) Procedures for monitoring

In conducting monitoring under this section the commissioner shall conduct—

(A) on-site visits, including on-site reviews of records to verify that the state is following requirements regarding the order of selection set forth in Section 101(a)(5)(A);

(B) public hearings and other strategies for collecting information from the public;

(C) meetings with the State Rehabilitation Council, if the state has such a council or with the commission described in Section 101(a)(21)(A)(i), if the state has such a commission;

(D) reviews of individual case files, including individualized plans for employment and ineligibility determinations; and

(E) meetings with qualified vocational rehabilitation counselors and other personnel.

(4) Areas of inquiry

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

(A) the eligibility process;

(B) the provision of services, including, if applicable, the order of selection;

(C) such other areas as may be identified by the public or through meetings with the State Rehabilitation Council, if the state has such a council or with the commission described in Section 101(a)(21)(A)(i), if the state has such a commission; and

(D) such other areas of inquiry as the commissioner may consider appropriate.

(5) Reports

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

(b) Technical Assistance

The commissioner shall—

(1) provide technical assistance to programs under this title regarding improving the quality of vocational rehabilitation services provided; and

(2) provide technical assistance and establish a corrective action plan for a program under this title if the commissioner finds that the program fails to comply substantially with the provisions of the state plan, or with evaluation standards or performance indicators established under Section 106, in order to ensure that such failure is corrected as soon as practicable.

(c) Failure to Comply With Plan

(1) Withholding payments

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

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

(B) in the administration of the plan there is a failure to comply substantially with any provision of such plan or with an evaluation standard or performance indicator established under Section 106,

the commissioner shall notify such state agency that no further payments will be made to the state under this title (or, in the discretion of the commissioner, that such further payments will be reduced, in accordance with regulations the commissioner shall prescribe, or that further payments will not be made to the state only for the projects under the parts of the state plan affected by such failure), until the commissioner is satisfied there is no longer any such failure.

(2) Period

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

(3) Disbursal of withheld funds

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

(d) Review

(1) Petition

Any state that is dissatisfied with a final determination of the commissioner under Section 101(b) or Subsection (c) may file a petition for judicial review of such determination in the U.S. Court of Appeals for the circuit in which the state is located. Such a petition may be filed only within the 30-day period beginning on the date that notice of such final determination was received by the state. The clerk of the court shall transmit a copy of the petition to the commissioner or to any officer designated by the commissioner for that purpose. In accordance with Section 2112 of Title 28, *U.S. Code*, the commissioner shall file with the court a record of the proceeding on which the commissioner based the determination being appealed by the state. Until a record is so filed, the commissioner may modify or set aside any determination made under such proceedings.

(2) Submissions and determinations

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

(3) Standards of review

(A) In general

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

(i) to grant appropriate relief as provided in Chapter 7 of Title 5, *U.S. Code*, except for interim relief with respect to a determination under Subsection (c); and

(ii) except as otherwise provided in Subparagraph (B), to review such determination in accordance with Chapter 7 of Title 5, *U.S. Code*.

(B) Substantial evidence

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

Section 106—Evaluation Standards and Performance Indicators

(a) Establishment

(1) In general

(A) Establishment of standards and indicators

The commissioner shall, not later than July 1, 1999, establish and publish evaluation standards and performance indicators for the vocational rehabilitation program carried out under this title.

(B) Review and revision

Effective July 1, 1999, the commissioner shall review and, if necessary, revise the evaluation standards and performance indicators every three years. Any revisions of the standards and indicators shall be developed with input from state vocational rehabilitation agencies, related professional and consumer organizations, recipients of vocational rehabilitation services, and other interested parties. Any revisions of the standards and indicators shall be subject to the publication, review and comment provisions of Paragraph (3).

(C) Bases

Effective July 1, 1999, to the maximum extent practicable, the standards and indicators shall be consistent with the core indicators of performance established under Section 136(b) of the *Workforce Investment Act of 1998*.

(2) Measures

The standards and indicators shall include outcome and related measures of program performance that facilitate the accomplishment of the purpose and policy of this title.

(3) Comment

The standards and indicators shall be developed with input from state vocational rehabilitation agencies, related professional and consumer organizations, recipients of vocational rehabilitation services and other interested parties. The commissioner shall publish in the *Federal Register* a notice of intent to regulate regarding the development of proposed standards and indicators. Proposed standards and indicators shall be published in the *Federal Register* for review and comment. Final standards and indicators shall be published in the *Federal Register*.

(b) Compliance

(1) State reports

In accordance with regulations established by the secretary, each state shall report to the commissioner after the end of each fiscal year the extent to which the state is in compliance with the standards and indicators.

(2) Program improvement

(A) Plan

If the commissioner determines that the performance of any state is below established standards, the commissioner shall provide technical assistance to the state, and the state and the commissioner shall jointly develop a program improvement plan outlining the specific actions to be taken by the state to improve program performance.

(B) Review

The commissioner shall—

(i) review the program improvement efforts of the state on a biannual basis and, if necessary, request the state to make further revisions to the plan to improve performance; and

(ii) continue to conduct such reviews and request such revisions until the state sustains satisfactory performance over a period of more than one year.

(c) Withholding

If the commissioner determines that a state whose performance falls below the established standards has failed to enter into a program improvement plan, or is not complying substantially with the terms and conditions of such a program improvement plan, the commissioner shall, consistent with Subsections (c) and (d) of Section 107, reduce or make no further payments to the state under this program, until the state has entered into an approved program improvement plan, or satisfies the commissioner that the state is complying substantially with the terms and conditions of such a program improvement plan, as appropriate.

(d) Report to Congress

Beginning in fiscal year 1999, the commissioner shall include in each annual report to the Congress under Section 13 an analysis of program performance, including relative state performance, based on the standards and indicators.

Section 101—State Plans

(a) Plan Requirements

(1) In general

(A) Submission

To be eligible to participate in programs under this title, a state shall submit to the commissioner a state plan for vocational rehabilitation services that meets the requirements of this section, on the same date that the state submits a state plan under Section 112 of the *Workforce Investment Act of 1998*.

(B) Nonduplication

The state shall not be required to submit, in the state plan for vocational rehabilitation services, policies, procedures or descriptions required under this title that have been previously submitted to the commissioner and that demonstrate that such state meets the requirements of this title, including any policies, procedures or descriptions submitted under this title as in effect on the day before the effective date of the *Rehabilitation Act Amendments of 1998*.

(C) Duration

The state plan shall remain in effect subject to the submission of such modifications as the state determines to be necessary or as the commissioner may require based on a change in state policy, a change in federal law (including regulations), an interpretation of this act by a federal court or the highest court of the state, or a finding by the commissioner of state noncompliance with the requirements of this act, until the state submits and receives approval of a new state plan.

(2) Designated state agency; designated state unit

(A) Designated state agency

The state plan shall designate a state agency as the sole state agency to administer the plan, or to supervise the administration of the plan by a local agency, except that—

(i) where, under state law, the state agency for individuals who are blind or another agency that provides assistance or services to adults who are blind is authorized to provide vocational rehabilitation services to individuals who are blind, that agency may be designated as the sole state agency to administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind (or to supervise the administration of such part by a local agency) and a separate state agency may be designated as the sole state agency to administer or supervise the administration of the rest of the state plan;

(ii) the commissioner, on the request of a state, may authorize the designated state agency to share funding and administrative responsibility with another agency of the state or with a local agency in order to permit the agencies to carry out a joint program to provide services to individuals with disabilities, and may waive compliance, with respect to vocational rehabilitation services furnished

under the joint program, with the requirement of Paragraph (4) that the plan be in effect in all political subdivisions of the state; and

(iii) in the case of American Samoa, the appropriate state agency shall be the governor of American Samoa.

(B) Designated state unit

The state agency designated under Subparagraph (A) shall be—

(i) a state agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities; or

(ii) if not such an agency, the state agency (or each state agency if two are so designated) shall include a vocational rehabilitation bureau, division or other organizational unit that—

(I) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities, and is responsible for the vocational rehabilitation program of the designated state agency; (II) has a full-time director;

(III) has a staff employed on the rehabilitation work of the organizational unit all or substantially all of whom are employed full-time on such work; and (IV) is located at an organizational level and has an organizational status within the designated state agency comparable to that of other major organizational units of the designated state agency.

(C) Responsibility for services for the blind

If the state has designated only one state agency pursuant to Subparagraph (A), the state may assign responsibility for the part of the plan under which vocational rehabilitation services are provided for individuals who are blind to an organizational unit of the designated state agency and assign responsibility for the rest of the plan to another organizational unit of the designated state agency, with the provisions of Subparagraph (B) applying separately to each of the designated state units.

(3) Nonfederal share

The state plan shall provide for financial participation by the state, or if the state so elects, by the state and local agencies, to provide the amount of the nonfederal share of the cost of carrying out Part B.

(4) Statewideness

The state plan shall provide that the plan shall be in effect in all political subdivisions of the state, except that—

(A) in the case of any activity that, in the judgment of the commissioner, is likely to assist in promoting the vocational rehabilitation of substantially larger numbers of individuals with disabilities or groups of individuals with disabilities, the commissioner may waive compliance with the requirement that the plan be in effect in all political subdivisions of the state to the extent and for

such period as may be provided in accordance with regulations prescribed by the commissioner, but only if the nonfederal share of the cost of the vocational rehabilitation services involved is met from funds made available by a local agency (including funds contributed to such agency by a private agency, organization or individual); and

(B) in a case in which earmarked funds are used toward the nonfederal share and such funds are earmarked for particular geographic areas within the state, the earmarked funds may be used in such areas if the state notifies the commissioner that the state cannot provide the full nonfederal share without such funds.

(5) Order of selection for vocational rehabilitation services

In the event that vocational rehabilitation services cannot be provided to all eligible individuals with disabilities in the state who apply for the services, the state plan shall—

(A) show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;

(B) provide the justification for the order of selection;

(C) include an assurance that, in accordance with criteria established by the state for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and

(D) provide that eligible individuals, who do not meet the order of selection criteria, shall have access to services provided through the information and referral system implemented under Paragraph (20).

(6) Methods for administration

(A) In general

The state plan shall provide for such methods of administration as are found by the commissioner to be necessary for the proper and efficient administration of the plan.

(B) Employment of individuals with disabilities

The state plan shall provide that the designated state agency and entities carrying out community rehabilitation programs in the state, who are in receipt of assistance under this title shall take affirmative action to employ and advance in employment qualified individuals with disabilities covered under, and on the same terms and conditions as set forth in, Section 503.

(C) Facilities

The state plan shall provide that facilities used in connection with the delivery of services assisted under the state plan shall comply with the act entitled “An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically

handicapped,” approved on Aug. 12, 1968 (commonly known as the “*Architectural Barriers Act of 1968*”), with Section 504, and with the *Americans with Disabilities Act of 1990*.

(7) Comprehensive system of personnel development

The state plan shall—

(A) include a description (consistent with the purposes of this act) of a comprehensive system of personnel development, which shall include—

(i) a description of the procedures and activities the designated state agency will undertake to ensure an adequate supply of qualified state rehabilitation professionals and paraprofessionals for the designated state unit, including the development and maintenance of a system for determining, on an annual basis—

(I) the number and type of personnel that are employed by the designated state unit in the provision of vocational rehabilitation services, including ratios of qualified vocational rehabilitation counselors to clients; and (II) the number and type of personnel needed by the state, and a projection of the numbers of such personnel that will be needed in five years, based on projections of the number of individuals to be served, the number of such personnel who are expected to retire or leave the vocational rehabilitation field, and other relevant factors;

(ii) where appropriate, a description of the manner in which activities will be undertaken under this section to coordinate the system of personnel development with personnel development activities under *the Individuals with Disabilities Education Act* (20 U.S.C. 1400 et seq.);

(iii) a description of the development and maintenance of a system of determining, on an annual basis, information on the programs of institutions of higher education within the state that are preparing rehabilitation professionals, including—

(I) the numbers of students enrolled in such programs; and (II) the number of such students who graduated with certification or licensure, or with credentials to qualify for certification or licensure, as a rehabilitation professional during the past year;

(iv) a description of the development, updating, and implementation of a plan that—

(I) will address the current and projected vocational rehabilitation services personnel training needs for the designated state unit; and

(II) provides for the coordination and facilitation of efforts between the designated state unit, institutions of higher education and professional associations to recruit, prepare and retain qualified personnel, including personnel from minority backgrounds, and personnel who are individuals with disabilities; and

(v) a description of the procedures and activities the designated state agency will undertake to ensure that all personnel employed by the designated state unit are appropriately and adequately trained and prepared, including—

(I) a system for the continuing education of rehabilitation professionals and paraprofessionals within the designated state unit, particularly with respect to rehabilitation technology; and (II) procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated state unit significant knowledge from research and other sources, including procedures for providing training regarding the amendments to this act made by the *Rehabilitation Act Amendments of 1998*;

(B) set forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel, including rehabilitation professionals and paraprofessionals, needed within the designated state unit to carry out this part are appropriately and adequately prepared and trained, including—

(i) the establishment and maintenance of standards that are consistent with any national or state approved or recognized certification, licensing, registration or other comparable requirements that apply to the area in which such personnel are providing vocational rehabilitation services; and

(ii) to the extent that such standards are not based on the highest requirements in the state applicable to a specific profession or discipline, the steps the state is taking to require the retraining or hiring of personnel within the designated state unit that meet appropriate professional requirements in the state; and

(C) contain provisions relating to the establishment and maintenance of minimum standards to ensure the availability of personnel within the designated state unit, to the maximum extent feasible, trained to communicate in the native language or mode of communication of an applicant or eligible individual.

(8) Comparable services and benefits

(A) Determination of availability (i) In general

The state plan shall include an assurance that, prior to providing any vocational rehabilitation service to an eligible individual, except those services specified in Paragraph (5)(D) and in Paragraphs (1) through (4) and (14) of Section 103(a), the designated state unit will determine whether comparable services and benefits are available under any other program (other than a program carried out under this title) unless such a determination would interrupt or delay—

(I) the progress of the individual toward achieving the employment outcome identified in the individualized plan for employment of the individual in accordance with Section 102(b); (II) an immediate job placement; or (III) the provision of such service to any individual at extreme medical risk.

(ii) Awards and scholarships

For purposes of clause (i), comparable benefits do not include awards and scholarships based on merit.

(B) Interagency agreement

The state plan shall include an assurance that the governor of the state, in consultation with the entity in the state responsible for the vocational rehabilitation program and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between any appropriate public entity, including the state entity responsible for administering the state medicaid program, a public institution of higher education and a component of the statewide workforce investment system, and the designated state unit, in order to ensure the provision of vocational rehabilitation services described in Subparagraph (A) (other than those services specified in Paragraph (5)(D), and in Paragraphs (1) through (4) and (14) of Section 103(a)), that are included in the individualized plan for employment of an eligible individual, including the provision of such vocational rehabilitation services during the pendency of any dispute described in clause (iii). Such agreement or mechanism shall include the following:

(i) Agency financial responsibility

An identification of, or a description of a method for defining, the financial responsibility of such public entity for providing such services and a provision stating the financial responsibility of such public entity for providing such services.

(ii) Conditions, terms and procedures of reimbursement

Information specifying the conditions, terms and procedures under which a designated state unit shall be reimbursed by other public entities for providing such services, based on the provisions of such agreement or mechanism.

(iii) Interagency disputes

Information specifying procedures for resolving interagency disputes under the agreement or other mechanism (including procedures under which the designated state unit may initiate proceedings to secure reimbursement from other public entities or otherwise implement the provisions of the agreement or mechanism).

(iv) Coordination of services procedures

Information specifying policies and procedures for public entities to determine and identify the interagency coordination responsibilities of each public entity to promote the coordination and timely delivery of vocational rehabilitation services (except those services specified in Paragraph (5)(D) and in Paragraphs (1) through (4) and (14) of Section 103(a)).

(C) Responsibilities of other public entities

(i) Responsibilities under other law

Notwithstanding Subparagraph (B), if any public entity other than a designated state unit is obligated under federal or state law, or assigned responsibility under state policy or under this paragraph, to provide or pay for any services that are also considered to be vocational rehabilitation services (other than those specified in Paragraph (5)(D) and in Paragraphs (1) through (4) and (14) of Section

103(a)), such public entity shall fulfill that obligation or responsibility, either directly or by contract or other arrangement.

(ii) Reimbursement

If a public entity other than the designated state unit fails to provide or pay for the services described in clause (i) for an eligible individual, the designated state unit shall provide or pay for such services to the individual. Such designated state unit may claim reimbursement for the services from the public entity that failed to provide or pay for such services. Such public entity shall reimburse the designated state unit pursuant to the terms of the interagency agreement or other mechanism described in this paragraph according to the procedures established in such agreement or mechanism pursuant to Subparagraph (B)(ii).

(D) Methods

The governor of a state may meet the requirements of Subparagraph (B) through—

(i) a state statute or regulation;

(ii) a signed agreement between the respective officials of the public entities that clearly identifies the responsibilities of each public entity relating to the provision of services; or

(iii) another appropriate method, as determined by the designated state unit.

(9) Individualized plan for employment

(A) Development and implementation

The state plan shall include an assurance that an individualized plan for employment meeting the requirements of Section 102(b) will be developed and implemented in a timely manner for an individual subsequent to the determination of the eligibility of the individual for services under this title, except that in a state operating under an order of selection described in Paragraph (5), the plan will be developed and implemented only for individuals meeting the order of selection criteria of the state.

(B) Provision of services

The state plan shall include an assurance that such services will be provided in accordance with the provisions of the individualized plan for employment.

(10) Reporting requirements

(A) In general

The state plan shall include an assurance that the designated state agency will submit reports in the form and level of detail and at the time required by the commissioner regarding applicants for, and eligible individuals receiving, services under this title.

(B) Annual reporting

In specifying the information to be submitted in the reports, the commissioner shall require annual reporting on the eligible individuals receiving the services, on those specific data elements described in Section 136(d)(2) of the *Workforce Investment Act of 1998* that are determined by the secretary to be relevant in assessing the performance of designated state units in carrying out the vocational rehabilitation program established under this title.

(C) Additional data

In specifying the information required to be submitted in the reports, the commissioner shall require additional data with regard to applicants and eligible individuals related to—

(i) the number of applicants and the number of individuals determined to be eligible or ineligible for the program carried out under this title, including—

(I) the number of individuals determined to be ineligible because they did not require vocational rehabilitation services, as provided in Section 102(a); and (II) the number of individuals determined, on the basis of clear and convincing evidence, to be too severely disabled to benefit in terms of an employment outcome from vocational rehabilitation services;

(ii) the number of individuals who received vocational rehabilitation services through the program, including—

(I) the number who received services under Paragraph (5)(D), but not assistance under an individualized plan for employment; (II) of those recipients who are individuals with significant disabilities, the number who received assistance under an individualized plan for employment consistent with Section 102(b); and (III) of those recipients who are not individuals with significant disabilities, the number who received assistance under an individualized plan for employment consistent with Section 102(b);

(iii) of those applicants and eligible recipients who are individuals with significant disabilities—

(I) the number who ended their participation in the program carried out under this title and the number who achieved employment outcomes after receiving vocational rehabilitation services; and (II) the number who ended their participation in the program and who were employed six months and 12 months after securing or regaining employment, or, in the case of individuals whose employment outcome was to retain or advance in employment, who were employed six months and 12 months after achieving their employment outcome, including— (aa) the number who earned the minimum wage rate specified in Section 6(a)(1) of the *Fair Labor Standards Act of 1938* (29 U.S.C. 206(a)(1)) or another wage level set by the commissioner, during such employment; and (bb) the number who received employment benefits from an employer during such employment; and

(iv) of those applicants and eligible recipients who are not individuals with significant disabilities—

(I) the number who ended their participation in the program carried out under this title and the number who achieved employment outcomes after receiving vocational rehabilitation services; and

(II) the number who ended their participation in the program and who were employed six months and 12 months after securing or regaining employment, or, in the case of individuals whose employment outcome was to retain or advance in employment, who were employed six months and 12 months after achieving their employment outcome, including— (aa) the number who earned the minimum wage rate specified in Section 6(a)(1) of the *Fair Labor Standards Act of 1938* (29 U.S.C. 206(a)(1)) or another wage level set by the commissioner, during such employment; and (bb) the number who received employment benefits from an employer during such employment.

(D) Costs and results

The commissioner shall also require that the designated state agency include in the reports information on—

(i) the costs under this title of conducting administration, providing assessment services, counseling and guidance and other direct services provided by designated state agency staff, providing services purchased under individualized plans for employment, supporting small business enterprises, establishing, developing, and improving community rehabilitation programs, providing other services to groups and facilitating use of other programs under this act and Title I of the *Workforce Investment Act of 1998* by eligible individuals; and

(ii) the results of annual evaluation by the state of program effectiveness under Paragraph (15)(E).

(E) Additional information

The commissioner shall require that each designated state unit include in the reports additional information related to the applicants and eligible individuals, obtained either through a complete count or sampling, including—

(i) information on—

(I) age, gender, race, ethnicity, education, category of impairment, severity of disability and whether the individuals are students with disabilities; (II) dates of application, determination of eligibility or ineligibility, initiation of the individualized plan for employment and termination of participation in the program; (III) earnings at the time of application for the program and termination of participation in the program; (IV) work status and occupation; (V) types of services, including assistive technology services and assistive technology devices, provided under the program; (VI) types of public or private programs or agencies that furnished services under the program; and (VII) the reasons for individuals terminating participation in the program without achieving an employment outcome; and

(ii) information necessary to determine the success of the state in meeting—

(I) the state performance measures established under Section 136(b) of the *Workforce Investment Act of 1998*, to the extent the measures are applicable to individuals with disabilities; and (II) the standards and indicators established pursuant to Section 106.

(F) Completeness and confidentiality

The state plan shall include an assurance that the information submitted in the reports will include a complete count, except as provided in Subparagraph (E), of the applicants and eligible individuals, in a manner permitting the greatest possible cross-classification of data and that the identity of each individual for which information is supplied under this paragraph will be kept confidential.

(11) Cooperation, collaboration and coordination

(A) Cooperative agreements with other components of statewide workforce investment systems

The state plan shall provide that the designated state unit or designated state agency shall enter into a cooperative agreement with other entities that are components of the statewide workforce investment system of the state, regarding the system, which agreement may provide for—

(i) provision of intercomponent staff training and technical assistance with regard to—

(I) the availability and benefits of, and information on eligibility standards for, vocational rehabilitation services; and (II) the promotion of equal, effective and meaningful participation by individuals with disabilities in workforce investment activities in the state through the promotion of program accessibility, the use of nondiscriminatory policies and procedures and the provision of reasonable accommodations, auxiliary aids and services and rehabilitation technology, for individuals with disabilities;

(ii) use of information and financial management systems that link all components of the statewide workforce investment system, that link the components to other electronic networks, including nonvisual electronic networks, and that relate to such subjects as employment statistics, and information on job vacancies, career planning and workforce investment activities;

(iii) use of customer service features such as common intake and referral procedures, customer databases, resource information and human services hotlines;

(iv) establishment of cooperative efforts with employers to—

(I) facilitate job placement; and (II) carry out any other activities that the designated state unit and the employers determine to be appropriate;

(v) identification of staff roles, responsibilities and available resources, and specification of the financial responsibility of each component of the statewide workforce investment system with regard to paying for necessary services (consistent with state law and federal requirements); and

(vi) specification of procedures for resolving disputes among such components.

(B) Replication of cooperative agreements

The state plan shall provide for the replication of such cooperative agreements at the local level between individual offices of the designated state unit and local entities carrying out activities through the statewide workforce investment system.

(C) Interagency cooperation with other agencies

The state plan shall include descriptions of interagency cooperation with, and utilization of the services and facilities of, federal, state and local agencies and programs, including programs carried out by the under secretary for rural development of the U.S. Department of Agriculture and state use contracting programs, to the extent that such agencies and programs are not carrying out activities through the statewide workforce investment system.

(D) Coordination with education officials

The state plan shall contain plans, policies and procedures for coordination between the designated state agency and education officials responsible for the public education of students with disabilities, that are designed to facilitate the transition of the students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitation services under this title, including information on a formal interagency agreement with the state education agency that, at a minimum, provides for—

- (i) consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;
- (ii) transition planning by personnel of the designated state agency and educational agency personnel for students with disabilities that facilitates the development and completion of their individualized education programs under Section 614(d) of the *Individuals with Disabilities Education Act* (as added by Section 101 of Public Law 105-17);
- (iii) the roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining state lead agencies and qualified personnel responsible for transition services; and
- (iv) procedures for outreach to and identification of students with disabilities who need the transition services.

(E) Coordination with statewide independent living councils and independent living centers

The state plan shall include an assurance that the designated state unit, the Statewide Independent Living Council established under Section 705, and the independent living centers described in Part C of title VII within the state have developed working relationships and coordinate their activities.

(F) Cooperative agreement with recipients of grants for services to American Indians

In applicable cases, the state plan shall include an assurance that the state has entered into a formal cooperative agreement with each grant recipient in the state that receives funds under Part C. The agreement shall describe strategies for collaboration and coordination in providing vocational rehabilitation services to American Indians who are individuals with disabilities, including—

- (i) strategies for interagency referral and information sharing that will assist in eligibility determinations and the development of individualized plans for employment;
- (ii) procedures for ensuring that American Indians who are individuals with disabilities and are living near a reservation or tribal service area are provided vocational rehabilitation services; and
- (iii) provisions for sharing resources in cooperative studies and assessments, joint training activities, and other collaborative activities designed to improve the provision of services to American Indians who are individuals with disabilities.

(12) Residency

The state plan shall include an assurance that the state will not impose a residence requirement that excludes from services provided under the plan any individual who is present in the state.

(13) Services to American Indians

The state plan shall include an assurance that, except as otherwise provided in Part C, the designated state agency will provide vocational rehabilitation services to American Indians who are individuals with disabilities residing in the state to the same extent as the designated state agency provides such services to other significant populations of individuals with disabilities residing in the state.

(14) Annual review of individuals in extended employment or other employment under special certificate provisions of the *Fair Labor Standards Act of 1938*

The state plan shall provide for—

(A) an annual review and reevaluation of the status of each individual with a disability served under this title who has achieved an employment outcome either in an extended employment setting in a community rehabilitation program or any other employment under Section 14(c) of the *Fair Labor Standards Act of 1938* (29 U.S.C. 214(c)) for two years after the achievement of the outcome (and thereafter if requested by the individual or, if appropriate, the individual's representative), to determine the interests, priorities and needs of the individual with respect to competitive employment or training for competitive employment;

(B) input into the review and reevaluation, and a signed acknowledgment that such review and reevaluation have been conducted, by the individual with a disability, or, if appropriate, the individual's representative; and

(C) maximum efforts, including the identification and provision of vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individuals described in subparagraph (A) in engaging in competitive employment.

(15) Annual state goals and reports of progress

(A) Assessments and estimates

The state plan shall—

(i) include the results of a comprehensive, statewide assessment, jointly conducted by the designated state unit and the State Rehabilitation Council (if the state has such a council) every three years, describing the rehabilitation needs of individuals with disabilities residing within the state, particularly the vocational rehabilitation services needs of—

(I) individuals with the most significant disabilities, including their need for supported employment services;

(II) individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program carried out under this title; and

(III) individuals with disabilities served through other components of the statewide workforce investment system (other than the vocational rehabilitation program), as identified by such individuals and personnel assisting such individuals through the components;

(ii) include an assessment of the need to establish, develop, or improve community rehabilitation programs within the state; and

(iii) provide that the state shall submit to the commissioner a report containing information regarding updates to the assessments, for any year in which the state updates the assessments.

(B) Annual estimates

The state plan shall include, and shall provide that the state shall annually submit a report to the commissioner that includes, state estimates of—

(i) the number of individuals in the state who are eligible for services under this title;

(ii) the number of such individuals who will receive services provided with funds provided under Part B and under Part B of Title VI, including, if the designated state agency uses an order of selection in accordance with Paragraph (5), estimates of the number of individuals to be served under each priority category within the order; and

(iii) the costs of the services described in clause (i), including, if the designated state agency uses an order of selection in accordance with Paragraph (5), the service costs for each priority category within the order.

(C) Goals and priorities

(i) In general

The state plan shall identify the goals and priorities of the state in carrying out the program. The goals and priorities shall be jointly developed, agreed to, and reviewed annually by the designated state unit and the State Rehabilitation Council, if the state has such a council. Any revisions to the goals and priorities shall be jointly agreed to by the designated state unit and the State Rehabilitation Council, if the state has such a council. The state plan shall provide that the state shall submit to the

commissioner a report containing information regarding revisions in the goals and priorities, for any year in which the state revises the goals and priorities.

(ii) Basis

The state goals and priorities shall be based on an analysis of—

(I) the comprehensive assessment described in Subparagraph (A), including any updates to the assessment; (II) the performance of the state on the standards and indicators established under Section 106; and (III) other available information on the operation and the effectiveness of the vocational rehabilitation program carried out in the state, including any reports received from the State Rehabilitation Council, under Section 105(c) and the findings and recommendations from monitoring activities conducted under Section 107.

(iii) Service and outcome goals for categories in order of selection

If the designated state agency uses an order of selection in accordance with Paragraph (5), the state shall also identify in the state plan service and outcome goals and the time within which these goals may be achieved for individuals in each priority category within the order.

(D) Strategies

The state plan shall contain a description of the strategies the state will use to address the needs identified in the assessment conducted under Subparagraph (A) and achieve the goals and priorities identified in Subparagraph (C), including—

(i) the methods to be used to expand and improve services to individuals with disabilities, including how a broad range of assistive technology services and assistive technology devices will be provided to such individuals at each stage of the rehabilitation process and how such services and devices will be provided to such individuals on a statewide basis;

(ii) outreach procedures to identify and serve individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program;

(iii) where necessary, the plan of the state for establishing, developing, or improving community rehabilitation programs;

(iv) strategies to improve the performance of the state with respect to the evaluation standards and performance indicators established pursuant to Section 106; and

(v) strategies for assisting entities carrying out other components of the statewide workforce investment system (other than the vocational rehabilitation program) in assisting individuals with disabilities.

(E) Evaluation and reports of progress

The state plan shall—

(i) include the results of an evaluation of the effectiveness of the vocational rehabilitation program, and a joint report by the designated state unit and the State Rehabilitation Council, if the state has such a council, to the commissioner on the progress made in improving the effectiveness from the previous year, which evaluation and report shall include—

(I) an evaluation of the extent to which the goals identified in Subparagraph (C) were achieved; (II) a description of strategies that contributed to achieving the goals; (III) to the extent to which the goals were not achieved, a description of the factors that impeded that achievement; and (IV) an assessment of the performance of the state on the standards and indicators established pursuant to Section 106; and

(ii) provide that the designated state unit and the State Rehabilitation Council, if the state has such a council, shall jointly submit to the commissioner an annual report that contains the information described in clause (i).

(16) Public comment

The state plan shall—

(A) provide that the designated state agency, prior to the adoption of any policies or procedures governing the provision of vocational rehabilitation services under the state plan (including making any amendment to such policies and procedures), shall conduct public meetings throughout the state, after providing adequate notice of the meetings, to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures, and actively consult with the director of the client assistance program carried out under Section 112, and, as appropriate, Indian tribes, tribal organizations, and Native Hawaiian organizations on the policies or procedures; and

(B) provide that the designated state agency (or each designated state agency if two agencies are designated) and any sole agency administering the plan in a political subdivision of the state, shall take into account, in connection with matters of general policy arising in the administration of the plan, the views of—

(i) individuals and groups of individuals who are recipients of vocational rehabilitation services, or in appropriate cases, the individuals' representatives;

(ii) personnel working in programs that provide vocational rehabilitation services to individuals with disabilities;

(iii) providers of vocational rehabilitation services to individuals with disabilities;

(iv) the director of the client assistance program; and

(v) the State Rehabilitation Council, if the state has such a council.

(17) Use of funds for construction of facilities

The state plan shall provide that if, under special circumstances, the state plan includes provisions for the construction of facilities for community rehabilitation programs—

(A) the federal share of the cost of construction for the facilities for a fiscal year will not exceed an amount equal to 10 percent of the state's allotment under Section 110 for such year;

(B) the provisions of Section 306 (as in effect on the day before the date of enactment of the *Rehabilitation Act Amendments of 1998*) shall be applicable to such construction and such provisions shall be deemed to apply to such construction; and

(C) there shall be compliance with regulations the commissioner shall prescribe designed to assure that no state will reduce its efforts in providing other vocational rehabilitation services (other than for the establishment of facilities for community rehabilitation programs) because the plan includes such provisions for construction.

(18) Innovation and expansion activities

The state plan shall—

(A) include an assurance that the state will reserve and use a portion of the funds allotted to the state under Section 110—

(i) for the development and implementation of innovative approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities under this title, particularly individuals with the most significant disabilities, consistent with the findings of the statewide assessment and goals and priorities of the state as described in Paragraph (15); and

(ii) to support the funding of—

(I) the State Rehabilitation Council, if the state has such a council, consistent with the plan prepared under Section 105(d)(1); and

(II) the Statewide Independent Living Council, consistent with the plan prepared under Section 705(e)(1);

(B) include a description of how the reserved funds will be utilized; and

(C) provide that the state shall submit to the commissioner an annual report containing a description of how the reserved funds were utilized during the preceding year.

(19) Choice

The state plan shall include an assurance that applicants and eligible individuals or, as appropriate, the applicants' representatives or individuals' representatives, will be provided information and support services to assist the applicants and individuals in exercising informed choice throughout the rehabilitation process, consistent with the provisions of Section 102(d).

(20) Information and referral services

(A) In general

The state plan shall include an assurance that the designated state agency will implement an information and referral system adequate to ensure that individuals with disabilities will be provided accurate vocational rehabilitation information and guidance, using appropriate modes of communication, to assist such individuals in preparing for, securing, retaining or regaining employment, and will be appropriately referred to federal and state programs (other than the vocational rehabilitation program carried out under this title), including other components of the statewide workforce investment system in the state.

(B) Referrals

An appropriate referral made through the system shall—

(i) be to the federal or state programs, including programs carried out by other components of the statewide workforce investment system in the state, best suited to address the specific employment needs of an individual with a disability; and

(ii) include, for each of these programs, provision to the individual of—

(I) a notice of the referral by the designated state agency to the agency carrying out the program; (II) information identifying a specific point of contact within the agency carrying out the program; and (III) information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain or regain employment.

(21) State independent consumer-controlled commission; State Rehabilitation Council

(A) Commission or council

The state plan shall provide that either—

(i) the designated state agency is an independent commission that—

(I) is responsible under state law for operating, or overseeing the operation of, the vocational rehabilitation program in the state; (II) is consumer-controlled by persons who— (aa) are individuals with physical or mental impairments that substantially limit major life activities; and (bb) represent individuals with a broad range of disabilities, unless the designated state unit under the direction of the commission is the state agency for individuals who are blind; (III) includes family members, advocates or other representatives, of individuals with mental impairments; and (IV) undertakes the functions set forth in Section 105(c)(4); or

(ii) the state has established a State Rehabilitation Council that meets the criteria set forth in Section 105 and the designated state unit—

(I) in accordance with Paragraph (15), jointly develops, agrees to, and reviews annually state goals and priorities, and jointly submits annual reports of progress with the council; (II) regularly consults with the council regarding the development, implementation and revision of state policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services; (III) includes in the state plan and in any revision to the state plan, a summary of input provided by the council, including recommendations from the annual report of the council described in Section 105(c)(5), the review and analysis of consumer satisfaction described in Section 105(c)(4), and other reports prepared by the council, and the response of the designated state unit to such input and recommendations, including explanations for rejecting any input or recommendation; and (IV) transmits to the council— (aa) all plans, reports and other information required under this title to be submitted to the secretary; (bb) all policies, and information on all practices and procedures, of general applicability provided to or used by rehabilitation personnel in carrying out this title; and (cc) copies of due process hearing decisions issued under this title, which shall be transmitted in such a manner as to ensure that the identity of the participants in the hearings is kept confidential.

(B) More than one designated state agency

In the case of a state that, under Section 101(a)(2), designates a state agency to administer the part of the state plan under which vocational rehabilitation services are provided for individuals who are blind (or to supervise the administration of such part by a local agency) and designates a separate state agency to administer the rest of the state plan, the state shall either establish a State Rehabilitation Council for each of the two agencies that does not meet the requirements in Subparagraph (A)(i), or establish one State Rehabilitation Council for both agencies if neither agency meets the requirements of Subparagraph (A)(i).

(22) Supported employment state plan supplement

The state plan shall include an assurance that the state has an acceptable plan for carrying out Part B of title VI, including the use of funds under that part to supplement funds made available under Part B of this title to pay for the cost of services leading to supported employment.

(23) Annual updates

The plan shall include an assurance that the state will submit to the commissioner reports containing annual updates of the information required under Paragraph (7) (relating to a comprehensive system of personnel development) and any other updates of the information required under this section that are requested by the commissioner, and annual reports as provided in Paragraphs (15) (relating to assessments, estimates, goals and priorities and reports of progress) and (18) (relating to innovation and expansion), at such time and in such manner as the secretary may determine to be appropriate.

(24) Certain contracts and cooperative agreements

(A) Contracts with for-profit organizations

The state plan shall provide that the designated state agency has the authority to enter into contracts with for-profit organizations for the purpose of providing, as vocational rehabilitation services, on-the-job training and related programs for individuals with disabilities under Part A of Title VI, upon

a determination by such agency that such for-profit organizations are better qualified to provide such rehabilitation services than nonprofit agencies and organizations.

(B) Cooperative agreements with private nonprofit organizations

The state plan shall describe the manner in which cooperative agreements with private nonprofit vocational rehabilitation service providers will be established.

(b) Approval; Disapproval of the state plan

(1) Approval

The commissioner shall approve any plan that the commissioner finds fulfills the conditions specified in this section, and shall disapprove any plan that does not fulfill such conditions.

(2) Disapproval

Prior to disapproval of the state plan, the commissioner shall notify the state of the intention to disapprove the plan and shall afford the state reasonable notice and opportunity for a hearing.

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