United States Code; and section 7.3 (c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 91–24790 Filed 10–9–91, 2:50 pm]

BILLING CODE 7710-12-Mu

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Amend Agenda

Prior to its October 7–8, 1991, meeting, the Board of Governors of the United States Postal Service gave due notice of its intention to hold the meeting, the notice and agenda for the meeting having been published in the **Federal Register** on September 25, 1991 (56 FR 48609). On October 7, while in closed session, the Board decided by unanimous vote to add to the open meeting agenda on October 8, 1991, consideration of an adjustment to reduced rate (non-profit) mail and that no earlier public announcement of the new item on the agenda was possible.

David F. Harris,

Secretary.

[FR Doc. 91–24789 Filed 10–9–91; 3:37 pm]

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federal register

Friday
October 11, 1991

Part II

Department of Education

34 CFR Part 400, et al.

State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 400, 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, and 428

RIN 1830-AA08

State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education

AGENCY: Department of Education.

ACTION: Proposed rule.

SUMMARY: The Secretary proposes to issue regulations governing three State-administered programs and 23 discretionary programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act, as amended by Public Law 101-392, 104 Stat. 753 (1990). These regulations explain the types of activities that the Secretary may support under each program, and the basis on which the Secretary would make awards.

DATES: Comments must be received on or before December 10, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. Thomas L. Johns, Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, room 4050), 400 Maryland Avenue, SW., Washington, DC 20202-7120. Telephone: (202) 732-2237. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Sharon A. Jones, Chairperson, Vocational Education Regulations Taskforce, U.S. Department of Education (Mary E. Switzer Building, room 4050), 400 Maryland Avenue SW., Washington, DC 20202-7120. Telephone: (202) 732-2237.

SUPPLEMENTARY INFORMATION:

Background

The Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Act), which was enacted on September 25, 1990, amends the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.* (1988)). Furthermore, technical amendments to the Act were made by Public Law 102-103, 105 Stat. 497 (1991). The Act authorizes Federal assistance for vocational education through Fiscal Year 1995.

The Act makes several significant amendments to redirect Federal assistance for vocational education in order to focus the Federal funds on improving vocational education and, in particular, on improving vocational education and services for members of special populations, including disabled and disadvantaged individuals. Under the Act, a State must make broad assurances that members of the special populations will be given equal access to vocational education. In addition, an eligible recipient under title II of the Act must make broad assurances that members of special populations will receive supplementary and other services necessary to succeed in vocational education, and must give priority for assistance to limited numbers of sites or programs that serve the highest concentrations of special population members.

Subject to these requirements for services to special population members and to certain requirements for the distribution of funds, the State and its eligible recipients share increased authority to direct the use of the funds awarded under the Act to improve their vocational education programs. In exchange for this increased flexibility, the Act imposes new requirements on both a State and its eligible recipients, making them accountable for improving vocational education. Specifically, a State is required to assess the quality of its vocational education program using measurable objective criteria during each State plan cycle. Furthermore, a State is required to develop and implement a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs. Using these statewide standards and measures, a recipient of funds under title II, part C of the Act must annually evaluate the effectiveness of its vocational education program and, in cases where substantial progress is not made toward meeting these standards and measures, implement a local program improvement plan, and, if that is not successful, a State and local joint plan for improvement.

The Secretary strongly supports increased flexibility for State and local recipients in exchange for increased accountability. "AMERICA 2000, An Educational Strategy," which was announced by the President on April 18, 1991, emphasizes the need for better and more accountable schools as well as the need to provide opportunities for adults to continue learning. Clearly, these needed improvements must be implemented by the States and local recipients. Also consistent with promoting accountability in education is the Secretary's goal to conduct evaluations of all Federal grant programs, to the extent resources permit. To conduct these evaluations, the Secretary will collect uniform data from grantees about project results.

Vocational education must play a crucial role in achieving the six national goals for educational improvement underlying the AMERICA 2000 strategy. Vocational education must be improved and made more accessible for special population members in order for this Nation to achieve the goal of making every adult American able to compete in the workplace (Goal 5). Moreover, improvements in vocational education can contribute to the Nation's achievement of a high school graduation rate of at least 90 percent by the year 2000 (Goal 1). Increased integration of vocational and academic education can contribute to the National goals of producing students that demonstrate competency in challenging subject matter, including English, mathematics, science, history, and geography (Goal 3) and students who lead the world in mathematics and science achievement (Goal 4).

The Act reflects many amendments that will assist States and local recipients in improving their vocational education programs. The regulations implementing the major changes to the provisions of the State program are discussed below in greater detail. In addition to the State Vocational and Applied Technology Education Programs, the Act authorizes several new categorical programs—some to be administered at the national level, others to be administered by the States.

Regulatory Development

Section 504(a) of the Act required the Secretary to convene regional meetings to obtain public involvement in the development of proposed regulations to implement the Act. Section 504(a) also required the Secretary to prepare draft regulations implementing the Act and to submit regulations on at least two key issues to a negotiated rulemaking process.

The Department of Education (Department) has taken numerous steps in addition to those required by section 504 of the Act to involve members of the public, especially representatives of special populations, in the development of the proposed regulations. Section 504(b) of the Act required the Secretary to select at least four key issues concerning the implementation of the Act for discussion at regional meetings. In order to determine which issues would be most appropriate for discussion, the Department held meetings with representatives of national associations interested in vocational education, to seek advice on the regulatory issues to be presented at the regional meetings. The Department carefully considered the concerns raised by these groups in selecting the issues for the regional meetings.

In order to ensure the widest, most informed participation in the regional meetings, the Department asked State and national associations, State agencies, the State directors of vocational education, and the State directors of community colleges to nominate individuals to represent them at the regional meetings. Through this process, the Department received approximately 1200 names, 200 of which were of individuals involved with special populations, and invited each of these individuals to participate in the regional meetings. In addition, the Department published a notice of the regional meetings in the **Federal Register.**

From October 29, 1990, through November 15, 1990, the Department held regional meetings in four cities, at which the total attendance exceeded 800 participants. In the course of each meeting, the Department led discussions in four areas including a total of 21 regulatory issues. A summary of the issues discussed at the regional meetings and the information received on these issues is contained in appendix B of these proposed regulations.

After the regional meetings, the Department selected negotiators to participate in the negotiated rulemaking. Section 504(b) of the Act required that the Department select at least ten negotiators from participants in the regional meetings, representing several groups, including special populations. Section 504(b) of the Act also required the Department to ensure that the ten regions were represented at the negotiated rulemaking. Using forms completed by the participants at the regional meetings, the Department selected 13 negotiators from outside of the Department who met the statutory criteria and who, on the basis of the quality of their participation at the regional meetings, the Department believed would be informed and effective negotiators.

The Federal Mediation and Conciliation Service conducted the negotiated rulemaking on December 17–18, 1990. Fourteen negotiators, including the 13 negotiators chosen from outside the Department and a negotiator representing the Department, participated in the negotiated rulemaking. Negotiations were held on eight regulatory issues in three areas: (1) Requirements for the use of funds; (2) evaluations under standards and measures; and (3) services and activities for special populations. The individual regulatory issues negotiated and the decisions reached or other recommendations made by the negotiators are summarized in appendix C to these proposed regulations.

Both participants in the regional meetings and negotiators at the negotiated rulemaking have requested that the regulations accord a State and its eligible recipients the most flexibility possible to address particular State or local needs in vocational education. In response to these requests, the Secretary has used examples to show how a State or other recipient under the Act may comply with certain statutory requirements wherever possible in the proposed regulations. The examples are contained in either the text of the proposed regulations or in appendix A to the proposed regulations. While not foreclosing a State or local recipient's flexibility to develop other reasonable interpretations of the statutory requirements, the examples provide an interpretation that the Secretary considers to be in compliance with the Act. However, the Secretary urges all States and other recipients to strive for improvements in vocational education beyond the requirements of the Act, especially with respect to the requirements for participation of special population members.

Summary of Major Provisions

(1) *General Provisions (Part 400)* (a) *"Coherent sequence of courses."* Section 235(c)(1)(B) of the Act requires recipients to use funds for vocational education programs that integrate academic and vocational education in those programs through "coherent sequences of courses" so that students attain academic and occupational competencies. The term "coherent sequence of courses" is also used in the Act in sections 201(b)(2)(B) (State programs and leadership) and 240(11)(B) and (12)(A) (local application). Section 400.4(b) defines this term in order to clarify that under vocational and applied technology education programs, competency-based education, academic education, and adult training or retraining are permissible if they directly relate to, and lead to, both educational and occupational competencies.

The Secretary submitted the draft regulation defining "coherent sequence of courses" to negotiated rulemaking, and the negotiators agreed to the revised definition contained in § 400.4(b) that more closely tracks the statutory requirements. While the definition does not specifically include a single course, the Secretary agrees with the negotiators that the definition of "coherent sequence of courses" would include sequential units encompassed within a single adult retraining course that otherwise meets the requirements of the definition.

(b) *"Economically disadvantaged family or individual."* Section 521(16) of the Act defines "economically disadvantaged family or individual" to mean those families or individuals who are determined by the Secretary to be low-income under the latest available data from the Department of Commerce. Section 400.4(b) defines this term to include any family or individual who is eligible for certain benefits or services. The qualifying benefits or services and other factors included in § 400.4(b) are those to be used by a State board in determining the number of economically disadvantaged students for purposes of allocations under § 403.114(a). Although the regulations in §§ 400.4(b) and 403.114(a) include participation under the National School Lunch Act (42 U.S.C. 1751 *et seq.*), in accordance with the requirements of that program, the Secretary wishes to emphasize that participation under this program may not be used as a basis for identifying a particular family or individual as economically disadvantaged.

(c) *"Individuals with disabilities."* The Act uses the terms "individuals with disabilities" and "individuals with handicaps" interchangeably. For sake of clarity, the proposed regulations use only the term "individuals with disabilities," and § 400.4(b) defines this term.

(d) *Requirement concerning a State committee of practitioners.* Section 115 of the Act requires the State board to convene a State Committee of Practitioners (Committee) to review, comment on, and propose revisions to the State draft proposal for a statewide system of core standards and measures of performance (§ 400.7). Section 115 also requires that the Committee be appointed as prescribed by section 512(a) of the Act after consultation with certain groups (§ 400.6). Section 512(a) of the Act requires that the membership, which is selected from nominations solicited from other specific groups, consist of representatives of seven groups, the majority of whom are representatives of local educational agencies. Section 400.6(c)(2) clarifies that a State may count school administrators, teachers, and members of local boards of education in determining whether a majority of the Committee membership represents local educational agencies. Section 512(a) of the Act further requires that a State submit for the Committee's review any proposed or final State rule or regulation under the Act. Section 400.7(b) clarifies that a State is required to submit for the Committee's review a State policy that would be binding on eligible recipients and that would have the same effect as a formal rule or regulation even if it would not be issued as one.

(e) *Reporting requirements.* One of AMERICA 2000's major themes is that communities and schools should be accountable for improving the effectiveness of the educational programs they administer. As a corollary responsibility, the Department is increasing the accountability of projects it funds thereby ensuring that demonstration and training projects better contribute to the improvement of education. This approach is designed to increase the number of instructional approaches, materials, and techniques for providing vocational education that are submitted to and approved by the Department's Program Effectiveness Panel and subsequently made available to practitioners. To implement this strategy, § 400.10 establishes a general reporting requirement that must be met by recipients of funds under the Vocational and Applied Technology Education Programs. Appendix D contains the specific information that the Secretary intends to require any grantee to submit in order to comply with the reporting requirement in § 400.10. The information in appendix D is provided with these proposed regulations to make applicants aware of the new standards for accountability that must be taken into account while the applicant is designing a project, developing an application, identifying staff, budgeting for activities, and planning evaluation activities. The Secretary is particularly interested in receiving comments on the type of information that will be collected under appendix D.

(2) *Indian Vocational Education Program (part 401).* The Indian Vocational Education Program provides financial assistance to projects that provide vocational education for the benefit of Indians. These regulations establish eligibility requirements (§ 401.2), selection criteria for evaluating applications (§ 401.21), and evaluation requirements (§ 401.31). These regulations also establish conditions under which projects may provide stipends for students who have acute economic needs that cannot be met under work-study programs (§ 401.3 (c) and (d)).

(3) *Native Hawaiian Vocational Education Program (part 402).* The Native Hawaiian Vocational Education Program provides financial assistance to projects that provide vocational education for the benefit of native Hawaiians. These regulations establish eligibility requirements (§ 402.2), and selection criteria for evaluating applications (§ 402.21).

(4) *State Vocational and Applied Technology Education Program (part 403)* (a) *State requirements.* In developing the State plan, the State must conduct an assessment of program quality, consult with the State council, and conduct public hearings (§ 403.31).

The State plan must contain a variety of new assurances and descriptions. For example, these include an assurance that the State board will annually assess, and include in the State plan a report on, the degree to which expenditures for guidance and counseling from the State's allotments under title II of the Act are not less than expenditures for guidance and counseling in fiscal year 1988 and assurances regarding the Business-Labor-Education Partnership for Training Program (§ 403.32(a)). The new required descriptions include, for example, a description of the procedures and results of the State assessment and of how funds will be used to reflect the needs identified in the assessment, and a description of how funds expended for occupationally specific training will be used for occupations in which job openings are projected or available, based on a labor market analysis (§ 403.32(b)). With respect to § 403.32(a)(5), the Secretary encourages States and local recipients to consult with representatives from private secondary schools regarding the participation in vocational education of members of special populations enrolled in private secondary schools.

Section 114 of the Act no longer explicitly requires a State to submit its State plan for review and comment to the State Job Training Coordinating Council under section 122 of the Job Training Partnerships Act (JTPA) (29 U.S.C. 1501 *et seq.*) and to the State council on vocational education at least sixty days before submission of the State plan to the Secretary. However, the Secretary believes that other provisions in the Act support the continuation of the requirement for review. Specifically, section 113(c) of the Act continues to require that State plan amendments be submitted for review and comment by the State Job Training Coordinating Council and the State council; section 112 (d)(2)(A) and (e) of the Act authorizes the State council to make recommendations on the State plan and to submit a statement to the Secretary reviewing and commenting on the State plan; and section 113(b)(14) of the Act continues to require joint planning and coordination with programs conducted under the JTPA. Therefore, § 403.33 continues the requirement that the State plan be reviewed by both councils.

Section 111 of the Act imposes new requirements for the review of local applications by the "sex equity coordinator," the head of the State office responsible for administering part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*), the head of the State office or other appropriate individual responsible for coordinating services under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (Chapter 1) (20 U.S.C. 2700 *et seq.*), and the head of the State office or other appropriate individual responsible for administering programs for students of limited English proficiency (§§ 403.13 through 403.16).

(b) *Special populations.* The Act imposes many new requirements for ensuring that members of special populations are given equal access to, and allowed full participation in, vocational education. Section 506 of the Act makes clear that no provisions of the Act should be construed as inconsistent with Federal laws guaranteeing civil rights (§ 400.9(b)). Section 400.9(b) emphasizes that the Act does not in any way limit the rights of special population members accorded by other Federal laws, for example, rights of individuals with disabilities under the Individuals with Disabilities Education Act (IDEA) or section 504 the Rehabilitation Act of 1973 (section 504) (29 U.S.C. 794).

Section 118(a) of the Act requires the State board to make broad assurances in its State plan that members of special populations will be given equal access to vocational education (§ 403.32(a)(18)-(26)). These assurances provide that special population members will be afforded equal access to the full range of vocational education programs available to members of the general population, including recruitment, enrollment, and placement activities. The assurances also require monitoring of the provision of vocational education to disabled and disadvantaged students and to students of limited English proficiency. The Secretary interprets the assurances in § 403.32(a)(18) through (26) as applying to the entire vocational education program operated by the State and its recipients. (See also § 403.190(d).) Because equal access is necessary for a student to enroll in a vocational education program as well as for a student to enroll in specific vocational education courses, the Secretary does not believe it is possible or appropriate to limit application of this requirement to students in specific projects, services, and activities that are funded under the Act. This limitation also would be inconsistent with the concept of fundamental fairness that equal access is intended to provide for special population members.

Further, the Secretary believes that the broad application of the assurances required by section 118(a) of the Act reinforces requirements imposed under other Federal statutes, including the IDEA and section 504. The Secretary also believes that the reference in section 118(a)(3)(C) of the Act to both students who are protected by the IDEA and students who are protected by section 504 is for the purpose of emphasizing that disabled students who do not have individualized education programs under the IDEA must be included in the required assurances because of protections under section 504. The Secretary does not agree with any implication that a student eligible to have an individualized education program under the IDEA would not be protected under section 504 as well.

Section 118(b) of the Act requires local educational agencies to provide information to students who are members of special populations and their parents concerning vocational education, including opportunities, eligibility, courses, special services, employment opportunities, and placement, at least one year before a student is old enough to enter vocational education (§ 403.193). Section 118(b) of the Act also requires an eligible institution receiving funds under Title II to provide the same information when requested. Section 403.193 interprets section 118(b) of the Act as applying to eligible recipients or institutions receiving funds under Title II of the Act. Section 403.193(a)(2) extends the requirement to provide information to special population members and their parents to an area vocational technical school or an intermediate educational agency that receives the entire allocation of a local educational agency. Additionally, § 403.193(e) clarifies that a local recipient is only required to provide this information to the extent possible with funds awarded under the Act.

The Secretary submitted for discussion at the negotiated rulemaking the issues of the required source of funding and of extending this requirement to area vocational technical schools and intermediate educational agencies. The negotiators reached a consensus on the language of the draft regulations insofar as it would extend the requirement to provide information to area schools and intermediate agencies. However, the negotiators did not reach agreement concerning the required source of funding for providing this information.

Section 118(c) of the Act requires each eligible recipient under Title II of the Act to make broad assurances in its local application that members of special populations will receive supplementary and other services necessary to succeed in vocational education (§ 403.190(b)). In particular, this includes an assurance that an eligible recipient under title II of the Act will assist in fulfilling the transitional services requirements of section 626 of the IDEA. In this regard, eligible recipients should note that section 614 of the IDEA has been amended so that it also requires transitional services for students aged 16 years or older as a component of their individualized education programs.

Section 403.190(b) interprets the assurances concerning the provision of supplementary and other services to apply only to members of special populations enrolled in projects, services, and activities that are funded under the Act. Further, § 403.190(b) also interprets section 118(c) of the Act as requiring an eligible recipient to provide supplementary and other services for those students only to the extent possible from funds received under the Act. The Secretary bases this interpretation on the lack of any legislative history or other indication that Congress intended to create an individual entitlement for special populations members and a corresponding financial obligation on a State or its local recipients similar to that imposed under the IDEA. However, while § 403.190 does not interpret section 118(c) as establishing an individual entitlement for members of special populations, the Secretary wishes to emphasize that neither § 403.190 nor section 118(c) of the Act in any way limits the rights and entitlement to services of special population members under other Federal laws, for example, the IDEA and section 504, nor does either § 403.190 or section 118(c) of the Act limit the financial obligation of a State or local recipient to provide these services under any other Federal law.

Both issues—the scope of the requirements imposed by section 118(c) of the Act and the source of funding to meet those requirements—were discussed in the negotiated rulemaking. However, the negotiators were not able to reach consensus on either issue. Because of the importance of providing services to special population members under the Act, and because the negotiators were unable to reach consensus on so many issues related to these services, the Secretary particularly invites further comments on these provisions. Of particular interest are: (1) Whether the obligations of a State and its local recipients to meet the requirements related to providing information and supplementary services to special population members should extend to funds other than those awarded under the Act; and (2) whether the requirements of section 118(c) of the Act should apply to projects, services, and activities funded under title II of the Act, to those funded under titles II and III of the Act, or to the local recipient's entire vocational education program (including specific projects, services, and activities not funded under the Act).

(c) *State assessment.* Section 116 of the Act requires a State to assess the quality of its vocational education program using measurable objective criteria. Section 403.203(f)(2) interprets section 116 of the Act as requiring a State assessment during each State plan cycle.

(d) *Evaluation requirements.* Section 115 of the Act requires a State to develop a statewide system of core standards and measures of performance for secondary and postsecondary vocational education programs (§ 403.201). Section 117 of the Act requires a recipient of financial assistance under title II, part C of the Act to use the standards and measures developed under section 115 of the Act to evaluate the effectiveness of the program conducted with assistance under the Act (§ 403.191). In cases where substantial progress is not made toward meeting these standards and measures, a local recipient must implement a local program improvement plan, and, if the local plan is not successful, a State and local recipient must develop a joint plan for improvement.

Section 403.201 applies the requirement under section 115 of the Act to develop a statewide system of core standards and measures of performance to a State's entire vocational education program, regardless of which particular projects, activities, and services are funded under the Act. Similarly, § 403.191, requires a recipient of funds under title II, part C of the Act to use these statewide standards and measures to evaluate annually the effectiveness of its entire vocational education program and not simply those projects, services, and activities funded under the Act. This is appropriate because funds awarded under the Act may be used jointly with State and local funds or for isolated costs such as equipment. In addition, the Act contemplates that the funds awarded under the Act will be provided for limited sites or program areas that will change from year to year. Therefore, the Secretary does not believe that it would be possible to measure annually the effectiveness of only projects, services, and activities funded under the Act.

The Secretary submitted the issue of the scope of the local evaluation required under section 117 of the Act for discussion in the negotiated rulemaking proceedings, but the negotiators were not able to reach a consensus. Therefore, the Secretary is particularly interested in receiving further comments on this provision, including whether an effective local evaluation could be performed using sampling techniques or other techniques designed to phase in the evaluation requirement, or whether other means exist to increase a local recipient's flexibility in evaluating its vocational education program.

(e) *Within-State allocation.* Section 102(a) of the Act establishes the percentage of a State's allotment that must be reserved for each program under title II of the Act (§ 403.180). Section 102(c)(1) of the Act establishes a "hold-harmless" provision for the Sex Equity Program and the Single Parents, Displaced Homemakers, and Single Pregnant Women Program to ensure that the funds reserved for each of these programs at least equal the amount the State "reserved for each such program in fiscal year 1990." Section 403.180(a)(1)(i) interprets the phrase "reserved for each such program in the fiscal year 1990" as meaning the amounts reserved for these programs under the percentage set-aside requirements of section 202 of the Carl D. Perkins Vocational Education Act (CDPVEA).

Section 102(c)(2) of the Act establishes a "hold-harmless" provision for the Program for Criminal Offenders to ensure that the funds reserved for that program equal the amount the State "expended under this Act for such program for the fiscal year 1990." (See Pub. L. 102–103, 105 Stat. 497 (1991), amending section 102(c) of the Act). While section 102(c)(2), as amended by Public Law 102–103, is not entirely clear, we believe that Congress' purpose was to increase the amount of funds to be reserved for the Program for Criminal Offenders above the one percent that a State was required to reserve under section 202(6) of CDPVEA. Therefore, § 403.180(a)(1)(ii) interprets the phrase "expended under this Act for such program for the fiscal year 1990" as meaning the amount the State reserved for projects, services, activities under section 202(6) of the CDPVEA and any other Federal funds under the CDPVEA, in excess of the one percent reserve under section 202(6), that the State and eligible recipients obligated for projects, services, or activities for criminal offenders in correctional institutions.

Section 403.180(c) requires a State first to reserve the amount necessary to satisfy the $250,000 minimum for State administration under section 102(a)(4) of the Act and the amounts for programs not meeting the "hold-harmless" requirements under section 102(c) of the Act, and then ratably reduce the funds available for the remaining programs. In no case in this process could a program subject to the "hold-harmless" requirements be reduced to less than the amount reserved for such a program in Fiscal Year 1990.

(f) *Distribution requirements for secondary, postsecondary, and adult funds.* Sections 231 and 232 of the Act impose requirements concerning the distribution of funds reserved by the State for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs, respectively. Section 231 of the Act requires that secondary funds be distributed to local educational agencies in accordance with a statutory formula, and allows those funds to be distributed to an area vocational education school or an intermediate educational agency if that entity has entered into a consortium with a local educational agency for the purpose of receiving these funds (§§ 403.112 and 403.113). Section 232 of the Act requires that postsecondary and adult funds be distributed to eligible institutions based on the relative number of Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in programs of the eligible institution (§ 403.116).

Under §§ 403.112 and 403.116, the statutory formulas would be applied using the required funding and enrollment figures from the fiscal year or program year preceding the year in which the funds are allocated—not the year in which the funds are distributed. While the statutory formulas are ambiguous as to what fiscal or program year is to be used as a point of reference for determining the "preceding" year, this interpretation is consistent with the use of enrollment figures in the statutory formulas in section 203 of the Carl D. Perkins Vocational Education Act. Therefore, given the lack of any legislative history or other indication of Congressional intent to the contrary, the regulations continue the past practice concerning the use of enrollment figures.

Section 231(b) of the Act imposes a $15,000 minimum grant requirement under the Secondary School Vocational Education Program, but permits a State to waive the application of the minimum grant requirement under certain circumstances. Section 231(b) of the Act also permits a local educational agency to enter into a consortium with one or more local educational agencies in order to meet the minimum grant requirement. However, the Secretary does not believe that Congress intended for local educational agencies to form consortia merely for the purpose of allowing members to receive an allocation of funds in alternate years. Therefore, under § 403.112(d), a consortium formed for the purpose of meeting the minimum grant requirement would be required to serve primarily as a structure for operating joint projects that provided services to all members of the consortium. Section 403.112(d) also makes clear that a consortium would be subject to the size, scope, and quality requirements of § 403.111(c)(1).

Section 232 of the Act also imposes a $50,000 minimum grant requirement under the Postsecondary and Adult Education Vocational Education Programs. In contrast to section 231 of the Act, section 232 of the Act does not permit eligible institutions to form consortia for the purpose of meeting this requirement. Although the Department has received requests that the regulations permit the use of consortia for this purpose, § 403.116(c) would not allow eligible institutions to form consortia to meet the minimum grant requirement.

Section 232 allows the Secretary to waive the requirements of the postsecondary and adult funding formula upon a State's application for a waiver if the application demonstrates that the use of the statutory formula would not result in the distribution of funds to institutions within the State that have the highest numbers of economically disadvantaged individuals and that an alternative formula proposed by the State in its application would achieve this result. Section 403.118 establishes the rules under which the Secretary will grant a waiver of the postsecondary and adult formula.

(g) *Use of funds.* Section 235 of the Act requires recipients of funds under title II, part C of the Act to use those funds to improve vocational education programs, with the "full participation" of individuals who are members of special populations, at a limited number of sites or with respect to a limited number of program areas (§ 403.111(a)(2)(i)). Section 235(b) of the Act requires a recipient to give "priority" for assistance to sites or programs that serve the highest concentrations of individuals who are members of special populations. Section 235(c) of the Act sets forth requirements that apply to the vocational education programs in which funds awarded under the Act are used. Specifically, section 235(c)(1) of the Act requires that funds be used in programs that are of sufficient size, scope, and quality as to be effective; that integrate academic and vocational education; and that provide "equitable participation" for special populations (§ 403.111(c)).

The Secretary submitted to negotiated rulemaking the issues of how "full participation" and "equitable participation" should be interpreted and the issue of how a recipient could give priority to a limited number of sites or program areas. The negotiators reached consensus on all these issues, and those agreements are reflected in the proposed regulations or in examples contained in appendix A to these regulations, as discussed below, and in greater detail in appendix C to these regulations. The Secretary believes that the use of examples to interpret statutory requirements maximizes a local recipient's flexibility and particularly invites suggestions for additional examples.

Section 403.111(a)(2)(i) interprets "full participation" as requiring that members of special populations be provided with supplementary and other services necessary for them to succeed in vocational education. Section 403.111(b) repeats the statutory language requiring that priority be given to a limited number of sites or program areas that serve the highest concentrations of special population members and provides three examples of ways to give priority. Under the examples, an eligible recipient would give priority by first establishing a funding cut-off point and then funding sites or programs from among those that are above the cut-off point and that are otherwise eligible for support under the Act. The third example was added by the negotiators to illustrate a way of providing new and better opportunities in vocational education for special population members. The proposed regulations also repeat the statutory language requiring "equitable participation" in § 403.111(c)(3) and provide two examples of providing "equitable participation" in appendix A. The negotiators agreed to delete the explanatory language from the draft regulation submitted to negotiated rulemaking and to place the examples in an appendix to the regulations.

(h) *Supplanting prohibition.* Section 516(a) of the Act continues the requirement from the previous act that funds available under title II be used to supplement, and to the extent practicable increase, the amount of State and local funds that would in the absence of the Federal funds be made available for the uses specified in the State plan and the local application, and in no case supplant State and local funds. However, section 516(a) of the Act provides an exception to the supplanting prohibition to allow funds under the Act to be used to pay for the costs of vocational education services required in an individualized education program developed pursuant to the IDEA, and for services necessary to meet the requirements of section 504 of the Rehabilitation Act of 1973 (section 504) with respect to ensuring equal access to vocational education. Sections 403.196 and 403.208 clarify that the limited purpose of this provision is to allow expenditures that would otherwise constitute supplanting only in instances where the expenditures at issue would be used to increase the amount of funds that would otherwise be available to pay the cost of the individualized education program or of meeting the requirements of section 504.

(i) *Comparability.* Section 113 of the Act requires a State to include in its State plan assurances that State and local funds will be used in the schools of each local educational agency that are receiving funds under the Act to provide services that, taken as a whole, are at least comparable to services being provided in schools in that agency that are not receiving funds. Section 403.194 interprets sections 113 of the Act as requiring comparability between secondary schools or sites served with Federal funds awarded under the State plan and secondary schools or sites that are not being served with Federal funds awarded under the State plan. Moreover, § 403.194 provides three examples of methods by which a local educational agency can demonstrate its compliance with the comparability requirements and requires a local educational agency to develop written procedures for complying with the comparability requirements. Section 403.200 requires a State to monitor each local educational agency's compliance with the comparability requirements and, if a local educational agency is found not to be in compliance, to withhold, or require repayment of, the amount or percentage by which the local educational agency failed to achieve comparability. The Secretary is particularly interested in receiving comments on whether, in determining comparability—

(1) State and local agencies should compare services provided in vocational education programs or services provided in secondary schools or sites; and

(2) The examples of methods by which an LEA can demonstrate its compliance with comparability requirements are appropriate for measuring comparability under the Act.

(j) *Fiscal requirements.* Under § 403.186, a State may use a necessary and reasonable amount of funds from its individual allotments for the special programs under title III of the Act, in addition to the funds reserved for State administration under title II of the Act, to administer those specific programs unless the Act provides otherwise with respect to a particular special program. Under § 403.187, a State also may use a necessary and reasonable portion of the funds reserved for each basic or special program under the State plan (other than the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs), in addition to the funds reserved for State administration under title II of the Act and for State leadership, to pay the costs of providing technical assistance necessary to enhance the quality and effectiveness of that specific program.

The Act is silent concerning an eligible recipient's use of funds awarded under the Act for local administrative costs, with two exceptions. Section 235(c)(4) of the Act limits the use of funds for local administrative costs to five percent under the Secondary Schools and Postsecondary and Adult Education Programs, and section 333(c) of the Act limits total expenditures for administrative costs of the State board and eligible partners under the Business-Labor-Education Partnership for

Training Program to not more than 10 percent of the State's allotment in the first year and five percent of that allotment in each subsequent year. Under § 403.195, an eligible recipient may use a necessary and reasonable amount of funds from its awards under the basic programs and the special programs, except for the two particular exceptions discussed above, to administer its projects.

The Secretary believes that the "necessary and reasonable" cost principle is implicit in the statute and is consistent with government-wide cost principles (see Office of Management and Budget Circular No. A–87 incorporated by reference in 34 CFR 80.22(b)) and well established Departmental practice under the Carl D. Perkins Vocational Education Act. Therefore, the Secretary has extended this principle in the proposed regulations, where it is not inconsistent with the Act, to allow for necessary and reasonable administrative costs in new programs authorized by the Act and for necessary and reasonable costs of technical assistance. In view of this, the Secretary invites comments on the use of the "necessary and reasonable" cost principle in §§ 403.186(b)(2), 403.187, 403.195, and 406.31.

(5) *National Tech-Prep Education Program (part 405).* The National Tech-Prep Education Program provides financial assistance for projects that develop and operate four-year sequences of study designed to provide a tech-prep education program leading to a two-year associate degree or a two-year certificate and that provide, in a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions. These regulations establish eligibility requirements (§ 405.2), selection criteria for evaluating applications (§ 405.21), and evaluation requirements (§ 405.30).

(6) *State-Administered Tech-Prep Education Program (part 406).* When the annual appropriation for tech-prep education exceeds $50,000,000, the program becomes State-administered, with each State receiving a grant based on a statutory formula. The State-administered Tech-Prep Education Program provides financial assistance for planning and developing—

(a) Four-year programs designed to provide a tech-prep education program leading to a two-year associate degree or certificate; and

(b) In a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions.

In order to be eligible for an award under this program, a State board of vocational education must include several descriptions in its State plan (§ 406.10). The Secretary strongly encourages the State board to submit to the State agency responsible for postsecondary education for review the portions of the State plan that will implement this program.

The Secretary determines the amount of each State's allotment according to the formula in section 101(a)(2) of the Act (§ 406.20). These regulations describe how a State carries out its grant, including the use of funds for State administration and technical assistance (§ 406.31), members of consortia who are eligible to apply to the State for an award (§ 406.30), the requirements for local applications (§ 406.32), and the reporting requirements (§ 406.33).

(7) *Supplementary State Grants Program (part 407).* The Supplementary State Grants Program provides financial assistance for program improvement activities, especially the improvement of facilities and acquisition or leasing of equipment to be used to carry out vocational education programs that receive assistance under the Act. To receive an award under this program, a State must include in its State plan the information in § 407.10. In addition, these regulations describe allowable activities (§ 407.3), the formula for distributing funds to State agencies (§ 407.20), and eligibility and application requirements for local educational agencies (§§ 407.30 and 407.32).

(8) *Community Education Employment Centers Program (part 408).* The Community Education Employment Centers Program provides financial assistance to establish and evaluate model high school community education employment centers to provide low-income urban and rural youth with the education, skills, support services, and enrichment necessary to ensure—

(a) Graduation from secondary school;

(b) Successful transition from secondary school to a broad range of postsecondary educational institutions; and

(c) Employment, including military service.

These regulations describe eligible applicants (§ 408.2), requirements regarding support services, parental, and community participation (§§ 408.30 through 408.32), and evaluation requirements (§ 408.34).

(9) *Vocational Education Lighthouse Schools Program (part 409).* The Vocational Education Lighthouse Schools Program provides financial assistance for the establishment and operation of vocational education lighthouse schools. These regulations describe the eligible applicants (§ 409.2), allowable activities (§ 409.3), criteria for evaluating applications (§ 409.21), and evaluation requirements (§ 409.30).

(10) *Tribally Controlled Postsecondary Vocational Institutions Program (part 410).* The Tribally Controlled Postsecondary Vocational Institutions Program provides grants for the operation and improvement of tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of those institutions (§ 410.1). For institutional support grants, the regulations describe eligible applicants (§ 410.2), allowable activities (§ 410.3), and requirements regarding the content of applications (§ 410.10). These regulations exclude tribally controlled community colleges, as defined in 34 CFR 400.4, from the definition of tribally controlled postsecondary vocational institutions (§ 410.5). In addition, the regulations do not implement the provisions in section 389(c) of the Act which provides for construction and renovation grants. The Secretary is studying the desirability and need for regulations to implement these provisions and may develop regulations for them at a later date.

(11) *Vocational Education Research Program (part 411).* The Vocational Education Research Program provides financial assistance for applied research projects. These regulations describe eligible activities (§ 411.3), selection criteria for evaluating applications (§ 411.21), and provisions governing unsolicited applications (§§ 411.23 and 411.24).

(12) *National Network for Curriculum Coordination in Vocational and Technical Education (part 412).* The National Network for Curriculum Coordination in Vocational and Technical Education is a system of six curriculum coordination centers (CCCs) that disseminate information resulting from research and development activities carried out under the Act in order to ensure broad access at the State and local levels to the information being disseminated. These regulations describe eligibility requirements (§ 412.2), selection criteria for evaluating applications (§ 412.21), and additional activities to be carried out by the CCCs (§ 412.30).

(13) *National Centers for Research in Vocational Education (part 413).* Under the authority for the National Centers

for Research in Vocational Education (National Center or Centers) awards are provided for a National Center or Centers to carry out activities in the areas of applied research and development and dissemination and training. These regulations describe eligible applicants (§ 413.2), the procedure for the selection of a National Center or Centers (§ 413.20), and selection criteria for evaluating applications (§§ 413.21 and 413.22).

The Secretary may hold two separate competitions, with the same closing date, for the National Center or Centers in order to fund the best proposal for both applied research and development activities and dissemination and training activities while giving preference to a consolidated application. A separate competition forestalls the possibility of funding a consolidated application that only adequately addresses both types of activities to be carried out by a National Center. Moreover, a separate competition will permit the Department to select panels based on particular expertise in research and development and dissemination and training.

The Secretary specifically invites ideas on how to effectively combine the two competitions and ensure that the best applications are funded for both the applied research and development activities and the dissemination and training activities.

(14) *Materials Development in Telecommunications Program (part 414).* The Materials Development in Telecommunications Program provides financial assistance for the development, production, and distribution of instructional telecommunications materials and services for use in local vocational and technical educational schools and colleges. These regulations describe eligible applicants (§ 414.2), allowable activities (§ 414.3), program priorities (§ 414.20), and selection criteria for evaluating applications (§ 414.21). Federal funds are to be used to pay 50 percent of the costs of projects (§ 414.13).

(15) *Demonstration Centers for the Training of Dislocated Workers Program (part 415).* The Demonstration Centers for the Training of Dislocated Workers Program provides financial assistance for establishing one or more demonstration centers for the retraining of dislocated workers. These regulations describe eligibility requirements (§ 415.2), selection criteria for evaluating applications (§ 415.21), and evaluation requirements (§ 415.30).

(16) *Vocational Education Training and Study Grants Program (part 416).* The National Vocational Education Training and Study Grants Program provides grants to certain agencies and institutions for vocational teacher education, graduate training in vocational education, and vocational education student internships (§ 416.1). These regulations establish eligibility requirements (§ 416.2), and selection criteria for evaluating applications (§ 416.21).

(17) *Vocational Education Leadership Development Award Program (part 417).* The Vocational Education Leadership Development Award Program provides financial assistance to meet the needs of all States for qualified vocational education leaders such as administrators, supervisors, teacher educators, researchers, career guidance and vocational counseling personnel, vocational student organization leadership personnel, and teachers in vocational education programs. These regulations describe how the Secretary makes awards to institutions (§§ 417.20 through 417.22), how individuals apply for awards (§§ 417.40 and 417.41), and conditions to be met by recipients of leadership development awards (§§ 417.50 through 417.55).

(18) *Vocational Educator Training Fellowship Program (part 418).* Under the Vocational Educator Training Fellowship Program the Secretary provides fellowships for individuals to receive training as vocational educators through approved institutions of higher education. These regulations describe who is eligible for a fellowship (§ 418.2), how the Secretary selects fellows (§§ 418.30 through 418.33), and the conditions to be met by fellows (§§ 418.40 through 418.49).

(19) *Internships for Gifted and Talented Vocational Education Students Program (part 419).* The Internships for Gifted and Talented Vocational Education Students Program provides internships to attract gifted and talented vocational education students into further study and professional development in the field of vocational education (§ 419.1). These regulations describe eligibility requirements (§ 419.2) and selection criteria for evaluating applications for internships (§ 419.22).

(20) *Business and Education Standards Program (part 421).* The Business and Education Standards Program provides financial assistance for organizing and operating business-education-labor technical committees that will develop national standards for competencies in industries and trades. These regulations describe eligible applicants (§ 421.2), allowable activities (§ 421.3), selection criteria for evaluating applications (§ 421.21), and cost-sharing requirements (§ 421.30).

(21) *Educational Programs for Federal Corrections Institutions (part 422).* The Educational Programs for Federal Correctional Institutions provides financial assistance for the education and training of criminal offenders in Federal correctional institutions. These regulations establish eligibility requirements (§ 422.2) and selection criteria for evaluating applications (§ 422.21).

(22) *Vocational Education Dropout Prevention Program (part 423).* The Vocational Education Dropout Prevention Program provides financial assistance for projects to develop, implement, and operate vocational education programs designed to prevent students from dropping out of school. These regulations describe allowable activities (§ 423.2) and selection criteria for evaluating applications (§ 423.21).

(23) *Model Centers of Regional Training for Skilled Trades Program (part 424).* The Model Centers of Regional Training for Skilled Trades Program provides financial assistance for regional model centers that provide training for skilled tradesmen and technical assistance for programs that train skilled tradesmen within a region serving several States. These regulations establish eligibility requirements (§ 424.2), criteria for evaluating applications (§ 424.21), and evaluation requirements (§ 424.30).

(24) *Demonstration Projects for the Integration of Vocational and Academic Learning Program (part 425).* The Demonstration Projects for the Integration of Vocational and Academic Learning Program provides financial assistance to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning. These regulations establish eligibility requirements (§ 425.2), selection criteria for evaluating applications (§ 425.21), and evaluation requirements (§ 425.30).

(25) *Cooperative Demonstration Program (part 426).* The Cooperative Demonstration Program provides financial assistance for demonstration projects, model consumer and homemaking education projects, community-based organization projects, and agriculture action centers. These regulations establish eligibility requirements (§ 426.2), selection criteria for evaluating applications (§§ 426.21 through 426.24), cost-sharing requirements (§ 426.30), and dissemination and evaluation requirements (§§ 426.31 and 426.32).

(26) *Bilingual Vocational Training Program (part 427).* The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training in order to prepare limited English proficient out-of-school youth and adults for jobs in recognized occupations, including new and emerging occupations. These regulations establish requirements for eligibility (§ 427.2) and the content of applications (§ 427.10). The regulations also establish selection criteria for evaluating applications (§ 427.21) and evaluation requirements (§ 427.30).

(27) *Bilingual Vocational Instructor Training Program (part 428).* The Bilingual Vocational Instructor Training Program provides financial assistance for preservice and inservice training for personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient out-of-school youth and adults. These regulations establish eligibility requirements (§ 428.2), and selection criteria for evaluating applications (§ 428.21).

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Under the State Vocational and Applied Technology Education Program, the State-Administered Tech-Prep Education Program, and the Supplementary State Grants Program, grants are available only to States, and States and State agencies are not defined as "small entities" under the Regulatory Flexibility Act. The small entities that would be affected under these regulations are small LEAs, area vocational schools, intermediate educational agencies, postsecondary educational institutions, State correctional institutions, and community-based organizations receiving Federal funds. However, the regulations would not have a significant economic impact on the small entities affected because they repeat statutory requirements and do not impose excessive regulatory burdens or require unnecessary Federal supervision.

The selection criteria for applications reviewed under the Secretary's discretionary programs require the minimum amount of information necessary for a fair appraisal of the activities proposed by applicants in order to ensure the funding of high quality projects.

Paperwork Reduction Act of 1980

Sections 400.9, 400.10, 401.21, 401.23, 401.31, 402.21, 403.12, 403.13, 403.19, 403.30, 403.31, 403.32, 403.33, 403.34, 403.81, 403.100, 403.115, 403.141, 403.184, 403.190, 403.192, 403.193, 403.201 through 403.205, 405.10, 405.21, 405.30, 406.10, 406.32, 406.33, 407.10, 407.32, 408.10, 408.22, 408.34, 409.21, 409.30, 410.10, 410.21, 411.21, 412.21, 413.21, 413.22, 414.22, 415.21, 415.30, 416.21, 416.31, 417.21, 417.31, 417.41, 418.20, 419.20, 419.22, 421.21, 422.2, 422.21, 422.30, 423.2, 423.21, 423.30, 424.21, 424.30, 425.21, 425.30, 426.2, 426.21 through 426.24, 426.32, 427.10, 427.21, 427.30, 428.10, and 428.21; and appendix D contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections, including any data collection request based on any reporting requirements in Appendix D, to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

State and local governments, individuals, businesses or other for-profit, and non-profit institutions are eligible to apply for grants under these regulations. The Department needs and uses this collection of information to make grants and monitor the compliance of grantees with statutory and regulatory requirements.

In developing the selection criteria for the vocational education discretionary programs the Secretary took into consideration the particular nature of each program. This Department experience has shown that in order to select quality vocational education applications the technical review criteria must be specific to the particular program under which grants will be made. Each individual criterion is weighted in relationship to the importance of that criterion for helping to select quality applications for a specific discretionary program. In designing the selection criteria, the Secretary also considered the major differences between the purposes of different types of discretionary programs; such as, demonstration programs, education and training programs, research and development programs, capacity building programs, and national centers.

Consequently, the selection criteria reflect the different purposes of the various program types. The rationale for selecting particular selection criteria that are included in the proposed regulations for more than one discretionary program are as follows:

(a) "Program Factors" are used to ensure that projects are related to the specific legislative purposes and requirements for each program.

(b) "Need" is used in training programs and in some of the research programs to determine the local, State, regional, or national need for a project proposed by an applicant.

(c) "Program Design" is used in education and training programs to analyze the conceptual and technical design of the proposed activities and relates to assessing the quality and accessibility of the training to be provided.

(d) "Educational Significance" is used in many of the demonstration programs and programs that offer training in order to determine whether the proposed activities are likely to contribute significantly to the improvement of education.

(e) "Plan of Operation" is used to assess the quality of both management and implementation activities that an applicant proposes.

(f) "Key Personnel" is used to determine the quality and appropriateness of key personnel and whether staff have experience that will aid in accomplishing project objectives. However, there are a few programs where determining the quality of key personnel is not a critical factor, for instance, the Vocational Educator Training Fellowships Program and the Internships for Gifted and Talented Vocational Education Students Program.

(g) "Budget and Cost-effectiveness" is used to determine how well proposed costs relate to the accomplishment of project activities. However, there are a few programs where determining the budget and cost-effectiveness is not a critical factor because awards are made to individuals through fellowships or stipends; for example, the Vocational Educator Training Fellowships Program and the Internships for Gifted and Talented Vocational Education Students Program.

(h) "Evaluation Plan" is used to ensure program and project accountability in demonstration programs and education and training programs.

(i) "Third Party Evaluation" is used to determine the rigor and strategy for evaluation for certain programs ensuring project accountability.

(j) "Demonstration and Dissemination" is used to determine, mostly for demonstration and model programs, the effectiveness of the planned demonstration and dissemination activities.

(k) "Adequacy of Resources" is used in research and demonstration programs to determine if the applicant has planned for and requested enough funds.

(l) "Institutional Commitment" is used in long-term projects to determine the past and current commitment of the applicant.

(m) "Coordination" is useful for determining the planned coordination activities with various types of organizations and entities, where the Act calls for coordination activities.

The annual public reporting burden for the collection of information is estimated to average 1000 hours per response for 53 respondents affected by the State plan requirements, 324 hours per response for 4212 respondents affected by the vocational education act reporting requirements, 90 hours per response for 552 respondents who submit an application for a discretionary program, 28 hours per response for 90 respondents that submit a performance report for a discretionary program, and 12 hours per response for 57 respondents who submit abstracts describing State-administered vocational education improvement projects.

The annual reporting and recordkeeping burden for the collection includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office building, Washington, DC 20503; Attention: Daniel Chenok.

Redesignation Table

In order to accommodate new programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, several part numbers in chapter IV of title 34 are proposed to be redesignated. The following table lists old and new part numbers for all programs in chapter IV of title 34.

New 34 CFR part Nos.	Title	Old 34 CFR part Nos.
400	Vocational and Applied Technology Education—General Provisions.	400
401	Indian Vocational Education Education.	410
402	Native Hawaiian Vocational Education Program.	410
403	State Vocational and Applied Technology Education Program.	401
404	[RESERVED]	
405	National Tech-Prep Education Program.	NEW
406	State-Administered Tech-Prep Education Program.	NEW
407	Supplementary State Grants Program.	NEW
408	Community Education Employment Centers Program.	NEW
409	Vocational Education Lighthouse Schools Program.	NEW
410	Tribally Controlled Postsecondary Vocational Institutions Program.	NEW
411	Vocational Education Research Program.	416
412	National Network for Curriculum Coordination in Vocational and Technical Education.	NEW
413	National Center or Centers for Research in Vocational Education.	417
414	Materials Development in Telecommunications Program.	NEW
415	Demonstration Centers for the Training of Dislocated Workers Program.	411
416	Vocational Education Training and Study Grants Program.	NEW
417	Vocational Education Leadership Development Awards Program.	NEW
418	Vocational Educator Training Fellowships Program.	NEW
419	Internships for Gifted and Talented Vocational Education Students Program.	NEW
420	[RESERVED]	
421	Business and Education Standards Program.	NEW
422	Educational Programs for Federal Correctional Institutions.	NEW
423	Vocational Education Dropout Prevention Program.	NEW
424	Model Centers of Regional Training for Skilled Trades.	NEW
425	Demonstration Projects for the Integration of Vocational and Academic Learning Program.	NEW
426	Cooperative Demonstration Programs.	412
427	Bilingual Vocational Training Program.	407
428	Bilingual Vocational Instructor Training Program.	408
429	Bilingual Materials, Methods, and Techniques Program.	409
445	Technology Education Demonstration Program.	445
430–459.	[RESERVED]	
460	Adult Education Programs—General Provisions.	425
461	Adult Education State-administered Basic Grant Programs.	426
462	State-administered Workplace Literacy Program.	433
463	State-adminstered English Literacy Program.	434
464	State Literacy Resource Centers Program.	None
465–470.	[RESERVED]	
471	National Adult Education Discretionary Program.	431
472	National Workplace Literacy Program.	432
473	National Workforce Literacy Strategies Program.	None
474	National English Literacy Demonstration Program for Individuals of Limited English Proficiency.	435
475	Adult Migrant Farmworker and Immigrant Education Program.	436
476	National Adult Literacy Volunteer Training Program.	437
477	State Program Analysis Assistance and Policy Studies Program.	438
478–488.	[RESERVED]	
489	Functional Literacy for State and Local Prisoners Program.	None
490	Life Skills for State and Local Prisoners Program.	None
491	Adult Education for the Homeless Program.	441
492–499.	[RESERVED]	

Intergovernmental Review

Programs covered by 34 CFR parts 402, 403, 405, 406, 407, 408, 409, 412, 414, 415, 417, 421, 422, 423, 424, 425, 426, 427, and 428 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4050, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects

34 CFR Part 400

Administrative practices and procedure, Education, Grant programs, and Vocational education.

34 CFR Parts 401, 410, and 425

Education, Indian education, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 402, 407, 408, 409, 412, 415, and 423

Education, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 403 and 407

Business and industry, Colleges and universities, Education, Education of disadvantaged, Education of handicapped, Equal education opportunity, Manpower training programs, Minority groups, Prisoners, Private schools, Reporting and recordkeeping requirements, Schools, Vocational education, and Women.

34 CFR Parts 405 and 406

Business and industry, Colleges and universities, Education, Education of disadvantaged, Education of handicapped, Labor unions, Minority groups, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 411 and 413

Education, Education research, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 414

Education, Reporting and recordkeeping requirements, Telecommunications, and Vocational education.

34 CFR Parts 416, 417, 418, and 419

Education, Reporting and recordkeeping requirements, Scholarships and fellowships, and Vocational education.

34 CFR Parts 421 and 426

Education, Business and industry, Labor unions, Reporting and Recordkeeping requirements, and Vocational education.

34 CFR Part 422

Education, Prisoners, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 424

Education, Education of disadvantaged, Education of handicapped, Minority groups, Reporting and recordkeeping requirements, Vocational education, and Women.

34 CFR Parts 427 and 428

Bilingual education, Education, Reporting and recordkeeping requirements, and Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.048 (Basic Grants to the States), 84.049 (Consumer and Homemaking Education Program), 84.051 (National Vocational Education Research Program and the National Center for Research in Vocational Education), 84.053 (State Councils for Vocational Education), 84.077 (Bilingual Vocational Training Program), 84.099 (Bilingual Vocational Instructor Training), 84.101 (Indian and Hawaiian Natives Program), 84.174 (State Assistance for Vocational Education Support Programs by Community-Based Organizations), 84.193 (Demonstration Centers for the Training of Dislocated Workers), 84.199 (Cooperative Demonstration Programs), 84.243 (State-administered Tech-Prep Education Program), 84.244 (Business and Education Standards Program), 84.245 (Tribally Controlled Postsecondary Vocational Institutions Program), and 84.248 (Demonstration Projects for the Integration of Vocational and Academic Learning Program). Catalog of Federal Domestic Assistance Numbers have not been assigned for the National Tech-Prep Education Program, Supplementary State Grants Program, Community Education Employment Centers Program, Vocational Education Lighthouse Schools Program, Materials Development in Telecommunications Program, Vocational Education Training and Study Grants Program, Vocational Education Leadership Development Awards Program, Vocational Education Training Fellowships Program, Internships for Gifted and Talented Vocational Education Students Program, Educational Programs for Federal Correctional Institutions, Vocational Education Dropout Prevention Program, and Model Centers of Regional Training for Skilled Trades.)

Dated: July 1, 1991.

Lamar Alexander,

Secretary of Education.

Chapter IV of title 34 of the Code of Federal Regulations is revised as follows:

1. The following parts are redesignated as follow:

Old parts	New parts
409	429
425	460
426	461
432	462
433	463
434	464
435	465
436	466
437	467
438	468
441	499

(Note: All internal references will be amended in the final rule according to the preceding redesignation table.

2. Part 400 is revised to read as follows:

PART 400—VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAMS—GENERAL PROVISIONS

Sec.

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

§ 400.1 What is the purpose of the Vocational and Applied Technology Education Programs?

(a) The purpose of the Vocational and Applied Technology Education Programs is to make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population.

(b) The purpose will be achieved principally through concentrating resources on improving educational programs leading to academic and occupational skill competencies needed to work in a technologically advanced society.

(Authority: 20 U.S.C. 2301)

§ 400.2 What programs are governed by these regulations?

The regulations in this part apply to the Vocational and Applied Technology Education Programs as follows:

(a) *State-administered programs.* (1) State Vocational and Applied Technology Education Program (34 CFR part 403).

(2) State-administered Tech-Prep Education Program (34 CFR part 406).

(3) Supplementary State Grants Program (34 CFR part 407).

(b) *National discretionary programs.* (1) Indian Vocational Education Program (34 CFR part 401).

(2) Native Hawaiian Vocational Education Program (34 CFR part 402).

(3) National Tech-Prep Education Program (34 CFR part 405).

(4) Community Education Employment Centers Program (34 CFR part 408).

(5) Vocational Education Lighthouse Schools Program (34 CFR part 409).

(6) Tribally Controlled Postsecondary Vocational Institutions Program (34 CFR part 410).

(7) Vocational Education Research Program (34 CFR part 411).

(8) National Network for Curriculum Coordination in Vocational and Technical Education (34 CFR part 412).

(9) National Center or Centers for Research in Vocational Education (34 CFR part 413).

(10) Materials Development in Telecommunications Program (34 CFR part 414).

(11) Demonstration Centers for the Training of Dislocated Workers Program (34 CFR part 415).

(12) Vocational Education Training and Study Grants Program (34 CFR part 416).

(13) Vocational Education Leadership Development Awards Program (34 CFR part 417).

(14) Vocational Educator Training Fellowships Program (34 CFR part 418).

(15) Internships for Gifted and Talented Vocational Education Students Program (34 CFR part 419).

(16) Business and Education Standards Program (34 CFR part 421).

(17) Educational Programs for Federal Correctional Institutions (34 CFR part 422).

(18) Vocational Education Dropout Prevention Program (34 CFR part 423).

(19) Model Centers of Regional Training for Skilled Trades Program (34 CFR part 424).

(20) Demonstration Projects for the Integration of Vocational and Academic Learning Program (34 CFR part 425).

(21) Cooperative Demonstration Programs (34 CFR part 426).

(22) Bilingual Vocational Training Program (34 CFR part 427).

(23) Bilingual Vocational Instructor Training Program (34 CFR part 428).

(24) Bilingual Materials, Methods, and Techniques Program (34 CFR part 429).

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 400.3 What other regulations apply to the Vocational and Applied Technology Education Programs?

The following regulations apply to the Vocational and Applied Technology Education Programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs) (applicable to parts 401, 402, 405, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, and 429 except that the performance reporting requirements in 34 CFR 75.720 do not apply to parts 401, 402, 405, 408, 409, 412, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428 and the financial reporting requirements in 34 CFR 75.720 do not apply to parts 412 and 413).

(3) 34 CFR part 76 (State-Administered Programs) (applicable to parts 403, 406, and 407).

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) (not applicable to parts 401, 410, 411, 413, 418, and 419).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying) (not applicable to parts 401 and 410).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR chapter 1 and the Education Department Acquisition Regulation (EDAR) in 48 CFR chapter 34 (applicable to contracts under parts 401, 402, 411, 412, 426, 427, 428, and 429).

(c) The regulations in this part 400.

(d) The regulations in 34 CFR parts 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, and 429.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 400.4 What definitions apply to the Vocational and Applied Technology Education Programs?

(a) *Definitions in EDGAR.* The following terms used in regulations for the Vocational and Applied Technology Education Programs are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Award
Budget
Contract
Department
EDGAR
Elementary school
Equipment
Facilities
Federally recognized Indian tribal government
Fiscal year
Grant
Grantee
Grant period
Nonprofit
Private
Project
Public
Recipient
Secondary school
Secretary
State educational agency
Subgrant
Subgrantee
Supplies

(b) *Other definitions.* The following definitions also apply to the regulations for Vocational and Applied Technology Education Programs.

Act means the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*, as amended by Pub. L. 101–392, 104 Stat. 753 (1990)), unless otherwise indicated.

Administration means activities of a State necessary for the proper and efficient performance of its duties under the Act, including supervision, but not including curriculum development activities, personnel development, or research activities.

All aspects of an industry includes, with respect to a particular industry that a student is preparing to enter, planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, health and safety, and environmental issues related to that industry.

Apprenticeship training program means a program registered with the Department of Labor or the State apprenticeship agency in accordance with the Act of August 16, 1937, known as the National Apprenticeship Act (29 U.S.C. 50), that is conducted or sponsored by an employer, a group of employers, or a joint apprenticeship committee representing both employers and a union, and that contains all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.

Area vocational education school means—

(1) A specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(2) The department of a high school exclusively or principally used for providing vocational education in not less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(3) A technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(4) The department or division of a junior college, community college, or university that operates under the policies of the State board and provides vocational education in not less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in paragraph (3) of this definition or in this paragraph, it admits as regular students both individuals who have completed high school and individuals who have left high school.

Career guidance and counseling means programs that—

(1) Pertain to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decision-making, placement skills, and knowledge and understanding of local, State, and national occupational, educational, and labor market needs, trends, and opportunities; and

(2) Assist those individuals in making and implementing informed educational and occupational choices.

Chapter 1 means chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 *et seq.*).

Coherent sequence of courses means a series of courses in which vocational and academic education are integrated, and which directly relates to, and leads to, both academic and occupational competencies. The term includes competency-based education, academic education, and adult training or retraining that meet these requirements.

Community-based organization means a private nonprofit organization of demonstrated effectiveness that is representative of communities or significant segments of communities and that provides job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, 70,001, Jobs for Youth, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10) of the Rehabilitation Act of 1973 (29 U.S.C. 706(10)), agencies serving youth, agencies serving the handicapped, including disabled veterans, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations), and an organization of demonstrated effectiveness serving non-reservation Indians (including the National Urban Indian Council), as well as tribal governments and Native Alaskan groups.

(Authority: 20 U.S.C. 2471(6); 41 U.S.C. 1503(5))

Construction includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and includes site grading and improvement and architect fees.

Cooperative education means a method of instruction of vocational education for individuals who, through written cooperative arrangements between the school and employers, receive instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field. The two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

Criminal offender means any individual who is charged with, or convicted of, any criminal offense, including a youth offender or a juvenile offender.

Correctional institution means any—

(1) Prison;

(2) Jail;

(3) Reformatory;

(4) Work farm;

(5) Detention center; or

(6) Halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

Curriculum materials means instructional and related or supportive material, including materials using advanced learning technology, in any occupational field which is designed to strengthen the academic foundation and prepare individuals for employment at the entry level or to upgrade occupational competencies of those previously or presently employed in any occupational field, and appropriate counseling and guidance material.

Disadvantaged refers to individuals (other than individuals with disabilities) who have economic or academic disadvantages and who require special services and assistance in order to enable these individuals to succeed in vocational education programs. This term includes individuals who are members of economically disadvantaged families, migrants, individuals of limited English proficiency and individuals who are dropouts from, or who are identified as potential dropouts from, secondary school. For the purpose of this definition, an individual who scores at or below the 25th percentile on a standardized achievement or aptitude test, whose secondary school grades are below 2.0 on a 4.0 scale (on which the grade "A" equals 4.0), or who fails to attain minimum academic competencies may be considered "academically disadvantaged." The definition does not include individuals with learning disabilities.

Displaced homemaker means an individual who—

(1) Is an adult;

(2) Has worked as an adult primarily without remuneration to care for the home and family, and for that reason has diminished marketable skills; and

(3)(i) Has been dependent on public assistance or on the income of a relative but is no longer supported by that income;

(ii) Is a parent whose youngest dependent child will become ineligible to receive assistance under part A of title IV of the Social Security Act (42 U.S.C. 601), Aid to Families with Dependent Children, within two years of the parent's application for assistance under the Carl D. Perkins Vocational and Applied Technology Education Act;

(iii) Is unemployed or underemployed and is experiencing difficulty in obtaining any employment or suitable employment, as appropriate; or

(iv) Is described in paragraphs (1) and (2) of this definition and is a criminal offender.

Economically disadvantaged family or individual means a family or individual that is—

(1) Eligible for any of the following:

(i) The program for Aid to Families with Dependent Children under part A of title IV of the Social Security Act (42 U.S.C. 601).

(ii) Benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011).

(iii) To be counted for purposes of section 1005 of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2701).

(iv) The free or reduced-price meals program under the National School Lunch Act (42 U.S.C. 1751).

Note to paragraph (1)(iv): The National School Lunch Act prohibits the identification of students by name. However, State and local projects may use the total number of students participating in a free- or reduced-priced meals program to determine eligibility for projects, services, and activities under the Vocational and Applied Technology Education Programs.

(2) Determined by the Secretary to be low-income according to the latest available data from the Department of Commerce.

(3) Identified as low income according to other indices of economic status, including estimates of those indices, if a grantee demonstrates to the satisfaction of the Secretary that those indices are more representative of the number of economically disadvantaged students attending vocational education programs. The Secretary determines, on a case-by-case basis, whether other indices of economic status are more representative of the number of economically disadvantaged students attending vocational education programs, taking into consideration, for example, the statistical reliability of any data submitted by a grantee as well as the general acceptance of the indices by other agencies in the State or local area.

(Authority: 20 U.S.C. 2341(d)(3)

Eligible recipient means, except as otherwise provided, a local educational agency, an area vocational education school, an intermediate educational agency, a postsecondary educational institution, a State corrections educational agency, or an eligible institution as defined in 34 CFR 403.117(a).

General occupational skills means strong experience in, and understanding of, all aspects of an industry.

High technology means state-of-the-art computer, microelectronic, hydraulic, pneumatic, laser, nuclear, chemical, telecommunication, and other technologies being used to enhance productivity in manufacturing, communication, transportation, agriculture, mining, energy, commercial, and similar economic activity, and to improve the provision of health care.

IDEA means the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), formerly entitled "Education of the Handicapped Act."

Individual with disabilities means—

(1) Any individual who—

(i) Has a physical or mental impairment that substantially limits one or more of the major life activities of that individual;

(ii) Has a record of an impairment described in paragraph (i) of this definition; or

(iii) Is regarded as having an impairment described in paragraph (i) of this definition.

(2) Any individual who has been evaluated under part B of the IDEA and determined to be an individual with a disability who is in need of special education and related services; or

(3) Any individual who is considered disabled under section 504 of the Rehabilitation Act of 1973.

(Authority: 42 U.S.C. 12102(2))

Individualized education program means a written statement for a disabled individual developed in accordance with sections 612(4) and 614(a)(5) the IDEA (20 U.S.C. 1412(4) and 1414(a)(5)).

Institution of higher education means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited—

(i) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or

(ii) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

This term also includes—

(A) Any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (1), (2), (4), and (5) of this definition; and

(B) A public or nonprofit private educational institution in any State which, in lieu of the requirement in paragraph (1) of this definition, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who meet the requirements of section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)).

(Authority: 20 U.S.C. 1141(a))

Intermediate educational agency means a combination of school districts or counties (those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties) as are recognized in a State as an administrative agency for that State's vocational or technical education schools or for vocational programs within its public elementary or secondary schools. This term includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

(Authority: 20 U.S.C. 2891(5))

JTPA means the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

Limited English proficiency, if used with reference to individuals, means individuals—

(1)(i) Who were not born in the United States or whose native language is a language other than English;

(ii) Who come from environments where a language other than English is dominant; or

(iii) Who are American Indian and Alaska Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Who by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny those individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(Authority: 20 U.S.C. 3223(a)(1))

Local educational agency means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program. For the purposes of sections 114, 115, 116, 117, and 240 of the Act (implemented at 34 CFR 403.31 (e) and (f), 403.32(c)(3), 403.190, 403.191, 403.192, 403.201, 403.202, and 403.204), this term includes a State corrections educational agency.

Measure means a description of an outcome.

(Authority: House Report No. 101–41, 101st Cong., 1st Sess. p. 13 (1989))

Postsecondary educational institution means an institution legally authorized to provide postsecondary education within a State, a Bureau of Indian Affairs-controlled postsecondary institution, or any postsecondary educational institution operated by, or on behalf of, any Indian tribe that is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or under the Act of April 16, 1934 (25 U.S.C. 452).

Preparatory services means services, programs, or activities designed to assist individuals who are not enrolled in vocational education programs in the selection of, or preparation for participation in, an appropriate vocational education training program. Preparatory services include, but are not limited to—

(1) Services, programs, or activities related to outreach to, or recruitment of, potential vocational education students;

(2) Career counseling and personal counseling;

(3) Vocational assessment and testing; and

(4) Other appropriate services, programs, or activities.

Private vocational training institution means a business or trade school, or technical institution or other technical or vocational school, in any State, that—

(1) Admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by the institution;

(2) Is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations;

(3) Has been in existence for two years or has been specially accredited by the Secretary as an institution meeting the other requirements of this definition; and

(4) Is accredited—

(i) By a nationally recognized accrediting agency or association listed by the Secretary;

(ii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Secretary; or

(iii) If the Secretary determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by the Secretary and composed of persons specially qualified to evaluate training provided by schools of that category. The committee shall prescribe the standards of content, scope, and quality that must be met by those schools and shall also determine whether particular schools meet those standards.

Program effectiveness panel means the panel of experts in the evaluation of education programs and in other areas of education, at least two-thirds of whom are not Federal employees, who are appointed by the Secretary, and who review and assign scores to programs according to the criteria in 34 CFR 786.12 or 787.12.

Program year or *academic year* mean the twelve-month period during which a State operates its vocational education program (which is most generally a period beginning on July 1 and ending on the following June 30).

(Authority: 20 U.S.C. 1225(a))

Rehabilitation Act of 1973 means the Act in 29 U.S.C. 701 *et seq.*

School facilities means classrooms and related facilities, including initial equipment, and interests in lands on which the facilities are constructed. The term does not include any facility intended primarily for events for which admission is to be charged to the general public.

Sequential course of study means an integrated series of courses that are directly related to the educational and occupational skills preparation of individuals for jobs, or preparation for postsecondary education.

Single parent means an individual who—

(1) Is unmarried or legally separated from a spouse; and

(2)(i) Has a minor child or children for which the parent has either custody or joint custody; or

(ii) Is pregnant.

Small business means a for-profit enterprise employing 500 or fewer employees.

Special populations refers to individuals with disabilities, educationally and economically disadvantaged individuals (including foster children), individuals of limited English proficiency, individuals who participate in programs designed to eliminate sex bias, and individuals in correctional institutions.

Spread means the degree to which—

(1) Project activities and results are demonstrated to others;

(2) Technical assistance is provided to others to help them replicate project activities and results;

(3) Project activities and results are replicated at other sites; or

(4) Information and material about or resulting from the project are disseminated.

Specific job training means training and education for skills required by an employer to provide the individual student with the ability to obtain employment and to adapt to the changing demands of the workplace.

Standard means the level or rate of an outcome.

(Authority: House Report No. 101–41, 101st Cong., 1st Sess. p. 13 (1989))

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99–658 (48 U.S.C. 1681)).

State board means a State board designated or created by State law as the sole State agency responsible for the administration of vocational education or for supervision of the administration of vocational education in the State.

State corrections educational agency means the State agency or agencies responsible for carrying out corrections education programs in the State.

State council means the State council on vocational education established in accordance with 34 CFR 403.17 through 403.19.

Supplementary services means curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.

Technology education means an applied discipline designed to promote technological literacy that provides knowledge and understanding of the impacts of technology including its organizations, techniques, tools and skills to solve practical problems and extend human capabilities in areas such as construction, manufacturing, communication, transportation, power, and energy.

Transportability means the ease by which project activities and results may be replicated at other sites, such as through the development and use of guides or manuals that provide step-by-step directions for others to follow in order to initiate similar efforts and reproduce comparable results.

Tribally controlled community college means an institution that receives assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a).

Vocational education means organized educational programs offering a sequence of courses or instruction in a sequence or aggregation of occupational competencies that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. These programs must include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. This term also includes applied technology education.

Vocational student organizations means those organizations for individuals enrolled in vocational education programs that engage in activities as an integral part of the instructional program. These organizations may have State and national units that aggregate the work and purposes of instruction in vocational education at the local level.

Wagner-Peyser Act means the Act in 29 U.S.C. 49 *et seq.*

(Authority: 20 U.S.C. 2471)

§ 400.5 Under what conditions may funds under the Act be used for the joint funding of programs?

(a) Funds made available under the Act may be used to provide additional funds under any of the programs in—

(1) Title II, section 123 and title III of the JTPA; or

(2) The Wagner-Peyser Act.

(b) Funds used to carry out paragraph (a) of this section may be used only if the—

(1) Program otherwise meets the requirements of the Act and the requirements of the programs in paragraph (a) (1) and (2) of this section;

(2) Program serves the same individuals that are served under the Act;

(3) Program provides services in a coordinated manner with services provided under the Act; and

(4) Funds would be used to supplement, and not supplant, funds provided from non-Federal sources.

(c) Funds that meet the conditions in paragraphs (a) and (b) of this section may be used as matching funds.

(Authority: 20 U.S.C. 2468)

§ 400.6 What are the requirements for establishing a State Committee of Practitioners?

(a) *Consultation.* A State shall appoint a State Committee of Practitioners (Committee) after consulting with—

(1) Local school officials representing eligible recipients;

(2) Representatives of—

(i) Organized labor;

(ii) Business;

(iii) Superintendents;

(iv) Community-based organization;

(v) Private industry councils established under section 102(a) of the JTPA (29 U.S.C. 1512);

(vi) State councils;

(vii) Parents;

(viii) Special populations; and

(ix) Correctional institutions;

(3) The administrator appointed under 34 CFR 403.13(a);

(4) The State administrator of programs assisted under part B of the IDEA;

(5) The State administrator of programs assisted under chapter 1;

(6) The State administrator of programs for students of limited English proficiency; and

(7) Guidance counselors.

(b) *Committee selection.* The State shall select the Committee from nominees solicited from—

(1) State organizations representing school administrators;

(2) Teachers;

(3) Parents;

(4) Members of local boards of education; and

(5) Appropriate representatives of institutions of higher education.

(c)(1) *Committee membership.* The Committee must consist of—

(i) Representatives of local educational agencies, who must constitute a majority of the members of the committee;

(ii) School administrators;

(iii) Teachers;

(iv) Parents;

(v) Members of local boards of education;

(vi) Representatives of institutions of higher education; and

(vii) Students.

(2) School administrators, teachers, and members of local boards of education may be counted as representatives of LEAs for purposes of paragraph (c)(1)(i) of this section.

(Authority: 20 U.S.C. 2325(a) and (d)(1); 2468a)

§ 400.7 What are the provisions governing the issuance of State standards and measures of performance and State rules or regulations?

(a)(1) *State standards and measures.* A State shall convene, on a regular basis, the Committee established under § 400.6 to review, comment on, and propose revisions to a draft proposal that the State board develops for a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs.

(2) The Committee shall make recommendations to the State board with respect to modifying statewide standards and measures based on information provided by the State under 34 CFR 403.201(d).

(b)(1) *State rules and regulations.* Except as provided in paragraph (b)(2) of this section, before a State publishes any proposed or final State rule or regulation for programs, services, or activities covered by the Act, the State shall convene the Committee for the purpose of reviewing the rule or regulation.

(2) In an emergency, in which a rule or regulation must be issued within a very limited time period to assist eligible recipients with the operation of a projects, services, or activities, the State—

(i) May issue a proposed rule or regulation without meeting the requirements in paragraph (b)(1) of this section; but

(ii) Shall immediately convene the Committee to review the rule or regulation before it is issued in final form.

Cross-Reference: See § 400.8(c).

(3) If a State policy is binding on eligible recipients and has the same effect as a formal rule or regulation, although it is not issued as one, that policy is covered by this section.

(Authority: 20 U.S.C. 2325(a); 2468a)

§ 400.8 What are the provisions governing student assistance?

(a) The portion of any student financial assistance received under the Act that is made available for attendance costs described in paragraph (b) of this section may not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

(b) For purposes of this section, attendance costs are—

(1) Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchases of any equipment, materials, or supplies required of all students in the same course of study; and

(2) An allowance for books, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending an institution on at least a half-time basis, as determined by the institution.

(Authority: 20 U.S.C. 2466d)

§ 400.9 What additional requirements govern the Vocational and Applied Technology Education Programs?

In addition to the Act, applicable Federal laws, and regulations, the following requirements apply to Vocational and Applied Technology Education Programs:

(a) A State that receives funds under the Act shall cooperate with the Secretary in supplying the information the Secretary requires, in the form the Secretary requires, and shall comply in its reports with the information system developed by the Secretary under section 421 of the Act.

(b) Nothing in the Act is to be construed to be inconsistent with applicable Federal laws guaranteeing civil rights, or is intended to, or has the effect of, limiting or diminishing any obligations imposed under the IDEA or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(c) Any State rule, regulation, or policy imposed on the administration or operation of programs funded under the Act, including any rule, regulation, or policy based on a State's interpretation of any Federal law, regulation, or guideline, must be identified as a State imposed requirement.

(d) Funds provided under the Act may not be used for the purpose of directly providing incentives or inducements to relocate a business or enterprise from one State to another State if the relocation would result in a reduction in the number of jobs available in the State where the business enterprise is located before the incentives or inducements are offered.

(e) A State may not take into consideration payments under the Act in determining for any educational agency or institution in that State the eligibility for State aid or the amount of State aid with respect to public education within the State.

(Authority: 20 U.S.C. 2421, 2424, 2466c, 2468b, 2468c, and 2468e(a)(2))

§ 400.10 What are the reporting requirements?

(a) Recipients of grants and cooperative agreements shall report information about students, projects, evaluations, dissemination, expenditures, accomplishments, and any other information, as may be required by the Secretary.

(b) Recipients of grants and cooperative agreements under—

(1) Parts 401, 402, 405, 408, 409, 413, 415, 416, 417, 422, 423, 424, 425, 426, 427, and 428 shall submit performance reports quarterly;

(2) Part 412 shall submit monthly progress and financial status reports and an annual impact report;

(3) Part 413 shall submit monthly exception reports and quarterly financial status reports; and

(4) Part 419 shall submit semi-annual performance reports.

(Authority: 20 U.S.C. 2301 *et seq.*)

3. Part 401 is revised to read as follows:

PART 401—INDIAN VOCATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.

Subpart B—How Does One Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met After an Award?

Authority: 20 U.S.C. 2313(b), unless otherwise noted.

Subpart A—General

§ 401.1 What is the Indian Vocational Education Program?

The Indian Vocational Education Program provides financial assistance to projects that provide vocational education for the benefit of Indians.

(Authority: 20 U.S.C. 2313(b))

§ 401.2 Who is eligible for an award?

(a) The following entities are eligible for an award under this program:

(1) A tribal organization of any Indian tribe that is eligible to contract with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

(2) A Bureau-funded school offering a secondary program.

(b) Any tribal organization or Bureau-funded school described in paragraph (a) of this section may apply individually or jointly as part of a consortium with one or more eligible tribal organizations or schools.

(c)(1) A consortium shall enter into an agreement signed by all members of the consortium, and designating one member of the consortium as the applicant and grantee.

(2) The agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the application.

(3) The applicant shall submit the agreement with its application.

Cross-Reference: See 34 CFR 75.127–75.129—Group applications.

(Authority: 20 U.S.C. 2313(b))

§ 401.3 What activities may the Secretary fund?

(a) The Secretary provides financial assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer projects or portions of projects that are authorized by and consistent with the purpose of the Act. In the case of a grant to a Bureau-funded school, the Secretary provides a minimum grant of $35,000.

(b) Projects funded under this program are in addition to other programs, services, and activities made available under other provisions of the Act to—

(1) Eligible Indians in need of vocational education; and

(2) Eligible Indian tribes as community-based organizations that receive State vocational education assistance.

(c) An award under this program may be used to provide a stipend to a student who—

(1) Is enrolled in a vocational education project funded under this program; and

(2) Has an acute economic need that cannot be met through work-study programs.

(d) The amount of a stipend may be the greater of either the minimum hourly wage prescribed by State or local law, or the minimum hourly wage set under the Fair Labor Standards Act. A stipend may not be paid for time a student is not in attendance in a project.

(Authority: 20 U.S.C. 2313(b) (1) and (3))

§ 401.4 What regulations apply?

The following regulations apply to the Indian Vocational Education Program:

(a) The regulations in 34 CFR part 400 (except that 34 CFR parts 79 and 82 do not apply to this program).

(b) The regulations in this part 401.

(Authority: 20 U.S.C. 2313(b))

§ 401.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Act of April 16, 1934 means the Federal law commonly known as the "Johnson-O'Malley Act" that authorizes the Secretary of the Interior to make contracts for the education of Indians and other purposes (25 U.S.C. 455–457).

Acute economic need means an income that is at or below the national poverty level according to the latest available data from the Department of Commerce.

Bureau means the Bureau of Indian Affairs, Department of Interior.

Bureau-funded school means—

(1) A Bureau operated elementary or secondary day or boarding school or a Bureau operated dormitory for students attending a school other than a Bureau school;

(2) An elementary or secondary school or a dormitory that receives financial assistance for its operation under a contract or agreement with the Bureau under sections 102, 104(1), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(1), and 458d); or

(3) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

(Authority: 20 U.S.C. 2313(b); 25 U.S.C. 2019(3), (4), and (5))

Indian means a person who is a member of an Indian tribe.

(Authority: 25 U.S.C. 450b(d))

Indian tribe means any Indian tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Authority: 25 U.S.C. 450b(e))

Stipend means a subsistence allowance for a student that is necessary for the student to participate in a project funded under this program.

Tribal organization means the recognized governing body of any Indian tribe or any legally established organization of Indians that is controlled, sanctioned, or chartered by that governing body or that is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities. Provided, that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

(Authority: 25 U.S.C. 450b(1))

(Authority: 20 U.S.C. 2313(a)(1)(A), (b))

Subpart B—How Does One Apply for an Award

§ 401.10 How are applications submitted?

(a) An application from a tribal organization must be submitted to the Secretary by the Indian tribe.

(b) An application for a project to serve more than one Indian tribe must be approved by each tribe to be served.

(c) An application from a Bureau-funded school may be submitted directly to the Secretary.

(Authority: 20 U.S.C. 2313(b)(1); 25 U.S.C. 450b)

Subpart C—How Does the Secretary Make an Award?

§ 401.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 401.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 401.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 401.21.

(e) In addition to the 100 points to be awarded based on the criteria in § 401.21, the Secretary awards—

(1) Up to 5 points to applications that propose exemplary approaches that involve, coordinate with, or encourage tribal economic development plans; and

(2) Five points to applications from tribally controlled community colleges that—

(i) Are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary vocational education; or

(ii) Operate vocational education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of vocational education programs.

(Authority: 20 U.S.C. 2313(b))

§ 401.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which it—

(1) Proposes measurable goals for student enrollment, completion, and placement that are realistic in terms of stated needs, resources, and job opportunities in each occupation for which training is to be provided;

(2) Proposes goals that take into consideration any related goals or

standards developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) training programs operating in the area, and, where appropriate, any goals set by the State board for vocational education for the occupation and geographic area;

(3) Describes, for each occupation for which training is to be provided, how successful program completion will be determined in terms of academic and vocational competencies demonstrated by enrollees prior to completion and any academic or work credentials acquired by enrollees upon completion;

(4) Demonstrates the active commitment in the project's planning and operation by advisory committees, tribal planning offices, the JOBS program office, the JTPA program director, and potential employers such as tribal enterprises, private enterprises (on or off reservation), and other organizations;

(5) Is targeted to individuals with inadequate skills to assist those individuals in obtaining new employment; and

(6) Includes a thorough description of the approach to be used including some or all of the following components:

(i) Methods of participant selection.

(ii) Assessment and feedback of participant progress.

(iii) Coordination of vocational instruction, academic instruction, and support services such as counseling, transportation, and child care.

(iv) Curriculum and, if appropriate, approaches for providing on-the-job training experience.

(b) *Need.* (15 points) The Secretary reviews each application to determine the extent to which the project addresses specific needs, including—

(1) The job market and related needs (such as educational level) of the target population;

(2) Characteristics of that population, including an estimate of those to be served by the project;

(3) How the project will meet the needs of the target population; and

(4) A description of any ongoing and planned activities relative to those needs, including, if appropriate, how the State plan developed under 34 CFR 403.30–403.34 is designed to meet those needs.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of objectives that are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and placements;

(2) A management plan that describes the chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity; and

(3) The way the applicant intends to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points). (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) Subject to the Indian preference provisions of the Indian Self-Determination Act (25 U.S.C. 450 *et seq.*) that apply to grants and contracts to tribal organizations, how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project and the number of participants to be served; and

(3) The budget narrative justifies the expenditures.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kind of academic and work credentials acquired by participants who complete the training;

(2) The plan identifies, at a minimum, types of data to be collected and reported with respect to the achievement of project goals for the enrollment, completion, and placement of participants. The data must be broken down by sex and by occupation for which the training was provided;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(g) *Employment opportunities.* (10 points) The Secretary reviews each application to determine the quality of the plan for job placement of participants who complete training under this program, including—

(1) The expected employment opportunities (including any military specialties) and any additional training opportunities that are related to the participants' training;

(2) Information and documentation concerning potential employers' commitment to hire participants who complete the training; and

(3) An estimate of the percentage of trainees expected to be employed (including self-employed individuals) in the field for which they were trained following completion of the training.

(Authority: 20 U.S.C. 2313(b))

§ 401.22 What additional factors may the Secretary consider?

The Secretary may decide not to award a grant or cooperative agreement if—

(a) The proposed project duplicates an effort already being made; or

(b) Funding the project would create an inequitable distribution of funds under this part among Indian tribes.

(Authority: 20 U.S.C. 2313(b))

§ 401.23 Is the Secretary's decision not to make an award under the Indian Vocational Education Program subject to a hearing?

(a) After receiving written notice from an authorized official of the Department that the Secretary will not award a grant or cooperative agreement to an eligible applicant under § 401.2(a)(1), an Indian tribal organization has 30 calendar days to make a written request to the Secretary for a hearing to review the Secretary's decision.

(b) Within 10 business days of the Department's receipt of a hearing request, the Secretary designates a Department employee who is not assigned to the Office of Vocational and Adult Education to serve as a hearing officer. The hearing officer conducts a hearing and issues a written decision within 75 calendar days of the Department's receipt of the hearing request. The hearing officer establishes rules for the conduct of the hearing. The hearing officer conducts the hearing solely on the basis of written submissions unless the officer determines, in accordance with standards in 34 CFR 81.6(b), that oral argument or testimony is necessary.

(c) The Secretary does not make any award under this part to an Indian tribal organization until the hearing officer issues a written decision on any appeal brought under this section.

(Authority: 20 U.S.C. 2313(b); 25 U.S.C. 450f)

Subpart D—What Conditions Must be Met After an Award?

§ 401.30 How does the Indian Self-Determination Act and the Act of April 16, 1934 affect awards under the Indian Vocational Education Program?

(a) Grants, cooperative agreements, or contracts with tribal organizations are subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f). These awards must be conducted by the recipient or contractor in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, that are relevant to the projects administered under this part. Section 4 contains requirements pertaining to submission of an education plan by a contractor. Section 5 pertains to participation of parents of Indian children. Section 6 pertains to reimbursement for educating non-resident students.

(b) Grants to Bureau funded schools are not subject to the requirements of the Indian Self-Determination Act or the Act of April 16, 1934.

(Authority: 20 U.S.C. 2313(b)(1)(A)(ii) (I) and (II))

§ 401.31 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for either an internal or external evaluation, or both, of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired;

(2) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex and socio-economic status for each occupation for which training has been provided;

(3) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application;

(4) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(5) The effectiveness of the project in promoting key elements for participants's job readiness, including—

(i) Coordination of services;

(ii) Improved attendance rates; and

(iii) Improved basic and vocational skills competencies.

(Authority: 20 U.S.C. 2313(b))

4. A new part 402 is added to read as follows:

PART 402—NATIVE HAWAIIAN VOCATIONAL EDUCATION PROGRAM

Authority: 20 U S.C. 2313(c), unless otherwise noted.

Subpart A—General

§ 402.1 What is the Native Hawaiian Vocational Education Program?

The Native Hawaiian Vocational Education Program provides financial assistance to projects that provide vocational training and related activities for the benefit of native Hawaiians.

(Authority: 20 U.S.C. 2313(c))

§ 402.2 Who is eligible for an award?

Any organization that primarily serves and represents native Hawaiians and that is recognized by the Governor of the State of Hawaii is eligible to apply for an award under this program.

(Authority: 20 U.S.C. 2313(c))

§ 402.3 What activities may the Secretary fund?

The Secretary provides assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer programs, or portions of programs, that provide vocational training and related activities for the benefit of native Hawaiians.

(Authority: 20 U.S.C. 2313(c))

§ 402.4 What regulations apply?

The following regulations apply to the Native Hawaiian Vocational Education Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 402.

(Authority: 20 U.S.C. 2313(c))

§ 402.5 What definitions apply?

The following definitions apply to the Native Hawaiian Vocational Education Program:

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definition also applies to this part:

Native Hawaiian means any individual who has any ancestors who were natives, prior to 1778, of the area that now comprises the State of Hawaii.

(Authority: 20 U.S.C. 2313(a)(1)(B))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 402.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 402.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 402.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 402.21.

(Authority: 20 U.S.C. 2313(c))

§ 402.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Program design.* (35 points) The Secretary reviews each application to determine the extent to which—

(1) The application presents a complete program design, including identifying the services to be provided, who will provide them, how they will be provided, and the expected outcomes for each activity;

(2) The proposed program is designed to meet the identified vocational education needs of native Hawaiians;

(3) The application proposes an effective plan for coordination with the office of the Hawaii State director for vocational education; and

(4) If vocational training is proposed within the project—

(i) Proposes measurable goals for student enrollment, completion, and placement.

(ii) Proposes goals that take into consideration any related standards and measures developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and any Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) programs in that geographic area;

(iii) Proposes goals that take into consideration any standards set by the State board for vocational education for the occupation and geographic area; and

(iv) Describes how successful program completion will be determined for each occupation for which training is to be provided, in terms of the academic and vocational competencies demonstrated by enrollees prior to successful completion and any academic or work credentials acquired upon completion.

(b) *Management plan.* (25 points) The Secretary reviews each application to determine the quality of the management plan for the project, including—

(1) The chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity;

(2) A clear description of the interrelationship among goals, objectives, and activities;

(3) The way the applicant plans to use the resources and personnel from the grant to achieve each objective; and

(4) How any contracts awarded by the grantee will be awarded, monitored, and evaluated.

(c) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time, that each one of the key personnel, including the project director, will commit to the proposed project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel for this project are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Third-party evaluation.* (10 points) (1) The Secretary reviews each application to determine the quality of the project's plan for an independent evaluation of the project, including if applicable, the extent to which the plan includes activities during the formative stages of the project to help guide and improve the project, as well as a final evaluation that includes summary data and recommendations.

(2) The Secretary reviews each application to determine whether, for any training programs proposed—

(i) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by completers; and

(ii) The plan identifies, at a minimum, types of data to be collected and reported with respect to enrollment, completion, and placement of participants by sex and socio-economic status for each occupation for which training is provided.

(e) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative is explanatory and justifies expenses;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 2313(c))

Subpart D—What Conditions Must Be Met After an Award?

§ 402.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for an external evaluation of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application; and

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress when training is provided by the project, including—

(i) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(ii) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex and socio-economic status for each occupation for which training has been provided.

(Authority: 20 U.S.C. 2313(c))

5. A new part 403 is added to read as follows:

PART 403—STATE VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAM

Subpart A—General

Subpart B—What Are the State's Organizational and Planning Responsibilities?

Subpart C—How Does a State Apply for a Grant?

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

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic Programs?

General

State Programs and State Leadership Activities

Single Parents, Displaced Homemakers, and Single Pregnant Women Program

Sex Equity Program

Programs for Criminal Offenders

Secondary, Postsecondary, and Adult Vocational Education Programs

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

General

Vocational Education Support Programs by Community-Based Organizations

Consumer and Homemaking Education Programs

Comprehensive Career Guidance and Counseling Programs

Business-Labor-Education Partnership for Training Program

Subpart G—What Financial Conditions Must Be Met by a State?

Subpart H—What Conditions Must Be Met by Local Recipients?

Authority: 20 U.S.C. 2301 *et seq.*, as amended by Pub. L. 101–392, 104 Stat. 753 (1990), unless otherwise noted.

Subpart A—General

§ 403.1 What is the State Vocational and Applied Technology Education Program?

(a) Under the State Vocational and Applied Technology Education Program, the Secretary makes grants to States, to assist them, local educational agencies, postsecondary educational institutions, and other agencies and institutions to administer and conduct vocational education programs that are authorized by the Act.

(b) The State Vocational and Applied Technology Education Program consists of the programs under the basic programs for vocational education authorized by title II of the Act and listed in § 403.60, and the special programs authorized by title III of the Act that are covered by the State plan and listed in § 403.130.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 403.2 Who is eligible for an award?

Except as otherwise provided in § 403.131, a State is eligible for an award under the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2311 and 2311a)

§ 403.3 What regulations apply?

The following regulations apply to the State Vocational and Applied Technology Education Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 403.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 403.4 What definitions apply?

The definitions in 34 CFR 400.4 apply to the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2471)

Subpart B—What are the State's Organizational and Planning Responsibilities?

§ 403.10 What is the State board?

A State that desires to participate in the programs authorized by the Act shall, consistent with State law, designate or establish a State board of vocational education (State board). The State board must be the sole State agency responsible for the administration or the supervision of the State's vocational and applied technology education program.

(Authority: 20 U.S.C. 2321(a))

§ 403.11 What are the principal responsibilities of the State board?

The principal responsibilities of the State board must include—

(a) The coordination of the development, submission, and implementation of the State plan;

(b) The evaluation of the programs, services, and activities assisted under the Act, as required by §§ 403.32 (a)(7) and (b)(9) and 403.201 through 403.204;

(c) The development, in consultation with the State council on vocational education, of the State plan and its submission to the Secretary, as required by §§ 403.30 through 403.34;

(d) Consultation with the State council on vocational education and other appropriate agencies, groups, and individuals, including business, industry, and labor, involved in the planning, administration, evaluation, and coordination of programs funded under the Act;

(e) Convening and meeting as a State board, consistent with applicable State law and procedure, when the State board determines it is necessary to meet to carry out its functions under the Act, but not less than four times annually; and

(f) The adoption of those procedures the State board considers necessary to implement State level coordination with the State job training coordinating council in order to encourage cooperation between programs under the Act and programs under the Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*).

(Authority: 20 U.S.C. 2321(a))

§ 403.12 What are the additional responsibilities of the State board?

(a) The State board shall make available to each private industry council established within the State under section 102 of the JTPA a current listing of all programs assisted under the Act.

(b)(1) The State board, in consultation with the State council on vocational education established under § 403.17, shall establish a limited number of (but at least two) technical committees to advise the State council and the State board on the development of model curricula to address State labor market needs. The technical committees shall develop an inventory of skills that may be used by the State board to define state-of-the-art model curricula. This inventory must identify the type and level of knowledge and skills needed for entry, retention, and advancement in occupational areas taught in the State.

(2) The State board shall establish procedures that are consistent with the purposes of the Act for membership, operation, and duration of the technical committees. Their membership must be composed of representatives of—

(i) Employers from any relevant industry or occupation for which the committee is established;

(ii) Trade or professional organizations representing any relevant occupations; and

(iii) Organized labor, if appropriate.

(c) Except for the functions described in § 403.11, the State board may delegate any of its other administrative, operational, or supervisory responsibilities, in whole or in part, to one or more appropriate State agencies.

(d) The State board shall carry out the responsibilities described in §§ 403.13 through 403.18 and 403.200 through 403.208.

(Authority: 20 U.S.C. 2321 (a)(1), (f), (g))

§ 403.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?

(a) A State that desires to participate in the State Vocational and Applied Technology Education Program shall assign one individual, within the appropriate agency established or designated by the State board under § 403.12(c), to administer vocational education programs within the State, to work full-time to assist the State board to fulfill the purposes of the Act by—

(1) Administering the program of vocational education for single parents, displaced homemakers, and single pregnant women described in § 403.81, and the sex equity program described in § 403.91;

(2) Gathering, analyzing, and disseminating data on the—

(i) Adequacy and effectiveness of vocational education programs in the State in meeting the education and employment needs of women, including the preparation of women for employment in technical occupations, new and emerging occupational fields, and occupations regarded as nontraditional for women; and

(ii) Status of men and women students and employees in the programs described in paragraph (a)(2)(i) of this section;

(3) Reviewing and commenting upon, and making recommendations concerning, the plans of local educational agencies, area vocational education schools, intermediate educational agencies, and postsecondary educational institutions to ensure that the needs of women and men for training in nontraditional jobs are met;

(4) (i) Reviewing vocational educational programs, including career guidance and counseling, for sex stereotyping and sex bias, with particular attention to practices that tend to inhibit the entry of women in high technology occupations; and

(ii) Submitting recommendations, to the State board for inclusion in the State plan, for programs and policies to overcome sex bias and sex stereotyping in the programs described in paragraph (a)(4)(i) of this section;

(5) Submitting to the State board an assessment of the State's progress in meeting the purposes of the Act with regard to overcoming sex discrimination and sex stereotyping;

(6) Reviewing proposed actions on grants, contracts, and the policies of the State board to ensure that the needs of women are addressed in the administration of the Act;

(7) Developing recommendations for programs of information and outreach to women concerning vocational education and employment opportunities for women, including opportunities for careers as technicians and skilled workers in technical fields and new and emerging occupational fields;

(8) Providing technical assistance and advice to local educational agencies, postsecondary institutions, and other interested parties in the State on expanding vocational opportunities for women;

(9) Assisting administrators, instructors, and counselors in implementing programs and activities to increase access for women, including displaced homemakers and single heads of households, to vocational education and to increase male and female students' enrollment in nontraditional programs;

(10) Developing an annual plan for the use of all funds available for programs described in §§ 403.81 and 403.91;

(11) Managing the distribution of funds pursuant to §§ 403.81 and 403.91;

(12) Monitoring the use of funds distributed to recipients under §§ 403.81 and 403.91;

(13) Evaluating the effectiveness of programs and activities supported by funds under §§ 403.81 and 403.91;

(14) On a competitive basis, allocating and distributing to eligible recipients or community-based organizations subgrants or contracts to carry out the Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program;

(15) Ensuring that each subgrant or contract awarded under the Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program is of sufficient size, scope, and quality to be effective;

(16) Developing procedures for the collection from eligible recipients or community-based organizations that receive funds under §§ 403.81 and 403.91 of data appropriate to the individuals served in programs under §§ 403.81 and 403.91 in order to permit an evaluation of effectiveness of those programs as required by paragraph (a)(13) of this section; and

(17) Cooperating in the elimination of sex bias and sex stereotyping in Consumer and Homemaking Education Programs.

(b) A State shall, in accordance with § 403.180(b)(4)(i), reserve at least $60,000 to carry out the provisions of paragraph (a) of this section, including the provision of necessary and reasonable staff support.

(c) For the purposes of this section, the term "State" includes only the fifty States and the District of Columbia.

(Authority: 20 U.S.C. 2312(a)(4)(A), 2321(b), 2335b, 2362(a)(3))

§ 403.14 What are the personnel requirements regarding coordination with services for individuals with disabilities?

(a) A State desiring to participate in the State Vocational and Applied Technology Education Program shall designate or assign the head of the State office responsible for administering part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*) to review the implementation of the provisions of the Act as they relate to students with disabilities by reviewing all or a representative sample of plans of eligible recipients to ensure that—

(1) Individuals with disabilities are receiving vocational educational services;

(2) Plans of the eligible recipients provide assurances of compliance with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the IDEA and regulations implementing those statutes, regarding equal access to programs; and

(3) Eligible recipients have—

(i) Identified the number of students with disabilities enrolled in the eligible recipients' vocational programs;

(ii) Assessed the vocational needs of those students; and

(iii) Developed an adequate plan to provide supplementary services sufficient to meet the needs of those students.

(b) For the purposes of this section, the term "State" includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321(c))

§ 403.15 What are the personnel requirements regarding coordination with services under chapter 1 of title I of the Elementary and Secondary Education Act?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office or other appropriate individual responsible for coordinating services under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1) (20 U.S.C. 2701 *et seq.*) to review all or a representative sample of applications from eligible recipients to ensure that—

(1) The number of economically disadvantaged students has been identified; and

(2) The needs of economically disadvantaged students are being met as outlined in the applications of eligible recipients.

(b) For the purposes of this section, the term *State* includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321(c) and (d))

§ 403.16 What are the personnel requirements regarding coordination with programs for individuals of limited English proficiency?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office or other appropriate individual responsible for administering programs for students of limited English proficiency to review all or a representative sample of applications from eligible recipients to ensure that—

(1) The number of students of limited English proficiency has been identified; and

(2) The needs of students of limited English proficiency for participation in vocational education programs are being met as outlined in the applications of eligible recipients.

(b) For the purposes of this section, the term "State" includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321 (c) and (e))

§ 403.17 What are the State's responsibilities regarding a State council on vocational education?

(a) A State desiring to participate in the State Vocational and Applied Technology Education Program shall establish a State council on vocational education. The State council must be appointed—

(1) By the Governor; or

(2) By the State board of education, in a State in which the members of State board of education are elected, including election by the State legislature.

(b) Each State shall certify to the Secretary the establishment and membership of the State council by June 1 prior to the beginning of each State plan period described in § 403.30.

(c) Each State shall recertify to the Secretary any new member of the State council not more than 60 days after a position on the State council is vacated.

(Authority: 20 U.S.C. 2322 (a), (b))

§ 403.18 What are the membership requirements of a State council on vocational education?

(a) Each State council must be composed of 13 individuals, and must be broadly representative of citizens and groups within the State having an interest in vocational education.

(b) Each State council must consist of—

(1) Seven individuals who are representative of the private sector in the State and who must constitute a majority of the membership—

(i) Five of whom must be representatives of business, industry, trade organizations, and agriculture including—

(A) One member who is representative of small business concerns; and

(B) One member who is a private sector member of the State job training coordinating council established pursuant to section 122 of the JTPA; and

(ii) Two of whom must be representatives of labor organizations; and

(2) Six individuals, one of whom must be representative of special education, who are representative of—

(i) Secondary and postsecondary vocational institutions (equitably distributed among those institutions);

(ii) Career guidance and counseling organizations within the State; and

(iii) Individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations, including women, disadvantaged individuals, disabled individuals, individuals with limited English proficiency, and minorities.

(c) The State council may include members of vocational student organizations and school boards but may not include employees of the State board of vocational education.

(d) In selecting individuals to serve on the State council on vocational education, the State shall give due consideration to the appointment of individuals who serve on a private industry council under the JTPA, or on State councils established under other related Federal programs.

(Authority: 20 U.S.C. 2322(a))

§ 403.19 What are the responsibilities of a State council on vocational education?

(a)(1) The State council on vocational education shall meet as soon as practical after the Secretary accepts its certification and shall select from among its membership a chairperson who must be a representative of the private sector.

(2) The State council on vocational education shall adopt rules that govern the time, place, and manner of meeting, as well as council operating procedures and staffing. The rules must provide for at least one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State.

(b) Each State council on vocational education, during each State plan period described in § 403.30 unless otherwise indicated in the regulations in this section, shall—

(1) Meet with the State board or its representatives to advise on the development of the subsequent State plan, or any amendments to the current State plan, while the State plan or amendment is being developed;

(2) Make recommendations to the State board and make reports to the Governor, the business community, and general public of the State, concerning—

(i) The State plan;

(ii) Policies the State should pursue to strengthen vocational education, with particular attention to programs for the disabled; and

(iii) Initiatives and methods the private sector could undertake to assist in the modernization of vocational education programs;

(3) Analyze and report on the distribution of all vocational education funds in the State and on the availability of vocational education activities and services within the State;

(4) Consult with the State board on the establishment of evaluation criteria for vocational education programs within the State;

(5) Submit recommendations to the State board on the conduct of vocational education programs conducted in the State that emphasize the use of business concerns and labor organizations;

(6) Assess and report on the distribution of financial assistance under the Act, particularly the distribution of financial assistance between secondary vocational education programs and postsecondary vocational education programs;

(7) Recommend procedures to the State board to ensure and enhance the participation of the public in the provision of vocational education at the local level within the State, particularly the participation of local employers and local labor organizations;

(8) Report to the State board on the extent to which individuals who are members of special populations are provided with equal access to quality vocational education programs;

(9) Analyze and review corrections education programs; and

(10)(i) At least once every two years—

(A) Evaluate the extent to which vocational education, employment, and training programs in the State represent a consistent, integrated, and coordinated approach to meeting the economic needs of the State;

(B) Evaluate the vocational education program delivery system assisted under the Act, and the job training program delivery system assisted under the JTPA, in terms of the delivery systems' adequacy and effectiveness in achieving the purposes of both Acts; and

(C) Make recommendations to the State board on the adequacy and effectiveness of the coordination that takes place between vocational education and the JTPA;

(ii) Comment on the adequacy or inadequacy of State action in implementing the State plan;

(iii) Make recommendations to the State board on ways to create greater incentives for joint planning and collaboration between the vocational education system and the job training system at the State and local levels; and

(iv) Advise, in writing, the Governor, the State board, the State job training coordinating council, the Secretary, and the Secretary of Labor of these findings and recommendations.

(c)(1) Each State council on vocational education may—

(i) Obtain the services of the professional, technical, and clerical personnel necessary to enable it to carry out its functions under the Act;

(ii) Contract for the services necessary to enable it to carry out its evaluation functions, independent of programmatic and administrative control by other State boards, agencies, and individuals; and

(iii) Submit a statement to the Secretary reviewing and commenting upon the State plan.

(2)(i) The expenditure of funds awarded to a State council on vocational education by the Secretary must be solely determined by that State council and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual.

(ii) Each State council on vocational education shall designate an appropriate State agency, or other public agency, eligible to receive funds under the Act, to act as its fiscal agent for purposes of disbursement, accounting, and auditing.

(Authority: 20 U.S.C. 2322(c)-(e) and (f)(2); 2323(c))

Subpart C—How Does A State Apply for a Grant?

§ 403.30 What documents must a State submit to receive a grant?

(a) A State that desires to participate in the State Vocational and Applied Technology Education Program shall submit to the Secretary a State plan for a three-year period, in the case of the initial plan, and a two-year period thereafter, together with annual revisions the State board determines to be necessary.

(b) Each State shall carry out its programs under the State Vocational and Applied Technology Education Program on the basis of program years that coincide with program years under section 104(a) of the JTPA.

(c) The provisions of 34 CFR 76.103 do not apply to the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2323)

§ 403.31 How is the State plan developed?

(a) In formulating the State plan, and any amendments to the State plan, the State board shall meet with, and utilize, the State council on vocational education established under § 403.17.

(b) After providing appropriate and sufficient notice to the public, the State board shall conduct at least two public hearings in the State for the purpose of affording all segments of the public and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan.

(c) A State shall provide public notice of a hearing on the State plan at least 30 days prior to the hearing.

(d) In developing a State plan, the State shall conduct an assessment according to § 403.203.

(e) The State board shall develop the portion of each State plan relating to the amount and uses of any funds proposed to be reserved for adult education, postsecondary education, tech-prep education, and secondary education after consultation with the State agency responsible for supervision of community colleges, technical institutes, or other two-year postsecondary institutions primarily engaged in providing postsecondary vocational education and the State agency responsible for secondary education. If a State agency finds that a portion of the final State plan is objectionable, that agency shall file its objections with the State board.

(f) The State board shall, in developing the State plan, take into consideration the relative training and retraining needs of secondary, adult, and postsecondary students.

(Authority: 20 U.S.C. 2323(a)(2) and 2324(a))

§ 403.32 What must the State plan contain?

(a) *Assurances.* To participate in the programs authorized under the State Vocational and Applied Technology Program, the State shall, in its State plan, provide assurances that—

(1) The State board will comply with the applicable requirements of titles I, II, III, and V of the Act and regulations implementing those requirements (including the maintenance of fiscal effort requirement in § 403.182);

(2) Eligible recipients will comply with the requirements of titles I, II, III, and V of the Act and the regulations implementing those requirements;

(3) The State board will develop measurable goals and accountability measures for its entire vocational education program for meeting the needs of individuals who are members of special populations;

(4) The State board will conduct adequate monitoring of programs conducted by eligible recipients to ensure that the projects, services, and activities conducted with assistance under the Act are meeting the goals described in paragraph (a)(3) of this section;

(5) To the extent consistent with the number and location of individuals who are members of special populations enrolled in private secondary schools, the State will provide for the participation of those individuals in the vocational education programs assisted under §§ 403.112 and 403.113;

(6) The State will comply with the provisions of § 403.180, and will distribute all of the funds reserved for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs to eligible recipients pursuant §§ 403.112, 403.113, and 403.116;

(7) The State will develop and implement a system of standards for performance and measures of performance for vocational education programs at the State level that meets the requirements of §§ 403.201 and 403.202;

(8) In the use of funds available for programs for single parents, displaced homemakers, or single pregnant women under § 403.81, the State will—

(i) Emphasize assisting individuals with the greatest financial need; and

(ii) Give special consideration to displaced homemakers who, because of divorce, separation, or the death or disability of a spouse, must prepare for paid employment;

(9) The State will furnish relevant training and vocational education activities to men and women who desire to enter occupations that are not traditionally associated with their sex;

(10) The State will fund programs of personnel development and curriculum development to further the goals identified in the State plan;

(11) The State has thoroughly assessed the vocational education needs of identifiable segments of the population in the State that have the highest rates of unemployment, and that those needs are reflected in and addressed by the State plan;

(12) The State board will cooperate with the State council in carrying out the Board's duties under the State plan;

(13) None of the funds expended under the Act will be used to acquire equipment (including computer software) in any instance in which that acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization;

(14) State and local funds will be used in the schools of each local educational agency that are receiving funds under the Act to provide services that, taken as a whole, are at least comparable to services being provided in schools in those agencies that are not receiving funds under the Act;

Cross-Reference: See §§ 403.194 and 403.200.

(15) (i) The State board will provide leadership (qualified by experience and knowledge in guidance and counseling), supervision, and resources for comprehensive career guidance, and vocational counseling, and placement programs; and

(ii) As a component of the assurances described in paragraph (a)(15)(i) of this section, the State board will annually assess and include in the State plan a report on the degree to which expenditures aggregated within the State for career guidance and vocational counseling from allotments under title II of the Act are not less than expenditures for guidance and counseling within the State under the Carl D. Perkins Vocational Education Act in Fiscal or Program Year 1988;

(Authority: House Report No. 101–660, 101st Cong., 1st Sess. p. 111 (1990))

(16) The State will provide for such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of, and accounting for, Federal funds paid to the State, including such funds paid by the State to eligible recipients under the Act;

(17) Funds made available under title II of the Act will be used to supplement, and to the extent practicable increase the amount of State and local funds that would in the absence of those Federal funds be made available for the uses specified in the State plan and the local application, and in no case supplant those State or local funds;

Cross-Reference: See §§ 403.196 and 403.208.

(18) Individuals who are members of special populations will be provided with equal access to recruitment, enrollment, and placement activities;

(19) Individuals who are members of special populations will be provided with equal access to the full range of vocational education programs available to individuals who are not members of special populations, including occupationally specific courses of study, cooperative education, apprenticeship programs, and, to the extent practicable, comprehensive career guidance and counseling services, and will not be discriminated against on the basis of their status as members of special populations;

(20) Vocational education programs and activities for individuals with disabilities will be provided in the least restrictive environment in accordance with section 612(5)(B) of the IDEA and will, if appropriate, be included as a component of the individualized education program developed under section 614(a)(5) of that Act;

(21) Students with disabilities who have individualized education programs developed under section 614(a)(5) of the IDEA, with respect to vocational education programs, will be afforded the rights and protections guaranteed those students under sections 612, 614, and 615 of that Act;

(22) Students with disabilities who do not have individualized education programs developed under section 614(a)(5) of the IDEA or who are not eligible to have such a program, with respect to vocational education programs, will be afforded the rights and protections guaranteed those students under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and, for the purpose of the State Vocational and Applied Technology Education Programs, those rights and protection will include making vocational education programs readily accessible to eligible individuals with disabilities through the provision of services described § 403.190(b)(3);

(23) Vocational education planning for individuals with disabilities will be coordinated among appropriate representatives of vocational education, special education, and State vocational rehabilitation agencies;

(24) The provision of vocational education to each student with disabilities will be monitored to determine if that education is consistent with the individualized education program developed for the student under section 614(a)(5) of the IDEA, in any case in which an individualized education program exists;

(25) The provision of vocational education will be monitored to ensure that disadvantaged students and students of limited English proficiency have access to that education in the most integrated setting possible;

(26) (i) The requirements of the Act relating to individuals who are members of special populations—

(A) Will be carried out under the general supervision of individuals in the appropriate State educational agency or State board who are responsible for students who are members of special populations; and

(B) Will meet education standards of the State educational agency or State board;

(ii) With respect to students with disabilities, the supervision carried out under paragraph (a)(26)(i) of this section will be carried out consistent with, and in conjunction with, supervision by the State educational agency or State board carried out under section 612(6) of the IDEA;

(27) Funds received under the Business-Labor-Education Partnership for Training Program will be awarded on a competitive basis solely for vocational education programs, including programs that—

(i) Provide apprenticeships and internships in industry;

(ii) Provide new equipment;

(iii) Provide teacher internships or teacher training;

(iv) Bring representatives of business and organized labor into the classroom;

(v) Increase the access to, and quality of, programs for individuals who are members of special populations;

(vi) Strengthen coordination between vocational education programs and the labor and skill needs of business and industry;

(vii) Address the economic development needs of the area served by the partnership;

(viii) Provide training and career counseling that will enable workers to retain their jobs;

(ix) Provide training and career counseling that will enable workers to upgrade their jobs; and

(x) Address the needs of new and emerging industries, particularly industries in high-technology fields;

(28) In administering the Business-Labor-Education Partnership for Training Program, the State board will—

(i) Give preference to partnerships that coordinate with local chambers of commerce (or the equivalent), local labor organizations, or local economic development plans;

(ii) Give priority to programs offered by partnerships that provide job training in areas or skills where there are significant labor shortages; and

(iii) Ensure an equitable distribution of assistance under this part between urban and rural areas;

(29) Except as provided in paragraph (a)(30) of this section, not less than 50 percent of the aggregate cost of programs and projects assisted under the Business-Labor-Education Partnership for Training Program will be provided from non-Federal sources, and not less than 50 percent of the non-Federal share will be provided by

businesses or labor organizations participating in the partnerships; and

(30) In the event that a partnership includes a small business or labor organization, 40 percent of the aggregate cost of the programs and projects assisted under the Business-Labor-Education Partnership for Training Program will be provided from non-Federal sources and not less than 50 percent of the non-Federal share will be provided by participating business or labor organizations.

(b) *Descriptions.* To participate in programs authorized under the State Vocational and Applied Technology Education Program, the State must include the following descriptions in the State plan:

(1) The procedures and criteria for, and the results of, each of the assessments required by § 403.203, including the needs identified by the assessments.

(2) The plans for the use of the funds and how those planned uses reflect the needs described in paragraph (b)(1) of this section.

(3) The manner in which the State will comply with the requirements in the Act regarding access and services for individuals who are members of special populations and a description of the responsiveness of programs to the special needs of those students.

(4) The estimated distribution, for each institutional level, of funds to corrections educational agencies as prescribed by § 403.100, of funds to local educational agencies, area vocational education schools, or intermediate educational agencies as prescribed by §§ 403.112 and 403.113, and of funds to eligible institutions as prescribed by § 403.116.

(5) The criteria the State board will use—

(i) In approving applications of eligible recipients; and

(ii) For spending the amounts reserved for the State under § 403.180(b).

(6) How funds expended for occupationally specific training will be used for occupations in which job openings are projected or available, based on a labor market analysis that is not limited to the area in which the school is located.

(Authority: House Report No. 101-660, 101st Cong., 1st Sess. p. 109 (1990))

(7) In each State plan submitted after Fiscal Year 1991, the progress the State has made in achieving the goals described in previous State plans.

(8) The methods of administration necessary for the prompt and efficient administration of programs under the Act.

(9) How the State will implement program evaluations with eligible recipients as prescribed in §§ 403.191 and 403.192.

(10) The methods proposed for the joint planning and coordination of programs carried out under the Act with programs conducted under the JTPA, the Adult Education Act (20 U.S.C. 1201 *et seq.*), chapter 1, the IDEA, and the Rehabilitation Act of 1973, and with apprenticeship programs.

(11) Procedures by which an area vocational educational school, intermediate educational agency, or local educational agency may appeal decisions adverse to its interests with respect to programs assisted under the Act.

(12) How the State will comply with the provisions of §§ 403.32(a)(18)-(26), 403.115, and 403.205.

(13) The State's rationale for distribution of funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Program.

(14) The State corrections educational agency or agencies designated to administer vocational education programs assisted under the Act, and the plan for the use of funds provided under § 403.180(b)(5).

(15) Any delegation of functions under § 403.12(c).

(16) The manner in which the State board will comply with the applicable requirements of titles I, II, III, and V of the Act (including the maintenance of fiscal effort requirements in § 403.182).

(17) A summary of recommendations made at public hearings on the State plan and the State board's response.

(18) How the State will determine which LEAs are located in a rural sparsely-populated area for purposes of § 403.112(d)(3).

(19) Which indices of economic status the State will use to determine the number of economically disadvantaged students attending vocational educational programs for the purposes of § 403.114.

(20) What method the State will use to distribute minimal amounts for the purpose of § 403.119(a).

(c) *Consultations.* A State desiring to participate in the State Vocational and Applied Technology Education Program shall include in its State plan—

(1) A statement, if any, from the State advisory council on vocational education reviewing and commenting on the State plan;

(2) As necessary, the State's reasons for not accepting the recommendations of the State Committee of Practitioners for modifying standards and measures to be used in the statewide system of core standards and measures of performance; and

(3) As necessary, the State's response to any objections raised by State agencies consulted during the development of the State plan as required by § 403.31(e).

(d) To be eligible to participate in the Supplementary State Grants Program under sections 351-356 of the Act, a State board shall comply with the requirements in 34 CFR 407.10.

(Authority: 20 U.S.C. 2321(a)(2); 2322(e); 2323(a)(2)(B), (b); 2324(a); 2325(a), (d)(3); 2328(a); 2336(a)(1); 2341(b)(2), (d)(3); 2341b(a); 2392(b); 2463; and 2468e(a)(1))

§ 403.33 What procedures does a State use to submit its State plan?

(a)(1) The State board shall submit its State plan for review and comment to the State job training coordinating council under section 122 of the JTPA not less than sixty days before the State plan is submitted to the Secretary.

(2) If the matters raised by the comments of the State job training coordinating council are not addressed in the State plan, the State board shall submit those comments to the Secretary with the State plan.

(b) The State board shall submit its State plan for review and comment to the State council on vocational education not less than sixty days before the State plan is submitted to the Secretary.

Cross-Reference: See § 403.19(c)(1)(iii).

(c) Each State plan must be submitted to the Secretary by May 1 preceding the beginning of the first fiscal year for which the plan is to be in effect.

(d) The State plan will be considered to be the general application required by section 435 of the General Education Provisions Act (20 U.S.C. 1232d).

(Authority: 20 U.S.C. 2322(d)(1) and (2)(A), (e); 2323(a)(2)(A); and 2324(b))

§ 403.34 When are amendments to the State plan required?

The State board, in consultation with the State council, shall submit amendments to the State plan to the Secretary when required by 34 CFR 76.140 or when changes in program conditions, labor market conditions, funding, or other factors require substantial amendment of an approved State plan. All amendments must be submitted for review by the State job training coordinating council and the State council on vocational education before submittal to the Secretary.

(Authority: 20 U.S.C. 2323(c))

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

§ 403.50 How does the Secretary make allotments?

(a)(1) From funds made available under section 3(c) of the Act for the basic programs listed in § 403.60, and under section 3(d) of the Act for the special programs listed in § 403.130, the Secretary allots funds each fiscal year according to the provisions of section 101 of the Act to the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the Virgin Islands.

(2) Upon approval of its State plan and any annual amendments, the Secretary makes one or more grant awards from those allotments to a State.

(b)(1) From funds made available under sections 3(b)(2) of the Act, the Secretary allots funds each fiscal year for State councils on vocational education according to the provisions of section 112(f)(1) of the Act.

(2) Upon approval of the State plan and submission of an annual budget covering the proposed expenditures of the State council on vocational education for the following program year, the Secretary makes an award to the State council.

(c) From funds made available under sections 3(b)(1)(B) of the Act for the territories, the Secretary allots funds each fiscal year according to the provisions of section 101A(a) of the Act.

(d)(1) The Secretary awards funds remaining after allotments are made under paragraph (c) of this section to the Center for the Advancement of Pacific Education (CAPE) or its successor entity, such as the Pacific Regional Educational Laboratory.

(2) CAPE or its successor entity shall make grants for vocational education and training in Guam, American Samoa, Palau, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, and the Republic of the Marshall Islands for the purpose of providing direct educational services, including—

(i) Teacher and counselor training and retraining;

(ii) Curriculum development; and

(iii) Improving vocational education and training programs in secondary schools and institutions of higher education (as defined in § 403.117(b)), or improving cooperative programs involving both secondary schools and institutions of higher education.

(3) CAPE may not use more than five percent of the funds received under paragraph (d)(1) of this section for administrative costs.

(Authority: 20 U.S.C. 2311; 2311a; and 2461)

§ 403.51 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 403.50(a) will not be required for any fiscal year for carrying out the program for which the allotment was made, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to use them promptly and effectively upon reallotment.

(2) The Secretary announces in the Federal Register the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2311(b))

§ 403.52 When does the Secretary approve State plans and amendments?

(a)(1) The Secretary approves a State plan, or an amendment to a State plan, within sixty days of its receipt unless the plan or amendment is—

(i) Inconsistent with the requirements and purposes of the Act; or

(ii) Not of sufficient quality to meet the objectives of the Act, including the objective of developing and implementing program evaluations and improvements.

(2) Before the Secretary finally disapproves a State plan, or an amendment to a State plan, the Secretary gives reasonable notice and an opportunity for a hearing to the State board.

(b)(1) In reviewing a State plan, or an amendment to a State plan, the Secretary considers available comments from—

(i) The State council on vocational education;

(ii) The State agency responsible for supervision of community colleges, technical institutes, or other two-year postsecondary institutions primarily engaged in providing postsecondary vocational education;

(iii) The State agency responsible for secondary education; and

(iv) The State Committee of Practitioners established under 34 CFR 400.6.

(2) In reviewing an amendment to a State plan, the Secretary considers available comments from the State job training coordinating council and the State council on vocational education.

(Authority: 20 U.S.C. 2323(c), 2324, and 2325(d)(3))

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic Programs?

General

§ 403.60 What are the basic programs?

The following basic programs are authorized by Title II of the Act:

(a) State Programs and State Leadership Activities.

(b) Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.

(c) Sex Equity Programs.

(d) Programs for Criminal Offenders.

(e) Secondary School Vocational Education Programs.

(f) Postsecondary and Adult Vocational Education Programs.

(Authority: 20 U.S.C. 2302)

§ 403.61 What projects, services, and activities are permissible under the basic programs?

Projects, services, and activities described in §§ 403.70, 403.71, 403.81, 403.91, 403.101, and 403.111 may include—

(a) Work-site programs such as cooperative vocational education, programs with community-based organizations, work-study, and apprenticeship programs;

(b) Placement services and activities for students who have successfully completed vocational education programs; and

(c) Programs that involve students in addressing the needs of the community in the production of goods or services that contribute to the community's welfare or that involve the students with other community development planning, institutions, and enterprises.

(Authority: 20 U.S.C. 2468e(c))

§ 403.62 What administrative provisions apply?

(a) Any project assisted with funds made available for the basic programs must be of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of the students involved in the project.

(b) Each State board receiving financial assistance for the basic programs may consider granting academic credit for vocational education courses that integrate core academic competencies.

(Authority: 20 U.S.C. 2468e(b) and (d))

§ 403.63 How does a State carry out the State Vocational and Applied Technology Education Program?

(a) Unless otherwise indicated in the regulations in this part, a State board shall carry out projects, services, and activities under the State Vocational and Applied Technology Education Program—

(1) Directly;

(2) Through a school operated by the State board;

(3) Through awards to State agencies or institutions, such as vocational schools or correctional institutions; or

(4) Through awards to eligible recipients.

(b) For the purpose of paragraph (a) of this section, a State board acts directly when it—

(1) Carries out projects, services, or activities using its own staff (except at a school operated by the State board); or

(2) Contracts for statewide projects, services, or activities such as research, curriculum development, and teacher training.

(c) The regulations in this part also authorize a State to carry out certain projects, services, and activities under the State Vocational and Applied Technology Education Program by making an award to an entity other than an eligible recipient, such as a community-based organization, employers, private vocational training institutions, private postsecondary education institutions, labor organizations, and joint labor management apprenticeship programs.

(d) For the purpose of requirements dealing with local applications (§§ 403.190 and 403.32(b)(5)) and the distribution of funds to eligible recipients (§ 403.32(a)(6)), projects, services, and activities carried out by a school operated by the State board under paragraph (a)(2) of this section, carried out by a State agency or institution under paragraph (a)(3) of this section, or carried out by an entity other than an eligible recipient under paragraph (c) of this section, are considered to be carried out by an eligible recipient.

(Authority: 20 U.S.C. 2323(b)(5), (6); 2335(a)(3); 2335b; 2342(c)(2)(N); and 2343).

State Programs and State Leadership Activities

§ 403.70 How must funds be used under the State Programs and State Leadership Activities?

A State shall use funds reserved under section 102(a)(3) of the Act for the State Programs and State Leadership Activities in accordance with § 403.180(b)(3) to conduct projects and activities that include—

(a) Professional development activities—

(1) For vocational teachers and academic teachers working with vocational education students, including corrections educators and counselors and educators and counselors in community-based organizations; and

(2) That include inservice and preservice training of teachers in programs and techniques, including integration of vocational and academic curricula, with particular emphasis on training of minority teachers;

(b) Development, dissemination, and field testing of curricula, especially curricula that—

(1) Integrate vocational and academic methodologies; and

(2) Provide a coherent sequence of courses through which academic and occupational skills may be measured; and

(c) Assessment of programs conducted with assistance under the Act including the development of—

(1) Performance standards and measures for those programs; and

(2) Program improvement and accountability with respect to those programs.

(Authority: 20 U.S.C. 2331(b))

§ 403.71 In what additional ways may funds be used under the State Programs and State Leadership Activities?

In addition to the required activities in § 403.70, a State may use funds reserved under section 102(a)(3) of the Act for the State Programs and State Leadership Activities in accordance with § 403.180(b)(3) for projects, services, and activities that include—

(a) The promotion of partnerships among business, education (including educational agencies), industry, labor, community-based organizations, or governmental agencies;

(b) The support for tech-prep education as described in 34 CFR part 406;

(c) The support of vocational student organizations that are an integral part of the vocational education instructional program, especially with respect to efforts to increase minority participation in those organizations. The support of vocational student organizations may not include—

(1) Lodging, feeding, conveying, or furnishing transportation to conventions or other forms of social assemblage;

(2) Purchase of supplies, jackets, and other effects for students' personal ownership;

(3) Cost of non-instructional activities such as athletic, social, or recreational events;

(4) Printing and disseminating non-instructional newsletters;

(5) Purchase of awards for recognition of students, advisors, and other individuals; or

(6) Payment of membership dues;

(d) Leadership and instructional programs in technology education; and

(e) Data collection.

(Authority: 20 U.S.C. 2331(c); House Report No. 101–660, 101st Cong., 1st Sess. p. 117 (1990))

Single Parents, Displaced Homemakers, and Single Pregnant Women Program

§ 403.80 Who is eligible for a subgrant or contract?

Eligible recipients and community-based organizations are eligible for an award under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program.

(Authority: 20 U.S.C. 2335(a)(2), (3); 2335b(1))

§ 403.81 How must funds be used under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program?

A State shall use funds reserved in accordance with § 403.180(b)(2)(i) for individuals who are single parents, displaced homemakers, or single pregnant women only to—

(a) Provide, subsidize, reimburse, or pay for preparatory services, including instruction in basic academic and occupational skills, necessary educational materials, and career guidance and counseling services in preparation for vocational education and training that will furnish single parents, displaced homemakers, and single pregnant women with marketable skills;

(b) Make grants to eligible recipients for expanding preparatory services and vocational education services if the expansion directly increases the eligible recipients' capacity for providing single parents, displaced homemakers, and single pregnant women with marketable skills;

(c) Make grants to community-based organizations for the provision of preparatory and vocational education services to single parents, displaced homemakers, and single pregnant women if the State determines that the community-based organizations have demonstrated effectiveness in providing comparable or related services to single parents, displaced homemakers, and single pregnant women, taking into account the demonstrated performance of such organizations in terms of cost, the quality of training, and the characteristics of the participants;

(d) Make preparatory services and vocational education and training more accessible to single parents, displaced homemakers, and single pregnant women by assisting those individuals with dependent care, transportation services, or special services and supplies, books, and materials, or by organizing and scheduling the programs so that those programs are more accessible; or

(e) Provide information to single parents, displaced homemakers, and single pregnant women to inform those individuals of vocational education programs, related support services, and career counseling.

(Authority: 20 U.S.C. 2335(a))

§ 403.82 In what settings may the Single Parents, Displaced Homemakers, and Single Pregnant Women Program be offered?

The programs and services described in § 403.81 may be provided in postsecondary or secondary school settings, including area vocational education schools, and community-based organizations that meet the requirements of § 403.81(c), that serve single parents, displaced homemakers, and single pregnant women.

(Authority: 20 U.S.C. 2335(b))

Sex Equity Program

§ 403.90 Who is eligible for a subgrant or contract?

Eligible recipients and community-based organizations are eligible for an award under the Sex Equity Program.

(Authority: 20 U.S.C. 2335b(1))

§ 403.91 How must funds be used under the Sex Equity Program?

Except as provided in § 403.92, each State shall use amounts reserved for the Sex Equity Program in accordance with § 403.180(b)(2)(ii) only for—

(a) Programs, services, comprehensive career guidance and counseling, and activities to eliminate sex bias and stereotyping in secondary and postsecondary vocational education;

(b) Preparatory services and vocational education programs, services, and activities for girls and women, aged 14 through 25, designed to enable the participants to support themselves and their families; and

(c) Support services for individuals participating in vocational education programs, services, and activities described in paragraphs (a) and (b) of this section, including dependent-care services and transportation.

(Authority: 20 U.S.C. 2335a(a))

§ 403.92 Under what circumstances may the age limit under the Sex Equity Program be waived?

The individual appointed under § 403.13(a) may waive the requirement in § 403.91(b) with respect to age limitations if the individual determines (through appropriate research) that the waiver is essential to meet the objectives of § 403.91.

(Authority: 20 U.S.C. 2335a(b))

Programs for Criminal Offenders

§ 403.100 What are the requirements for designating a State corrections educational agency to administer the Programs for Criminal Offenders?

(a) The State Board shall designate one or more State corrections educational agencies to administer programs assisted under the Act for juvenile and adult criminal offenders in correctional institutions in the State including correctional institutions operated by local authorities.

(b) Each State corrections educational agency that desires to be designated under paragraph (a) of this section shall submit to the State board a plan for the use of funds.

(Authority: 20 U.S.C. 2336(a))

§ 403.101 How must funds be used under the Programs for Criminal Offenders?

In administering programs receiving funds reserved under § 403.180(b)(5) for criminal offenders, each State corrections educational agency designated under § 403.100(a) shall—

(a) Give special consideration to providing—

(1) Services to offenders who are completing their sentences and preparing for release; and

(2) Grants for the establishment of vocational education programs in correctional institutions that do not have such programs;

(b) Provide vocational education programs for women who are incarcerated;

(c) Improve equipment; and

(d) In cooperation with eligible recipients, administer and coordinate vocational education services to offenders before and after their release.

(Authority: 20 U.S.C. 2336(b))

§ 403.102 What other requirements apply to the Program for Criminal Offenders?

Each State corrections educational agency designated under § 403.100(a) shall meet the requirements in §§ 403.191 and 403.192.

(Authority: 20 U.S.C. 2471(22))

Secondary, Postsecondary, and Adult Vocational Education Programs

§ 403.110 Who is eligible for a subgrant or contract?

(a) Subject to the requirements of paragraph (c) of this section, the following entities are eligible for an award under the Secondary School Vocational Education Program:

(1) A local educational agency.

(2) An area vocational education school or intermediate educational agency that meets the requirements in § 403.113.

(b) Subject to the requirements of paragraph (c) of this section, the following entities are eligible for an award under the Postsecondary and Adult Vocational Education Programs:

(1) An institution of higher education as defined in § 403.117(b), including a nonprofit institution that satisfies the conditions set forth in § 403.111(d)(14).

(2) A local educational agency serving adults.

(3) An area vocational education school serving adults that offers or will offer a program that meets the requirements of § 403.111 and seeks to receive assistance under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs.

(c) Only an entity that provides or will provide vocational education in a program that meets the requirements of § 403.111 is eligible to receive an award under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program.

(Authority: 20 U.S.C. 2341 (a) and (d); 2341a (a) and (d)(1); and 2342(c))

§ 403.111 How must funds be used under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

(a)(1) Each eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 shall use funds under that award to improve vocational education programs.

(2) Projects assisted with funds awarded under §§ 403.112, 403.113, or 403.116 must—

(i) Provide for the full participation of individuals who are members of special populations by providing the supplementary and other services necessary for them to succeed in vocational education; and

Cross-Reference: See appendix A to part 403 and §§ 403.190(c) and 403.193(e).

(ii) Operate at a limited number of sites or with respect to a limited number of program areas.

(3) If an eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 meets the requirements in this section and §§ 403.190(b) and 403.193, it may use those Federal funds to serve students who are not members of special populations.

(b) Each eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 shall give priority for assistance under those sections to sites or program areas that serve the highest concentrations of individuals who are members of special populations.

Examples: Methods by which an eligible recipient may give priority to sites or program areas that serve the highest concentrations of individuals who are members of special populations include, but are not limited to, the following:

Example 1: Method to give priority to a limited number of sites. Based on data from the preceding fiscal year—

(a) First, a local educational agency ranks each site based on the percentage of the site's total enrollment of students who are members of special populations.

(b) Second, the local educational agency establishes a funding cut-off point for sites above the district-wide percentage of special populations enrollment. The local educational agency funds sites above the cut-off point but does not fund sites below that point.

Example 2: Method to give priority to a limited number of program areas. Based on data from the preceding fiscal year—

(a) First, a postsecondary institution ranks each program area based on the percentage of the program area's total enrollment of students who are members of special populations.

(b) Second, the postsecondary institution establishes a funding cut-off point for program areas that rank above the institution-wide average percentage of special populations enrollment. The postsecondary institution funds projects in a program area that is above the cut-off point but does not fund projects in program areas below that point.

Example 3: Method to give priority to a limited number of program areas. Based on data from the preceding fiscal year—

(a) First, an LEA or postsecondary institution identifies a site with a high concentration of special populations;

(b) Second, the LEA or postsecondary institution identifies a program area at the site (such as health occupations) in which the participation rate for members of special populations is lower than the overall rate of participation for members of special populations at the site; and

(c) Third, the LEA or postsecondary institution funds a project at the site designed to improve the participation rate of members of special populations in that program area.

(c) Funds made available from an award under §§ 403.112, 403.113, or 403.116 must be used to provide vocational education in programs that—

(1) Are of sufficient size, scope, and quality as to be effective;

(2) Integrate academic and vocational education in those programs through coherent sequences of courses so that students achieve both academic and occupational competencies; and

(3) Provide for the equitable participation of members of special populations in vocational education consistent with the assurances and requirements in §§ 403.190(b) and 403.193.

Cross-Reference: See appendix A to part 403.

(d) In carrying out the provisions of paragraph (c) of this section, an eligible recipient under §§ 403.112, 403.113, or 403.116 may use funds for activities that include, but are not limited to—

(1) Upgrading of curriculum;

(2) Purchase of equipment, including instructional aids;

(3) Inservice training of both vocational instructors and academic instructors working with vocational education students for integrating academic and vocational education;

(4) Guidance and counseling;

(5) Remedial courses;

(6) Adaptation of equipment;

(7) Tech-prep education programs;

(8) Supplementary services designed to meet the needs of special populations;

(9) Payment in whole or in part with funds under §§ 403.112, 403.113, or 403.116 for a special populations coordinator, who must be a qualified counselor or teacher, to ensure that individuals who are members of special populations are receiving adequate services and job skill training;

(10) Apprenticeship programs;

(11) Programs that are strongly tied to economic development efforts in the State;

(12) Programs that train adults and students for all aspects of an occupation in which job openings are projected or available;

(13) Comprehensive mentor programs in institutions of higher education offering comprehensive programs in teacher preparation, that seek to use fully the skills and work experience of individuals currently or formerly employed in business and industry who are interested in becoming classroom instructors and to meet the need of vocational educators who wish to upgrade their teaching competencies; or

(14) Provision of education and training through arrangements with private vocational training institutions, private postsecondary educational institutions, employers, labor organizations, and joint labor-management apprenticeship programs if those institutions, employers, labor organizations, or programs can make a significant contribution to obtaining the objectives of the State plan and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions.

(Authority: 20 U.S.C. 2342)

§ 403.112 How does a State allocate funds under the Secondary School Vocational Education Program to local educational agencies?

(a) *Reservation of funds.* From the portion of its allotment under § 403.180(b)(1) for the basic programs, each fiscal year a State may reserve funds for the Secondary School Vocational Education Program.

(b) *General rule.* Except as provided in paragraphs (c) and (d) of this section and § 401.119, a State shall distribute funds reserved for the Secondary School Vocational Education Program to local educational agencies (LEAs) according to the following formula:

(1) From 70 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 70 percent as the amount the LEA was allocated under section 1005 of chapter 1 (20 U.S.C. 2711) in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the total amount received under section 1005 of chapter 1 by all LEAs in the State in that preceding year.

(2) From 20 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 20 percent as the number of students with disabilities who have individualized education programs under section 614(a)(5) of the IDEA served by the LEA in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the total number of those students served by all LEAs in the State in that preceding year.

(3) From 10 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 10 percent as the number of students enrolled in schools and adults enrolled in vocational education training programs under the jurisdiction of the LEA in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the number of students enrolled in schools in kindergarten through 12th grade and adults enrolled in vocational education training programs under the jurisdiction of all LEAs in the State in that preceding year.

Example: Assume that a State has reserved $5,000,000 of its basic programs funds under

Title II of the Act for secondary school programs.

(a)(1) All LEAs in the State were allocated a total of $80,000,000 under section 1005 of Chapter 1 in the preceding fiscal year. Of that amount, school district "A" was allocated $400,000.

(2) The allocation for school district "A" is calculated by multiplying $3,500,000 (70 percent of $5,000,000) by .005 of the State total ($400,000 ÷ $80,000,000). The allocation for school district "A" would be $17,500 under paragraph (b)(1) of this section.

(b)(1) All LEAs in a State served a total of 100,000 students with disabilities who have individualized education programs under section 614(a)(5) of the IDEA in the preceding fiscal year. Of that total, school district "A" served 400 of those students in the preceding fiscal year.

(2) The allocation for school district "A" is calculated by multiplying $1,000,000 (20 percent of $5,000,000) by .004 of the State total (400 ÷ 100,000). The allocation for school district "A" would be $4,000 under paragraph (b)(2) of this section.

(c)(1) All LEAs in a State enrolled a total of 1,000,000 students (including adults enrolled in vocational education training programs in those LEAs) in the preceding fiscal year. Of that number school district "A" enrolled 3,500 of those students in the preceding fiscal year.

(2) The allocation for school district "A" is calculated by multiplying 500,000 (10 percent of $5,000,000) by .0035 of the State total (3,500 ÷ 1,000,000). The allocation for school district "A" would be $1,750 under paragraph (b)(3) of this section.

(c) *Exception to the general rule.* In applying the provisions in paragraph (b) of this section, a State may not distribute funds to an LEA that operates only elementary schools, but shall instead distribute funds that would have been allocated for those ineligible LEAs as follows:

(1) If an LEA that operates only elementary schools sends its graduating students to a single local or regional educational agency that provides secondary school services to secondary school students in the same attendance area, a State shall distribute to that local or regional educational agency any amounts under paragraph (b) of this section that would otherwise have been allocated to LEAs operating only elementary schools.

(2) If an LEA that operates only elementary schools sends its graduating students to two or more local or regional educational agencies that provide secondary school services to secondary students in the same attendance area, the State shall distribute to those local or regional educational agencies an amount based on the proportionate number of students each agency received in the previous year from the LEA that operates only elementary schools.

(d)(1) *Minimum grant amount.* Except as provided in paragraph (d)(3) of this section, an LEA is not eligible for a grant under the Secondary School Vocational Education Program unless the amount allocated to the LEA under paragraph (b) of this section is not less than $15,000.

(2)(i) An LEA may enter into a consortium with one or more LEAs for the purpose of providing services under the Secondary School Vocational Education Program in order to meet the minimum grant requirement in paragraph (d)(1) of this section.

(ii) A consortium arrangement under paragraph (d)(2)(i) of this section must serve primarily as a structure for operating joint projects that provide services to all participating local educational agencies.

(iii) A project operated by a consortium must meet the size, scope, and quality requirement of § 403.111(c)(1).

Example: Under the distribution formula for the Secondary School Vocational Education Program, three LEAs earn $5,000 each (which is less than the $15,000 minimum grant amount for each LEA). The LEAs form a consortium in order to receive an award. One of the LEAs is designated as the fiscal agent for the consortium and receives the $15,000 award for the consortium. The consortium may operate and fund with the $15,000 a project or projects for the benefit of all participating LEAs. The fiscal agent of the consortium may not subgrant back to the participating LEAs the amounts they contributed to the consortium.

(3) A State may waive paragraph (d)(1) of this section in any case in which the LEA—

(i) Is located in a rural, sparsely populated area; and

(ii) Demonstrates that it is unable to enter into a consortium for purposes of providing services under the Secondary School Vocational Education Program.

(4) Any amounts that are not distributed by reason of paragraph (d)(1) of this section must be redistributed in accordance with the provisions in paragraph (b) of this section.

Cross-Reference: See 34 CFR 403.113(d).

(Authority: 20 U.S.C. 2341 (a), (b), and (c))

§ 403.113 How does a State allocate funds under the Secondary School Vocational Education Program to area vocational education schools and intermediate educational agencies?

(a) A State shall distribute funds reserved under § 403.112(a) directly to the appropriate area vocational education school or intermediate educational agency in any case in which—

(1) The area vocational education school or intermediate educational agency and an LEA—

(i) Have formed or will form a consortium for the purpose of receiving funds reserved under § 403.112(a); or

(ii) Have entered into or will enter into a cooperative arrangement for the purpose of receiving funds reserved under § 403.112(a); and

(2)(i) The area vocational education school or intermediate educational agency serves a proportion of students with disabilities and students who are economically disadvantaged that is approximately equal to or greater than the proportion of those students attending the secondary schools under the jurisdiction of all of the LEAs sending students to the area vocational education school or the intermediate educational agency; or

(ii) The area vocational education school or intermediate educational agency demonstrates that it is unable to meet the criterion in paragraph (a)(2)(i) of this section due to the lack of interest by students with disabilities and students who are economically disadvantaged in attending vocational education programs in that area vocational education school or intermediate educational agency.

(b) If an area vocational education school or intermediate educational agency meets the requirements of paragraph (a) of this section, then the amount that would otherwise be allocated to the LEA may be distributed to the area vocational education school, the intermediate educational agency, and the LEA—

(1) Based on each school's or entity's relative share of students with disabilities and students who are economically disadvantaged who are attending vocational education programs that meet the requirements of § 403.111 (based, if practicable, on the average enrollment for the prior 3 years); or

(2) On the basis of an agreement between the LEA and the area vocational education school or intermediate educational agency.

(c) Notwithstanding paragraphs (a) and (b) of this section, and §§ 403.114 and 403.115, prior to distributing funds to any LEA that would receive an allocation that is not sufficient to conduct a program that meets the requirements of § 403.111(c), a State shall encourage the LEA to—

(1) Form a consortium or enter a cooperative agreement with an area vocational education school or intermediate educational agency offering programs that meet the

requirements of § 403.111(c), and that are accessible to economically disadvantaged students and students with disabilities that would be served by the LEA; and

(2) Transfer its allocation to an area vocational education school or intermediate educational agency.

(d) If an LEA's allocation under § 403.112 meets the minimum grant requirement in § 403.112(d), and the allocation is distributed in part to an area vocational education school or an intermediate educational agency pursuant to paragraphs (a) and (b) of this section, the LEA may retain the amount not distributed to the area vocational education school or an intermediate educational agency even though that amount is less than the minimum grant required by § 403.112(d).

(Authority: 20 U.S.C. 2341(d) (1), (2), and (5))

§ 403.114 How does a State determine the number of economically disadvantaged students attending vocational education programs under the Secondary School Vocational Education Program?

(a) For the purposes of § 403.113, a State may determine the number of economically disadvantaged students attending vocational education programs on any of the following bases:

(1) Eligibility for one of the following:

(i) Free or reduced-price meals under the National School Lunch Act (42 U.S.C. 1751 *et seq.*).

(ii) The program for aid to Families with Dependent Children under part A of title IV of the Social Security Act (42 U.S.C. 601).

(iii) Benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011).

(iv) To be counted for purposes of section 1005 of chapter 1.

(2) Status of an individual who is determined by the Secretary to be low-income according to the latest available data from the Department of Commerce.

(3) Other indices of economic status, including estimates of those indices, if the State demonstrates to the satisfaction of the Secretary that those indices are more representative of the number of economically disadvantaged students attending vocational education programs. The Secretary determines, on a case-by-case basis, whether other indices of economic status are more representative of the number of economically disadvantaged students attending vocational education programs, taking into consideration, for example, the statistical reliability of any data submitted by a grantee as well as the general acceptance of the indices by other agencies in the State or local area.

(b) If a State elects to use more than one factor described in paragraph (a) of this section for purposes of determining the number of economically disadvantaged students enrolled in vocational education programs, the State shall ensure that the data used are not duplicative.

(Authority: 20 U.S.C. 2341(d)(3) and 2471(15))

§ 403.115 What appeal procedures must be established under the Secondary School Vocational Education Program?

The State board shall establish an appeals procedure for resolution of any dispute arising between an LEA and an area agency with respect to the allocation procedures described in §§ 403.112 and 403.113, including the decision of an LEA to leave a consortium.

(Authority: 20 U.S.C. 2341(d)(4))

§ 403.116 How does a State allocate funds under the Postsecondary and Adult Vocational Education Programs?

(a) *Reservation of funds.* From the portion of its allotment under § 403.180(b)(1) for the basic programs, each fiscal year a State may reserve funds for the Postsecondary and Adult Vocational Education Programs.

(b) *General rule.* (1) A State shall distribute funds reserved for Postsecondary and Adult Vocational Education Programs to eligible institutions within the State.

(2) Except as provided in paragraph (c) of this section and §§ 403.118 and 403.119, each eligible institution must receive an amount that bears the same relationship to the amount of funds reserved for the Postsecondary and Adult Vocational Education Programs as the number of Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in vocational education, as defined in 34 CFR 400.4, offered by the eligible institution in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the number of those recipients enrolled in vocational education programs within the State in that preceding year.

(c) *Minimum grant amount.* (1) A State may not provide a grant under paragraph (b) of this section to any institution for an amount that is less than $50,000.

(2) Any amounts that are not allocated by reason of paragraph (c)(1) of this section must be redistributed to eligible institutions in accordance with the provisions of paragraph (b) of this section.

(Authority: 20 U.S.C. 2341a (a) and (c))

§ 403.117 What definitions apply to the Postsecondary and Adult Vocational Education Programs?

For the purposes of §§ 403.116, 403.118, and 403.120 the following definitions apply:

(a) *Eligible institution* means an institution of higher education, an LEA serving adults, or an area vocational education school serving adults that offers or will offer a program that meets the requirements of § 403.111 and seeks to receive assistance under § 403.116.

(b)(1) *Institution of higher education* means an educational institution in any State that—

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of that certificate, or who are beyond the age of compulsory school attendance;

(ii) Is legally authorized within the State to provide a program of education beyond secondary education;

(iii) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, or in the case of a hospital or health care facility, that provides training of not less than one year for graduates of accredited health professions programs, leading to a degree or certificate upon completion of that training;

(iv) Is a public or other nonprofit institution; and

(v) Is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose or, if not so accredited—

(A) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(2) This term also includes any school that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the

provisions of paragraphs (b)(1) (i), (ii), (iv), and (v) of this definition. If the Secretary determines that a particular category of these schools does not meet the requirements of paragraph (b)(1)(v) because there is no nationally recognized accrediting agency or association qualified to accredit schools in that category, the Secretary, pending the establishment of such an accrediting agency or association, will appoint an advisory committee, composed of persons specially qualified to evaluate training provided by schools in that category, that must—

(i) Prescribe the standards of content, scope, and quality that must be met in order to qualify schools in that category to participate in the program pursuant to this part; and

(ii) Determine whether particular schools not meeting the requirements of paragraph (b)(1)(v) of this definition meet those standards.

(Authority: 20 U.S.C. 1085)

(c) *Pell Grant recipient* means a recipient of financial aid under subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a–l *et seq.*).

(Authority: 20 U.S.C. 2341a(d))

§ 403.118 Under what circumstances may the Secretary waive the distribution requirements for the Postsecondary and Adult Vocational Education Programs?

The Secretary may waive § 403.116(b)(2) for any fiscal or program year for which a State submits to the Secretary an application for such a waiver that—

(a) Demonstrates that the formula in § 403.116(b)(2) does not result in a distribution of funds to the institutions within the State that have the highest numbers of economically disadvantaged individuals and that an alternative formula would result in such a distribution;

(b) Includes a proposal for an alternative formula that may include criteria relating to the number of individuals attending institutions within the State who—

(1) Receive need-based postsecondary financial aid provided from public funds;

(2) Are members of families participating in the program for aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601);

(3) Are enrolled in postsecondary educational institutions that—

(i) Are funded by the State;

(ii) Do not charge tuition; and

(iii) Serve only economically disadvantaged students;

(4) Are enrolled in programs serving economically disadvantaged adults;

(5) Are participants in programs assisted under the JTPA;

(6) Are Pell Grant recipients; and

(c) Proposes an alternative formula that—

(1) Includes direct counts of students enrolled in the institutions;

(2) Directly relates to the status of students as economically disadvantaged individuals;

(3) Is to be uniformly applied to all eligible institutions;

(4) Does not include fund pools for specific types of institutions; and

(5) Does not include the direct assignment of funds to a particular institution on a non-formula basis.

(Authority: 20 U.S.C. 2341a(b))

§ 403.119 Under what circumstances may the State waive the distribution requirements for Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs?

(a) This section applies in any fiscal or program year in which a State reserves 15 percent or less under § 403.180(b)(1) for distribution under—

(1) The Secondary School Vocational Education Program; or

(2) The Postsecondary and Adult Vocational Education Programs.

(b) Notwithstanding the provisions and §§ 403.112, 403.113, or 403.116, as applicable, in order to result in a more equitable distribution of funds for programs serving the highest numbers of economically disadvantaged individuals, the State may distribute the funds described in paragraph (a) of this section—

(1) On a competitive basis; or

(2) Through any alternative method determined by the State.

(Authority: 20 U.S.C. 2341b)

§ 403.120 How does a State reallocate funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

(a) In any fiscal or program year that an LEA, area vocational school, intermediate school district, or eligible institution does not expend all of the amounts it is allocated for that year under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs, the LEA, area vocational education, intermediate school district, or eligible institution shall return any unexpended amounts to the State to be reallocated under §§ 403.112(b), 403.113, or 403.116(b), as applicable.

(b) In any fiscal or program year in which amounts allocated under §§ 403.112(b), 403.113, 403.116(b), or 403.118 are returned to the State and the State is unable to reallocate those amounts according to those sections in time for the amounts to be expended in the fiscal or program year, the State shall retain the amounts to be distributed in combination with amounts reserved under §§ 403.112(b), 403.113, 403.116(b), or 403.118 for the following fiscal or program year.

(Authority: 20 U.S.C. 2341c)

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

General

§ 403.130 What are the Special Programs?

The following special programs are authorized by title III of the Act and are subject to the requirements of the State plan:

(a) State Assistance for Vocational Education Support Programs by Community-Based Organizations.

(b) Consumer and Homemaking Education Program.

(c) Comprehensive Career Guidance and Counseling Programs.

(d) Business-Labor-Education Partnerships for Training Program.

(e) Supplementary State Grants for Facilities and Equipment and Other Program Improvement Activities (Supplementary State Grants Program) in 34 CFR part 407.

(Authority: 20 U.S.C. 2302(d)(A)–(F))

§ 403.131 Who is eligible for an award under the Special Programs?

(a) The fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands are eligible for an award under the—

(1) State Assistance for Vocational Education Support and Programs by Community-Based Organizations;

(2) Consumer and Homemaking Education Programs; and

(3) Comprehensive Career Guidance and Counseling Programs.

(b) States, as defined in 34 CFR 400.4(b), are eligible for the Business-Labor-Education Partnerships for Training Program.

(c) The fifty States, the District of Columbia, and Puerto Rico are eligible for the Supplementary State Grants Programs in 34 CFR part 407.

(Authority: 20 U.S.C. 2302(d)(A)–(F))

Vocational Education Support Programs by Community-Based Organizations

§ 403.140 What activities does the Secretary support under the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) The State shall provide, in accordance with its State plan, and from its allotment for this program, financial assistance to joint projects of eligible recipients and community-based organizations within the State that provide the following special vocational education services and activities:

(1) Outreach programs that facilitate the entrance of youth into a program of transitional services and subsequent entrance into vocational education, employment, or other education and training.

(2) Transitional services such as attitudinal and motivational prevocational training programs.

(3) Prevocational educational preparation and basic skills development conducted in cooperation with business concerns.

(4) Special prevocational preparations programs targeted to inner-city youth, non-English speaking youth, Appalachian youth, and the youth of other urban and rural areas having a high density of poverty who need special prevocational education programs.

(5) Career intern programs.

(6) Model programs for school dropouts.

(7) The assessment of students' needs in relation to vocational education and jobs.

(8) Guidance and counseling to assist students with occupational choices and with the selection of a vocational education program.

(b) Disabled individuals who are educationally or economically disadvantaged may participate in projects under this program.

(Authority: 20 U.S.C. 2352, 2471(6))

§ 403.141 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) Each community-based organization and eligible recipient that desire to participate in this program shall jointly prepare and submit an application to the State board at the time and in the manner established by the State board.

(b) The State board also may establish requirements relating to the contents of the applications, except that each application must contain—

(1) An agreement among the community-based organization and the eligible recipients in the area to be served that includes the designation of one or more fiscal agents for the project;

(2) A description of how the funds will be used, together with evaluation criteria to be applied to the project;

(3) Assurances that the community-based organization will give special consideration to the needs of severely economically and educationally disadvantaged youth, ages sixteen through twenty-one, inclusive;

(4) Assurances that business concerns will be involved, as appropriate, in services and activities for which assistance is sought;

(5) A description of the efforts the community-based organization will make to collaborate with the eligible recipients participating in the joint project;

(6) A description of the manner in which the services and activities for which assistance is sought will serve to enhance the enrollment of severely economically and educationally disadvantaged youth into the vocational education programs; and

(7) Assurances that the projects conducted by the community-based organization will conform to the applicable standards of performance and measures of effectiveness required of vocational education programs in the State.

(Authority: 20 U.S.C. 2351)

Consumer and Homemaking Education Programs

§ 403.150 What activities does the Secretary support under the Consumer and Homemaking Education Programs?

(a) The State shall conduct, in accordance with its State plan, and from its allotment for this program, consumer and homemaking education projects that may include—

(1) Instructional projects, services, and activities that prepare youth and adults for the occupation of homemaking;

(2) Instruction in the areas of—

(i) Food and nutrition;

(ii) Individual and family health;

(iii) Consumer education;

(iv) Family living and parenthood education;

(v) Child development and guidance;

(vi) Housing and home management, including resource management; and

(vii) Clothing and textiles.

(b) The State shall use the funds for this program for projects, services, and activities—

(1) For residents of economically depressed areas;

(2) That encourage the participation of traditionally underserved populations;

(3) That encourage, in cooperation with the individual appointed under § 403.13(a), the elimination of sex bias and sex stereotyping;

(4) That improve, expand, and update Consumer and Homemaking Education Programs, especially those that specifically address needs described in paragraphs (b) (1), (2), and (3) of this section; and

(5) That address priorities and emerging concerns at the local, State, and national levels.

(c) The State may use the funds described in paragraph (a) of this section for—

(1) Program development and the improvement of instruction and curricula relating to—

(i) Managing individual and family resources;

(ii) Making consumer choices;

(iii) Balancing work and family;

(iv) Improving responses to individual and family crises (including family violence and child abuse);

(v) Strengthening parenting skills (especially among teenage parents);

(vi) Preventing teenage pregnancy;

(vii) Assisting the aged, individuals with disabilities, and members of at risk populations (including the homeless);

(viii) Improving individual, child, and family nutrition and wellness;

(ix) Conserving limited resources;

(x) Understanding the impact of new technology on life and work;

(xi) Applying consumer and homemaking education skills to jobs and careers; and

(xii) Other needs as determined by the State; and

(2) Support services and activities designed to ensure the quality and effectiveness of programs, including—

(i) The demonstration of innovative and exemplary projects;

(ii) Community outreach to underserved populations;

(iii) The application of academic skills (such as reading, writing, mathematics, and science) through consumer and homemaking education programs;

(iv) Curriculum development;

(v) Research;

(vi) Program evaluation;

(vii) The development of instructional materials;

(viii) Teacher education;

(ix) The upgrading of equipment;

(x) Teacher supervision;

(xi) State leadership, including the activities of student organizations; and

(xii) State administration, subject to § 403.151(c).

(Authority: 20 U.S.C. 2361, 2362 (a), (b))

§ 403.151 How must funds be used under the Consumer and Homemaking Education Programs?

(a) A State shall use not less than one-third of its allotment under the Consumer and Homemaking Education Program in economically depressed areas or areas with high rates of unemployment for projects, services, and activities designed to assist consumers, and to help improve the home environment and the quality of family life.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership and full-time State administrator(s) qualified by experience and educational preparation in home economics education.

(3) For purposes of the Consumer and Homemaking Education Program, State leadership includes, but is not limited to, curriculum development, personnel development, research, and dissemination activities, and technical assistance.

(c) A State may use, in addition to funds reserved under § 403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2362(c), 2363)

Comprehensive Career Guidance and Counseling Programs

§ 403.160 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Programs?

(a) The State shall conduct, in accordance with its State plan, from its allotment for this program, career guidance and counseling projects, services, and activities that are—

(1) Organized and administered by certified counselors; and

(2) Designed to improve, expand, and extend career guidance and counseling programs to meet the career development, vocational education, and employment needs of vocational education students and potential students.

(b) The purposes of the projects, services, and activities described in paragraph (a) of this section must be to—

(1) Assist individuals to—

(i) Acquire self-assessment, career planning, career decision-making, and employability skills;

(ii) Make the transition from education and training to work;

(iii) Maintain the marketability of their current job skills in established occupations;

(iv) Develop new skills to move away from declining occupational fields and enter new and emerging fields in high-technology areas and fields experiencing skill shortages;

(v) Develop mid-career job search skills and to clarify career goals; and

(vi) Obtain and use information on financial assistance for postsecondary and vocational education, and job training; and

(2)(i) Encourage the elimination of sex, age, disabling conditions, and race bias and stereotyping;

(ii) Provide for community outreach;

(iii) Enlist the collaboration of the family, the community, business, industry, and labor; and

(iv) Be accessible to all segments of the population, including women, minorities, disabled individuals, and economically disadvantaged individuals.

(c) The projects, services, and activities described in paragraph (a) of this section must consist of—

(1) Instructional activities and other services at all educational levels to help students develop the skills described in paragraph (b)(1) of this section;

(2) Services and activities designed to ensure the quality and effectiveness of career guidance and counseling projects such as—

(i) Counselor education, including the education of counselors working with individuals with limited English proficiency;

(ii) Training support personnel;

(iii) Curriculum development;

(iv) Research and demonstration projects;

(v) Experimental projects;

(vi) The development of instructional materials;

(vii) The acquisition of equipment;

(viii) State and local leadership;

(ix) The development of career information delivery systems; and

(x) Local administration, including supervision;

(xi) State administration, including supervision, subject to § 403.161(c);

(3) Projects that provide opportunities for counselors to obtain firsthand experience in business and industry; and

(4) Projects that provide students with an opportunity to become acquainted with business, industry, the labor market, and training opportunities, including secondary educational programs that—

(i) Have at least one characteristic of an apprenticeable occupation as recognized by the Department of Labor or the State Apprenticeship Agency, in accordance with the National Apprenticeship Act (29 U.S.C. 50);

(ii) Are conducted in concert with local business, industry, labor, and other appropriate apprenticeship training entities; and

(iii) Are designed to prepare participants for an apprenticeable occupation or provide information concerning apprenticeable occupations and their prerequisites.

(Authority: 20 U.S.C. 2382 (a), (b))

§ 403.161 How must funds be used under the Comprehensive Career Guidance and Counseling Programs?

(a) A State shall use not less than twenty percent of its allotment under the Career Guidance and Counseling Program for projects, services, and activities designed to eliminate sex, age, and race bias and stereotyping under § 403.160(b)(2) to ensure that projects, services, and activities under this program are accessible to all segments of the population, including women, disadvantaged individuals, disabled individuals, individuals with limited English proficiency, and minorities.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and knowledge in guidance and counseling.

(3) For purposes of Comprehensive Career Guidance and Counseling Programs, State leadership includes, but is not limited to curriculum development, personnel development, research, dissemination activities, and technical assistance; and

(c) A State may use, in addition to funds reserved under § 403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2382(c), 2383)

Business-Labor-Education Partnership for Training Program

§ 403.170 What activities does the Secretary support under the Business-Labor-Education Partnership for Training Program?

The State board shall, in accordance with the State plan, from its allotment for this program, support the establishment and operation of projects, services, and activities, that—

(a) Provide incentives for the coordination of the Business-Labor-Education Partnership for Training Program with related efforts under the—

(1) National Tech-Prep Education Program in 34 CFR part 405;

(2) State-administered Tech-Prep Education Program in 34 CFR part 406; and

(3) JTPA; and

(b) May only include, in addition to the activities described in § 403.32(a)(27) through (30),—

(1) Training and retraining of instructional and guidance personnel;

(2) Curriculum development and the development or acquisition of instructional and guidance equipment and materials;

(3) Acquisition and operation of communications and telecommunications equipment and other high-technology equipment for programs authorized by this part;

(4) Other activities authorized by title III of the Act as may be essential to the successful establishment and operation of projects, services, and activities under the Business-Labor-Education Partnership for Training Program, including activities and related services to ensure access of women, minorities, disabled individuals, and economically disadvantaged individuals; and

(5) Providing vocational education to individuals in order to assist their entry into, or advancement in, high technology occupations or to meet the technological need of other industries or businesses.

(Authority: 20 U.S.C. 2392(b) and 2393(a), (d)(1))

§ 403.171 Who is eligible to apply to a State board for an award?

(a) The State board awards subgrants or contracts to partnerships between—

(1) An area vocational education school, a State agency, a local educational agency, a secondary school funded by the Bureau of Indian Affairs, an institution of higher education, a State corrections educational agency, or an adult learning center; and

(2) Business, industry, labor organizations, or apprenticeship programs.

(b) A partnership receiving an award from a State board must include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 2392(a)(1))

§ 403.172 What special considerations must the State board give in approving projects, services, and activities?

The State board, in approving projects, services, and activities assisted under the Business-Labor-Education Partnership Training Program, shall give special consideration to the following:

(a) The level and degree of business and industry participation in the development and operation of the program.

(b) The current and projected demand within the State or relevant labor market area for workers with the level and type of skills the program is designed to produce.

(c) The overall quality of the proposal, with particular emphasis on the probability of successful completion of the program by prospective trainees and the capability of the eligible recipient, with assistance from participating business or industry, to provide high quality training for skilled workers and technicians in high technology.

(d) The commitment to serve, as demonstrated by special efforts to provide outreach, information, and counseling, and by the provision of remedial instruction and other assistance, all segments of the population, including women, minorities, disabled individuals, and economically disadvantaged individuals.

(e) Projects, services, and activities to provide vocational education for individuals who have attained 55 years of age in order to assist their entry into, or advancement in, high technology occupations or to meet the technological needs of other industries or businesses.

(Authority: 20 U.S.C. 2393(b) and (d)(2))

§ 403.173 What expenses are allowable?

The State board shall use funds awarded under the Business-Labor-Education Partnership for Training Program only for—

(a) Expenses incurred in carrying out the programs, services, and activities described in § 403.170, including, for example, expenses for—

(1) The introduction of new vocational education programs, particularly in economically depressed urban and rural areas;

(2) The introduction or improvement of basic skills instruction, including English-as-a-second-language instruction, in order for an individual to be eligible for employment, to continue employment, or to be eligible for career advancement;

(3) Costs associated with coordination between vocational education programs, business, and industry, including advisory council meetings and newsletters; and

(4) Transportation and child-care services for students necessary to ensure access of women, minorities, disabled individuals, and economically disadvantaged individuals to projects, services, and activities authorized by the Business-Labor-Education Partnership for Training Program; and

(b)(1) Subject to paragraph (b)(2) of this section, expenditures for necessary and reasonable administrative costs of the State board and of eligible partners.

(2) Total expenditures for administrative costs of the State board and of eligible partners may not exceed 10 percent of the State's allotment for this program in the first year and five percent of that allotment in each subsequent year.

(Authority: 20 U.S.C. 2392(d) and 2393(a)(1))

§ 403.174 What additional fiscal requirements apply to the Business-Labor-Education Partnership for Training Program?

(a) The business and industrial share of the costs required in § 403.32(a)(29) may be in the form of either expenditures or the fair market value of in-kind contributions such as facilities, overhead, personnel, and equipment.

(b) The State board shall use equal amounts from its allotment under this program and from its allotment for basic programs to provide the Federal share of cost of projects, services, and activities under this program.

(c) If an eligible partner demonstrates to the satisfaction of the State that it is incapable of providing all or part of the non-Federal portion of the costs of projects, services, and activities, as required by § 403.32(a)(29), the State board may use funds available under parts A and C of title II of the Act or funds available from State sources in place of the non-Federal portion.

(Authority: 20 U.S.C. 2392(c))

Subpart G—What Financial Conditions Must Be Met by a State?

§ 403.180 How must a State reserve funds for the basic programs?

(a)(1) Except as provided in paragraph (a)(2) of this section, each State shall reserve from its allotment under the basic programs authorized by title II of the Act, for—

(i) The Program for Single Parents, Displaced Homemakers, and Single Pregnant Women under § 403.81, and the Sex Equity Program under § 403.91, respectively, an amount that is not less than the amount the State reserved for each of those programs under section 202 of the Carl D. Perkins Vocational Education Act (CDPVEA) from its Fiscal

Year (FY) 1991 grant from the FY 1990 appropriation; and

(ii) The Program for Criminal Offenders under § 403.101 an amount that is not less than—

(A) The amount the State reserved for projects, services, or activities under section 202(6) of the CDPVEA from its FY 1991 grant from the FY 1990 appropriation; and

(B) The amount of Federal funds under the CDPVEA, other than the one percent reserve under section 202(6) of the Act, that the State and its eligible recipients obligated for projects, services, and activities for criminal offenders in correctional institutions from its FY 1991 grant from the FY 1990 appropriation.

(2) In any year in which a State receives an amount for purposes of carrying out programs under Title II of the Act that is less than the amount the State received for those purposes in its FY 1991 grant award from the FY 1990 appropriation under the Carl D. Perkins Vocational Education Act, the State shall ratably reduce the amounts reserved under paragraph (a)(1) of this section in the same proportion that the amount for carrying out programs under title II of the Act is less than the amount the State received for those purposes from the FY 1990 appropriation.

(b) Except as provided in paragraph (a) of this section, from its allotment for the basic programs authorized by title II of the Act, a State shall reserve—

(1) At least 75 percent for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs described in § 403.111;

(2) Ten and one-half percent for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women described in § 403.81 and the Sex Equity Program described in § 403.91, as follows:

(i) Not less than seven percent for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women.

(ii) Not less than three percent for the Sex Equity Program;

(3) Not more than eight and one-half percent for State Programs and State Leadership Activities described in §§ 403.70 and 403.71;

(4) Not more than five percent or $250,000, whichever is greater, for administration of the State plan, of which—

(i) Not less than $60,000 must be available for carrying out the provisions in § 403.13, regarding the personnel requirements for eliminating sex discrimination and sex stereotyping; and

(ii) Remaining amounts may be used for the costs of—

(A) Developing the State plan;

(B) Reviewing local applications;

(C) Monitoring and evaluating program effectiveness;

(D) Providing technical assistance;

(E) Ensuring compliance with all applicable Federal laws, including required services and activities for individuals who are members of special populations; and

(F) Supporting the activities of the technical committees it establishes under § 403.12(b)(1); and

(5) One percent for Programs for Criminal Offenders described in § 403.101.

(c) The procedure for meeting the "hold-harmless" requirements in § 403.180(a) and the $250,000 minimum for State administration provision in § 403.180(b)(4) is as follows:

(1) If the five percent reserved for administration is less than the $250,000 minimum allowed by paragraph (b)(4) of this section, or if any of the amounts reserved for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women in § 403.81, the Sex Equity Program in § 403.91, or the Program for Criminal Offenders in § 403.101, respectively, is less than the amount reserved for that program in FY 1990 (funds from the FY 1990 appropriation awarded in the States FY 1991 grant), a State shall subtract any amount necessary to satisfy the $250,000 minimum for State administration or any of the "hold-harmless" amounts from the total basic programs award received by the State.

(2) The State shall reserve $250,000 for administration and shall reserve for any program not meeting the "hold-harmless" requirement an amount necessary to meet that requirement.

(3) The State shall reserve from the remainder of the basic program award an amount for each of the remaining programs that is proportionate to the amount that program would have received in the absence of a shortfall in the amounts reserved for administration or to meet the "hold-harmless" requirements in paragraph (a)(1) of this section.

Example: 1 (a) A State receives a basic programs award of $4,000,000. Five percent of the basic programs award equals $200,000, which is $50,000 less than the $250,000 minimum that may be reserved for State administration. To determine the amount of funds that will be reserved for each program under title II, parts A, B, and C of the Act, the State first subtracts $250,000 for State administration from the $4,000,000 basic programs award ($4,000,000 − $250,000 = $3,750,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under title II, parts A, B, and C of the Act in the absence of a shortfall in the set-aside amount for administration, as follows:

3.0% × $4,000,000 =	$120,000	For Sex Equity Programs.
7.5% × $4,000,000 =	300,000	For Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
8.5% × $4,000,000 =	340,000	For State Programs and State Leadership Activities.
1.0% × $4,000,000 =	40,000	For Programs for Criminal Offenders.
75% × $4,000,000 =	3,000,000	For Part C of Title II.
	3,800,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have received in the absence of a shortfall ($3,800,000) and multiplies the remaining basic programs award ($3,750,000) by these percentages to determine the amount to reserve for each program under parts A, B, and C of title II of the Act, as follows:

(120,000/ $3,800,000) × $3,750,000 =	$118,421	For Sex Equity Programs.
(300,000/ $3,800,000) × $3,750,000 =	296,053	For Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
($340,000/ $3,800,000) × $3,750,000 =	335,526	For State Programs and State Leadership Activities.
($40,000/ $3,800,000) × $3,750,000 =	39,474	For Programs for Criminal Offenders.
($3,000,000/ $3,800,000) × $3,750,000 =	2,960,526	For Part C of Title II.
	3,750,000	

This example assumes that amounts reserved meet the "hold-harmless" requirement of section 102(c)(1) of the Act.

Example 2: A State's seven percent reserve from its FY 1992 grant for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women is $1,400,000 and the amount reserved for that program from its FY 1991 grant was $1,581,000. Therefore, the FY 1992 reserve for that program is $181,000 less than the amount reserved in FY 1991. The State received a basic programs award of

$20,000,000 in FY 1992. The other programs under title II, part B meet the "hold-harmless" requirement of § 403.189(a)(1), and the reserve for State administration exceeds $250,000. The State determines the amount of funds to be reserved for each program under title II, parts A, B, and C of the Act as follows:

(a) First, the State subtracts $1,581,000 from the $20,000,000 total basic programs award ($20,000,000 − $1,581,000 = $18,419,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under parts A, B, and C of title II of the Act in the absence of a shortfall in the set-aside amount for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women, as follows:

5.0% × $20,000,000 =	$1,000,000	For administration.
3.5% × $20,000,000 =	700,000	For Sex Equity Programs.
8.5% × $20,000,000 =	1,700,000	For State Programs and State Leadership Activities.
1.0% × $20,000,000 =	200,000	For Programs for Criminal Offenders.
75.0% × $20,000,000 =	15,000,000	For Part C of Title II.
	18,600,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have earned in the absence of a shortfall ($18,600,000) and multiplies the remaining basic programs award ($18,419,000) by these percentages to determine the amount to reserve each program under parts A, B, and C of title II of the Act, as follows:

($1,000,000/ $18,600,000) × $18,419,000 =	$990,269	For administration.
($700,000/ $18,600,000) × $18,419,000 =	693,188	For Sex Equity Programs.
($1,700,000/ $18,600,000) × $18,419,000 =	1,683,457	For State Programs and State Leadership Activities.
($200,000/ $18,600,000) × $18,419,000 =	198,054	For Programs for Criminal Offenders.
($15,000,000/ $18,600,000) × $18,419,000 =	14,854,032	For Part C of Title II.
	18,419,000	

This example assumes that amounts reserved for the Sex Equity Program and Programs for Criminal Offenders meet the "hold-harmless" requirement of section 102(c) (1) and (2) of the Act.

(d) The procedure for meeting the ratable reduction provision in paragraph (a)(2) of this section is as follows:

(1) If a State's basic programs award under title II of the Act for FY 1992 or in future years is less than that State's basic grant amount in FY 1991, a State shall determine the percentage that the basic programs award is of the FY 1991 basic programs award.

(2) The State shall multiply the amounts reserved in FY 1991 for each of the three programs covered by the "hold-harmless" provisions in paragraph (a)(1) of this section by this percentage.

(3) The State shall compare the amounts that would be reserved for these programs in FY 1992 to determine if these amounts are less than the ratably reduced hold-harmless amounts, and if so, shall proceed with the calculation required by paragraph (c) of this section except using the ratably reduced "hold-harmless" amounts.

(Authority: 20 U.S.C. 2312)

§ 403.181 What are the cost-sharing requirements applicable to the basic programs?

(a) A State shall match, from non-Federal sources and on a dollar-for-dollar basis, the funds reserved for administration of the State plan under § 403.180(b)(4).

(b) The matching requirement under paragraph (a) of this section may be applied overall, rather than line-by-line, to State administrative expenditures.

(c) A State shall provide from non-Federal sources for State administration under the Act an amount that is not less than the amount provided by the State from non-Federal sources for State administrative costs for the preceding fiscal or program year.

Example for paragraph (b): From the five percent reserved for the administration of the State plan, a State must reserve $60,000 to carry out the provisions in § 403.13. The $60,000 must be matched, but the matching funds need not be used for the activities described in § 403.13.

(Authority: 20 U.S.C. 2312(b) and 2463d; House Report No. 101–660, 101st Cong., 2nd Sess. pp. 103 and 104 (1990))

§ 403.182 What is the maintenance of fiscal effort requirement?

The Secretary may not make a payment under the Act to a State for any fiscal year unless the Secretary determines that the fiscal effort per student, or the aggregate expenditures of that State, from State sources, for vocational education for the fiscal year (or program year) preceding the fiscal year (or program year) for which the determination is made, at least equaled its effort or expenditures for vocational education for the second preceding fiscal year (or program year).

(Authority: 20 U.S.C. 2463(a))

§ 403.183 Under what circumstances may the Secretary waive the maintenance of effort requirement?

(a) The Secretary may waive the maintenance of effort requirement in § 403.182 for a State for one year only if—

(1) The Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances affecting the State's ability to maintain fiscal effort; and

(2) The State has decreased its expenditures for vocational education from non-Federal sources by no more than five percent.

(b) For purposes of this section, "exceptional or uncontrollable circumstances" include, but are not limited to, the following:

(1) A natural disaster.

(2) An unforeseen and precipitous decline in financial resources.

(c) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(Authority: 20 U.S.C. 2463(b))

§ 403.184 How does a State request a waiver of the maintenance of effort requirement?

A State seeking a waiver of the maintenance of effort requirement in § 403.182 shall—

(a) Submit to the Secretary a request for a waiver; and

(b) Include in the request—

(1) The reason for the request;

(2) Information that demonstrates that a waiver is justified; and

(3) Any additional information the Secretary may require.

(Authority: 20 U.S.C. 2463(b))

§ 403.185 How does the Secretary compute maintenance of effort in the event of a waiver?

If a State has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant for a fiscal year, the Secretary determines whether the State has met that requirement for the grant to be awarded for the year after the year of the waiver by comparing the amount spent for vocational education from non-Federal sources in the first preceding fiscal year (or program year) with the amount spent in the third preceding fiscal year (or program year).

Example: Because exceptional or uncontrollable circumstances prevented a State from maintaining its level of fiscal effort in a program year 1989 (July 1, 1988–June 30, 1989) at the level of its fiscal effort in program year 1988 (July 1, 1987–June 30, 1988), the Secretary granted the State a waiver of the maintenance of effort requirement that permits the State to receive its fiscal year 1990 grant (a grant that is awarded on or after July 1, 1990 from funds appropriated in the fiscal year 1990 appropriation). To be eligible to receive its fiscal year 1991 grant (the grant to be awarded for the year after the year of the waiver), the State's expenditures from the first preceding program year (July 1, 1989–June 30, 1990) must equal or exceed its expenditures from the third preceding program year (July 1, 1987 to June 30, 1988).

(Authority: 20 U.S.C. 2463(c))

§ 403.186 What are the administrative cost requirements applicable to a State?

(a) *Basic Programs*. A State may use only funds reserved under § 403.180(b)(4) to administer the programs under Title II of the Act, including Programs for Criminal Offenders.

(b) *Special Programs*. (1) A State may use the funds reserved under § 403.180(b)(4) to administer any of the special programs listed in § 403.130.

(2) In addition to the funds reserved under § 403.180(b)(4), a State may use only an amount of funds from its allotment for the State Assistance for Vocational Education Support Programs by Community-Based Organizations that is necessary and reasonable for the proper and efficient State administration of that program.

(3) In addition to the funds reserved under § 403.180(b)(4), a State may use the amounts reserved for the Consumer and Homemaking Education Program, the Comprehensive Career Guidance and Counseling Program, and the Business-Labor-Education Partnership for Training Program under §§ 403.151(c), 403.161(c), and 403.173(b), respectively, for the proper and efficient administration of each program.

(Authority: 20 U.S.C. 2302(d)(A)–(F) and 2312(a))

§ 403.187 How may a State provide technical assistance?

(a) Except as provided in paragraph (b) of this section, a State may use only an amount of the funds reserved for each of the basic programs listed in § 403.60 and the special programs listed in § 403.130 to pay the costs of providing technical assistance that is necessary and reasonable to promote or enhance the quality and effectiveness of that program.

(b) A State may not use funds reserved under § 403.180(b)(1) for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Program or funds allotted under 34 CFR part 407 for the Supplementary State Grants Program to pay the costs of providing technical assistance.

(c) In providing technical assistance under paragraph (a) of this section, a State may not use amounts to an extent that would interfere with achieving the purposes of the program for which the funds were awarded.

(Authority: 20 U.S.C. 2302(d)(A)–(F), 2312(a), and 2323(b)(5))

Subpart H—What Conditions Must Be Met by Local Recipients?

§ 403.190 What are the requirements for receiving a subgrant or contract?

(a) Each eligible recipient desiring financial assistance under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program must submit to the State board, according to requirements established by the State board, an application covering the same period as the State plan, for the use of that assistance. The State board shall determine requirements for local applications, except that each application must—

(1) Contain a description of—

(i) The vocational education program to be funded, including—

(A) The extent to which the program incorporates each of the requirements described in § 403.111 (a), (b), and (c); and

(B) How the eligible recipient will use the funds available under §§ 403.112, 403.113, or 403.116 and from other sources to improve the program with regard to each requirement and activity described in § 403.111 (c) and (d);

(ii) How the needs of individuals who are members of special populations will be assessed and the planned use of funds to meet those needs;

(iii) How access to programs of good quality will be provided to students who are economically disadvantaged (including foster children), students with disabilities, and students of limited English proficiency through affirmative outreach and recruitment efforts;

(iv) The program evaluation standards the applicant will use to measure its progress;

(v) The methods to be used to coordinate vocational education services with relevant programs conducted under the JTPA, including cooperative arrangements established with private industry councils established under section 102(a) of that Act, in order to avoid duplication and to expand the range of and accessibility to vocational education services;

(vi) The methods used to develop vocational educational programs in consultation with parents and students of special populations;

(vii) How the eligible recipient coordinates with community-based organizations;

(viii) The manner and the extent to which the eligible recipient considered the demonstrated occupational needs of the area in assisting programs funded under the Act;

(ix) How the eligible recipient will provide a vocational education program that—

(A) Integrates academic and occupational disciplines so that students participating in the program are able to achieve both academic and occupational competence; and

(B) Offers coherent sequences of courses leading to a job skill; and

(x) How the eligible recipient will monitor the provision of vocational education to individuals who are members of special populations;

(2) Provide assurances that—

(i) The programs funded under §§ 403.112, 403.113, or 403.116 will be carried out according to the requirements regarding special populations;

(ii) The eligible recipient will provide a vocational program that—

(A) Encourages students through counseling to pursue coherent sequences of courses;

(B) Assists students who are economically disadvantaged, students of limited English proficiency, and students with disabilities to succeed through supportive services such as counseling, English-language instruction, child care, and special aids;

(C) Is of a size, scope, and quality as to bring about improvement in the quality of education offered by the school; and

(D) Seeks to cooperate with the sex equity program carried out under § 403.91; and

(iii) The eligible recipient will provide sufficient information to the State to enable the State to comply with the requirements in § 403.113; and

(3) Contain a report on the number of individuals in each of the special populations.

(b) Each eligible recipient desiring financial assistance under title II of the Act must provide assurances to the

State board that, with respect to any project that is funded under title II or title III of the Act, it will—

(1) Assist students who are members of special populations to enter vocational education programs, and, with respect to students with disabilities, assist in fulfilling the transitional service requirement of section 626 of the IDEA;

(2) Assess the special needs of students participating in programs receiving assistance under titles II and III of the Act, with respect to their successful completion of the vocational education program in the most integrated setting possible;

(3) Provide supplementary services, as defined in 34 CFR 400.4(b), to students who are members of special populations;

(4) Provide guidance, counseling, and career development activities conducted by professionally trained counselors and teachers who are associated with the provision of those special services;

(5) Provide counseling and instructional services designed to facilitate the transition from school to post-school employment and career opportunities; and

(c) Each eligible recipient desiring financial assistance under title II of the Act must provide the services and activities described in paragraph (b) of this section, to the extent possible with funds awarded under the Act, and indicate in its local application whether any non-Federal funds will be used for this purpose.

Cross-Reference: See § 403.193(e)

(d) Each eligible recipient desiring financial assistance under the Act shall provide sufficient information to the State, as the State board requires, to demonstrate to the State board that the eligible recipient's projects comply with § 403.32(a)(18)–(26).

(e) Each eligible recipient desiring financial assistance under the Act shall—

(1) Provide the assurance described in § 403.14(a)(2); and

(2) Include in its application, as appropriate,—

(i) The number of disabled students, economically disadvantaged students, and students with limited English proficiency in its vocational program;

(ii) An assessment of the vocational needs of its disabled students, economically disadvantaged students, and students with limited English proficiency; and

(iii) A plan to provide supplementary services sufficient to meet the needs identified in the assessment described in paragraph (e)(2)(ii).

(Authority: 20 U.S.C. 2321(c)(1), (d), (e); 2328; and 2343)

§ 403.191 What are the requirements for program evaluation?

(a) (1) Beginning in the 1992–1993 school year, each recipient of financial assistance under §§ 403.112, 403.113, or 403.116 shall evaluate annually the effectiveness of the recipient's entire vocational education program, regardless of which particular projects are assisted with those Federal funds.

(2) The annual evaluation must be based on the standards and measures developed by the State board in accordance with §§ 403.201, 403.202, and 403.203, including any modifications made by the recipient in accordance with paragraph (b) of this section.

(b) (1) Each recipient may modify the State standards and measures based on—

(i) Economic, geographic, or demographic factors; or

(ii) The characteristics of the populations to be served.

(2) Modifications must conform to the assessment criteria contained in the State plan.

(c) Each recipient, as part of the annual evaluation required in paragraph (a) of this section, and with the full participation of representatives of special populations, shall—

(1) Identify and adopt strategies to overcome barriers that are resulting in lower rates of access to, or success in, vocational education programs for members of special populations; and

(2) Evaluate the progress of individuals who are members of special populations in the recipient's entire vocational education program.

(d) Each recipient, as a part of the annual evaluation required in paragraph (a) of this section, shall evaluate the progress of the recipient's entire vocational education program, in providing vocational education students with strong experience in and understanding of all aspects of the industries the students are preparing to enter.

(Authority: 20 U.S.C. 2325(a) and 2327(a))

§ 403.192 What are the requirements for program improvement?

(a) If, beginning not less than one year after implementing the program evaluation required in § 403.191, a recipient determines, through its annual evaluation, that it is not making substantial progress in meeting the standards and measures developed by the State under §§ 403.201 and 403.202, the recipient shall develop a plan for program improvement for the succeeding school year.

(b) The plan must be developed in consultation with teachers, parents, and students concerned with or affected by the program, and must describe how the recipient will identify and modify programs that are in need of improvement, including a description of—

(1) Vocational education and career development strategies designed to achieve progress in improving the effectiveness of the recipients entire program; and

(2) If necessary, the strategies designed to improve supplementary services provided to individuals who are members of special populations.

Cross Reference: See 34 CFR 403.204

(Authority: 20 U.S.C. 2327(b))

§ 403.193 What are the information requirements regarding special populations?

(a)(1) Each local educational agency that receives funds under Title II of the Act shall provide to students who are members of special populations and their parents information concerning—

(i) The opportunities available in vocational education;

(ii) The requirements for eligibility for enrollment in those vocational education programs;

(iii) Special courses that are available;

(iv) Special services that are available;

(v) Employment opportunities; and

(vi) Placement.

(2) Each area vocational education school or intermediate educational agency that receives funds under title II of the Act shall provide the information described in paragraph (a)(1) of this section to the students who are members of special populations and their parents in any local educational agency whose allocation was distributed in its entirety under § 403.113 to the area vocational education school or intermediate educational agency.

(b) The information described in paragraph (a)(1) of this section must be provided at least one year before the students enter, or are of an appropriate age for, the grade level in which vocational education programs are first generally available in the State, but in no case later than the beginning of the ninth grade.

(c) Each eligible institution that receives funds under title II of the Act shall—

(1) Provide the information described in paragraph (a)(1) of this section to each individual who requests information concerning, or seeks

admission to, vocational education programs offered by the institution; and

(2) If appropriate, assist in the preparation of applications relating to that admission.

(d) Information described under paragraph (a)(1) of this section must, to the extent practicable, be in a language and form that parents and students understand.

(e) An eligible recipient is not required by this part to use non-Federal funds to pay the cost of services and activities required by this section and §§ 403.111(a)(2)(i) and (c)(3) and 403.190(b) unless this requirement is imposed by other applicable laws.

(Authority: 20 U.S.C. 2328(b) and (c) and 2342(a) and (c)(1)(C))

§ 403.194 What are the comparability requirements?

(a) A local educational agency may receive an award of Federal funds under the State plan only if—

(1) The local educational agency uses State and local funds to provide services in secondary schools or sites served with Federal funds awarded under the State plan that, taken as a whole, are at least comparable to those services being provided in secondary schools or sites that are not being served with Federal funds awarded under the State plan; or

(2) In the event that the local educational agency serves all its secondary schools or sites with Federal funds awarded under the State plan, the local educational agency uses State and local funds to provide services that taken as a whole, are substantially comparable in each secondary school or site.

Examples: Methods by which a local educational agency can demonstrate its compliance with the comparability requirements in paragraph (a) of this section include the following:

Example 1: The local educational agency files with the State board a written assurance that it has established and implemented—

(a) A district-wide salary schedule;

(b) A policy to ensure equivalence among secondary schools or sites in teachers, administrators, and auxiliary personnel; and

(c) A policy to ensure equivalency among secondary schools or sites in the provision of curriculum materials and instructional supplies.

Example 2: The local educational agency establishes and implements other procedures for ensuring comparability, such as the following:

(a) Comparing the average number of students per instructional staff in each secondary school or site served with Federal funds awarded under the State plan with the average number of students per instructional staff in secondary schools or sites not served with Federal funds awarded under the State plan. A served school is considered comparable if its average does not exceed 110 percent of the average of schools or sites in the local educational agency not served with Federal funds awarded under the State plan; or

(b) Comparing the average instructional staff salary expenditures per student in each secondary school or site served with Federal funds awarded under the State plan with the average instructional staff salary expenditure per student in schools or sites in the local educational agency not served with Federal funds awarded under the State plan. A served school is considered comparable if its average is at least 90 percent of the average of schools or sites not served with Federal funds awarded under the State plan.

(b) The comparability requirements in paragraph (a) of this section do not apply to a local educational agency with only one secondary school or site.

(c)(1) A local educational agency shall develop written procedures for complying with the comparability requirements in paragraph (a) of this section, including a process for demonstrating annually that State and local funds are used to provide services in served schools and sites that are at least comparable to the services provided with State and local funds in schools or sites in the local educational agency that are not served with funds awarded under the State plan.

(2) In reaching the determination as to whether comparability requirements in paragraph (a) of this section were met, the local educational agency's written procedures—

(i) Do not have to take into account unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year; and

(ii) May not take into account any State and local funds spent in carrying out the following types of programs:

(A) Special local programs designed to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that were excluded in the preceding fiscal year from comparability determinations under section 1018(d)(1)(B) of chapter 1 (20 U.S.C. 2728(d)(1)(B)).

(B) Bilingual education for children of limited English proficiency.

(C) Special education for disabled children.

(D) State phase-in programs that were excluded in the preceding fiscal year from comparability determinations under section 1018(d)(2)(B) of chapter 1 (20 U.S.C. 2728(d)(2)(B)).

(Authority: 20 U.S.C. 2323(b)(19))

§ 403.195 What are the administrative cost requirements applicable to local recipients?

(a) Except as provided in paragraphs (b) and (c) of this section, each eligible recipient, including a State corrections educational agency, that receives an award under a basic program listed in § 403.60 or a special program listed in § 403.130, may use no more than the amount of funds from each award that is necessary and reasonable for the proper and efficient administration of the projects, services, and activities for which the award was made.

(b) Each eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 may use no more than five percent of those funds for administrative costs.

(c) Each eligible partner that receives an award under the Business-Labor-Education Partnership for Training Program may use no more funds under that award for administrative costs than the amounts prescribed in § 403.173(b).

(Authority: 20 U.S.C. 2342(c); 2393(a)(1) and (c))

§ 403.196 What are the requirements regarding supplanting?

(a) Funds made available under title II of the Act shall be used to supplement, and to the extent practicable increase the amount of State and local funds that would in the absence of funds under title II of the Act be made available for the purposes specified in the State plan and the local application.

(b) Notwithstanding paragraph (a) of this section and § 403.32(a)(17), funds made available under title II of the Act may be used to pay the costs of vocational education services required by an individualized education program developed pursuant to sections 612(4) and 614(a)(5) of the IDEA (20 U.S.C. 1412(4) and 1414(a)(5)), in a manner consistent with section 614(a)(1) of that Act, and services necessary to meet the requirements of section 504 of the Rehabilitation Act of 1973 with respect to ensuring access to vocational education.

(c) Any expenditures pursuant to paragraph (b) of this section must increase the amount of funds that would otherwise be available to meet the costs of an individualized education program or to comply with section 504 of the Rehabilitation Act of 1973.

(Authority: 20 U.S.C. 2468e(a)(1))

§ 403.197 What are the requirements for the use of equipment?

(a) Equipment purchased with funds under §§ 403.112, 403.113, or 403.116, when not being used to carry out the purposes of the Act for which it was purchased, may be used for other vocational education purposes if the acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program.

(b) Equipment purchased with funds under §§ 403.112, 403.113, or 403.116, when not being used to carry out the purposes of the Act for which it was purchased or other vocational education purposes, may be used for other instructional purposes if—

(1) The acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program; and

(2) The other use of the equipment is after regular school hours or on weekends.

(c) The use of equipment under paragraphs (a) and (b) of this section must—

(1) Be incidental to the use of that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased;

(2) Not interfere with the use of that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased; and

(3) Not add to the cost of using that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased.

(Authority: 20 U.S.C. 2342(c)(3))

Subpart I—What Are the Administrative Responsibilities of a State Under the State Vocational and Applied Technology Education Program?

§ 403.200 What are the State's responsibilities for ensuring compliance with the comparability requirements?

(a) The State board shall monitor each local educational agency's compliance with the comparability requirements in § 403.194.

(b) If a local educational agency is found not to be in compliance with the comparability requirements, the State board shall withhold, or require repayment of, the amount or percentage by which the local educational agency failed to achieve comparability under the local educational agency's procedures established pursuant to § 403.194(c).

(Authority: 20 U.S.C. 2323(b)(19))

§ 403.201 What are the State's responsibilities for developing and implementing a statewide system of core standards and measures of performance?

(a)(1) Each State board receiving funds under the Act shall develop and implement a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs.

(2) This system must—

(i) Be developed by September 25, 1992; and

(ii) Apply to all programs assisted under the Act.

(3) For purposes of this section, "programs assisted under the Act" refers to a State board's entire vocational education program.

(b) To assist in the development and implementation of the Statewide system addressed in paragraph (a) of this section, the State board shall appoint a State Committee of Practitioners (Committee), as prescribed in 34 CFR 400.6.

(c) The State board shall convene the Committee on a regular basis to review, comment on, and propose revisions to the State board's draft proposal for a system of core standards and measures of performance for vocational programs assisted under the Act.

(d) To assist the Committee in formulating recommendations for modifying standards and measures of performance, the State board shall provide the Committee with information concerning differing types of standards and measures including—

(1) The advantages and disadvantages of each type of standard or measure; and

(2) Instances in which those standards and measures—

(i) Have been effective; and

(ii) Have not been effective.

(Authority: 20 U.S.C. 2325 (a) and (d))

§ 403.202 What must each State's system of core standards and measures of performance include?

(a) The statewide system of core standards and measures of performance for vocational programs must include—

(1) Measures of learning and competency gains, including student progress in the achievement of basic and more advanced academic skills;

(2) One or more measures of the following:

(i) Student competency attainment.

(ii) Job or work skill attainment or enhancement including student progress in achieving occupational skills necessary to obtain employment in the field for which the student has been prepared, including occupational skills in the industry the student is preparing to enter.

(iii) Retention in school or completion of secondary school or its equivalent.

(iv) Placement into additional training or education, military service, or employment;

(3) Incentives or adjustments that are—

(i) Designed to encourage service to targeted groups or special populations; and

(ii) Developed for each student, and, if appropriate, consistent with the student's individualized education program developed under section 614(a)(5) of the IDEA; and

(4) Procedures for using existing resources and methods developed in other programs receiving Federal assistance.

(b) In developing the standards and measures included in the system developed under paragraph (a) of this section, the State board shall take into consideration and shall provide, to the extent appropriate, for consistency with—

(1) Standards and measures developed under job opportunities and basic skills training programs established and operated under a plan approved by the Secretary of Health and Human Services that meets the requirements of section 402(a)(19) of the Social Security Act (42 U.S.C. 687); and

(2) Standards prescribed by the Secretary of Labor under section 106 of the JTPA.

Cross-Reference: see 34 CFR 400.6.

(Authority: 20 U.S.C. 2325 (b), (c))

§ 403.203 What are the State's responsibilities for a State assessment?

(a) Each State board receiving assistance under the Act shall conduct an assessment of the quality of vocational education programs throughout the State using measurable objective criteria.

(b) In developing the assessment criteria, the State board shall—

(1) Consult with representatives of the groups described in 34 CFR 400.6(c); and

(2) Use information gathered by the National Occupational Information Coordinating Committee and, if appropriate, other information.

(c) Each State board shall—

(1) Develop assessment criteria no later than the beginning of the 1991–1992 school year; and

(2) Widely disseminate those criteria.

(d) Assessment criteria must include at least the following factors, but may include others:

(1) Integration of academic and vocational education.

(2) Sequential courses of study leading to both academic and occupational competencies.

(3) Increased student work skill attainment and job placement.

(4) Increased linkages between secondary and postsecondary educational institutions.

(5) Instruction and experience, to the extent practicable, in all aspects of an industry the students are preparing to enter.

(6) The ability of the eligible recipients to meet the needs of special populations with respect to vocational education.

(7) Raising the quality of vocational education programs in schools with high concentration of poor and low-achieving students.

(8) The relevance of programs to the workplace and to the occupations for which students are to be trained, and the extent to those such programs reflect a realistic assessment of current and future labor market needs, including needs in areas of emerging technologies.

(9) The ability of the vocational curriculum, equipment, and instructional materials to meet the demands of the work force.

(10) Basic and higher order current and future workplace competencies that will reflect the hiring needs of employers.

(11) The capability of vocational education programs to meet the needs of individuals who are members of special populations.

(12) Other factors considered appropriate by the State board.

(e) The assessment must include an analysis of—

(1) The relative academic, occupational, training, and retraining needs of secondary, adult, and postsecondary students; and

(2) The capability of vocational education programs to provide vocational education students, to the extent practicable, with—

(i) Strong experience in, and understanding of, all aspects of the industry the students are preparing to enter (including planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, and health, safety, and environmental issues); and

(ii) Strong development and use of problem-solving skills and basic and advanced academic skills (including skills in the areas of mathematics, reading, writing, science, and social studies) in a technological setting.

(f)(1) Each State board shall complete the initial assessment required by paragraph (a) of this section before March 25, 1991, and, therefore, at least six months prior to the required submission of a new State plan to the Secretary.

(2) Each State board shall conduct an assessment under this section prior to the submission of each new State plan to the Secretary.

(Authority: 20 U.S.C. 2323 (a)(3), (b)(3)(B), and 2326)

§ 403.204 What are the State's responsibilities for program evaluation and improvement?

(a) If, one year after an eligible recipient has implemented its program improvement plan described in § 403.192, the State finds that the eligible recipient has not made sufficient progress in meeting the standards and measures developed as required by §§ 403.201, 403.202, and 403.203, the State shall work jointly with the recipient and with teachers, parents, and students concerned with or affected by the program, to develop a joint plan for program improvement.

(b) Each joint plan required by paragraph (a) of this section must contain—

(1) A description of the technical assistance and program activities the State will provide to enhance the performance of the eligible recipient;

(2) A reasonable timetable to improve school performance under the plan;

(3) A description of vocational education strategies designed to improve the performance of the program as measured by the local evaluation; and

(4) If necessary, a description of strategies designed to improve supplementary services provided to individuals who are members of special populations.

(c) The State, in conjunction with the eligible recipient, shall annually review and revise the joint plan developed under paragraph (a) of this section and provide appropriate assistance until the recipient sustains fulfillment of State and local standards and measures developed under §§ 403.201, 403.202, and 403.203 for more than one year.

(Authority: 20 U.S.C. 2327 (c), (d))

§ 403.205 What are the State's responsibilities for members of special populations?

The State board shall—

(a) Establish effective procedures, including an expedited appeals procedure, by which students who are members of special populations and their parents, teachers, and concerned area residents will be able to participate directly in State and local decisions that influence the character of programs under the Act affecting their interests; and

(b) Provide technical assistance and design procedures necessary to ensure that those individuals referred to in paragraph (a) of this section are given access to the information needed to use those procedures.

(Authority: 20 U.S.C. 2328(d))

§ 403.206 What are the State's responsibilities regarding a State occupational information coordinating committee?

(a) A State that receives funds under the Act shall establish a State occupational information coordinating committee composed of representatives of the State board, the State employment security agency, the State economic development agency, the State job training coordinating council, and the agency administering the vocational rehabilitation program.

(b) With funds made available to it by the National Occupational Information Coordinating Committee, the State occupational information coordinating committee shall—

(1) Implement an occupational information system in the State which will meet the common needs for the planning for, and the operation of, programs of the State board assisted under the Act and of the administering agencies under the JTPA; and

(2) Use the occupational information system to implement a career information delivery system.

(Authority: 20 U.S.C. 2422(b))

§ 403.207 What are the State's responsibilities to the National Center or Centers for Research in Vocational Education?

A State shall forward to the National Center for Research in Vocational Education a copy of an abstract for each new research, curriculum development, or personnel development project it supports, and the final report on each project.

(Authority: 20 U.S.C. 2404(c))

§ 403.208 What are the requirements regarding supplanting?

(a) The State board is subject to the prohibition against supplanting in § 403.196.

(b) The State board shall monitor each eligible recipient's compliance with the supplanting requirements in § 403.196.

(Authority: 20 U.S.C. 2468e(a)(1)).

Appendix A to Part 403—Examples for 34 CFR 403.111(a) and 403.111(c)(3)

Illustration of providing full participation under 34 CFR 403.111(a). An educationally disadvantaged student is enrolled in a course that is part of a vocational education program and is having trouble understanding a math concept (e.g., negative numbers) necessary to succeed in the course. To ensure the student's full participation in the course, a local educational agency may use funds awarded under § 403.112 as needed to provide tutoring in negative numbers to enable the student to understand the concept well enough to complete the vocational education course.

Illustrations of providing equitable participation under CFR 403.111(c)(3).
Example 1: An area vocational education school conducts an informal meeting to provide the information required in § 403.193(a) regarding the area vocational education school's vocational education programs, to parents of students who are members of special populations in a local educational agency whose allocation was distributed to the area vocational education school under § 403.113. The area vocational education school conducts the meeting at a time and in a location convenient for these parents and students. At the meeting, the area vocational education school provides a staff person to assist students or their parents to complete any forms necessary to enroll in the area vocational education school's vocational education program.

Example 2: A hearing-impaired student in a local educational agency could participate in the vocational education program only if an interpreter is provided for that student. The local educational agency cannot refuse to admit the student because of the need for an interpreter.

PART 404—[RESERVED]

6. Part 404 is reserved.

7. A new part 405 is added to read as follows:

PART 405—NATIONAL TECH-PREP EDUCATION PROGRAM

Subpart A—General

Authority: 20 U.S.C. 2394–2394e, unless otherwise noted.

Subpart A—General

§ 405.1 What is the National Tech-Prep Education Program?

The National Tech-Prep Education Program provides financial assistance for projects that develop and operate four-year sequences of study designed to provide a tech-prep education program leading to a two-year associate degree or a two-year certificate and provides, in a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions.

(Authority 20 U.S.C. 2394(b))

§ 405.2 Who is eligible for an award?

(a) Awards are provided to consortia described in 34 CFR 406.30(a)(1) through (3) and (b).

(b) Members of a consortium shall—

(1) Apply jointly to the Secretary for funds; and

(2) Enter into an agreement, in the form of a single document signed by all members, designating one member of the consortium as the applicant and the grantee. The agreement must also detail the role each member plans to perform, and must bind each member to every statement and assurance made in the application.

Cross-Reference: See 34 CFR 75.127–75.129—Group Applications)

(Authority: 20 U.S.C. 2394a(a))

§ 405.3 What activities may the Secretary fund?

(a) The Secretary provides grants and cooperative agreements for projects to develop and operate a four-year tech-prep education program.

(b) Each project assisted under this part must meet the requirements in 34 CFR 406.3(b) (1) through (7) and may also perform the activities described in 34 CFR 406.3(c).

(Authority: 20 U.S.C. 2394a(a) and 2394b)

§ 405.4 What regulations apply?

The following regulations apply to the National Tech-Prep Education Program:

(a) The regulations in this Part 405.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.5 What definitions apply?

The definitions in 34 CFR 406.5 apply to this part.

(Authority: 20 U.S.C. 2394e)

Subpart B—How Does One Apply for an Award?

§ 405.10 What must the application contain?

The application must contain—

(a) An articulation agreement between the participants in a consortium;

(b) A three-year plan for the development and implementation of project requirements under § 405.3;

Cross-Reference: See 34 CFR 75.117

(c) A copy of the transmittal letters the consortium sent to the State educational agency and the State agency for higher education of the State in which the consortium is located in order to notify those agencies that the consortium has submitted an application to the Secretary and to provide those agencies with a copy of the consortium's application; and

(d) Information that indicates whether the consortium is composed of either urban participants or rural participants.

(Authority: 20 U.S.C. 2394b(b)(1) and 2394c (a), (b), (e), and (f))

Subpart C—How Does the Secretary Make an Award?

§ 405.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 405.21.

(b) The Secretary may award up to 100 points, including a reserve 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 405.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 405.21.

(e) The Secretary awards up to five points to applications that—

(1) Provide for effective employment placement activities or transfer of students to four-year baccalaureate degree programs. Acceptable documentation of employment placement includes letters of commitment from employers to hire individuals who complete the program;

(2) Are developed in consultation with business, industry, and labor unions; and

(3) Address effectively the issues of dropout prevention and re-entry and the needs of minority youths, youths of limited English proficiency, youths with disabilities, and disadvantaged youths.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which—

(1) The proposed project demonstrates the need for and the soundness of the rationale for developing a tech-prep education program between or among the consortium participants;

(2) The proposed project will provide tech-prep education that is designed to meet current and projected occupational needs;

(3) The proposed project demonstrates that course offerings will have a strong relationship between mathematics, science, and communication and technical preparation in engineering technology, applied science, mechanical, industrial or practical art or trade, agriculture, health, or business in both the secondary and postsecondary or apprenticeship programs;

(4) The articulation agreement between the participants in the consortium is appropriate to the needs and resources of the consortium participants;

(5) The in-service training for teachers is designed to train teachers to implement tech-prep education program curricula effectively;

(6) The training activities for counselors are designed to enable counselors to more effectively—

(i) Recruit students for tech-prep education programs;

(ii) Ensure that students successfully complete tech-prep education programs; and

(iii) Ensure that students are placed in appropriate employment; and

(7) Preparatory services are provided that assist all participants in tech-prep education programs.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed tech-prep education program on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from these programs in such factors as—

(i) Student performance and achievement in such subjects as mathematics, science, communication, and technologies;

(ii) High school graduation;

(iii) Placement of students in jobs, including the military; and

(iv) Successful transfer of students to a variety of postsecondary educational programs;

(2) Proposes project objectives that contribute to the improvement of education;

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(4) Will be developed, implemented, operated, and demonstrated within the grant period.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project, including whether the design will result in the project being developed, implemented, operated, and demonstrated within the grant period;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project between or among consortium participants over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Includes, at a minimum, a description of the participant data to be collected based on the project objectives; tracking and follow-up of progress by all project participants throughout the project period; and outcome measures to be used for each objective;

(6) Will lead to the demonstration of a clear link between the intended positive results and the specific treatment of project participants; and

(7) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the project requirements, of the project director;

(ii) The qualifications, in relation to the project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities;

(2) The budget contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) The budget proposes using non-Federal resources from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire tech-prep education program equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 405.21, the Secretary determines whether the most highly rated applications are equitably distributed between consortia of urban participants and consortia of rural participants.

(b) The Secretary may select other applications for funding if doing so would improve the urban and rural distribution of projects funded under this program.

(Authority: 20 U.S.C. 2394c(e))

Subpart D—What Conditions Must Be Met After an Award?

§ 405.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation shall be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, placement rates, project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel shall be submitted to the Secretary during the last year of the project period.

(f) Reports documenting evaluation activities must be included as appendices to the grant recipient's annual and final performance reports.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.31 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of project funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2394–2394e)

8. A new part 406 is added to read as follows:

PART 406—STATE-ADMINISTERED TECH-PREP EDUCATION PROGRAM

Authority: 20 U.S.C. 2394–2394e, unless otherwise noted.

Subpart A—General

§ 406.1 What is the State-Administered Tech-Prep Education Program?

If the annual appropriation for tech-prep education exceeds $50,000,000, the State-administered Tech-Prep Education Program provides financial assistance for—

(a) Planning and developing four-year programs designed to provide a tech-prep education program leading to a two-year associate degree or certificate; and

(b) Planning and developing in a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions.

(Authority: 20 U.S.C. 2394(b))

§ 406.2 Who is eligible for an award?

A State board of vocational education (State board) in the fifty States, Puerto Rico, the District of Columbia, or the Virgin Islands is eligible for an allotment under this program if the Secretary has approved the State plan submitted in accordance with 34 CFR 403.30, and the State plan meets the requirements in § 406.10.

(Authority: 20 U.S.C. 2394a(b))

§ 406.3 What activities may the Secretary fund?

(a) The Secretary makes allotments to State boards to provide funding for consortia described in § 406.30 for tech-prep education projects.

(b) A State board assists projects that must—

(1) Be carried out under an articulation agreement between the members of the consortium;

(2) Consist of the two years of secondary school preceding graduation and two years of higher education, or an apprenticeship training program of at least two years following secondary instruction, with a common core of

required proficiency in mathematics, science, communications, and technologies designed to lead to an associate degree or certificate in a specific career field;

(3) Include the development of tech-prep education program curricula appropriate to the needs of the consortium participants;

(4) Include in-service training for teachers that—

(i) Is designed to train teachers to implement tech-prep education program curricula effectively;

(ii) Provides for joint training for teachers from all participants in the consortium; and

(iii) May provide training on weekends, evenings, or during the summer in the form of sessions, institutes, or workshops;

(5) Include training activities for counselors designed to enable counselors to more effectively—

(i) Recruit students for tech-prep education programs;

(ii) Ensure that students successfully complete tech-prep education programs; and

(iii) Ensure that students are placed in appropriate employment;

(6) Provide equal access to the full range of tech-prep education programs to individuals who are members of special populations, including the development of tech-prep education program services appropriate to the needs of these individuals; and

(7) Provide preparatory services that assist all participants in tech-prep education programs, including the provision of skills in the liberal and practical arts and in basic academics, literacy instruction in the English language, in combination with intense technical preparation, as well as the preparatory services described in the definition of this term in 34 CFR 400.4.

(c) A project assisted under this part may also—

(1) Provide for the acquisition of tech-prep education program equipment; and

(2) Acquire, as part of the planning activities of the tech-prep education program, technical assistance from State or local entities that have successfully designed, established, and operated tech-prep education programs.

(Authority: 20 U.S.C. 2394a, 2394b)

§ 406.4 What regulations apply?

The following regulations apply to the State-administered Tech-Prep Education Program:

(a) The regulations in this part 406.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2394–2394e)

§ 406.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Articulation agreement means a commitment to a program designed to provide students with a non-duplicative sequence of progressive achievement leading to competencies in a tech-prep education program.

Community college—

(1) Has the meaning provided in 34 CFR 400.4 for the term "Institution of higher education" for an institution that provides not less than a two-year program that is acceptable for full credit toward a bachelor's degree; and

(2) Includes tribally controlled community colleges.

Institution of higher education includes an institution offering apprenticeship programs of at least two years beyond the completion of secondary school, and includes in addition to the institutions covered by the definition of the term *institution of higher education* in 34 CFR 400.4—

(1) Proprietary institution of higher education;

(2) Postsecondary vocational institution;

(3) Department, division, or other administrative unit in a college or university that provides primarily or exclusively an accredited program of education in professional nursing and allied subjects leading to the degree of bachelor of nursing, or to be an equivalent degree, or to a graduate degree in nursing; and

(4) Department, division, or other administrative unit in a junior college, community college, college, or university that provides primarily or exclusively an accredited two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or an equivalent degree.

Tech-prep education program means a combined secondary and postsecondary program that—

(1) Leads to an associate degree or two-year certificate;

(2) Provides technical preparation in at least one field of engineering technology, applied science, mechanical, industrial, or practical art or trade, or agriculture, health, or business;

(3) Builds student competence in mathematics, science, and communications (including through applied academics) through a sequential course of study; and

(4) Leads to placement in employment.

(Authority: 20 U.S.C. 1088 and 2394e)

Subpart B—How Does a State Apply for a Grant?

§ 406.10 What must the State application contain?

To receive a grant under this program, a State board must include in its State application to the Secretary a description of—

(a) The requirements for State board approval of funding of a local tech-prep education project, including—

(1) Whether the State board intends to make awards on a competitive basis or on the basis of a formula; and

(2) If a formula is to be used, a description of that formula; and

(b) How the State board will perform the following:

(1) Approve applications based on their potential to create an effective tech-prep education program as described in § 406.3(b).

(2) Give special consideration to applicants that—

(i) Provide for effective employment placement activities or transfer of students to four-year baccalaureate degree programs;

(ii) Are developed in consultation with business, industry, and labor unions; and

(iii) Address effectively the issues of dropout prevention and re-entry and the needs of minority youth of limited English proficiency, youth with disabilities, and disadvantaged youth.

(3) Ensure an equitable distribution of assistance between urban and rural consortium participants.

(c) How the State board will ensure that local recipients meet the requirements of this program; and

(d) How activities under this program will be coordinated with other tech-prep education programs, services, and activities provided under the State plan.

(Authority: 20 U.S.C. 2394c(b)–(e))

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

§ 406.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's allotment according to a formula in section 101(a)(2) of the Act (20 U.S.C. 2311(a)(2)).

(Authority: 20 U.S.C. 2394a(b)(1))

§ 406.21 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 406.20 will not be required for any fiscal year for carrying out the program under this part, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to use them promptly and effectively upon reallotment.

(2) The Secretary announces in the **Federal Register** the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2311(a) and (d) and 2394a(b)(1))

Subpart D—What Conditions Must be Met After a State Receives an Award?

§ 406.30 Who is eligible to apply to a State for an award?

(a) A State board shall provide subgrants or contracts to consortia between—

(1) A local educational agency, intermediate educational agency, area vocational education school serving secondary school students, or secondary school funded by the Bureau of Indian Affairs; and

(2) A nonprofit institution of higher education that—

(i) Is qualified as an institution of higher education as defined in § 406.5, including institutions receiving assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*);

(ii) Is not prohibited from receiving assistance under Part B of the Higher Education Act of 1965 pursuant to the provisions of section 435(a)(3) of that Act; and

(iii) Offers a two-year associate degree program, a two-year certificate program, or a two-year apprenticeship training program that follows secondary instruction; or

(3) A proprietary institution of higher education that—

(i) Is qualified as an institution of higher education as defined in § 406.5;

(ii) Is not subject to a default management plan required by the Secretary; and

(iii) Offers a two-year associate degree program.

(b) A consortia must include at least one entity from paragraph (a)(1) of this section and at least one entity from either paragraphs (a)(2) or (a)(3) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 2394a)

§ 406.31 How does a State carry out the State-administered Tech-Prep Education Program?

(a) A State board carries out the program by—

(1) Providing State administration of its grant; and

(2) Awarding subgrants or contracts to eligible consortia on a competitive basis or on the basis of a formula determined by the State board.

(b) A State board may use funds reserved under 34 CFR 403.180(b)(3) to provide support for the State-administered Tech-Prep Education Program.

(c) A State board may use no more than the amount of funds from its award under this part that is necessary and reasonable for—

(1) The proper and efficient administration of this program; and

(2) Technical assistance to promote or enhance the quality and effectiveness of the State's tech-prep education program.

(Authority: 20 U.S.C. 2331(c)(2); 2394a(b))

§ 406.32 What are the local application requirements?

(a) Each consortium that desires to receive an award shall submit an application to the State board.

(b) The application must be submitted at the time and contain the information prescribed by the State board, and must contain—

(1) An articulation agreement between the participants in the consortium; and

(2) A three-year plan for the development and implementation of activities under this part.

(Authority: 20 U.S.C. 2394c(a)–(b))

§ 406.33 What are the reporting requirements?

The State board shall, in conjunction with recipients of subgrants and contracts, with respect to assistance received under this part, submit to the Secretary reports as may be required by the Secretary to ensure that grantees are complying with the requirements of this part.

(Authority: 20 U.S.C. 2394a–2394e)

9. Part 407 is revised to read as follows:

PART 407—SUPPLEMENTARY STATE GRANTS PROGRAM

Subpart A—General

Subpart B—How Does a State Apply for a Grant?

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

Subpart D—How Does an Applicant Apply to a State for an Award?

Authority: 20 U.S.C. 2395–2395e, unless otherwise noted.

Subpart A—General

§ 407.1 What is the Supplementary State Grants Program?

The Supplementary State Grants Program provides financial assistance for program improvement activities, especially the improvement of facilities and acquisition or leasing of equipment to be used to carry out vocational education programs that receive assistance under the Act.

(Authority: 20 U.S.C. 2395)

§ 407.2 Who is eligible for an award?

A State board for vocational education (State board) in the fifty States, the District of Columbia, or Puerto Rico is eligible for awards under this program.

(Authority: 20 U.S.C. 2395a)

§ 407.3 What activities may the Secretary fund?

Under the Supplementary State Grants Program, the Secretary makes grants or cooperative agreements to a State board to provide funding to eligible local educational agencies (LEAs) in economically depressed areas for program improvement activities described in § 407.32.

(Authority: 20 U.S.C. 2395–2395a)

§ 407.4 What regulations apply?

The following regulations apply to the Supplementary State Grants Program:

(a) The regulations in this part 407.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2395–2395e)

§ 407.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2395–2395e)

Subpart B—How does a State Apply for a Grant?

§ 407.10 What must the State application contain?

(a) To receive a grant under the Supplementary State Grants Program, a State board shall submit an application to the Secretary, as a part of the State plan developed in accordance with 34 CFR 403.32. The application must—

(1) Designate the sole State agency described in 34 CFR 403.10 as the State agency responsible for the administration and supervision of activities carried out with assistance under this program;

(2) Provide for a process of consultation with the State council established under 34 CFR 403.18;

(3) Describe how funds will be allocated in a manner consistent with § 407.33;

(4) Provide for an annual submission of data concerning the use of funds and students served with assistance under this program;

(5) Provide that the State board will keep records and provide information to the Secretary as may be required for purposes of financial audits and program evaluations; and

(6) Contain an assurance that the State board will comply with the requirements of this part.

(b) An application submitted by the State board under paragraph (a) of this section must be for a period of not more than three years and must be amended annually.

(Authority: 20 U.S.C. 2395d)

Subpart C—How Does the Secretary make a Grant to a State?

§ 407.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's grant for a given fiscal year according to the provisions in section 352 of the Act.

(Authority: 20 U.S.C. 2395a)

§ 407.21 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 407.20 will not be required for any fiscal year for carrying out the program under this part, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to utilize them promptly and effectively upon reallotment.

(2) The Secretary announces in the **Federal Register** the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purpose for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2395a and 2821)

§ 407.22 How does a State carry out this program?

(a) A State carries out the program by—

(1) Providing State administration of the grant; and

(2) Awarding 100 percent of the amounts made available under this program to eligible LEAs.

(b) A State may not use program funds for the administrative costs it incurs in carrying out its responsibilities under paragraph (a) of this section.

(c) A State may use funds reserved under 34 CFR 403.180(b)(4) to pay the administrative costs it incurs in carrying out its responsibilities under paragraph (a) of this section.

(Authority: 20 U.S.C. 2312(a) and 2395b(a))

Subpart D—How Does an Applicant Apply to a State for an Award?

§ 407.30 Who is eligible to apply to a State for an award?

(a) An LEA is eligible to apply to the State board for an allocation if the LEA received an award under section 1006 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2712).

(b) A consortium of the LEAs described in paragraph (a) of this section is also eligible to apply to the State board for an award.

(Authority: 20 U.S.C. 2395b(b))

§ 407.31 How are funds to be used by local agencies?

Each LEA or consortium of LEAs that receives a grant under this program—

(a) Shall give first priority to using funds provided under the grant for improving facilities and acquiring or leasing equipment for carrying out vocational education programs that are in economically depressed areas in which economically and educationally disadvantaged individuals are served, and that receive assistance under the Act; and

(b) May use any funds not required to carry out the provisions of paragraph (a) of this section for other program improvement activities, such as curriculum development or teacher training.

(Authority: 20 U.S.C. 2395c)

§ 407.32 What are the local application requirements?

Each LEA or consortium of LEAs that desires to receive a grant under this program shall submit to the State board an application at the time, in the manner, and containing or accompanied by any information the State board may reasonably require, including evidence that the requirement in § 407.31(a) is being met.

(Authority: 20 U.S.C. 2395e)

§ 407.33 How does a State make allotments?

In each fiscal year for which a State board receives a grant under this part, the State board shall allot to each eligible LEA or consortium of LEAs in the State an amount under this part that bears the same relationship to the amount allotted to that LEA or those LEAs under section 1006 of Chapter 1 bears to the aggregate amount allotted to LEAs in the State under section 1006 of Chapter 1 in the fiscal year in which distribution is made.

(Authority: 20 U.S.C. 2395b(b))

10. Part 408 is revised to read as follows:

PART 408—COMMUNITY EDUCATION EMPLOYMENT CENTERS PROGRAM

Subpart A—General

Subpart D—What Conditions Must Be Met After an Award?

Authority: 20 U.S.C. 2396, unless otherwise noted.

Subpart A—General

§ 408.1 What is the Community Education Employment Centers Program?

The Community Education Employment Centers Program provides financial assistance to establish and evaluate model high school community education employment centers to provide low-income urban and rural youth with the education, skills, support services, and enrichment necessary to ensure—

(a) Graduation from secondary school;

(b) Successful transition from secondary school to a broad range of postsecondary educational institutions; and

(c) Employment, including military service.

(Authority: 20 U.S.C. 2396 and 2396a)

§ 408.2 Who is eligible for an award?

(a) A public secondary school or area vocational education school is eligible for an award under the Community Education Employment Centers Program if the school—

(1) Is located in or serves one or more local educational agencies that are eligible for assistance under section 1006 of chapter 1 of title 1 of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2712); and

(2) Demonstrates that it will serve a student population that is predominantly educationally and economically disadvantaged.

(b) For purposes of paragraph (a)(2) of this section, an eligible recipient is considered to be serving—

(1) A predominately educationally disadvantaged population if over 75 percent of the students to be served are individuals—

(i) Who score at or below the 25th percentile on a standardized achievement or aptitude test;

(ii) Whose secondary school grades are below 2.0 on a 4.0 scale (grade "A" equals 4.0); or

(iii) Who fail to attain minimal academic competencies;

(2) A predominately economically disadvantaged population if over 75 percent of the students to be served can be classified as economically disadvantage individuals according to the definition of that term in 34 CFR 400.4.

(Authority: 20 U.S.C. 2396f and 2396i(1))

§ 408.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for community education employment centers.

(a) Each project assisted by the Secretary must—

(1) Operate a community education employment center on an extended year and extended day basis;

(2) Establish a collegial working environment, with substantial opportunities for staff training and development and shared decision-making;

(3) Maintain small class sizes, and to the extent possible, maintain an average class size of 15 students or fewer;

(4) Offer a broad array of secondary school course-work, including, to the extent possible—

(i) English, mathematics, history, geography, biology, chemistry, physics, and computer science;

(ii) Opportunities for student participation in a wide range of extracurricular activities, including community service and exploration, sports, fine and performing arts, and tutorial study sessions;

(iii) A comprehensive vocational-technical education program that—

(A) Was developed through regular consultation with employer-labor panels with knowledge of relevant industries; and

(B) Offers skills in planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, economic development and health, safety, and environment issues; and

(iv) Courses in health, nutrition, and parenting;

(5) Offer students on-site opportunities for assistance with career planning and decision-making, employability, entrepreneurial abilities, interpersonal communication skills, and remedial studies;

(6) Maintain an emphasis on the development of academic skills, regardless of student career objectives;

(7) Provide technical assistance and training to staff from other schools and local educational agencies within the State that wish to replicate community education employment center capabilities;

(8) Seek to use community organizations to provide support for educational activities and services to parents and students;

(9) Offer school-to-work transition services;

(10) Establish a support system to coordinate services for students as described in § 408.30;

(11) Meet the requirements regarding center personnel in §§ 408.31 and 408.33; and

(12) Meet the requirements regarding a Council of Advisors in § 408.32.

(b) Projects assisted by the Secretary under this part may organize community education employment centers into one or more programs specializing in different areas of study of particular interest and employment opportunities for the student population.

(Authority: 20 U.S.C. 2396b, 2396c, and 2396d(a))

§ 408.4 What regulations apply?

The following regulations apply to the Community Education Employment Centers Program:

(a) The regulations in this part 408.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2396a–2396m)

§ 408.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definition also applies to this part: *Parent* includes a legal guardian or other person standing in loco parentis.

(Authority: 20 U.S.C. 2396i)

Subpart B—How Does One Apply for an Award?

§ 408.10 What must an application contain?

An application must—

(a) Contain information demonstrating that the area where the center is to be located has a high concentration of children from low-income families, relative to the county and State as a whole, such as proof of eligibility for an award under section 1006 of the Elementary and Secondary Education Act;

(b) Describe the activities and services for which assistance is sought;

(c) Describe how the applicant will comply with the provisions of §§ 408 2, 408.3, and 408.30 through 403.34;

(d) Provide assurances that the State and local educational agencies in which the applicant is located or serves will, in any fiscal year, supply at least the same fiscal effort per student, with respect to the provision of free public education, to community education employment center students as the local educational agency provides for students attending secondary schools in the local educational agency;

(e) Describe how the applicant will use funding available from appropriate employment, training, and education programs in the State in order to provide a maximum amount of resources for instructional and student services; and

(f) Provide assurances that the community education employment center will coordinate the operations of the center with local postsecondary institutions, business, industry, labor, and other appropriate public and private community agencies in order to help meet local economic needs.

(Authority: 20 U.S.C. 2396g)

Subpart C—How Does the Secretary Make an Award?

§ 408.20 What awards does the Secretary make?

The Secretary makes awards to establish and operate not more than 10 community education employment centers for up to five years.

(Authority: 20 U.S.C. 2396a)

§ 408.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 408.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 408.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 408.22.

(Authority: 20 U.S.C. 2396a–2396m)

§ 408.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which—

(1) The center will be located in an urban or rural area that has a high concentration of children from low-income families, relative to the county and State as a whole;

(2) Activities and services will be provided to low-income urban and rural youth with education, skills, and the enrichment necessary to ensure graduation from secondary school, transition from secondary school to postsecondary school, or employment;

(3) Proposed activities will be coordinated with the entities listed in § 408.10 (f) to ensure that the operations of the community education employment center will help meet current and projected occupational needs in the area;

(4) In-service training will be provided for community education employment center teachers in techniques, procedures and policies relevant to the community education employment center;

(5) Support services will be provided to meet the requirements of § 408.30; and

(6) Parental and community participation will be provided for, as required in § 408.31.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed community education employment center on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs on such factors as—

(i) Student performance, achievement, and learning gains in vocational competencies and skills;

(ii) Student performance, achievement, and learning gains in such subjects as English, mathematics, history, geography, biology, chemistry, physics, and computer science as measured by standardized tests;

(iii) High school graduation;

(iv) Placement of students in jobs, including military service; and

(v) Successful transfer of students to a wide variety of postsecondary educational programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project, including the provision for meeting and reporting on the requirements in § 408.34;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the services provided to participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to assess the effectiveness and efficiency of the plan for demonstrating and disseminating information about the project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating

those methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project, including the parent/community coordinator and personnel who will be employed to meet the requirements in § 408.33;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project;

(3) Proposes using funds available from appropriate employment, training, and education agencies in the State to provide project services and activities, and using non-Federal resources of community organizations to provide the support services described in § 408.30; and

(4) Proposes using funds or resources available from the State or local educational agency in which the center will be located or will serve to acquire community education employment center equipment and facilities in order to provide a maximum amount of resources for instructional and student services.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to assess the adequacy of resources the applicant plans to devote to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2396e, 2396g, and 2396h)

§ 408.23 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 408.22, the Secretary may select other than the most highly rated applications for funding if doing so would improve the—

(a) Distribution between applicants serving rural and urban youth; or

(b) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2396)

Subpart D—What Conditions Must Be Met After an Award?

§ 408.30 What are the requirements regarding support services?

Each grantee shall establish in its community education employment center a support system to coordinate services for students, including the following:

(a) A comprehensive program of confidential guidance counseling that provides—

(1) Guidance for career and personal decision-making and postsecondary institution placement;

(2) Mentoring and referral to appropriate social services; and

(3) An accessible counseling service to help parents to participate in the enhancement of student education.

(b) An on-site job service office to offer students—

(1) Career guidance, career development, and employment counseling that provides information about a broad range of occupations and alternative career paths;

(2) Labor market information, job development, career testing, and occupational placement services for part-time and summer employment, internships, cooperative programs, and part-time and full-time employment opportunities upon graduation; and

(3) Assistance in arranging part-time employment, so long as that employment does not adversely affect academic performance.

(c) Assistance in arranging a summer program of work, education, or enrichment sessions.

(d) To the extent possible, transportation to and from the community education employment center and part-time job sites.

(e) Access to day-care services for children of participating students.

(Authority: 20 U.S.C. 2396c)

§ 408.31 What are the requirements regarding a parent/community coordinator?

Each grantee shall employ a parent/community coordinator to provide for the active and informed participation of parents and appropriate community representatives in its community education employment center by—

(a) Encouraging parents and students to make informed decisions in reviewing and selecting a community education employment center program;

(b) Conducting regular parent seminars to—

(1) Inform parents about community education employment center operations;

(2) Obtain parent input; and

(3) Disseminate information on how parents can encourage student performance;

(c) Providing the parents of each student with a regular opportunity to meet with counselors, teachers, and the student to discuss student progress, plans, and needs;

(d) Providing a range of roles in which parents may work with students at home or as class assistants or volunteer coordinators; and

(e) Establishing a Council of Advisors as required in § 408.32.

(Authority: 20 U.S.C. 2396d(a))

§ 408.32 What are the requirements regarding a Council of Advisors?

(a) Each grantee shall establish an advisory Council of Advisors (Council) as provided in § 408.31(e).

(b) *Membership.* The Council shall consist of one representative from each of the following entities:

(1) The local educational agency in which the center is located or serves.
(2) The State council on vocational education.
(3) The State agency responsible for secondary vocational education.
(4) The student body.
(5) The local teacher organization.
(6) Guidance counselors.
(7) Community-based organizations.
(8) Parents.
(9) The appropriate private industry council established under section 102(a) of the Job Training Partnership Act (29 U.S.C. 1512).

(c) *Functions of the council.* The Council shall provide recommendations to, and work with, the grantee to—

(1) Establish annual community education employment center priorities, programs, and procedures;

(2) Establish student selection criteria to ensure that—

(i) All students in the school district have an equal opportunity to attend the community education employment center; and

(ii) Participants will be representative of the secondary school population in the school district;

(3) Promulgate a student code of conduct that must be developed in consultation with the students and teachers;

(4) Assist in the selection of the community education employment center's principal, administrators, department chairpersons, and teachers;

(5) Assist in the selection and application of assessment tools for continuous evaluation of student learning progress;

(6) Make recommendations for the selection of curriculum, textbooks, software, and other learning resources and equipment; and

(7) Make recommendations regarding the coordination of activities assisted under this part with—

(i) Activities assisted under the Job Training Partnership Act; and

(ii) School-to-work transition activities.

(Authority: 20 U.S.C. 2396d (a)(5), (b))

§ 408.33 What are the requirements regarding other center personnel?

Each grantee shall—

(a) Employ only professional staff who demonstrate the highest of academic, teaching, guidance, or administrative standards;

(b) Ensure that teachers in the center receive inservice training at least annually in techniques, procedures, and policies relevant to the community education employment center; and

(c) Employ a sufficient number of full-time certified or licensed guidance and career counselors to assist, enhance, and monitor student progress.

(Authority: 20 U.S.C. 2396e)

§ 408.34 What are the evaluation requirements?

(a) Each grantee shall provide for an independent evaluation of grant activities and student learning progress.

(b) The evaluation must be both formative and summative in nature, and must include information regarding—

(1) Student academic and vocational competencies;

(2) Student dropout rates;

(3) Employment and earnings while the students are attending the community education employment center and upon the graduation of the students from the center;

(4) Student attendance at postsecondary institutions or student enlistment into military service upon graduation from the community education employment center;

(5) Parental, student, and community participation in the activities of the community employment education center; and

(6) Project spread and transportability.

(c) A proposed project evaluation design must be submitted to the U.S. Department of Education for review and approval prior to the end of the first six months of the project period.

(d) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2396h(a))

11. Part 409 is added to read as follows:

PART 409—VOCATIONAL EDUCATION LIGHTHOUSE SCHOOLS PROGRAM

Authority: 20 U.S.C. 2396m, unless otherwise noted.

Subpart A—General

§ 409.1 What is the Vocational Education Lighthouse Schools Program?

The Vocational Education Lighthouse Schools Program provides financial assistance for the establishment and operation of vocational education lighthouse schools.

(Authority: 20 U.S.C. 2396m(a))

§ 409.2 Who is eligible for an award?

A public secondary school or area vocational education school is eligible for an award under the Vocational Education Lighthouse Schools Program.

(Authority: 20 U.S.C. 2396m(a))

§ 409.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for projects to establish vocational education lighthouse schools that—

(a) Serve as a model vocational education program that—

(1) Provides each student with knowledge of, and experience in, all aspects of an industry or enterprise the student is preparing to enter;

(2) Provides each student with basic and higher order skills and develops the student's problem solving abilities in a vocational setting;

(3) Offers exceptionally high quality programs for disadvantaged and minority students;

(4) Provides the special services and modifications necessary to help individual students successfully complete the program;

(5) Is planned, developed, and implemented with the participation of staff, local employers, and local community representatives; and

(6) Offers a full range of programs, including comprehensive career guidance and counseling, for students who plan to seek employment upon graduation or who will enroll in a two or four-year college;

(b) Provide information and assistance to other vocational eduction lighthouse schools funded under this part, vocational programs, vocational education personnel, parents, students, educators, community members, and community organizations throughout the State in which the project is located regarding—

(1) Curriculum materials;

(2) Curriculum development, especially the integration of vocational and academic education;

(3) Inservice and preservice staff development, training, and assistance through off-site activities and through a range of short-term and long-term opportunities to participate in activities at the demonstration site;

(4) Opportunities to systematically observe the model program; and

(5) Technical assistance and staff development, as appropriate;

(c) Use funds received under this program, together with funds from non-Federal sources, to develop and implement model programs containing the elements described in paragraph (a) of this section;

(d) Develop comprehensive linkages with other local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate; and

(e) Develop and disseminate model approaches—

(1) For meeting the education training needs and career counseling needs of minority students, disadvantaged students, students with disabilities, and students of limited English proficiency; and

(2) To reduce and eliminate sex bias and stereotyping.

(Authority: 20 U.S.C. 2396m(b))

§ 409.4 What regulations apply?

The following regulations apply to the National Vocational Education Lighthouse Schools Program:

(a) The regulations in this part 409.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2396m)

§ 409.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2396m)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 409.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 409.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 409.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 409.21.

(Authority: 20 U.S.C. 2396m)

§ 409.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess—

(1) The quality of the plan to—

(i) Provide each student with knowledge of, and experience in, all aspects of an industry or enterprise the student is preparing to enter;

(ii) Provide each student with basic and higher order skills and develop the student's problem solving abilities in a vocational setting;

(iii) Involve staff, local employers, and local community representatives in the planning for and development of the project;

(iv) Integrate vocational and academic education;

(v) Develop comprehensive linkages with other local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate; and

(vi) Offer exceptionally high quality programs for disadvantaged and minority students;

(2) The extent to which the project—

(i) Is specifically designed to meet the education training needs and career counseling needs of minority students, disadvantaged students, students with disabilities, and students of limited English proficiency;

(ii) Will contribute to the reduction and elimination of sex bias and stereotyping; and

(iii) Is designed in accordance with current and projected occupational needs; and

(3) The quality of the staff development plan.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed vocational education lighthouse school on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs on such factors as—

(i) Student achievement and learning gains in vocational education;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project's management design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the

Department's Program Effectiveness Panel as defined in 34 CFR 400.4.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Identification of target groups and provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project;

(3) Proposes using funds available from non-Federal sources such as appropriate employment, training, and education programs in the State to acquire vocational education lighthouse school equipment and facilities in order to devote a maximum amount of resources to instructional services; and

(4) Includes documentation of the availability of funds from non-Federal sources that will be used for activities described in § 409.3(a).

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment and capacity to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2396m)

§ 409.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 409.21, the Secretary may select other than the most highly rated applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2396m)

Subpart D—What Conditions Must Be Met After an Award?

§ 409.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, increases in academic and vocational competencies, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the U.S. Department of Education for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel shall be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2396m)

12. Part 410 is revised to read as follows:

PART 410—TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL INSTITUTIONS PROGRAM

Subpart A—General

Sec.

Subpart B—How Does One Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met After an Award?

Authority: 20 U.S.C. 2397–2397h, unless otherwise noted.

Subpart A—General

§ 410.1 What is the Tribally Controlled Postsecondary Vocational Institutions Program?

The Tribally Controlled Postsecondary Vocational Institutions Program provides grants for the operation and improvement of tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of those institutions.

(Authority: 20 U.S.C. 2397 and 2397c)

§ 410.2 Who is eligible for an award?

A tribally controlled postsecondary vocational institution is eligible for assistance under this part if it—

(a) Is governed by a board of directors or trustees, a majority of whom are Indians;

(b) Demonstrates adherence to stated goals, a philosophy or a plan of operation that fosters individual Indian economic and self-sufficiency opportunity, including programs that are appropriate to stated tribal goals of developing individual entrepreneurships and self-sustaining economic infrastructures on reservations;

(c) Has been in operation for at least three years;

(d) Holds accreditation with or is a candidate for accreditation by a nationally recognized accrediting authority for postsecondary vocational education; and

(e) Enrolls the full-time equivalency of not fewer than 100 students, of whom a majority are Indians.

(Authority: 20 U.S.C. 2397b)

§ 410.3 What activities may the Secretary fund?

The Secretary provides grants for basic support for the education and training of Indian students, including—

(a) Training costs;

(b) Educational costs;

(c) Equipment costs;

(d) Administrative costs; and

(e) Costs of operation and maintenance of the institution.

(Authority: 20 U.S.C. 2397a)

§ 410.4 What regulations apply?

The following regulations apply to the Tribally Controlled Postsecondary Vocational Institutions Program:

(a) The regulations in this part 410.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part, except for the definition of the term "Act."

(b) The following definitions also apply to this part:

Act means the Tribally Controlled Vocational Institutions Support Act of 1990.

Indian means a person who is a member of an Indian tribe.

Indian student count means a number equal to the total number of Indian students enrolled in each tribally controlled vocational institution, determined as follows:

(1) The registrations of Indian students as in effect on October 1 of each year.

(2) Credits or clock hours toward a certificate earned in classes offered during a summer term must be counted toward the computation of the Indian student count in the succeeding fall term.

(3) Credits or clock hours toward a certificate earned in classes during a summer term must be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of the student on the basis of the student's ability to benefit from the education or training offered. The institution is presumed to have established those criteria if the admission procedures for those studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. Credit earned by the student for purposes of obtaining a high school degree or its equivalent may not be counted toward the computation of the Indian student count.

(4) Indian students earning credits in any continuing education program of a tribally controlled vocational institution must be included in determining the sum of all credit or clock hours.

(5) Credits or clock hours earned in a continuing education program must be converted to the basis that is in accordance with the institution's system for providing credit for participation in those programs.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Tribally controlled postsecondary vocational institution means an institution of higher education that is formally controlled, or has been formally sanctioned or chartered by the governing body of an Indian tribe or tribes, and that offers technical degrees or certificate granting programs. This term does not include an institution that is a tribally controlled community college as defined in 34 CFR 400.4. (See Cong. Rec. S4116 (daily ed. April 5, 1990) (Statement of Senator Bingaman); Cong. Rec. H1708 (daily ed. May 9, 1989) (Statement of Rep. Richardson)).

(Authority: 20 U.S.C. 2397h and 25 U.S.C. 1801 (1) and (2))

Subpart B—How Does One Apply for an Award?

§ 410.10 What must an application contain?

An application for a grant under the Tribally Controlled Postsecondary Vocational Institutions Program must include the following:

(a) Documentation showing that the institution is eligible according to the requirements in § 410.2.

(b) A description of the fiscal control and fund accounting procedures to be used for all funds received under this program that will allow the Secretary to monitor expenditures and the Education Department Inspector General, the U.S. Comptroller General, or an independent non-Federal auditor to audit the institution's programs.

(c) An application for an institutional support grant must also contain a comprehensive development plan addressing the following:

(1) The institutional mission statement, i.e., a broad statement of purpose, that identifies its distinguishing characteristics, including the characteristics of the students the institution serves and plans to serve and the programs of study it offers and proposes to offer.

(2) Data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population.

(3) A description of how the institution is responsive to the current and projected labor market needs in its geographic area, including the institution's plans for placement of students.

(4) Assumptions concerning the institutional environment, the potential number of students to be served, enrollment trends, and economic factors which could affect the institution.

(5) Major problems or deficiencies that inhibit the institution from realizing its mission.

(6) Long-range and short-range goals that will chart the growth and development of the institution and address the problems identified under paragraph (c)(5) of this section.

(7) Measurable objectives related to reaching each goal.

(8) Time-frames for achieving the goals and objectives described in paragraphs (c) (6) and (7) of this section.

(9) Priorities for implementing improvements concerning instructional and student support, capital expenditures, equipment, and other priority areas.

(10) Major resource requirements necessary to achieve its goals and objectives, including personnel, finances, equipment, and facilities. Also provide a detailed budget identifying the costs to be paid with a grant under this program and resources available from other Federal, State, and local sources that will be used to achieve the institution's goals and objectives. Budget and cost information must be sufficiently detailed to enable the Secretary to determine the amount of payments pursuant to section 386(b)(2) of the Act. The statement must include information on allowable expenses listed in § 410.30.

(11) Strategies and resources for objectively evaluating the institution's progress towards, and success in, achieving its goals and objectives.

(d) The institution's operating expenses for the preceding fiscal year, including allowable expenses listed in § 410.30.

(e) The institution's Indian student count.

(Authority: 20 U.S.C. 2397b, 2397c(a), 2397d(b)(2)(B), and 2397f)

Subpart C—How Does the Secretary Make an Award?

§ 410.20 How does the Secretary apply the selection criteria in § 410.21?

(a) The Secretary evaluates an application on the basis of the criteria in § 410.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 401.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion in § 401.21 is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 401.21.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.21 What selection criteria does the Secretary use for institutional support grants?

The Secretary uses the following criteria to evaluate an application for an institutional support grant:

(a) *Institutional goals and objectives.* (10 points) The Secretary reviews each application to determine the extent to which the applicant's current and future institutional goals and objectives are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved.

(b) *Comprehensive development plan.* (25 points) The Secretary reviews each application to determine the extent to which the plan is effectively designed to meet the applicant's current and future institutional goals and objectives, including instructional and student support needs, and equipment and capital requirements.

(c) *Implementation strategy.* (20 points) The Secretary reviews each application to determine the extent to which an applicant's implementation strategy—

(1) For each major activity funded under this program, is comprehensive and likely to be effective, taking into account the applicant's past performance and the data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population;

(2) Includes a realistic timetable for each such activity; and

(3) Includes a staff management plan likely to ensure effective administration of the project activities.

(d) *Budget and cost effectiveness.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the proposed activities to be funded under this program, including capital expenditures and acquisition of equipment, if applicable;

(2) Costs are necessary and reasonable in relation to similar activities the institution carried out in previous years; and

(3) The budget narrative justifies the expenditures.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan the institution plans to use to determine its progress towards, and success in, achieving its goals and objectives, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected, expected outcomes, and how those outcomes will be measured;

(2) The methods of evaluation are appropriate and, to the extent possible, are objective and produce data that are quantifiable; and

(3) The methods of evaluation provide periodic data that can be used for ongoing program improvement.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.22 What additional factors does the Secretary consider?

(a) After evaluating applications according to the criteria in § 410.21 and consulting, to the extent practicable, with boards of trustees and the tribal governments chartering the institutions being considered, the Secretary determines whether the most highly rated applications are equitably distributed among Indian tribes.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects among Indian tribes.

(c) In addition to the criteria in § 410.21, the Secretary considers whether funding a particular applicant duplicates an effort already being made.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.23 How does the Secretary select grantees for institutional support grants?

(a) The Secretary selects at least two eligible applicants for funding.

(b) If only one or two applicants are eligible, the Secretary selects each eligible applicant, the amount of each grant to be determined by the quality of the application based on the selection criteria stated in § 410.22, and the respective needs of the applicants.

(c) If there are more than two eligible applicants, the Secretary ranks each applicant using the selection criteria in § 410.22. The Secretary funds two or more applicants, taking into account the quality of the applications and the respective needs of the applicants.

(d) For fiscal years subsequent to the first year of funding, the Secretary follows the procedure in paragraphs (a) through (c) of this section, except that if appropriations for that fiscal year are not sufficient to pay in full the total amount that approved applicants are eligible to receive, the Secretary allocates the available grant amounts as required by section 388(a) of the Act.

(Authority: 20 U.S.C. 2397c(b))

§ 410.24 How does the Secretary award additional grants?

If funds remain after providing grants to all eligible institutions, the Secretary makes awards as follows:

(a) The Secretary allocates funds to institutions receiving their first grant under this part in an amount equal to the training equipment costs necessary to implement training programs.

(b) If funds remain after the Secretary makes awards under paragraph (a) of this section, the Secretary reviews training equipment needs at each institution receiving assistance under this part at the end of the five year period beginning on the first day of the first year for which the institution received a grant under this part, and provides allocations for other training equipment needs if it is demonstrated by the institution that its training equipment has become obsolete for its purposes, or that the development of other training programs is appropriate.

(Authority: 20 U.S.C. 2397d(d))

Subpart D—What Conditions Must Be Met After an Award?

§ 410.30 What expenses are allowable under an institutional support grant?

An institutional support grant may only be used to pay expenses associated with the following:

(a) The maintenance and operation of the program, including—

(1) Development costs;

(2) Costs of basic and special instruction, including special programs for individuals with disabilities and academic instruction;

(3) Materials;

(4) Student costs;

(5) Administrative expenses;

(6) Boarding costs;

(7) Transportation;

(8) Student services;

(9) Day care and family support programs for students and their families, including contributions to the costs of education for dependents; and

(10) Training equipment costs necessary to implement training programs.

(b) Capital expenditures, including operations and maintenance and minor improvements and repair, physical plant maintenance costs

(c) Costs associated with repair, upkeep, replacement, and upgrading of instructional equipment.

(Authority: 20 U.S.C. 2397d(a), (d))

§ 410.31 What other provisions apply to this program?

(a) Except as specifically provided in the Act, eligibility for assistance under this part may not preclude any tribally controlled postsecondary vocational institution from receiving Federal financial assistance under any program authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*) or any other applicable program for the benefit of institutions of higher education or vocational education.

(b) No tribally controlled postsecondary vocational institution for which an Indian tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13) may be denied a contract for that portion under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*) (except as provided in that Act), or denied appropriate contract support to administer that portion of the appropriated funds.

(Authority: 20 U.S.C. 2397e)

13. Part 411 is revised to read as follows:

PART 411—VOCATIONAL EDUCATION RESEARCH PROGRAM

Authority: 20 U.S.C. 2401 and 2402, unless otherwise noted.

Subpart A—General

§ 411.1 What is the Vocational Education Research Program?

The Vocational Education Research Program is designed to—

(a) Improve access to vocational educational programs for disabled individuals, individuals who are disadvantaged, men and women who are entering nontraditional occupations, adults who are in need of retraining, single parents, displaced homemakers, single pregnant women, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(b) Support research and development activities that make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population by concentrating resources on improving educational programs leading to academic and occupational skill competencies needed to work in a technologically advanced society;

(c) Improve the competitive process by which research projects are awarded;

(d) Encourage the dissemination of findings of research projects assisted under the Act to all States; and

(e) Support research activities that are readily applicable to the vocational education setting and are of practical application to vocational education administrators, counselors, instructors, and others involved in vocational education.

(Authority: 20 U.S.C. 2401)

§ 411.2 Who is eligible for an award?

(a) Any individual or public or private agency, organization, or institution may apply for an award under this part.

(b) Any individual researcher, community college, State advisory council, or State or local educator may submit an unsolicited research application.

(Authority: 20 U.S.C. 2402(a), (b))

§ 411.3 What activities may the Secretary fund?

The Secretary may directly, or through grants, cooperative agreements, or contracts, conduct applied research on aspects of vocational education that are specially related to the Act, including the following:

(a) Applied research on—

(1) Effective methods for providing quality vocational education to disabled individuals, disadvantaged individuals, men and women in nontraditional fields, adults, single parents, displaced homemakers, single pregnant women, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(2) The development and implementation of performance standards and measures that fit within the needs of State boards of vocational education or eligible recipients as defined in 34 CFR 400.4 in carrying out the provisions of the Act and on the relationship of those standards and measures to the data system established under section 421 of the Act. Research may include an evaluation of existing performance standards and measures and dissemination of that information to State boards of vocational education and eligible recipients;

(3) Strategies for coordinating local, State, and Federal vocational education, employment training, and economic development programs to maximize their efficacy and for improving worker training and retraining;

(4) The constructive involvement of the private sector in public vocational education;

(5) Successful methods of reinforcing and enhancing basic and more advanced academic and problem-solving skills in vocational settings;

(6) Successful methods for providing students, to the maximum extent practicable, with experience in and understanding of all aspects of the industry those students are preparing to enter; and

(7) The development of effective methods for providing quality vocational education to individuals with limited English proficiency, including research related to bilingual vocational training.

(b) An evaluation of the use of performance standards and measures under the Act and the effect of those standards and measures on the participation of students in vocational education programs and on the outcomes of students in those programs, especially students who are members of special populations as defined in 34 CFR 400.4.

(Authority: 20 U.S.C. 2402(a))

§ 411.4 What regulations apply?

The following regulations apply to the Vocational Education Research Program:

(a) The regulations in this Part 411.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2401 and 2402)

§ 411.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2401 and 2402)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 411.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 411.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of the section, based on the criteria in § 411.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 411.21.

(e) The Secretary awards five points to applications submitted by public or private postsecondary institutions.

(Authority: 20 U.S.C. 2402)

§ 411.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *National need.* (20 points) The Secretary reviews each application to determine the extent to which the project would make a contribution of national significance, as measured by such factors as—

(1) The need for the project in relation to any program priority announced in the **Federal Register**; and

(2) The likelihood that the project will make an important contribution to vocational education.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (15 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable and necessary in relation to the objectives of the project.

(e) *Evaluation plan.* (5 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(4) If appropriate, identifies expected outcomes of the project participants and how those outcomes will be measured;

(5) If appropriate, will lead to the demonstration of a clear link between the intended positive results and the specific treatment of project participants; and

(6) To the extent possible, include a third party evaluation.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(2) A clear description of the project outcomes; and

(3) A detailed description of how information and materials will be disseminated, including—

(i) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journals articles, newsletters, and brochures;

(ii) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques; and

(iii) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(Authority: 20 U.S.C. 2402)

§ 411.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 411.21 the Secretary may select other than the most highly rated applications for funding if doing so would—

(a) Improve the geographical distribution of projects funded under this program; or

(b) Contribute to the funding of a variety of approaches for carrying out the activities under this part.

(Authority: 20 U.S.C. 2401 and 2402)

§ 411.23 How does the Secretary evaluate unsolicited applications?

(a) At any time during a fiscal year, the Secretary may accept and consider for funding an unsolicited application that has not been submitted under a competition announced in the **Federal Register** for that fiscal year, if the project proposes activities described in § 411.3.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the **Federal Register.**

(c) The Secretary may select an unsolicited application for funding in accordance with the procedures in §§ 411.20(e) and 411.24.

(d) The Secretary assigns the 15 points reserved under § 411.20(b) as follows:

(1) Ten points to the selection criterion in § 411.21(a)—national need.

(2) Five points to the selection criterion in § 411.21(b)—plan of operation.

(Authority: 20 U.S.C. 2402)

§ 411.24 How does the Secretary select an unsolicited application for funding?

(a) After evaluating an unsolicited research application on the basis of the criteria in § 411.21, the Secretary compares that application to other unsolicited research applications the Secretary has received.

(b) The Secretary may fund an unsolicited research application at any time during the fiscal year.

(Authority: 20 U.S.C. 2402)

14. Part 412 is revised to read as follows:

PART 412—NATIONAL NETWORK FOR CURRICULUM COORDINATION IN VOCATIONAL AND TECHNICAL EDUCATION

Subpart A—General

Authority: 20 U.S.C. 2402(c), unless otherwise noted.

Subpart A—General

§ 412.1 What is the National Network for Curriculum Coordination in Vocational and Technical Education?

The National Network for Curriculum Coordination in Vocational and Technical Education (Network) is a system of six curriculum coordination centers that disseminate information resulting from research and development activities carried out under the Act, in order to ensure broad access at the State and local levels to the information being disseminated.

(Authority: 20 U.S.C. 2402(c))

§ 412.2 Who is eligible for an award?

State and local educational agencies, postsecondary educational institutions, and other public and private agencies, organizations, and institutions are eligible for an award under this program.

(Authority: 20 U.S.C. 2402(c))

§ 412.3 What activities may the Secretary fund?

(a) The Secretary provides grants, cooperative agreements, or contracts to six regional curriculum coordination centers (CCCs).

(b) Each CCC must—

(1) Provide for national dissemination of information on effective vocational and technical education programs and materials, with particular attention to regional programs;

(2) Be accessible by electronic means;

(3) Provide leadership and technical assistance in the design, development, and dissemination of curricula for vocational education;

(4) Coordinate the sharing of information among the States with respect to vocational and technical education curricula;

(5) Reduce duplication of effort in State activities for the development of vocational and technical education curricula; and

(6) Promote the use of research findings with respect to vocational education curricula.

(c) The six regional CCCs assisted with funds under this program must serve States according to the Department of Education's regional alignment as follows:

(1) The Northeast Curriculum Coordination Center serves Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands.

(2) The Southeast Curriculum Coordination Center serves Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

(3) The East Central Curriculum Coordination Center serves Delaware, the District of Columbia, Indiana, Illinois, Maryland, Michigan, Minnesota, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin.

(4) The Midwest Curriculum Coordination Center serves Arkansas, Iowa, Kansas, Louisiana, Missouri,

Nebraska, New Mexico, Oklahoma, and Texas.

(5) The Northwest Curriculum Coordination Center serves Alaska, Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(6) The Western Curriculum Coordination Center serves American Samoa, Arizona, California, Guam, Hawaii, Nevada, the Northern Mariana Islands, and Palau until the Compact of Free Association with Palau takes effect.

(Authority: 20 U.S.C. 2402(c))

§ 412.4 What is the National Network of Directors Council?

(a) The National Network of Directors Council (Council) enhances the effectiveness of the Network by—

(1) Planning for inter-center coordination, dissemination, and diffusion activities;

(2) Providing leadership to ensure cohesiveness for overall Network functions;

(3) Promoting the adoption and adaptation of curriculum materials;

(4) Maintaining liaison with dissemination systems described in § 412.32;

(5) Convening at least twice a year; and

(6) Planning for and participating in an annual meeting of CCCs that includes activities such as displays of current curriculum materials from each CCC, inservice training sessions, and hands-on experience with new technologies in vocational and technical education. This meeting is to be hosted in a different region each year.

(b) The Council is composed of the six CCC directors and a liaison from the Department. One of the CCC directors serves as chair for the Council and has responsibilities for submitting minutes of Council meetings to the Secretary.

(Authority: 20 U.S.C. 2402(c))

§ 412.5 What regulations apply?

The following regulations apply to the National Network for Curriculum Coordination in Vocational and Technical Education:

(a) The regulations in this part 412.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2402(c))

§ 412.6 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2402(c))

Subpart B—[Reserved]

Subpart C—How Does the Secretary make an Award?

§ 412.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 412.21.

(b) The Secretary may award up to 100 points including 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 412.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 412.21.

(Authority: 20 U.S.C. 2402(c))

§ 412.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Regional need.* (30 points) The Secretary reviews each application to determine the applicant's understanding of and responsiveness to the needs of the region, including the extent to which the applicant—

(1) Demonstrates an understanding of the leadership responsibilities associated with serving as a resource center and facilitator for States in a region, including the region's need for inservice training, holding regional meetings, providing technical assistance, coordinating with State directors of vocational education, maintaining a lending library, and disseminating information regularly;

(2) Proposes adequate mechanisms and procedures for reporting the results of curriculum networking services and activities of the 50 States, District of Columbia, Puerto Rico, and the Outlying Areas;

(3) Demonstrates the capacity to disseminate information on effective vocational education materials, including curriculum materials;

(4) Demonstrates an understanding of the operation of the Vocational Education Curriculum Materials (VECM) and ADVOCNET Systems and the need for establishing a Tech-Prep education clearinghouse; and

(5) Demonstrates the capacity to undertake the responsibilities associated with participation as a member of the Network Directors Council described in § 412.4.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the management plan ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraph (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine the personnel qualifications under paragraph (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in the fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Institutional commitment.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Has experience with vocational education curriculum and dissemination;

(2) Will initiate and maintain liaison functions with regional States; and

(3) Will provide adequate facilities, equipment, and supplies.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities; and

(2) The budget contains costs that are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project; and

(2) Identifies expected outcomes of the services provided and how those services will be measured.

(Authority: 20 U.S.C. 2402(c))

Subpart D—What Conditions Must Be Met After An Award?

§ 412.30 What additional activities must be carried out by Curriculum Coordination Centers?

In carrying out the activities described in § 412.3, each CCC must perform the following activities:

(a) Assist States in the development, adaptation, adoption, dissemination, and use of curriculum materials and services and other information resulting from research and development activities carried out under the Act, including performing these activities during at least two regional meetings involving States served by the CCC. One of these regional meetings must be conducted jointly with the other five CCCs and their regional States at the meeting described in § 412.4(a)(6).

(b) Coordinate with other curriculum coordination centers funded under this part.

(c) Coordinate with the State salaried State liaison representative (SLR), who is appointed by the State director of vocational education. The SLR has primary responsibilities for liaison activities within the States, including—

(1) Obtaining new curriculum and research and development materials for Network sharing;

(2) Informing localities and State agencies of Network services;

(3) Disseminating CCC related materials;

(4) Arranging for intrastate and interstate development and dissemination activities;

(5) Arranging for technical assistance and inservice training workshops;

(6) Participating in regional CCC meetings; and

(7) Fostering adoption and adaptations of materials available through the CCC.

(d) Maintain a lending library with a collection of vocational education curriculum, research, and development materials for use by the States served by the CCC.

(e) Each CCC must participate in the Council activities described in § 412.4.

(Authority: 20 U.S.C. 2402(c))

§ 412.31 What existing dissemination systems must be used?

In carrying out its activities, each CCC must use existing dissemination systems, including the National Diffusion Network and the National Center or Centers for Research in Vocational Education, in order to ensure broad access at the State and local levels to the information being disseminated.

(Authority: 20 U.S.C. 2402(c))

15. A new part 413 is added to read as follows:

PART 413—NATIONAL CENTER OR CENTERS FOR RESEARCH IN VOCATIONAL EDUCATION

Subpart A—General

Authority: 20 U.S.C. 2404, unless otherwise noted.

Subpart A—General

§ 413.1 What is the National Center or Centers for Research in Vocational Education?

The Secretary supports the establishment of one or two National Centers for Research in Vocational Education (National Center) in the areas of—

(a) Applied research and development; and

(b) Dissemination and training.

(Authority: 20 U.S.C. 2404)

§ 413.2 Who is eligible to apply for the National Center or Centers?

An institution of higher education or consortium of institutions of higher education may apply to be a National Center under this part.

Cross-Reference: See 34 CFR 75.127 through 75.129, Group Applications.

(Authority: 20 U.S.C. 2404(a)(5))

§ 413.3 What kinds of activities are carried out?

The Secretary provides a grant or cooperative agreement to a National Center or Centers that are designed to perform either one or both of the activities described in paragraphs (a) and (b) of this section.

(a) *Applied research and development activities.* (1) A major purpose of the National Center is to design and conduct research and development activities that are consistent with the purpose of the Act, including—

(i) Longitudinal studies which extend over a period of years;

(ii) Supplementary and short term activities; and

(iii) Upon negotiation with the center, and if funds are provided pursuant to section 404(d) of the Act, such other topics as the Secretary may designate.

(2) The National Center shall conduct applied research and development activities which include examination of the following:

(i) Economic changes that affect the skills which employers seek and entrepreneurs need.

(ii) Integration of academic and vocational education.

(iii) Efficient and effective practices for addressing the needs of special populations.

(iv) Efficient and effective methods for delivering vocational education.

(v) Articulation of school and college instruction with high quality work experience.

(vi) Recruitment, education, and enhancement of vocational teachers and other professionals in the field.

(vii) Accountability processes in vocational education, to include identification and evaluation of the use of appropriate performance standards for student, program, and State-level outcomes.

(viii) Effective practices that educate students in all aspects of the industry the students are preparing to enter.

(ix) Effective methods for identifying and inculcating literacy and other communication skills essential for effective job preparation and job performance.

(x) Identification of strategic, high priority occupational skills and skills formation approaches needed to maintain the competitiveness of the United States workforce, sustain high-wage, high-technology jobs and that address national priorities such as technical jobs needed to protect and restore the environment.

(xi) Identification of practices and strategies that address entrepreneurial development for minority-owned enterprises.

(xii) The applied research and development activities must include—

(A) An emphasis on the recruitment, education, and enhancement of minority and female vocational teachers and professionals; and

(B) Activities that aid in the development of minorities and women for leadership roles in vocational education.

(b) *Dissemination and training activities.* (1) A major purpose of the National Center is to design and conduct dissemination and training activities that are consistent with the purposes of the Act, including—

(i) The broad dissemination of the results of the research and development conducted by the National Center;

(ii) The development and utilization of a national level dissemination network including functions such as clearinghouses, databases, and telecommunications;

(iii) Planning, developing, and conducting training activities; and

(iv) Upon negotiation with the Center and if funds are provided pursuant to section 404(d) of the Act, such other topics as the Secretary may designate.

(2) The National Center shall conduct dissemination and training activities that include the following:

(i) Teacher and administrator training and leadership development.

(ii) Technical assistance to ensure that programs serving special populations are effective in delivering well-integrated and appropriately articulated vocational and academic offerings for secondary, postsecondary, and adult students.

(iii) Needs assessment, design, and implementation of new and revised programs with related curriculum materials to facilitate vocational-academic integration.

(iv) Evaluation and follow-through to maintain and extend quality programs.

(v) Assistance in technology transfer and articulation of program offerings from advanced technology centers to minority enterprises.

(vi) Assistance to programs and States on the use of accountability indicators, including appropriate and innovative performance standards.

(vii) Delivery of information and services using advanced technology, where appropriate, to increase the effectiveness and efficiency of knowledge transfer.

(viii) Development of processes for synthesis of research, in cooperation with a broad array of users, including vocational and non-vocational educators, employers and labor organizations.

(ix) Dissemination of exemplary curriculum and instructional materials, and development and publication of curriculum materials (in conjunction with vocational and non-vocational constituency groups, where appropriate).

(x) Technical assistance in recruiting, hiring, and advancing minorities in vocational education.

(xi) The training and leadership development activities must include an emphasis on—

(A) Training minority and female teachers; and

(B) Programs and activities that aid in the development of minorities and women for leadership roles in vocational education.

(3) Advanced technology may include audio-video cassettes, electronic networking, satellite-assisted programming, computer-based conferencing, and interactive video.

(Authority: 20 U.S.C. 2404 (b) and (c); House Report No. 101–660, 101st Cong. 2nd Sess. p. 143 (1990))

§ 413.4 How does the Secretary designate a National Center or Centers?

(a) The Secretary designates a National Center or Centers once every five years.

(b) In designating the National Center or Centers for Research in Vocational Education, the Secretary may support—

(1) One National Center that conducts both research and development activities and dissemination and training activities; or

(2) Two National Centers: One that conducts research and development activities and one that conducts dissemination and training activities.

(Authority: 20 U.S.C. 2404)

§ 413.5 What regulations apply?

The following regulations apply to the National Center or Centers:

(a) The regulations in this part 413.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2404)

§ 413.6 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part, except that the term "institution of higher education" has the same meaning as provided in 34 CFR 403.117(b).

(Authority: 20 U.S.C. 1085(b) and 2404)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 413.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 413.21 and 413.22.

(b) The Secretary may award up to 100 points to each set of criteria in §§ 413.21 and 413.22, including a reserved 15 points for each set of criteria to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d), the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in §§ 413.21 and 413.22.

(e) The Secretary may hold two separate competitions, with the same closing date, for the National Center or Centers. One competition will be held for research and development activities and the second competition will be held for dissemination and training activities. An institution of higher education or consortium of higher education institutions may submit a research and development application; a dissemination and training application; or both as separate applications under separate covers.

(f) Those institutions or consortiums that rank the highest in each competition will be funded and two awards will be given. If two separate applications from the same institution or consortium of institutions are ranked the highest in both competitions, then one award will be given to that institution or consortium of institutions.

(g) The Secretary evaluates applications for the research and development center and the dissemination and training center independently against the criteria in §§ 413.21 and 413.22 whether an institution or consortium of institutions is competing for either or both sets of activities.

(h) If an institution or consortium submits two applications and demonstrates that it can effectively carry out both the activities described in §§ 413.3 (a) and (b) either directly or through contracting with other public agencies and public and private institutions of higher education, that institution or consortium may be given up to five preference points in the competition for the research and development center and up to five preference points in the competition for the dissemination and training center.

(Authority: 20 U.S.C. 2404)

§ 413.21 What selection criteria does the Secretary use to evaluate an application proposing research and development activities?

The Secretary uses the following selection criteria in evaluating each research and development application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which each of the required research and development activities described in § 413.3(a)(2) will be of high quality and effective.

(b) *Plan of operation.* (35 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed center, including—

(1) The applicant's plan for managing the National Center;

(2) The procedures the applicant will use to implement the National Center particularly with regard to the public or private nonprofit institution of higher education with which it is associated and, in the case of a consortium, with the other member institutions of the consortium;

(3) The applicant's plan for managing the National Center's activities and personnel, including—

(i) Quality control procedures for its activities;

(ii) Procedures for assuring compliance with timelines;

(iii) Coordination procedures for communicating among staff, subcontractors, members of the consortium, if any, and the Department of Education;

(iv) Procedures for ensuring that adequate progress is being made toward achieving the goals of the grantee by subcontractors, and members of a consortium; and

(v) Procedures for ensuring that adequate budget, accounting, and recordkeeping procedures will be used.

(4) The quality of the applicant's detailed plans for year one of the National Center, including—

(i) Methodology and plan of operation;

(ii) Tasks and timelines;

(iii) Deliverables; and

(iv) Dissemination plans for each project.

(5) The quality of the applicant's general plans for developing appropriate, coherent, and effective vocational education research and development activities, or dissemination and training activities, or both, for years two through five.

(c) *Key personnel.* (10 points) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use for the National Center, including—

(1) The extent to which the Director of the National Center has—

(i) Appropriate professional qualifications, relevant project management experience, and administrative skills;

(ii) A commitment to work full time at the National Center;

(iii) A clear commitment to the goals of the project;

(iv) Sufficient authority to effectively manage the activities of the National Center; and

(v) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) The extent to which other key personnel to be used for the National Center—

(i) Have experience and training in project management and in fields related to the proposed activities they will be carrying out; and

(ii) Will commit sufficient time to the project.

(d) *Vocational education experience.* (10 points) The Secretary reviews each application to determine the extent to which the applicant understands the state of knowledge and practice related to vocational education, including—

(1) The applicant's experience in conducting applied research and development activities and/or dissemination and training activities in the field of vocational education of the type described in § 413.3;

(2) The applicant's capacity for conducting applied research and development activities and/or dissemination and training activities in the field of vocational education of the type described in § 413.3; and

(3) How the activities of the National Center will contribute to the advancement of relevant theory and practice in vocational education.

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The Center has an adequate budget that is cost effective;

(2) The budget is adequate to support the Center's activities; and

(3) Costs are reasonable in relation to the objectives of the Center.

(f) *Coordination activities.* (5 points) The Secretary reviews each application to determine the extent to which there is an effective plan for the coordination of activities described in § 413.3 (a) and (b) whether these activities are carried out between two institutions or within one institution.

(Authority: 20 U.S.C. 2404)

§ 413.22 What selection criteria does the Secretary use to evaluate an application proposing dissemination and training activities?

The Secretary uses the following selection criteria in evaluating each dissemination and training application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which each of the required dissemination and training activities, described in § 413.3(b), will be of high quality and effective.

(b) The selection criteria and points in § 413.21 (b), (c), (d), (e), and (f).

(Authority: 20 U.S.C. 2404)

Subpart D—What Conditions Must Be Met After an Award?

§ 413.30 What are the restrictions on the use of funds?

(a) A National Center that performs both research and development activities and dissemination and training activities shall use at least two thirds of its award for applied research and development.

(b) Not more than 10 percent of each year's budget for a National Center may be used to respond to field-initiated needs unanticipated prior to the annual funding period and that are in the mission of the National Center, but not part of the scope of work of the grant or cooperative agreement.

(Authority: 20 U.S.C. 2404 (a)(3) and (b))

§ 413.31 Must a National Center have a director?

A National Center must have a full time director who is appointed by the institution serving as the grantee.

(Authority: 20 U.S.C. 2404)

§ 413.32 What are the requirements for coordination?

If the Secretary designates two National Centers, the two centers must coordinate their activities.

(Authority: 20 U.S.C. 2404)

§ 413.33 What substantive studies must the National Center or Centers conduct and submit?

(a) The National Center conducting research and development activities shall annually prepare a study on the research conducted on approaches that lead to effective articulation for the education-to-work transition, including tech-prep programs, cooperative education or other work-based programs, such as innovative apprenticeship or mentoring approaches.

(b) The National Center conducting dissemination and training activities shall annually prepare a study of its dissemination and training activities.

(c) Annual studies described in paragraphs (a) and (b) of this section must be submitted to the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, the Committee on Labor and Human Resources of the Senate, and the Committee on Education and Labor of the House of Representatives.

(Authority: 20 U.S.C. 2404 (b)(2) and (c)(2))

§ 413.34 What activities must be performed during the final year of an award?

During the fifth year of the award cycle, the National Center or Centers shall develop and remain prepared to implement a contingency plan for completing all substantive work by the end of the eleventh month of that year and transferring all projects, services, and activities to a successor during the twelfth month of that year.

(Authority: 20 U.S.C. 2404)

16. Part 414 is revised to read as follows:

PART 414—MATERIALS DEVELOPMENT IN TELECOMMUNICATIONS PROGRAM

Subpart A—General

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met After an Award?

Authority: 20 U.S.C. 2412, unless otherwise noted.

Subpart A—General

§ 414.1 What is the Materials Development in Telecommunications Program?

The Materials Development in Telecommunications Program provides financial assistance for the development, production, and distribution of instructional telecommunications materials and services for use in local vocational and technical educational schools and colleges.

(Authority: 20 U.S.C. 2412)

§ 414.2 Who is eligible for an award?

A public or private nonprofit educational telecommunication entity is eligible for an award under this part.

(Authority: 20 U.S.C. 2412)

§ 414.3 What activities may the Secretary fund?

The Secretary may support, through grants or cooperative agreements, projects that develop, produce, and distribute—

(a) A sequential course of study that includes either pre-produced video courseware or direct interactive teaching delivered via satellite, accompanied by a variety of print and computer-based instructional materials;

(b) Individual videocassettes or a series of videocassettes that supplement instruction that must be distributed both via broadcast and non-broadcast means;

(c) Videodiscs that produce simulated hands-on training; or

(d) Teacher training programs for vocational educators and administrators and correctional educators.

(Authority: 20 U.S.C. 2412)

§ 414.4 What regulations apply?

The following regulations apply to the Materials Development in Telecommunication Program:

(a) The regulations in this part 414.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2412)

§ 414.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2412)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 414.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the **Federal Register** the priorities for this program from the list of priorities in paragraph (b) of this section.

(b) In awarding grants under this part, the Secretary may give priority to programs or projects that serve—

(1) Students in area vocational and technical schools;

(2) Teachers, administrators, and counselors in need of training or retraining;

(3) Out-of-school adults in need of basic skills improvement or a high school equivalency diploma to improve the employability of these individuals;

(4) College students, particularly those who are working toward a two-year associate degree from a technical or community college;

(5) Workers in need of basic skills, vocational instruction, or career counseling to retain for employment; or

(6) Workers who need to improve their skills to obtain jobs in high-growth industries.

(Authority: 20 U.S.C. 2412)

§ 414.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 414.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section based on the criteria in § 414.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parenthesis after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 414.22.

(Authority: 20 U.S.C. 2412)

§ 414.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Educational significance.* (20 points) The Secretary reviews each application to assess the quality of the proposed project, including the extent to which the applicant—

(1) Provides a clear description of the plan to develop, produce, and distribute quality instructional telecommunication materials and services;

(2) Proposes using innovative techniques and approaches to educational problems and needs that are of national significance;

(3) Provides a clear description of how the proposed project will contribute to the improvement of education by promoting the use of instructional telecommunications materials and services in local vocational and technical educational schools and colleges;

(4) Provides a clear description of how the proposed project will provide electronic learning opportunities for populations described in § 414.20(b)(1)–(6); and

(5) Describes a project that is likely to make a significant contribution to the use of telecommunications in vocational education.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed project, including—

(1) The quality of the design of the project, especially the establishment of measurable objectives for the project that are based on the project's overall goals and relate to the purpose of this program;

(2) The extent to which the plan of management is effective, ensures proper and efficient administration of the project, and includes timelines that show starting and ending dates for all tasks, activities, and significant events;

(3) Specific procedures that clearly describe how the project's objectives will be accomplished;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(c) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications and experience of the project director;

(ii) The documentation of the project director's availability at the start of the project and a time commitment to the project;

(iii) The qualifications and experience of each of the other key personnel to be used on the project;

(iv) The appropriateness of the time that each person referred to in paragraphs (c)(1) (i) and (iii) of the section will commit to the project; and

(v) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (iii) of this section, the Secretary considers—

(i) The experience and training of key personnel in fields related to the objectives of the project;

(ii) The experience and training of key personnel in project management; and

(iii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is cost effective and adequate to support the project activities;

(2) The proposed expenditures for each budget category are justified in a budget narrative; and

(3) Costs are necessary and reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) Will determine the effectiveness of the project in meeting the purposes of this program;

(3) Will determine the effect of the project on learning gains/competencies of persons being served by the project, especially as appropriate—

(i) Students in area vocational and technical schools;

(ii) Teachers, administrators, and counselors in need of retraining;

(iii) Out-of-school adults in need of basic skills or a high school equivalency diploma;

(iv) College students in tech-programs; and

(v) Workers in need of basic skills, vocational instruction, or upgraded job skills.

(4) Will produce quantifiable data on the project objectives, including, as appropriate, information on—

(i) The demographic characteristics and numbers of individual participants being served and the schools they attend;

(ii) The services provided to participants, including information on duration, intensity, and costs; and

(iii) The effect of services on the quality of curriculum, the retention of students in programs, and the academic and vocational competencies of students in vocational education programs.

(f) *Dissemination.* (10 points) The Secretary reviews each application to determine whether the applicant has an effective and efficient plan for disseminating information about the project, including—

(1) The design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) A description of the types of materials the applicant plans to make available and the methods for making the materials available, including information about the project, the results of the project, and any specialized materials developed by the project;

(3) Provisions for assisting others to adopt and successfully implement the projects or methods and techniques developed by the project; and

(4) Provisions for publicizing the findings of the project at the local, State, and national level.

(Authority: 20 U.S.C. 2412)

§ 414.23 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 414.22, the Secretary may select other than the most highly rated applications for funding if doing so would—

(a) Improve the geographical distribution of projects funded under this program; or

(b) Contribute to the funding of a variety of approaches for carrying out the activities under this program.

(Authority: 20 U.S.C. 2412)

Subpart D—What Conditions Must Be Met After an Award?

§ 414.30 What cost-sharing requirements must be met?

(a)(1) *Federal share.* The Secretary pays no more than the Federal share of the cost of each project.

(2) The Federal share of the cost of each project assisted under this part is 50 percent.

(b) *Non-Federal share.* The non-Federal share of the cost of each project assisted under this part must be provided from non-Federal sources.

Cross-Reference: See 34 CFR part 74, subpart G—Cost Sharing or Matching.

(Authority: 20 U.S.C. 2412)

17. Part 415 is revised to read as follows:

PART 415—DEMONSTRATION CENTERS FOR THE TRAINING OF DISLOCATED WORKERS PROGRAM

Subpart A—General

Authority: 20 U.S.C. 2413, unless otherwise noted.

Subpart A—General

§ 415.1 What is the Demonstration Centers for the Training of Dislocated Workers Program?

The Demonstration Centers for the Training of Dislocated Workers Program provides financial assistance for establishing one or more demonstration centers for the retraining of dislocated workers.

(Authority: 20 U.S.C. 2413(a))

§ 415.2 Who is eligible for an award?

A private nonprofit organization that is eligible to receive funding under title III of the Job Training Partnership Act (JTPA) (29 U.S.C. 1651 *et seq.*) is eligible to receive an award under this program.

(Authority: 20 U.S.C. 2413(d))

§ 415.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements for one or more centers that demonstrate the retraining of dislocated workers.

(b) Each center funded by the Secretary must be designed and operated to provide for the use of appropriate existing Federal, State, and local programs and resources.

(c) Each center may use funds to provide for—

(1) The recruitment of unemployed workers;

(2) Vocational evaluation;

(3) Assessment and counseling services;

(4) Vocational and technical training;

(5) Support services; or

(6) Job placement assistance.

(Authority: 20 U.S.C. 2413(a))

§ 415.4 What regulations apply?

The following regulations apply to the Demonstration Centers for the Training of Dislocated Workers Program:

(a) The regulations in this part 415.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2413)

§ 415.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2413)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 415.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 415.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 415.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 415.21.

(Authority: 20 U.S.C. 2413)

§ 415.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the extent to which the proposed demonstration center for the training of dislocated workers will—

(1) Be located in a service area with a high concentration of dislocated workers, as supported by specific evidence of the need for the proposed demonstration center;

(2) Provide vocational education and technical training to meet current and projected occupational needs;

(3) Provide trainees with appropriate vocational evaluation, assessment, and counseling, support services, and job placement assistance;

(4) Result in trainees becoming employed in jobs related to their training upon completion of their training; and

(5) Use other appropriate Federal, State, and local programs to retrain, or provide services to, dislocated workers.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed demonstration center for the training of dislocated workers on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs, in such factors as—

(i) Student performance and achievement in vocational and technical training;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use innovative techniques to address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective including the use of appropriate existing Federal, State, and local programs; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Identification of target groups and provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities;

(2) The budget contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) The budget proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire demonstration center equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2413)

§ 415.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 415.21, the Secretary may select other than the most highly rated applications if doing so would improve the geographical distribution of projects funded under this program.

(Authority: U.S.C. 2413)

Subpart D—What Conditions Must Be Met After an Award?

§ 415.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2413)

18. Part 416 is revised to read as follows:

PART 416—VOCATIONAL EDUCATION TRAINING AND STUDY GRANTS PROGRAM

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

Authority: 20 U.S.C. 2414(a), unless otherwise noted.

Subpart A—General

§ 416.1 What is the Vocational Education Training and Study Grants Program?

The Vocational Education Training and Study Grants Program provides financial assistance for vocational teacher education, undergraduate or graduate training in vocational education, and vocational education student internships.

(Authority: 20 U.S.C. 2414(a))

§ 416.2 Who is eligible for an award?

An institution of higher education, State education agency, or State correctional education agency is eligible for an award under this part.

(Authority: 20 U.S.C. 2414(a))

§ 416.3 What activities may the Secretary fund?

The Secretary supports grants or cooperative agreements for eligible agencies or institutions to provide—

(a) Undergraduate and graduate training in vocational education;

(b) Vocational teacher education; and

(c) Opportunities for further study and professional development for gifted and talented students in vocational education programs by interning with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(a))

§ 416.4 What regulations apply?

The following regulations apply to the Vocational Education Training and Study Grants Program:

(a) The regulations in this part 416.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(a))

§ 416.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Dependent means an individual's legal spouse, natural or adopted minor child, or any other person claimed as a dependent by that individual for Federal income tax purposes.

Stipend means funds used for room and board and personal living expenses, including an allowance for subsistence and other expenses for the individual and his or her dependents.

(Authority: 20 U.S.C. 2414(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 416.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 416.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 416.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 416.21.

(Authority: 20 U.S.C. 2414(a))

§ 416.21 What selection criteria does the Secretary use?

(a) *Project design.* (20 points) The Secretary reviews each application to determine the quality of the project design, including—

(1) The extent to which the applicant understands and has responded to any program priorities announced in the **Federal Register** for the grant competition;

(2) The geographic area to be served and of the specific training or internships to be provided, including the purposes of the training or internships;

(3) The objectives of the project;

(4) The institutional and participant selection procedures;

(5) How resources and personnel (including resources and personnel of other entities) will be used to achieve each objective;

(6) When in each budget period the applicant plans to meet each objective;

(7) The extent to which the design of the project is practical and effective to achieve the purposes and goals in § 416.3; and

(8) The extent to which the management plan provides adequately for monitoring, supervising, and evaluating all entities and individuals participating in the program.

(b) *Applicant commitment and experience.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The applicant's selection procedures, including priorities and criteria, will be effective for selecting the institutions, agencies, organizations, and Center or Centers in which trainees will be placed; and

(2) The applicant has demonstrated competence and experience in operating training or internship programs similar to that proposed, including how, if applicable, its capabilities will be extended through subgrants, contracts, or agreements with other entities. When subgrants, contracts, or agreements with other entities are proposed, the applicant must include copies of the written agreements covering the intent of all proposed entities to participate with the applicant in achieving the purposes and objectives of the proposed program.

(c) *Key personnel.* (20 points) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The names and qualifications of key personnel, including the project director. If the names of key persons are not yet known, specify the minimum qualifications that will be used to select them;

(2) The qualifications of key personnel intended to be used under subgrants, contracts, or agreements and designation of their employment affiliation. If key personnel from other entities will be used, include copies of their stated intent to participate and copies of the concurrence of the entity by which they are employed to make them available for the time specified in the proposal;

(3) The extent to which key personnel are adequate and appropriate to achieve the objectives of the proposed program;

(4) Whether the allocation of time of key personnel to the objectives of the program seems adequate to predict achievement; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(d) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of resources the applicant plans to use, including the extent to which the applicant—

(1) Will use its resources and those of other participating entities effectively to accomplish the purposes and objectives of the proposed project;

(2) Will devote adequate financial and material resources to the program being proposed; and

(3) Will use adequate facilities and equipment for the program being proposed.

(e) *Participant recruitment and selection plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Will make information about the learning opportunities, the financial support to be provided, eligibility requirements, and the applicant's selection criteria broadly available to all individuals eligible to participate in the project;

(2) Has proposed participant selection criteria for each training or internship activity that are consistent with § 416.30; and

(3) Will ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant will conduct an annual evaluation of the accomplishment of the purposes and objectives of the project, including—

(1) An evaluation of student participation by sex, race or ethnic group, and language proficiency for each vocational education category and each target position in vocational education for which training or internships are intended to prepare recipients;

(2) Comparing the active career pursuits and career goals of program participants before and after participation in training or an internship under the project; and

(3) Analyzing the completeness and accuracy of and synthesizing grantee records on the level of participation and progress of program participants in their learning pursuits and the level and timing of disbursements and recovery of financial support in relation thereto.

(Authority: 20 U.S.C. 2414(a))

Subpart D—What Conditions Must Be Met After an Award?

§ 416.30 Which individuals are eligible to participate under this program?

(a) The following individuals are eligible for training under this program:

(1) Experienced vocational educators who want to participate in advanced study of vocational education.

(2) Certified teachers who have been trained to teach in other fields and who want to become teachers of vocational education students, including teachers with skills related to vocational fields who can be trained as vocational educators, and especially minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminal offenders.

(3) Individuals in industry who have skills and experience in vocational fields and who want to be trained as vocational educators.

(4) Vocational educators who want to improve or maintain technological currency in their fields.

(b) Gifted and talented vocational education secondary and postsecondary students are eligible under this program for internships with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(a))

§ 416.31 What are the responsibilities of the grantee?

(a) A grantee carrying out activities under § 416.3 (a) and (b) shall—

(1) Provide training directly, or, in the case of a State educational agency or a State correctional education agency, provide for training through a contract;

(2) Select individuals for participation in training activities; and

(3) Determine the amounts participants will receive for training, fellowships, stipends, or travel allowances.

(b) A grantee carrying out activities under § 416.3(c) shall—

(1) Select individuals for participation;

(2) Coordinate with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education that are willing to participate with the project in providing internships for further study and professional development for gifted and talented vocational education students; and

(3) Determine the amount participant's will receive for subsistence allowance and other expenses such as necessary travel expenses related to participation.

(c) All grantees shall—

(1) Monitor, supervise, maintain records on, and report on the level and type of participation, and on the conditions and progress of the institutions, agencies, associations, Centers, and individuals involved in the project; and

(2) Evaluate, either directly or through a contract, and report on the accomplishment of the purposes and objectives of the project.

(Authority: 20 U.S.C. 2414(a))

19. Part 417 is revised to read as follows:

PART 417—VOCATIONAL EDUCATION LEADERSHIP DEVELOPMENT AWARDS PROGRAM

Authority: 20 U.S.C. 2414(b), unless otherwise noted.

Subpart A—General

§ 417.1 What is the Vocational Education Leadership Development Awards Program?

The Vocational Education Leadership Development Awards Program provides financial assistance to meet the needs of all States for qualified vocational education leaders such as administrators, supervisors, teacher educators, researchers, career guidance and vocational counseling personnel, vocational student organization leadership personnel, and teachers in vocational education programs.

(Authority: 20 U.S.C. 2414(b))

§ 417.2 Who is eligible for an award?

An institution of higher education is eligible for an award under this part if it offers a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, career guidance and vocational counseling, research, and curriculum development, and that program is—

(a) Designed to substantially advance the objective of improving vocational education in the State through providing opportunities for graduate training of teachers of vocational education students, vocational supervisors and administrators, and university-level vocational education teacher educators and researchers; and

(b) Conducted by a school of graduate study in the institution of higher education.

(Authority: 20 U.S.C. 2414(b)(4))

§ 417.3 What activities may the Secretary fund?

The Secretary provides grants to institutions for leadership development awards to individuals.

(Authority: 20 U.S.C. 2414(b))

§ 417.4 What regulations apply?

The following regulations apply to the Vocational Education Leadership Development Awards Program:

(a) The regulations in this part 417.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(b))

§ 417.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Academic year means a period of time in which a full-time student is expected to complete—

(1) The equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system;

(2) At least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours, but does not use a semester, trimester, or quarter system; or

(3) At least 900 clock hours at an institution that measures academic progress in clock hours.

Dependent means an individual's legal spouse, natural or adopted minor child, or any other person claimed as a dependent by that individual for Federal income tax purposes.

Full-time course of study means the number of credit hours that an institution requires of a full-time student.

Full-time student means a student who—

(1) Carries a full-time course of study; and

(2) Is not employed for more than 20 hours a week.

Satisfactory proficiency means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

(Authority: 20 U.S.C. 2414(b))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 417.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 417.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 417.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 417.21.

(Authority: 20 U.S.C. 2414(b))

§ 417.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Institutional commitment and experience.* (25 points) The Secretary reviews each application to determine the extent to which—

(1) The institution has resources and supporting services for at least five of the generally recognized fields of vocational education that are integrated into a comprehensive approach to vocational education.

(2) The institution's vocational education program has been adopted as a permanent graduate program of study;

(3) The institution demonstrates competence and experience in programs and activities similar to those authorized under the Act;

(4) The applicant provides adequate documentation that its vocational education program meets the requirements in § 417.2; and

(5) The institution's vocational education program will address the need in the State for improving the quality and quantity of vocational personnel, including those referred to in § 417.1.

(b) *Academic program.* (15 points) The Secretary reviews each application to determine the adequacy of the institution's academic program including the—

(1) Range of course offerings and level and number of academic requirements for students; and

(2) Institutions's demonstrated success in preparing individuals for professional or academic careers in the vocational education field.

(c) *Key faculty.* (15 points) The Secretary reviews each application to determine the extent to which the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(d) *Adequacy of resources.* (10 points) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the academic area, including the adequacy of—

(1) The facilities the applicant plans to use; and

(2) The equipment the applicant plans to use.

(e) *Recruitment plan.* (10 points) The Secretary considers the quality of an institution's plan for selecting graduate students, including—

(1) A description of how the institution will apply the requirements in § 417.31; and

(2) The extent to which the institution will make available to all individuals eligible to participate information about learning opportunities, the financial support available, eligibility requirements, and the institutions's criteria for selecting participants.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant will conduct an annual evaluation—

(1) Of student participation by sex and racial or ethnic groups in relation to such indicators of need as the State's vocational education enrollments and the need for additional vocational education leadership in the State;

(2) Of the extent to which selection criteria and procedures used resulted in student participants who meet the eligibility requirements in § 417.40;

(3) Of the accuracy and validity of records on the level of participation and progress of program participants in their learning pursuits, and the appropriateness of the level and timing of disbursements in relation thereto; and

(4) Comparing the active career pursuits and career goals of participants before and after participating in the program to determine the extent to which they enter for the first time, returned to, or advance in work in vocational education in a leadership position.

(Authority: 20 U.S.C. 2414(b))

§ 417.22 What additional factors does the Secretary consider?

(a) In addition to the criteria in § 417.21, the Secretary determines whether the most highly rated applicants are—

(1) Equitably distributed among the States; and

(2) Located in States that need additional vocational education personnel.

(b) The Secretary may select other applicants for funding if doing so would improve the equitable distribution of projects geographically and among the States needing additional trained personnel.

(Authority: 20 U.S.C. 2414(b)(5))

Subpart D—What are the Administrative Responsibilities of Institutions?

§ 417.30 What is the role of an institution in the administration of leadership development awards?

An institution receiving an award under this part is responsible for—

(a) Administering the grant;

(b) Accepting, screening, and selecting individual applications in accordance with its own technical and academic criteria;

(c) Disbursing and returning funds in accordance with procedures described in §§ 417.33 and 417.34, including making appropriate adjustments of any overpayment or underpayment to a recipient of a leadership development award.

(Authority: 20 U.S.C. 2414(b))

§ 417.31 What selection criteria and procedures must an institution use in selecting students?

(a) An institution of higher education shall establish competitive selection criteria and procedures that reflect the needs of the State for qualified vocational education personnel, only after consultation with the State's vocational education leaders (such as administrators, researchers, and teachers) an analysis of relevant statewide data, including the State's vocational education enrollments.

(b) The institution shall design the selection criteria and procedures to ensure that it selects individuals—

(1) On the basis of demonstrated leadership potential, promise of continued achievement, and commitment;

(2) On the basis of standards in § 417.40;

(3) Without regard to race, color, national origin, gender, age, disability, or economic background; and

(4) Without regard to financial need.

(Authority: 20 U.S.C. 2414(b))

§ 417.32 What are the special requirements regarding leadership development awards?

(a) Leadership development awards to individuals—

(1) May not exceed $9,000 per individual per academic year or its equivalent and $3,000 per individual per summer session or its equivalent;

(2) May not be paid for more than three years; and

(3) Cover expenses that are consistent with prevailing practices of the institution, including—

(i) Tuition and books;

(ii) Non-refundable fees;

(iii) A subsistence allowance for the individual and his or her dependents; and

(iv) Other expenses the institution deems necessary and reasonable and consistent with prevailing practices.

(b) In determining an individual's need for assistance and the amount of the assistance, an institution shall deduct financial assistance—other than loans—received or expected to be received by the individual for his or her educational or living expenses and for the support of his or her dependents.

(c) The total financial assistance provided to an individual from all sources, other than loans, may not exceed the individual's need for that assistance.

(d) An institution may not provide a leadership development award to an individual who is not a full-time student.

(Authority: 20 U.S.C. 2414(b) (2) and (6))

§ 417.33 How are funds disbursed and returned?

(a) The institution shall disburse a leadership development award to an individual in no fewer than two installments per academic year.

(b) An institution shall make an award only to an individual who is in good standing and is making satisfactory progress.

Cross-Reference: See § 417.34(a)

(c) Before considering a leadership development award for new individuals, the Secretary provides payment to continue support for qualified individuals who—

(1) Received an award under this program in the previous year; and

(2) Are maintaining satisfactory progress as determined by the institution.

(d) If a leadership development award is vacated or discontinued, the institution shall notify the Secretary. The Secretary—

(1) Allows the award to follow the individual to another participating institution if the remaining award time comprises at least one academic quarter, semester, trimester, or summer session; or

(2) Permits the institution to use any unexpended funds from an award to make an award to an alternate applicant at that institution for a period of study that does not exceed the terms or amount of the original award.

(e) If the individual is no longer eligible for an award, and there is no qualified alternate applicant, the institution must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program and recover funds from the individual. The amount of unexpended funds is determined by prorating the amount received for that academic term in proportion to the amount of the academic term during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(b))

§ 417.34 Under what circumstances must an institution terminate a leadership development award?

An institution shall—

(a) Terminate a leadership development award if the recipient of an award—

(1) Is not pursuing a full-time course of study in vocational education;

(2) Is not maintaining satisfactory proficiency in the course of study;

(3) Is engaged in gainful employment other than part-time employment by the institution in teaching, research, or similar activities;

(4) Is no longer enrolled, or is no longer in good standing at the institution; or

(5) Fails to follow the prescribed course of study for which he or she applied, unless a revised course of study is approved under this part.

(b) Terminate an award only after providing reasonable notice and an opportunity for the individual to rebut, in writing or in an informal meeting with the responsible official in the institution, the basis for the decision.

(c) Ensure that a recipient of a leadership development award repays all or a prorated portion of an award in accordance with the provisions in §§ 417.51 through 417.55.

(Authority: 20 U.S.C. 2414(b))

Subpart E—How Does an Individual Apply for a Leadership Development Award?

§ 417.40 Which individuals are eligible for an award?

An individual is eligible for an award if the institution participating under this part determines that the individual—

(a) Has at least three years of experience in vocational education or in industrial training, or, in the case of researchers, experience in social science research that is applicable to vocational education;

(b) Is currently employed or is reasonably assured of employment in vocational education and has successfully completed at least a baccalaureate degree program;

(c) Is recommended by his or her employer, or others, as having leadership potential in the field of vocational education and has been accepted for admission as a graduate student in an institution participating under this part; and

(d) Has made a commitment to return to the field of vocational education upon completion of education provided through the Vocational Education Leadership Development Award Program.

(Authority: 20 U.S.C. 2414(b))

§ 417.41 How does an individual apply to an institution for a leadership development award?

To apply for an award, an individual shall—

(a) Follow the application procedures established by an institution participating under this part; and

(b) Provide sufficient information concerning his or her employment experience and academic background to enable the institution to determine whether the individual is eligible to receive an award, taking into consideration the standards in § 417.40.

(Authority: 20 U.S.C. 2414(b))

Subpart F—What Conditions Must be Met by Recipients of Leadership Development Awards?

§ 417.50 May a course of study be interrupted?

The Secretary approves a leadership development award only for study in the field and at the institution specified in an individual's application. The Secretary or the institution discontinues the leadership development award if the individual changes the field of study or the institution without the Secretary's prior approval.

(Authority: 20 U.S.C. 2414(b))

§ 417.51 Under what conditions must a leadership development award be returned?

(a) An individual shall repay to the institution all, or a prorated portion, of a leadership development award, as determined by the Secretary, if the individual—

(1) Withdraws from an approved institution of higher education;

(2) Is terminated or expelled from an approved institution of higher education; or

(3) Is found by the institution or the Secretary to be in noncompliance with the requirements stated in § 417.34(a).

(b) An individual shall repay all, or a portion of, amounts received during the academic term in which the individual no longer qualifies for participation under this program.

(Authority: 20 U.S.C. 2414(b))

§ 417.52 What is the repayment schedule?

(a) A recipient of a leadership development award required to repay all, or a prorated portion, of the award shall begin repayments to the institution within one month of the date he or she ceases to be enrolled as a full-time student at an institution in the leadership development program; or

(b) A recipient of a leadership development award must repay to the institution the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(b))

§ 417.53 What interest is charged?

(a) The Secretary charges a recipient of a leadership development award interest on the unpaid balance owed by the recipient in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 417.54.

(Authority: 20 U.S.C. 2414(b))

§ 417.54 Under what circumstances is repayment deferred?

Upon request from the recipient of a leadership development award, the Secretary may defer repayment if the recipient—

(a) Re-enrolls as a full-time student at a participating institution;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(b))

§ 417.55 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a recipient of a leadership development award shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(b))

20. A new part 418 is added to read as follows:

PART 418—VOCATIONAL EDUCATOR TRAINING FELLOWSHIPS PROGRAM

Subpart A—General

Sec.

Subpart B—How Does an IHE Obtain Approval of Its Application for Participation?

Subpart C—How Does An Individual Apply for a Fellowship?

Subpart D—How Does the Secretary Select Fellows?

Subpart E—What Conditions Must be Met by a Fellow?

Authority: 20 U.S.C. 2414(c), unless otherwise noted.

Subpart A—General

§ 418.1 What is the Vocational Educator Training Fellowship Program?

Under the Vocational Educator Training Fellowship Program, the Secretary provides fellowships to individuals through approved institutions of higher education (IHEs) to—

(a) Meet the need to provide adequate numbers of teachers and related classroom instructors in vocational education who are technologically current in their fields;

(b) Take full advantage of the education that has been provided to already certified teachers who are unable to find employment in their fields of training and of individuals employed in industry who have skills and experience in vocational fields; and

(c) Encourage more instructors from minority groups and teachers with skills and experience instructing individuals of limited English proficiency to become vocational education teachers.

(Authority: 20 U.S.C. 2414(c)(1))

§ 418.2 Who is eligible for a fellowship?

Fellowships are awarded to individuals (especially minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminals) who—

(a)(1)(i) Are teachers of vocational education students and need an opportunity to improve or maintain technological skills;

(ii) Are certified by a State, or were so certified during the 10-year period preceding their application for a fellowship under this part, as teachers in secondary schools, area vocational education schools or institutes, or in community or junior colleges; and

(iii) Have skills and experiences in vocational fields so that those individuals can be trained to be teachers of vocational education students; or

(2) Are employed in agriculture, business, or industry (and may or may not hold a baccalaureate degree) and have skills and experience in vocational fields for which there is a need for vocational educators;

(b) Have been accepted in a program to become a vocational educator by an institution of higher education approved by the Secretary; and

(c) Have made a commitment to work in the field of vocational education upon completion of the fellowship provided under this program.

(Authority: 20 U.S.C. 2414(c)(2))

§ 418.3 What does a fellowship include?

(a) A fellowship may not be paid for more than two years.

(b) *Allowable costs.* A fellow may use fellowships under this program for—

(1) Tuition and non-refundable fees—the normal and usual costs associated with the course of study;

(2) Books;

(3) Travel to a field study site; and

(4) Subsistence and other expenses of the fellow and his or her dependents.

(c) The Secretary announces in the **Federal Register** the maximum amounts for each allowable cost under a fellowship. These maximum amounts are based on the prevailing amounts for costs during the past 12 months, plus projected inflationary increases.

(Authority: 20 U.S.C. 2414(c))

§ 418.4 What regulations apply?

The following regulations apply to the Vocational Educator Training Fellowship Program:

(a) The regulations in this part 418.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(c))

§ 418.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following terms used in this regulation are defined in 34 CFR 417.5:

Dependent
Full-time course of study
Satisfactory proficiency

(c) The following definitions also apply to this part:

Fellow means the individual recipient of a fellowship under this part.

Fellowship means an award made to an individual for vocational educator training under this part.

(Authority: 20 U.S.C. 2414(c))

Subpart B—How Does an IHE Obtain Approval of its Application for Participation?

§ 418.10 How does the Secretary approve IHEs for participation?

The Secretary considers for participation only IHEs that—

(a) Offer a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, career guidance and vocational counseling, research, and curriculum development, including resources and supporting services for at least five of the generally recognized fields of vocational education that are integrated into a comprehensive approach to vocational education; and

(b) Will enroll in its vocational education program individuals receiving fellowships under this part so that those individuals receive the same quality of education and training provided for undergraduate students at the institution who are preparing to become vocational education teachers.

(Authority: 20 U.S.C. 2424(c))

Subpart C—How Does an Individual Apply for a Fellowship?

§ 418.20 Where does an individual apply for a fellowship?

(a) An individual shall submit an application for a fellowship to a participating IHE.

(b) The applicant shall provide sufficient information in the application as required by institution concerning his or her employment and academic background and proposed course of study, to enable an institution and the Secretary to determine whether the individual—

(1) Meets the eligibility requirements indicated in § 418.2; and

(2) Should be selected for a fellowship under this part.

(Authority: 20 U.S.C. 2414(c))

Subpart D—How Does the Secretary Select Fellows?

§ 418.30 How does the Secretary select fellows?

In selecting recipients of fellowships, the Secretary—

(a) Gives preference to individuals seeking to become teachers or improve their skills in the areas identified in § 418.32(b); and

(b) Takes into consideration the rank orders prepared by participating IHEs.

(Authority: 20 U.S.C. 2414(c)(7))

§ 418.31 What criteria must IHEs consider in nominating fellows?

In rank ordering applicants for fellowships, an IHE shall consider the following criteria in addition to its admissions standards:

(a) *Eligibility.* The applicant meets the requirements in § 418.2, especially with regard to minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminals.

(b) *Academic ability.* The quality of the applicant's academic record, including—

(1) Transcripts of grades earned in secondary school and, where appropriate, postsecondary education;

(2) Results earned on specific skill aptitude tests; and

(3) Results of other tests, if appropriate.

(c) *Vocational skills.* Evidence of the applicant's performance in a work situation requiring vocational skills, including—

(1) Letters of recommendations from previous employers or others, as appropriate;

(2) Results of National Occupational Competency Testing Institute tests, if appropriate;

(3) Certificates or diplomas, as appropriate; and

(4) Work related experience, including teaching, if appropriate.

(d) *Community human relations skills.* Evidence of the applicant's skills in interpersonal relations, including experience with—

(1) Community groups;

(2) Volunteer groups;

(3) Work related organizations;

(4) Members of minority groups;

(5) Economically or educationally disadvantaged, or individuals with disabilities; and

(6) Adult and juvenile criminal offenders; and other groups, as appropriate.

(e) *National need.* As stated by the applicant in writing, the applicant's goals, objectives, and aspirations in vocational education, and their relationship to national needs with particular reference to—

(1) Technological skill upgrading; and

(2) Increasing the number of instructors who—

(i) Are members of minority groups; and

(ii) Possess skills and experience in teaching individuals who are economically disadvantaged, individuals with disabilities, individuals of limited English proficiency, and adult and juvenile criminals.

(Authority: 20 U.S.C. 2414(c))

§ 418.32 What additional factors does the Secretary consider in selecting fellows?

The Secretary may choose fellows out of rank order if doing so would—

(a) Improve the equitable distribution of fellowships among the States, taking into account such factors as—

(1) The State's vocational education enrollments; and

(2) The need in the State for additional instructors of vocational education students, especially minority educators and individuals with skills and experience in teaching individuals of limited English proficiency, individuals who are economically disadvantaged, individuals with disabilities, and adult and juvenile criminal offenders.

(b) Increase the number of trained persons in the areas of teaching in vocational education—

(1) In which additional personnel are needed;

(2) That will likely have need of additional personnel in the future; and

(3) In which technological upgrading may be especially critical.

(Authority: 20 U.S.C. 2414(c)(2), (4), and (6)(A))

§ 418.33 How are funds distributed to a fellow?

(a) Funds are disbursed by the participating IHE in which a fellow is enrolled.

(b) A participating institution shall award to each fellow a fellowship that covers costs described in § 418.3.

(c) An institution shall—

(1) Pay a fellow his or her subsistence and any other allowance in installments during the term of the fellowship;

(2) Make a payment only to a fellow who meets the requirements in § 418.41;

(3) Make appropriate adjustments of any overpayment or underpayment to a fellow; and

(4) Ensure that a fellow repays all or a prorated portion of an award in accordance with the provisions in §§ 418.45 through 418.49.

(d) In determining an individual's need for assistance and the amount of the assistance, an institution shall deduct financial assistance—other than loans—received or expected to be received by the individual for his or her educational or living expenses and for the support of his or her dependents.

(Authority: 20 U.S.C. 2414(c))

Subpart E—What Conditions Must Be Met by a Fellow?

§ 418.40 Where may fellows study?

Fellows may use fellowships under this part only at institutions that have been approved under this part.

(Authority: 20 U.S.C. 2414(c))

§ 418.41 What are the requirements for an individual to continue to receive a fellowship?

A participating IHE shall continue to pay fellowships only during a period in which the fellow is—

(a) Maintaining satisfactory proficiency;

(b) Engaging in full-time study in the field of vocational education in an institution of higher education; and

(c) Not engaging in gainful employment other than part-time employment with the institution.

(Authority: 20 U.S.C. 2414(c)(5))

§ 418.42 May fellowship tenure be interrupted?

(a) With prior approval of the Secretary, a fellow may interrupt periods of vocational educator study under the fellowship for a period of up to 12 months for the purpose of work, travel, or independent study away from the institution of higher education at which the fellow is enrolled only if the—

(1) Work, travel, or independent study is supportive of the fellow's academic program;

(2) Leave of absence is approved by the institution at which the fellow is enrolled; and

(3) IHE certifies, to the Secretary in advance of the leave, that the fellow is eligible to resume his or her course of study at the end of the leave of absence.

(b) An institution may not make fellowship payments under this part for a period of time during which a fellowship is interrupted.

(Authority: 20 U.S.C. 2414(c))

§ 418.43 May fellows make changes in institutions or fields of study?

The Secretary approves a fellowship only for study in the field of study and at the institution specified in the fellow's application. The Secretary or the institution discontinues the fellowship if the fellow changes the field of study or the institution without the Secretary's prior approval.

(Authority: 20 U.S.C. 2414(c))

§ 418.44 Under what circumstances may a fellowship be discontinued?

(a) An institution shall discontinue a fellowship—

(1) If a fellow fails to comply with the provisions under this part; and

(2) Only after providing reasonable notice and an opportunity for the fellow to rebut, in writing or in an informal meeting with the responsible official in the institution, the basis for the decision.

(b) If a fellowship is vacated or discontinued the institution shall notify the Secretary. The Secretary—

(1) Allows the fellowship to follow the fellow to another participating IHE if the remaining fellowship time comprises at least one full academic quarter, semester, trimester, or summer session and the fellow maintains eligibility for a fellowship; or

(2) Permits the institution to award unexpended funds from a fellowship to an alternate fellow at that institution for a period of study that does not exceed the term or amount of the original fellowship.

(c) If the individual is no longer eligible for an award, and there is no qualified alternate applicant, the institution must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program and recover funds from the individual. The amount of unexpended funds is determined by prorating the amount received for that academic term in proportion to the amount of the academic term during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(c))

§ 418.45 Under what conditions must fellowship payments be repaid?

(a) A fellow shall repay to the institution the entire fellowship, or a prorated portion, as determined by the Secretary, if the fellow—

(1) Withdraws from an institution;

(2) Is terminated or expelled from an institution; or

(3) Is found by the institution or the Secretary to be in noncompliance with the requirements in this part.

(b) A fellow shall refund all or a portion of amounts received during the academic term in which the individual no longer qualifies for participation under this program.

(Authority: 20 U.S.C. 2414(c))

§ 418.46 What is the repayment schedule?

(a) A fellow required to repay all, or a prorated portion, of a fellowship shall begin repayments within one month of the date he or she ceases to be enrolled as a full-time student at an IHE in the fellowship program.

(b) A fellow must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(c))

§ 418.47 What interest is charged?

(a) The Secretary charges a fellow interest on the unpaid balance owed by the fellow in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 418.48.

(Authority: 20 U.S.C. 2414(c))

§ 418.48 Under what circumstance is repayment deferred?

Upon request from a fellow, the Secretary may defer repayment if the fellow—

(a) Re-enrolls as a full-time student at a participating IHE;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(c))

§ 418.49 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a fellow shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(c))

21. A new part 419 is added to read as follows:

PART 419—INTERNSHIPS FOR GIFTED AND TALENTED VOCATIONAL EDUCATION STUDENTS PROGRAM

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Select Interns?

Subpart D—What Conditions Must be Met By an Intern?

Authority: 20 U.S.C. 2414(d), unless otherwise noted.

Subpart A—General

§ 419.1 What is the Internships for Gifted and Talented Vocational Education Students Program?

The Internships for Gifted and Talented Vocational Education Students Program provides internships to meet the need of attracting gifted and talented vocational education students into further study and professional development in the field of vocational education.

(Authority: 20 U.S.C. 2414(d)(1))

§ 419.2 Who is eligible for an internship?

A gifted and talented student from a vocational education secondary or postsecondary program is eligible for an internship under this program if the student is recommended—

(a) As gifted and talented by a vocational educator at the secondary or postsecondary school the student attends; and

(b) By a State director of vocational education.

(Authority: 20 U.S.C. 2414(d)(2))

§ 419.3 What activities may the Secretary fund?

The Secretary provides internships, of up to nine months, for gifted and talented students from vocational education secondary and postsecondary programs to work as interns for Federal and State agencies, nationally recognized vocational education associations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(d)(2)(A))

§ 419.4 What regulations apply?

The following regulations apply to the Internships for Gifted and Talented Vocational Education Students Program:

(a) The regulations in this part 419.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(d))

§ 419.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Gifted and talented student means a student who gives evidence of high performance capability in the field of vocational education, taking into account theoretical knowledge, applied skills, and leadership potential.

Intern means a gifted and talented student who receives payments under this program.

Sponsor means a Federal or State agency, nationally recognized vocational education association, or National Center for Research in Vocational Education that has agreed to provide further study and professional development to interns under this program.

(Authority: 20 U.S.C. 2414(d))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Select Interns?

§ 419.20 What are the procedures for applying for an internship?

(a) A gifted and talented vocational education student shall apply to the Secretary for an internship in response to an application notice published by the Secretary in the **Federal Register**.

(b) A student applying for an internship shall—

(1) Obtain a recommendation as gifted and talented from a vocational educator at the secondary or postsecondary school the student attends. The recommendation must state why the student is considered gifted and talented. The recommendation must be attached to the student's application;

(2) Submit to the State director of vocational education for the State in which the student attends a vocational education program, a copy of his or her application;

(3) Indicate, in the application, a first and second choice of agencies or organizations where the student would like to be an intern; and

(4) Submit with the application, an agreement to follow the code of conduct of the agency or organization that will sponsor the intern.

(c) The Secretary considers for internships only students recommended by State directors of vocational education. The State director's recommendation must include an assurance that—

(1) The student is available to take part in this program during the specified dates;

(2) Parent or guardian of a student who has not reached the age of majority in a State has formally consented for the student to take part in this program; and

(3) The secondary or postsecondary school the student attends has provided authorization for the student to participate in this program, if the internship will interfere with school attendance.

(Authority: 20 U.S.C. 2414(d))

§ 419.21 How does the Secretary evaluate an application for an internship?

(a) The Secretary evaluates an application on the basis of the criteria in § 419.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 419.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 419.22.

(Authority: 20 U.S.C. 2414(d))

§ 419.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Goal of the internship.* (30 points) The Secretary reviews each application to determine the extent to which there—

(1) Is a clearly stated goal to be achieved during the internship. This goal must be directly related to the present area of study the student is pursuing; and

(2) Are measurable objectives to be met during the internship.

(b) *Internship plan.* (40 points) The Secretary reviews each application to determine the quality of the internship plan, including—

(1) Choice of internship site;

(2) Statement of understanding from the proposed sponsor, including a description of the—

(i) Sponsoring agency's internship work plan, including specific assignments and learning experiences; and

(ii) Supervision to be provided to the intern through the sponsoring agency; and

(3) The length and description of the internship.

(c) *Budget.* (15 points) The Secretary reviews each application to determine the extent to which the intern has identified expenses that are reasonable and adequate to support the proposed internship.

(Authority: 20 U.S.C. 2414(d))

§ 419.23 What other factors may the Secretary consider?

(a) After evaluating the applications according to the criteria in § 419.22, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of internships funded under this program.

(Authority: 20 U.S.C. 2301, 2414(d))

§ 419.24 How does the Secretary assign interns?

(a) In assigning students to internships, the Secretary considers the following:

(1) The opportunities to be provided by approved agencies or organizations.

(2) The goals of potential interns.

(3) The intern's choice of agencies or organizations.

(4) The availability of interns.

(b) In consultation with approved sponsors, the Secretary assigns interns to an agency or organization that will provide the best opportunities for an intern to accomplish his or her goals.

(Authority: 20 U.S.C. 2414(d))

§ 419.25 How is the amount of a stipend determined?

An intern's stipend is based on a subsistence allowance and other expenses of the intern, such as necessary travel expenses related to the internship, consistent with 5 U.S.C. Chapter 57.

(Authority: 20 U.S.C. 2414(d))

§ 419.26 How is a stipend distributed?

The Secretary pays an intern's stipend through the agency or organization sponsoring the internship. The sponsoring agency or organization must enter into an agreement with the Secretary to establish a payment schedule.

(Authority: 20 U.S.C. 2414(d))

Subpart D—What Conditions Must be Met by an Intern?

§ 419.30 May internships be interrupted?

An intern may request a leave of absence from the Secretary for a period no longer than three months. Leave of absence is permitted at the Secretary's discretion, but only if the sponsoring agency or organization certifies that the intern is eligible to resume his or her internship at the end of the leave of absence.

(Authority: 20 U.S.C. 2414(d))

§ 419.31 Under what conditions may the Secretary discontinue an internship?

(a) The Secretary may discontinue an internship, if the intern fails to—

(1) Comply with the provisions under this part, including failure to obtain an approved leave of absence under § 419.30, or with the terms and conditions of the internship award;

(2) Disclose any information that substantially affects his or her financial need for a cost item included in the stipend; or

(3) Report any change in his or her academic status;

(b) The Secretary will discontinue an internship only after providing reasonable notice and an opportunity for the intern to rebut, in writing or in an informal meeting with the responsible official in the Department, the basis for the decision.

(Authority: 20 U.S.C. 2414(d))

§ 419.32 Under what conditions must internship payments be returned?

(a) An intern who officially or unofficially withdraws from an internship or is expelled from an agency or organization before completion of an internship shall refund to the Secretary all or a prorated portion of the internship payments that have been received, as determined by the Secretary.

(b) If the individual is no longer eligible for an internship, the intern must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program. The amount of unexpended funds is determined by prorating the amount received for the internship in proportion to the amount of the internship during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(d))

§ 419.33 What is the repayment schedule?

(a) An intern required to repay all or a portion of internship payments shall begin repayments within one month of the date he or she ceases to be an intern; or

(b) An intern must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(d))

§ 419.34 What interest is charged?

(a) The Secretary charges an intern interest on the unpaid balance owed by an intern in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the intern is required to commence repayment; or

(2) During which repayment has been deferred under § 419.35.

(Authority: 20 U.S.C. 2414(d))

§ 419.35 Under what circumstance is repayment deferred?

The Secretary may defer repayment if an intern—

(a) Resumes an internship;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(d))

§ 419.36 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, an intern shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(d))

PART 420 [RESERVED]

22. Part 420 is reserved.

23. A new part 421 is added to read as follows:

PART 421—BUSINESS AND EDUCATION STANDARDS PROGRAM

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met After an Award?

Authority: 20 U.S.C. 2416, unless otherwise noted.

Subpart A—General

§ 421.1 What is the Business and Education Standards Program?

The Business and Education Standards Program provides financial assistance for organizing and operating business-education-labor technical committees that will develop national standards for competencies in industries and trades.

(Authority: 20 U.S.C. 2416)

§ 421.2 Who is eligible for an award?

The following entities are eligible for an award under this program:

(a) Industrial trade associations.

(b) Labor organizations.

(c) National joint apprenticeship committees.

(d) Comparable national organizations, such as educational associations, industry councils, business and industry organizations, associations of private and national research organizations.

(Authority: 20 U.S.C. 2416)

§ 421.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for projects that organize and operate business-labor-education technical committees that propose national standards for competencies in industries and trades, including standards for—

(a) Major divisions or specialty areas identified within occupations studied;

(b) Minimum hours of study to be competent in those divisions or specialty areas;

(c) Minimum tools and equipment required in those divisions or specialty areas;

(d) Minimum qualifications for instructional staff; and

(e) Minimum tasks to be included in any course of study purporting to prepare individuals for work in those divisions or specialty areas.

(Authority: 20 U.S.C. 2416)

§ 421.4 What regulations apply?

The following regulations apply to the Business and Education Standards Program:

(a) The regulations in this part 421.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2416)

§ 421.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2416)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 421.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperation agreement on the basis of the criteria in § 421.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 421.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 421.21.

(Authority: 20 U.S.C. 2416)

§ 421.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews each application to assess the quality and effectiveness of the applicants' approach to developing national standards for competencies in industries and trades, including the extent to which the application proposes—

(1) To develop standards for—

(i) The competencies required for actual jobs, including the increased competency requirements created by the changing workplace;

(ii) Major divisions or specialty areas identified within the occupations the applicant proposes to study;

(iii) The minimum hours of study needed to be competent in those divisions or specialty areas;

(iv) Minimum tools and equipment required in those divisions or specialty areas;

(v) Minimum tasks to be included in any course of study purporting to prepare individuals for work in those divisions or specialty areas; and

(vi) Minimum qualifications for instructional staff in those divisions or specialty areas; and

(2) An adequate needs assessment of the program factors described in paragraph (a)(1) as a part of the project.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including—

(1) The extent of the need for national standards for competencies in the major division or specialty areas identified within the occupations that the applicant proposes to study;

(2) How the applicant identified and documented those needs;

(3) How the standards to be developed will meet those needs, including the need of business for competent entry-level workers in the occupations to be studied; and

(4) The benefits to business, labor, and education that will result from meeting those needs.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The plan of management will be effective, will ensure proper and efficient administration of the program, and includes timelines that show starting and ending dates for all tasks;

(2) The specific procedures proposed will accomplish the project's objectives, including how the procedures for selecting the committee will ensure that the members are knowledgeable about the occupations to be studied and include representatives of business, labor, and education;

(3) The applicant plans to organize and operate business-labor-education technical committees effectively in developing national standards for competencies in industries and trades;

(4) The development of proposed competencies for major divisions or specialty areas within occupations will be coordinated with education and industrial trade associations, labor organizations, and businesses;

(5) The methods the applicant proposes to use to select project participants, if applicable, will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the plan includes specific procedures for—

(1) A formative evaluation to help assess and improve the accuracy of standards for competencies; and

(2) A summative evaluation conducted by an independent evaluator.

(e) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the extent of the applicant's experience in fields related to the objectives of the project.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (e)(2)(i) and (ii) of this section will commit to the project; and

(iv) The experience and training of the project director and key personnel in project management.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) A clear description of the dissemination procedures;

(2) A description of the types of materials the applicant plans to make available; and

(3) Provisions for publicizing the proposed national standards for competencies in industries and trades.

(Authority: 20 U.S.C. 2416)

Subpart D—What Conditions Must Be Met After an Award?

§ 421.30 What is the cost-sharing requirement?

(a) The Secretary pays no more than 50 percent of the cost of a project.

(b) Each recipient of an award under this part shall provide 50 percent of the cost of the business-labor-education technical committee established under the award.

(Authority: 20 U.S.C. 2416(c))

24. A new part 422 is added to read as follows:

PART 422—EDUCATIONAL PROGRAM FOR FEDERAL CORRECTIONAL INSTITUTIONS

Subpart A—General

Authority: 20 U.S.C. 2417, unless otherwise noted.

Subpart A—General

§ 422.1 What is the Educational Program for Federal Correctional Institutions?

The Educational Program for Federal Correctional Institutions provides financial assistance for the education and training of criminal offenders in Federal correctional institutions.

(Authority: 20 U.S.C. 2417(a))

§ 422.2 Who is eligible for an award?

(a) Awards are provided to consortia of—

(1) A Federal correctional institution; and

(2) An educational institution, community-based organization of demonstrated effectiveness, or business and industry.

(b) A consortium must include a Federal correctional institution and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) Members of a consortium shall apply jointly to the Secretary for funds.

(2) The members of a consortium shall enter into an agreement, in the form of a single document signed by all members, designating the Federal correctional institution as the applicant and the grantee. The agreement must also detail the role each member plans to perform, and must bind each member to every statement and assurance made in the application.

(Authority: 20 U.S.C. 2417(a))

§ 422.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements that may be used for—

(a) Basic education programs with an emphasis on literacy instruction;

(b) Vocational training programs;

(c) Guidance and counseling programs; and

(d) Supportive services for criminal offenders, with special emphasis on the coordination of educational services with agencies furnishing services to criminal offenders after the offenders are released from correctional institutions.

(Authority: 20 U.S.C. 2417(b))

§ 422.4 What regulations apply?

The following regulations apply to the Educational Program for Federal Correctional Institutions:

(a) The regulations in this part 422.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2417)

§ 422.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2417)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 422.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 422.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 422.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criteria.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 422.21.

(Authority: 20 U.S.C. 2417)

§ 422.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need.* (20 points) The Secretary reviews each application to assess the need for and the soundness of the rationale for the project, including—

(1) A clear description of the need for the proposed project;

(2) Specific evidence of the need for the project;

(3) A description of any ongoing and planned activities in the Federal correctional institution relative to the need; and

(4) Evidence that demonstrates the vocational training to be provided is designed to meet current and projected occupational needs.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals, including measurable goals for learner enrollment and completion in each academic skill and occupation for which training is to be provided;

(2) Definitions of successful program completion (or a description of how successful program completion will be defined and reported to the Secretary) for each academic skill and occupation for which training is to be provided. Successful program completion should be defined in terms of the academic and vocational competencies expected of enrollees prior to successful completion, and any academic or work credentials expected to be acquired upon completion;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes a description of the respective roles of each member of the consortium in carrying out the plan;

(4) The extent to which the objectives are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and pre and post release services for participants;

(5) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(6) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications and experience of the project director, if one is to be used;

(ii) The qualifications and experience of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are necessary and reasonable in relation to the objectives of the project and the numbers of participants to be served; and

(3) The budget narrative justifies the proposed expenditures.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to enrollment and completion of participants by sex, racial or ethnic group and, if appropriate, by level of English proficiency, for each academic skill and occupation for which training is provided;

(2) The plan identifies at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by completers;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 2417)

§ 422.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 422.21, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2301; 2417)

Subpart D—What Conditions Must be Met After an Award?

§ 422.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for either an internal or external evaluation, or both, of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(2) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment and completion by sex, racial or ethnic group, and, if appropriate, by level of English proficiency for each academic skill and occupation for which training has been provided.

(d) The annual evaluation must also include—

(1) The grantee's progress in achieving the objectives in its approved application including any approved revisions of the application;

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(3) The effectiveness of the project in promoting key elements for participants' job enhancement, including—

(i) Coordination of services;

(ii) Improved attendance rates; and

(iii) Improved basic skills competencies.

(Authority: 20 U.S.C. 2417)

25. A new part 423 is added to read as follows:

PART 423—VOCATIONAL EDUCATION DROPOUT PREVENTION PROGRAM

Authority: 20 U.S.C. 2418, unless otherwise noted.

Subpart A—General

§ 423.1 What is the Vocational Education Dropout Prevention Program?

The Vocational Education Dropout Prevention Program provides financial assistance for projects to develop, implement, and operate vocational education programs designed to prevent students from dropping out of school.

(Authority: 20 U.S.C. 2418)

§ 423.2 Who is eligible for an award?

(a) Awards are provided to partnerships between—

(1) Local educational agencies or area vocational education schools; and

(2) Institutions of higher education or public or private nonprofit organizations that have an established record of vocational education strategies that prevent students from dropping out of school.

(b) Partnerships formed for the purpose of receiving an award under this program must include as partners at least one of the types of entities in paragraph (a)(1) of this section and one of the types of entities in paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every

statement and assurance made in the application.

(Authority: 20 U.S.C. 2418(a))

§ 423.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements to projects that develop, implement, and operate a vocational education program designed to prevent students from dropping out of secondary school.

(b) Projects assisted under this part must—

(1) Serve special populations, including significant numbers of economically disadvantaged, dropout-prone youth;

(2) Provide inservice training for teachers and administrators in dropout prevention; and

(3) Disseminate information relating to successful dropout prevention strategies and programs through appropriate dissemination networks such as the National Dropout Prevention Network, the National Dropout Prevention Center, and the Center on Adult, Career and Vocational Education of the Educational Resources Information Clearinghouse.

(c) Projects assisted under this part may not include pre-vocational education, employability skill training, or career education.

(Authority: 20 U.S.C. 2418)

§ 423.4 What regulations apply?

The following regulations apply to the Vocational Education Dropout Prevention Program:

(a) The regulations in this part 423.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2418)

§ 423.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2418)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 423.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 423.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 423.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 423.21.

(e) In addition to the 100 points to be awarded based on the criteria in § 423.21, the Secretary awards up to 10 points to applications that propose particularly effective activities that—

(1) Provide the special support services necessary to help individual students successfully complete the vocational education program such as mentoring, basic skills education, and services that address barriers to learning; and

(2) Use measures to integrate basic and academic skills instruction with work experience and vocational education.

(Authority: 20 U.S.C. 2418)

§ 423.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program design.* (15 points) The Secretary reviews each application to assess the effectiveness of the project including the quality of the—

(1) Vocational program dropout prevention model to be used in carrying out the purposes of this program, including services to be provided, who will provide them, and how they will be provided;

(2) Proposed methodology, specifically, the extent to which the project will include—

(i) Training in appropriate vocational skill areas;

(ii) A thorough assessment of individual student needs;

(iii) Flexibility in the structure of the delivery system to be used (e.g., in classroom hours, use of additional staff, classroom location, and student-teacher ratios);

(iv) Active recruitment;

(v) Thorough assessment and feedback on student progress;

(vi) Individualized treatment;

(vii) Tutoring and mentoring;

(viii) Adjustments for childcare;

(ix) Coordination of vocational instruction, academic instruction, and counseling services;

(x) Coordination with other agencies providing services to dropouts or potential dropouts;

(xi) Relevant work-related experience;

(xii) Transportation from school to work;

(xiii) Parental involvement;

(xiv) Community and business involvement; or

(xv) Inservice training for teachers and administrators in dropout prevention.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed dropout prevention program on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from these programs in such factors as—

(i) Student performance and achievement in such subjects as mathematics, science, communication, and technologies;

(ii) High school graduation;

(iii) Placement of students in jobs including military service; and

(iv) Successful matriculation of students to a variety of postsecondary educational programs.

(2) Proposes project objectives that contribute to the improvement of education;

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(4) Proposes a project that will be developed, implemented, operated, and demonstrated within the grant period.

(c) *Management plan.* (15 points) The Secretary reviews each application to assess the quality of the management plan for the project that includes the following elements:

(1) A clear chain of command, including how staff will be managed and how coordination among staff will be accomplished.

(2) Timelines for each activity.

(3) A clear description of the goals, objectives, and activities, and how each builds on the others.

(4) An effective strategy for the use of the resources and personnel from the grant to achieve each objective.

(5) A detailed description of how subcontracts will be awarded, monitored, and evaluated, if subcontracts are to be used.

(d) *Key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications (as described in a job description or a resume), in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine—

(1) The quality and comprehensiveness of the independent evaluation plan for the project, including the extent to which the plan includes activities during the formative stages of the project to help to guide and improve the project, as well as a final evaluation that includes summary data and recommendations;

(2) The extent to which the plan—

(i) Is clearly explained and is appropriate to the project;

(ii) To the extent possible, is objective and will produce data that are quantifiable;

(iii) Identifies expected outcomes of the participants and how those outcomes will be measured;

(iv) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(v) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effective Panel.

(3) The qualifications (as described in a job description or a resume) of the independent evaluator to be used in the project.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative explains and justifies each budget item in detail;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(g) *Demonstration and dissemination plan.* (10 points) The Secretary reviews each application to assess the quality of the plan for demonstrating and disseminating information about the project, including the—

(1) Quality of the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Target groups, timelines, and responsibilities for each dissemination activity, including provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available.

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project; and

(6) A description of the cost and logistical provisions to be made if there is an intent to engage in a subcontract with one or more of the national dissemination entities described in § 423.3(b)(3) for dissemination services.

(Authority: 20 U.S.C. 2418)

§ 423.22 What additional factors may the Secretary consider?

After evaluating applications according to the criteria in § 423.21, the Secretary may select other than the most highly rated applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2418)

Subpart D—What Conditions Must Be Mdt After an Award?

§ 423.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for a third-party evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2418)

26. A new part 424 is added to read as follows:

PART 424—MODEL CENTERS OF REGIONAL TRAINING FOR SKILLED TRADES PROGRAM

Subpart A—General

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met After an Award?

Authority: 20 U.S.C. 2419, unless otherwise noted.

Subpart A—General

§ 424.1 What is the Model Centers of Regional Training for Skilled Trades Program?

The Model Centers of Regional Training for Skilled Trades Program provides financial assistance for regional model centers that provide—

(a) Training for skilled tradesmen within a region serving several States; and

(b) Technical assistance for programs that train skilled tradesmen within a region serving several States.

(Authority: 20 U.S.C. 2419)

§ 424.2 Who is eligible for an award?

Entities proposing to develop a regional model center or existing regional model centers that provide training for skilled tradesmen within a region serving several States and technical assistance for programs that train skilled tradesmen within a region serving several States are eligible for awards under this program.

(Authority: 20 U.S.C. 2419(a))

§ 424.3 What activities may the Secretary fund?

The Secretary provides grants or cooperative agreements to model centers for regional training for skilled trades. Each project assisted by the Secretary must—

(a) Provide training and career counseling for skilled tradesmen in areas of skill shortages or projected skill shortages;

(b) Provide pre-job and apprenticeship training and career counseling in skilled trades;

(c) Upgrade specialized craft training; and

(d) Improve the access of women, minorities, economically disadvantaged individuals, individuals with handicaps and ex-criminal offenders to trade occupations and training.

(Authority: 20 U.S.C. 2419(b))

§ 424.4 What regulations apply?

The following regulations apply to the Model Centers of Regional Training for Skilled Trades Program:

(a) The regulations in this part 424.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2419)

§ 424.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The term *skilled trades* includes, among other occupations, "construction trades" and "firefighting" which are defined as follows:

(1) *Construction trades* means a summary of groups of instructional programs that prepare individuals to erect, install, maintain, and repair buildings, highways, airports, missile sites, and other structures using materials such as metal, wood, stone, brick, glass, concrete, and composition substances. The term includes instruction in cost estimating; cutting, fastening, and fitting various materials; the use of hand and power tools; and in following technical specifications and blueprints.

(2) *Firefighting* means an instructional program that prepares individuals to fight fires, and control the outbreak of fires. The term includes instruction in fire department organization; the use of water and other materials in firefighting and various kinds of equipment such as extinguishers, pumps, hoses, ropes, ladders, gas masks, hydrants, and standpipe and sprinkler systems; entry and rescue and salvage practices and equipment; and fire and arson inspection and investigation techniques.

(Authority: 20 U.S.C. 2419; H. Rep. No. 101-660, 101st Cong., 2nd Sess. 147 (1990))

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 424.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 424.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 424.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 424.21.

(e) In addition to points awarded under § 424.21, the Secretary may award up to five points to applications that propose particularly effective training in the masonry trades.

(Authority: 20 U.S.C. 2419; H. Rep. No. 101-660, 101st Cong., 2nd Sess. 147 (1990))

§ 424.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the quality of the proposed model center of regional training for skilled trades and how well the project will—

(1) Provide training and career counseling for skilled tradesmen in areas of labor or skill shortages or projected labor or skill shortages;

(2) Provide pre-job and apprenticeship training and career counseling in skilled trades;

(3) Upgrade specialized craft training; and

(4) Improve the access of women, minorities, economically disadvantaged individuals, individuals with disabilities and ex-criminal offenders to trade occupations and training.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed national model center of regional training for skilled trades on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) Placement of students in jobs, including military service; and

(iii) Successful matriculation of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of training for skilled tradesmen;

(3) Proposes to use innovative techniques that address problems and needs associated with training skilled tradesmen and that are of national significance; and

(4) Is likely to make a significant contribution to training skilled tradesmen in areas of skill shortages or projected skill shortages in the region in which the project will be located.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) Is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the skilled trades training methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire regional model center equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2419)

§ 424.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 424.21, the Secretary considers whether the most highly rated applications are equitably distributed among the skilled trades with shortages.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects funded under this program among the skilled trades with shortages.

(Authority: 20 U.S.C. 2419(c))

Subpart D—What Conditions Must Be Met After an Award?

§ 424.30 What are the evaluation requirements?

(a) Each grant recipient shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, placement rates, and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2419)

§ 424.31 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of Federal funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2419)

27. Part 425 is added to read as follows:

PART 425—DEMONSTRATION PROJECTS FOR THE INTEGRATION OF VOCATIONAL AND ACADEMIC LEARNING PROGRAM

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met After an Award?

Authority: 20 U.S.C. 2420, unless otherwise noted.

Subpart A—General

§ 425.1 What is the Demonstration Projects for the Integration of Vocational and Academic Learning Program?

The Demonstration Projects for the Integration of Vocational and Academic Learning Program provides financial assistance to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning.

(Authority: 20 U.S.C. 2420(a))

§ 425.2 Who is eligible for an award?

(a) The following entities are eligible for an award under the Demonstration Projects for the Integration of Vocational and Academic Learning Program:

(1) An institution of higher education.

(2) An area vocational education school.

(3) A secondary school funded by the Bureau of Indian Affairs.

(4) A State board of vocational education.

(5) A public or private nonprofit organization.

(6) A local educational agency.

(b) Consortia composed of the entities described in paragraph (a) of this section also are eligible for awards under this program.

(Authority: 20 U.S.C. 2420(a))

§ 425.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning by—

(1) Designing integrated curricula and courses;

(2) Providing inservice training for teachers of vocational education students and administrators in integrated curricula; and

(3) Disseminating information regarding effective integrative strategies to other school districts through the National Diffusion Network (NDN) under section 1562 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2962), or, in the case of projects that will be funded for less than three years, disseminating information about the design of a project necessary for effective integrative strategies to be supported, so that they may be disseminated through NDN.

(b) Each project supported under this part must serve—

(1) Individuals who are members of special populations;

(2) Vocational students in secondary schools;

(3) Vocational students at postsecondary institutions;

(4) Individuals enrolled in adult programs; or

(5) Single parents, displaced homemakers, and single pregnant women.

(Authority: 20 U.S.C. 2420(a), (b)(3) and (4))

§ 425.4 What regulations apply?

The following regulations apply to the Demonstration Projects for the Integration of Vocational and Academic Learning Program:

(a) The regulations in this part 425.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2420)

§ 425.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2420)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 425.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 425.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 425.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 425.21.

(Authority: 20 U.S.C. 2420)

§ 425.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the quality of the proposed project, including—

(1) The extent to which the project involves creative or innovative methods for integrating vocational and academic learning; and

(2) The extent to which the project will serve—

(i) Individuals who are members of special populations;

(ii) Vocational students in secondary schools and at postsecondary institutions;

(iii) Individuals enrolled in adult programs; or

(iv) Single parents, displaced homemakers, and single pregnant women.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques that address the need to integrate vocational and academic learning, and produce benefits that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Carries out the requirements in § 425.30;

(2) Is clearly explained and is appropriate to the project;

(3) To the extent possible, is objective and will produce data that are quantifiable;

(4) Includes quality measures to assess the effectiveness of the curricular developed by the project;

(5) Identifies expected outcomes of the participants and how those outcomes will be measured;

(6) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(7) Will lead to the demonstration of a clear link between the intended positive results and the specific treatment of project participants; and

(8) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of the audience to which the project activities will be disseminated and provisions for publicizing the project at the local, State, and national levels by conducting, or delivering presentations at, conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the methods, approaches, and techniques developed by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities, to ensure that funds awarded under this part are used to provide instructional services.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2420)

§ 425.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 425.21, the Secretary determines whether the most highly rated applications—

(1) Are equitably distributed throughout the Nation;

(2) Offer significantly different approaches to integrating vocational and academic curricula; and

(3) Serve individuals described in § 425.3(b).

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of, diversity of approaches in, or the diversity of populations to be served by projects funded under this program.

(Authority: 20 U.S.C. 2420(b))

Subpart D—What Conditions Must Be Met After an Award?

§ 425.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) Each grantee shall employ adequate measures to evaluate the effectiveness of the curriculum approaches supported by the project.

(d) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(e) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(f) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2420(b)(5))

28. Part 426 is added to read as follows:

PART 426—COOPERATIVE DEMONSTRATION PROGRAM

Subpart A—General

Authority: 20 U.S.C. 2420a, unless otherwise noted.

Subpart A—General

§ 426.1 What is the Cooperative Demonstration Program?

The Cooperative Demonstration Program provides financial assistance for—

(a) Model projects providing improved access to quality vocational education programs for individuals who are members of special populations and for men and women seeking non-traditional occupations;

(b) Projects that are examples of successful cooperation between the private sector and public agencies in vocational education;

(c) Projects to overcome national skill shortages;

(d) Projects that develop consumer and homemaking education programs, including child growth and development centers;

(e) Projects that assist disadvantaged youths in preparing for technical and professional health careers; and

(f) Model projects providing access to vocational education programs through agriculture action centers.

(Authority: 20 U.S.C. 2420a(a))

§ 426.2 Who is eligible for an award?

(a) The following entities are eligible to apply for an award for activities described in §§ 426.4, 426.5, and 426.7:

(1) State educational agencies.

(2) Local educational agencies.

(3) Postsecondary educational institutions.

(4) Institutions of higher education.

(5) Other public and private agencies, organizations, and institutions.

(b)(1) Awards for activities described in § 426.6 are provided to partnerships between—

(i) Community-based organizations; and

(ii) Local schools, institutions of higher education, and businesses.

(2) A partnership formed for the purpose of receiving an award under § 426.6 shall include as partners at least one community-based organization and at least one entity from the groups listed in paragraph (b)(1)(ii) of this section, and may include more than one entity from each group.

(3) The partners shall apply jointly to the Secretary for an award under this part.

(4) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Authority: 20 U.S.C. 2420a(a))

§ 426.3 What activities may the Secretary fund?

(a) The Secretary supports, directly or through grants, cooperative agreements, or contracts, the following types of projects:

(1) *Demonstration Projects.* The Secretary supports model projects providing improved access to high quality vocational education for members of special populations and men and women seeking to enter non-traditional occupations, projects that are models of successful cooperation between the private sector and projects to overcome national skill shortages, as described in § 426.4.

(2) *Program for Model Consumer and Homemaking Education Projects.* The Secretary supports model projects that improve instruction and curricula related to consumer and homemaking skills, as described in § 426.5.

(3) *Community-Based Organization Projects.* The Secretary supports community-based organizations in partnerships with entities listed in § 426.2(b)(1)(ii), to operate projects that assist disadvantaged youths in preparing for technical and professional health careers, as described in § 426.6.

(4) *Agriculture Action Centers.* The Secretary supports model projects providing improved access to vocational education programs through agriculture action centers, as described in § 426.7.

(b) All projects assisted under the Cooperative Demonstration Program must be—

(1) Of direct service to the individuals enrolled; and

(2) Capable of wide replication by service providers.

(Authority: 20 U.S.C. 2420a(a))

§ 426.4 What activities does the Secretary fund under the Demonstration Projects?

The Secretary supports the following types of projects:

(a) Model projects providing improved access to quality vocational education programs for—

(1) Individuals with disabilities;

(2) Educationally and economically disadvantaged individuals (including foster children);

(3) Individuals of limited English proficiency;

(4) Individuals who participate in programs designed to eliminate sex bias;

(5) Individuals in correctional institutions; and

(6) Men and women seeking to enter nontraditional occupations.

(b)(1) Projects that are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, building trade councils, and private agencies, organizations, and institutions) and public agencies in vocational education (including State boards of vocational education and eligible recipients as defined in 34 CFR 400.4).

(2) The projects described in paragraph (b)(1) of this section must be designed to demonstrate ways in which vocational education and the private sector of the economy can work together effectively to assist vocational education students to attain the advanced level of skills needed to make the transition from school to productive employment, including—

(i) Work experience and apprenticeship projects;

(ii) Transitional work site job training for vocational education students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient;

(iii) Placement services in occupations that the students are preparing to enter;

(iv) If practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas; or

(v) Employment-based learning programs.

(3) The projects described in paragraphs (b) (1) and (2) of this section may include institutional and on-the-job training, supportive services authorized by the Act, and other assistance as the Secretary determines to be necessary for the successful completion of the project.

(c) Projects to overcome national skill shortages, as designated by the Secretary in cooperation with the Secretary of Labor, Secretary of Defense, and Secretary of Commerce.

(Authority: 20 U.S.C. 2420a (a)(1)–(3) and (b)(1))

§ 426.5 What activities does the Secretary fund under the Program for Model Consumer and Homemaking Education Projects?

The Secretary supports model projects that develop programs and improve instruction and curricula related to—

(a) Managing individual and family resources;

(b) Making consumer choices;

(c) Balancing work and family;

(d) Improving responses to individual and family crises, including family violence and child abuse;

(e) Strengthening parenting skills, especially among teenage parents;

(f) Preventing teenage pregnancy;

(g) Assisting aged individuals with disabilities, and members of at-risk populations, including the homeless;

(h) Conserving limited resources;

(i) Improving individual, child, and family nutrition and wellness;

(j) Understanding the impact of new technology on life and work;

(k) Applying consumer and homemaking education skills to jobs and careers;

(l) Other needs to be determined by the State board of vocational education; and

(m) Developing child growth and development centers.

(Authority: 20 U.S.C. 2420a(4))

§ 426.6 What activities does the Secretary fund under the Community-based Organization Projects?

(a) The Secretary supports projects that assist disadvantaged youths in preparing for technical and professional health careers.

(b) The Secretary may require partnerships described in § 426.2(b)(1) to provide in-kind contributions from such schools, institutions, and businesses and to involve health professionals serving as instructors and counselors.

(Authority: 20 U.S.C. 2420a(5))

§ 426.7 What activities does the Secretary fund under the Agriculture Action Centers?

The Secretary supports model Agriculture Action Centers that provide improved access to vocational education programs and that—

(a) Assist individuals—

(1) Who are adversely affected by farm and rural economic downturns;

(2) Who are dislocated from farming; and

(3) Who are dislocated from agriculturally related businesses and industries that are adversely affected by farm and rural economic downturns;

(b) Provide services, including—

(1) Crisis management counseling and outreach counseling that would include members of the family of the affected individual;

(2) Evaluation of vocational skills and counseling on enhancement of these skills;

(3) Assistance in obtaining training in basic, remedial, and literacy skills;

(4) Assistance in seeking employment and training in employment-seeking skills; and

(5) Assistance in obtaining training related to operating a business or enterprise;

(c) Provide for formal and on-the-job training to the extent practicable; and

(d) Are coordinated with activities and discretionary programs under title III of the Job Training Partnership Act (JTPA) (29 U.S.C. 1651 *et seq.*).

(Authority: 20 U.S.C. 2420a(6))

§ 426.8 What regulations apply?

The following regulations apply to the Cooperative Demonstration Program:

(a) The regulations in this part 426.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2420a)

§ 426.9 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2420a)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 426.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 426.21, 426.22, 426.23, or 426.24.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §§ 426.21, 426.22, 426.23, or 426.24.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in §§ 426.21, 426.22 426.23, or 426.24.

(Authority: 20 U.S.C. 2420a)

§ 426.21 What selection criteria does the Secretary use for the Demonstration Projects?

The Secretary uses the following criteria to evaluate an application for a grant or cooperative agreement:

(a) *Program factors.* (10 points) The Secretary reviews the application to assess the quality of the proposed project, including the extent to which the project will provide—

(1) Vocational education to meet current and projected occupational needs; and

(2) For adequate and appropriate involvement and cooperation of the public and private sectors in the project, including—

(i) A clear identification of the public and private sector entities involved in the project;

(ii) A description of public and private sector involvement in the planning of the project; and

(iii) A description of public and private sector involvement in the operation of the project.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successfully designed, established, and operated model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will lead to the demonstration of a clear link between the intended positive results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Disseminating the results of the project in a manner that would meet the requirement in § 426.31;

(3) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(4) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(5) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(6) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project. For the Community-based Organization Program, the Secretary determines the qualifications, in relation to project requirements, of health professionals serving as preceptors and counselors and of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project. For the Program for Model Consumer and Homemaking Education Projects, the Secretary also considers the experience and training of key personnel in consumer and homemaking education; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities. For the Community-based Organization Program, the Secretary also determines the extent to which the budget includes in-kind contributions from partnership members.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which the—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2420a)

§ 426.22 What selection criteria does the Secretary use for the Program for Model Consumer and Homemaking Education Projects?

(a) The Secretary uses the following criteria to evaluate an application for a grant or cooperative agreement:

(1) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which project activities will improve, expand, and update programs that will—

(i) Be conducted for residents of economically depressed areas or areas with high rates of unemployment;

(ii) Encourage participation of traditionally underserved populations;

(iii) Encourage the elimination of sex bias and sex stereotyping; and

(iv) Address priorities and emerging concerns at the local, State, and national levels, such as the articulation of secondary and postsecondary consumer and homemaking education programs and the integration of basic skills in consumer and homemaking education programs.

(2) *Demonstration program design.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(i) Bases the proposed consumer and homemaking education project on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(A) Student performance and achievement;

(B) Placement of students in jobs, including the preparation of students for the occupation of homemaking; and

(C) Successful transfer of students to a wide variety of postsecondary educational programs;

(ii) Proposes project objectives that contribute to the improvement of consumer and homemaking education; and

(iii) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(b) The Secretary also uses the criteria and points in § 426.21(c)–(h) to evaluate an application.

(Authority: 20 U.S.C. 2420a)

§ 426.23 What selection criteria does the Secretary use for the Community-based Organization Projects?

(a) The Secretary uses the following criterion to evaluate an application for a grant or cooperative agreement:

Program factors. (10 points) The Secretary reviews the quality of a proposed project to assess the extent to which the proposed project—

(1) Will assist disadvantaged youths in preparing for technical and professional health careers;

(2) Provides for adequate and appropriate involvement of local schools, institutions of higher education, and businesses in the project, including—

(i) Clear identification of partnership members;

(ii) Involvement of partnership members in the planning of the project; and

(iii) Involvement of partnership members in the operation of the project; and

(3) Will coordinate activities to ensure that the project will help meet current and projected occupational needs in the area.

(b) The Secretary also uses the criteria and points in § 426.21(b)–(h) to evaluate an application.

(Authority: 20 U.S.C. 2420a)

§ 426.24 What selection criteria does the Secretary use for Agriculture Action Centers?

(a) The Secretary uses the following criterion to evaluate an application for a grant or cooperative agreement:

Program factors. (10 points) The Secretary reviews each application to determine the extent to which the proposed Agriculture Action Center will—

(1) Provide vocational education to meet current and projected occupational needs; and

(2) Be located in a service area that includes a high concentration of individuals who are—

(i) Adversely affected by farm and rural economic downturns;

(ii) Dislocated from farming; and

(iii) Dislocated from agriculturally-related businesses and industries that are adversely affected by farm and rural economic downturns.

(b) The Secretary also uses the criteria and points in § 426.21(b)–(h) to evaluate an application.

(Authority: 20 U.S.C. 2420a)

§ 426.25 What additional factors may the Secretary consider?

After evaluating applications according to criteria in §§ 426.21, 426.22, 426.23, or 426.24, the Secretary may fund other than the most highly rated applications if doing so would improve the geographical distribution of projects funded under this part.

(Authority: 20 U.S.C. 2420a)

Subpart D—What Conditions Must Be Met After an Award?

§ 426.30 What is the requirement regarding cost-sharing?

(a) A recipient of an award under this part shall provide not less than 25 percent of the total cost (the sum of the Federal and non-Federal shares) of the project it conducts under this program.

(b) In accordance with subpart G of 34 CFR part 74, the non-Federal share may be in the form of cash or in-kind contributions, including the fair market value of facilities, overhead, personnel, and equipment.

(Authority: 20 U.S.C. 2420a(b)(2))

§ 426.31 What is the requirement regarding dissemination?

Recipients must disseminate the results of projects assisted under this part in a manner designed to improve the training of teachers, other instructional personnel, counselors, and administrators who are needed to carry out the purposes of the Act.

(Authority: 20 U.S.C. 2420a(d))

§ 426.32 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2420a)

§ 426.33 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of Federal funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2420a)

29. Part 427 is added to read as follows:

PART 427—BILINGUAL VOCATIONAL TRAINING PROGRAM

Subpart A—General

Authority: 20 U.S.C. 2441(a), unless otherwise noted.

Subpart A—General

§ 427.1 What is the Bilingual Vocational Training Program?

The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training for limited English proficient out-of-school youth and adults, to prepare these individuals for jobs in recognized occupations and new and emerging occupations.

(Authority: 20 U.S.C. 2441(a))

§ 427.2 Who is eligible for an award?

(a) The following entities are eligible for an award under this program:

(1) State agencies.

(2) Local educational agencies (LEAs).

(3) Postsecondary educational institutions.

(4) Private nonprofit vocational training institutions.

(5) Other nonprofit organizations specially created to serve or currently serving individuals who normally use a language other than English.

(b) Private for-profit agencies and organizations are eligible only for contracts under this program.

(Authority: 20 U.S.C. 2441(a))

§ 427.3 What activities may the Secretary fund?

(a) The Secretary provides grants, cooperative agreements, or contracts for—

(1) Bilingual vocational training projects for limited English proficient out-of-school youth and adults who are available for training and employment;

(2) Bilingual vocational education and training projects for limited English proficient out-of-school youth and adults who have already entered the labor market but who desire or need English language skills and job skills training or retraining to achieve employment in a recognized occupation or new and emerging occupations, adjust to changing work force needs, expand their range of skills, or advance in employment; and

(3) Training stipends for participants in bilingual vocational training projects.

(b) Bilingual vocational training projects must include instruction in the English language to ensure that participants in that training will be equipped to pursue occupations in an English language environment.

(c) In the Commonwealth of Puerto Rico, the Bilingual Vocational Training Program may provide for the needs of students of limited Spanish proficiency.

(Authority: 20 U.S.C. 2441(a), (e)(2))

§ 427.4 What regulations apply?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 427.

(Authority: 20 U.S.C. 2441(a))

§ 427.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: 20 U.S.C. 2441(a))

Subpart B—How Does One Apply for an Award?

§ 427.10 What must an application contain?

(a) An application must—

(1) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(2) Propose a project of a size, scope, and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Training Program;

(3) Contain measurable goals for the enrollment, completion, and placement of program participants;

(4) Include a comparison of how the applicant's goals take into consideration any related standards and measures in the geographic area for the Job Opportunities and Basic Skills Training (JOBS) program (42 U.S.C. 681 *et seq.*) and any Job Training Partnership Act (JTPA) programs (29 U.S.C. 1501 *et seq.*) and any standards set by the State Board for Vocational Education for the occupational and geographic area;

(5) Describe, for each occupation for which training is to be provided, how successful program completion will be determined and reported to the Secretary in terms of the academic and vocational competencies to be demonstrated by enrollees prior to successful completion and any academic or work credentials expected to be acquired upon completion; and

(6) Be submitted to the State board for vocational education (State board) established under section 111 of the Act for review and comment, including comment on the relationship of the proposed project to the State's vocational education program.

(b) An applicant shall include any comments received under paragraph (a)(6) of this section with the application.

(Authority: 20 U.S.C. 2441(a), (d)(1) and (2))

Subpart C—How Does the Secretary Make an Award?

§ 427.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 427.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 427.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 427.21.

(Authority: 20 U.S.C. 2441(a))

§ 427.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Need.* (15 points) (1) The Secretary reviews each application for specific information that shows the need for the proposed bilingual vocational training project in the local geographic area, including—

(i) The employment training need to be met;

(ii) The labor market need to be met; and

(iii) The relationship of the proposed project to other employment training programs in the community.

(2) The Secretary reviews each application to determine the extent to which the project proposes measurable goals for student enrollment, completion, and placement and describes how the applicant sets the

goals taking into consideration the standards and measures for JOBS programs and JTPA programs and any standards set by the State Board established under section 111 of the Act for the occupation and geographic area.

(3) The Secretary reviews each application to determine the extent to which the project defines successful program completion (or describes how successful program completion will be defined and reported to the Secretary) in a way consistent with the goals of the program for each occupation for which training is to be provided.

(4)(i) The Secretary reviews each application for specific information that, upon completion of their training, more than 65 percent of the trainees will be employed in jobs (including military specialties) related to their training, or will be enrolled for further training related to their training under this program. This information should correspond to the information described in paragraph (a)(1) of this section.

(ii) The estimated job placement rate should be supported by past records, actual employer job commitments, anticipated job openings, or other pertinent information.

(b) *Plan of operation.* (15 points) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(1) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Training Program;

(2) For each objective, the specific tasks to be performed in order to achieve the specified project objective;

(3) How the applicant plans to use its resources and personnel to achieve each objective; and

(4) If the applicant plans to use a project advisory committee, a clear plan for using a project advisory committee to assist in project development, to review curriculum materials, and to make recommendations about job placements.

(c) *Program factors.* (20 points) (1) The Secretary reviews each application to determine the quality of training to be provided, including—

(i) Provision of vocational skills instruction in English and the trainees' native languages;

(ii) Provision of job-related English-as-a-second language instruction;

(iii) Coordination of the job-related English-as-a-second language instruction with the vocational skills instruction;

(iv) Recruitment procedures that are targeted towards limited English proficient out-of-school youth and adults who have the greatest need for bilingual vocational training;

(v) Assessment procedures that evaluate the language and vocational training needs of the trainees;

(vi) Provision of counseling activities and employability skills instruction that prepare trainees for employment in an English language environment; and

(vii) Job development and job placement procedures that provide opportunities for career advancement or entrepreneurship.

(2) The Secretary reviews each application to determine the project's potential to have a lasting impact in the local geographic area, including the potential impact of the project on—

(i) Program participants;

(ii) The agency or agencies responsible for administering the bilingual vocational training program;

(iii) Other employment training services in the local area; and

(iv) The community.

(d) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities, equipment, and supplies that the applicant plans to use are adequate for the proposed project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the project;

(2) Identifies at a minimum, types of data to be collected and reported with respect to the English-language competencies and academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by individuals who complete the training;

(3) Identifies at a minimum, types of data to be collected and reported with respect to enrollment, completion, and placement of participants by sex, racial or ethnic group, socio-economic status, and where appropriate, by level of English proficiency, for each occupation for which training is provided;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as, a summative evaluation that includes recommendations for replicating project activities and results; and

(5) Makes use of an external evaluator.

(g) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for making available the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(Authority: 20 U.S.C. 2441(a))

§ 427.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 427.21 and consulting with the appropriate State board established under section 111 of the Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with limited English proficiency within a State; or

(2) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2441(d)(5))

Subpart D—What Conditions Must Be Met After an Award?

§ 427.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for an independent evaluation of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include descriptions and analyses of the accuracy of records and validity of measures by the project to establish and report on the English-language competencies and academic and vocational competencies demonstrated and the academic and work credentials acquired.

(d) The annual evaluation must contain descriptions and analyses of the accuracy of records and validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex, racial or ethnic group, socio-economic status, and if appropriate, by level of English proficiency for each occupation for which training has been provided.

(e) The annual evaluation must also include—

(1) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application;

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(3) The effectiveness of the project in promoting key elements for participants' job readiness, including—

(i) Coordination of services; and

(ii) Improved English-language, academic, and vocational skills competencies.

(Authority: 20 U.S.C. 2441(a))

30. Part 428 is added to read as follows:

PART 428—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

Authority: 20 U.S.C. 2441(b), unless otherwise noted.

Subpart A—General

§ 428.1 What is the Bilingual Vocational Instructor Training Program?

The Bilingual Vocational Instructor Training Program provides financial assistance for preservice and inservice training for personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient out-of-school youth and adults.

(Authority: 20 U.S.C. 2441(b))

§ 428.2 Who is eligible for an award?

(a) The following entities are eligible for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Public and private nonprofit educational institutions.

(b) Private for-profit educational institutions are eligible only for contracts under this program.

(Authority: 20 U.S.C. 2441(b)(1))

§ 428.3 What activities may the Secretary fund?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(1) Preservice and inservice training for instructors, aides, counselors, or other ancillary personnel participating in or preparing to participate in bilingual vocational training programs for out-of-school youth and adults; and

(2) Fellowships and traineeships for individuals participating in preservice or inservice training.

(b) The Secretary does not make an award under this program unless the Secretary determines that the applicant has an ongoing vocational education program in the field in which participants will be trained, and can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual vocational training project.

(Authority: 20 U.S.C. 2441(b))

§ 428.4 What regulations apply?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 428.

(Authority: 20 U.S.C. 2441(b))

§ 428.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: 20 U.S.C. 2441(b))

Subpart B—How Does One Apply for an Award?

§ 428.10 What must an application contain?

An application must—

(a) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(b) Propose a project of a size, scope and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Instructor Training Program;

(c) Describe the capabilities of the applicant, including vocational training or education courses offered by the applicant, accreditation, and any certification of courses by appropriate State agencies;

(d) Describe the qualifications of principal staff to be used in the bilingual vocational instructor training project;

(e) Describe the number of participants to be served, the minimum qualifications for project participants, and the selection process for project participants;

(f) Include the projected amount of the fellowships or traineeships, if any;

(g) Contain sufficient information for the Secretary to make the determination required by § 428.3(b); and

(h) Provide an assurance that preservice training will be provided to individuals who have indicated their intent to engage as personnel in a vocational education program that serves limited English proficient out-of-school youth and adults.

(Authority: 20 U.S.C. 2441(d)(1), (4))

Subpart C—How Does the Secretary Make an Award?

§ 428.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 428.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) or this section, based on the criteria in § 428.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 428.21.

(Authority: 20 U.S.C. 2441(b), (d)(5))

§ 428.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points) (1) The Secretary reviews each application to determine the need for the proposed bilingual vocational instructor training project, including—

(i) The need for the project in the specific geographic area(s) to be served by the proposed project;

(ii) The training needs of program participants to be served by the proposed project;

(iii) How these needs will be met through the proposed project; and

(iv) The relationship of the proposed project to other ongoing personnel development programs in the geographic area(s) to be served by the proposed project.

(2) The Secretary reviews each application to determine the extent to which, upon completion of their training, program participants will work with programs that provide vocational education to limited English proficient out-of-school youth and adults.

(b) *Program design.* (20 points) The Secretary reviews each application to determine the quality of the program design and the potential of the project to have a lasting impact on the geographic area(s) to be served by the proposed project, including—

(1) Potential to increase the skill level of program participants, with particular regard to the following areas:

(i) Knowledge of the needs of limited English proficient out-of-school youth and adults enrolled in vocational education programs, and how those needs should influence teaching strategies and program design.

(ii) Understanding of bilingual vocational training methodologies.

(iii) Techniques for preparing limited English proficient out-of-school youth and adults for employment; and

(2) Potential to increase access to vocational education for limited English proficient out-of-school youth and adults.

(c) *Plan of operation.* (15 points) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(1) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Instructor Training Program;

(2) For each objective, the specific tasks to be performed in order to achieve the specified project objective; and

(3) How the applicant plans to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Instructor Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities that the applicant plans to use are adequate for the proposed project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the bilingual vocational instructor training project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies outcomes of the project in terms of enrollment, completion and after—training work commitments of participants by sex, racial or ethnic group, and by level and kinds of language proficiency;

(4) Identifies expected learning and skills outcomes for participants and how those outcomes will be measured.

(5) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the effectiveness and efficiency of the plan to disseminate information about the project and demonstrate project activities and results, including—

(1) High quality in its design and procedures for evaluating the effectiveness of the dissemination plan; and

(2) A description of the types of materials the applicant plans to develop and make available to help others replicate project activities, and the methods to be used to make the materials available.

(Authority: 20 U.S.C. 2441(b))

§ 428.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 428.21, and consulting with the appropriate State board established under section 111 of the Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with

limited English proficiency within the affected State; or

(2) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2441(d)(5))

PARTS 469-498—[RESERVED]

31. Parts 469 through 498 are reserved.

Appendix B—Summary of the Results of Negotiated Rulemaking

Note: This appendix is to be published in the **Federal Register** with the proposed regulations, but it is not to be codified in the Code of Federal Regulations.

The purpose of this appendix is to provide a general summary of the results of the negotiated rulemaking conducted pursuant to section 504(b) of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Public Law No. 101–392, 104 Stat. 753 (1990)). Public Law No. 101–392 amends the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.* (1988)), effective July 1, 1991. (The law, which becomes effective on July 1, is referred to as the "Perkins Act" or the "Perkins Act as amended" in this appendix.)

The Federal Mediation and Conciliation Service conducted the negotiated rulemaking on December 17–18, 1991. Fourteen negotiators chosen by the U.S. Department of Education, including a representative of the Department, participated in the negotiated rulemaking. In addition to the Department's representative, the negotiators included representatives of particular constituent groups listed in section 504(b) of the Act and the Department's ten regions. Prior to the negotiated rulemaking, the Department provided each negotiator with a copy of a summary of the regulatory issues to be negotiated, possible options for resolving the issues, and draft proposed regulations.

This appendix summarizes the negotiations held in each of the three areas in which regulatory issues were submitted for negotiation: (1) Requirements for the use of funds; (2) evaluations under standards and measures; and (3) services and activities for special populations. Within each area, the individual regulatory issues negotiated and the decisions reached, or other recommendations made by the negotiators, are summarized.

Requirements for the Use of Funds

Issue 1: Section 235(a) of the Act provides that recipients must use funds to improve vocational education programs with the full participation of special populations. *How Should the Department Interpret "Full Participation of Individuals who are Members of Special Populations"?*

The draft proposed regulations interpreted "full participation" as requiring a recipient to provide the supplementary services necessary for special population members to succeed in vocational education. The draft proposed regulations provided an example of a supplementary service that a recipient might offer to ensure full participation.

Under the draft proposed regulations, a recipient would be permitted to serve other populations at the same time that it is serving special populations if it meets the requirements in sections 118 and 235 (a), (b), and (c)(1)(C) of the Act.

Decision: Consensus

• All negotiators agreed to the draft proposed regulations, with § 403.74 (a)(2) and (a)(2)(i) (currently § 403.111(a)(2)(i)) of the draft proposed regulations revised to read as follows:

(2) Programs assisted with funds awarded under (section 231 (a) or (d) or section 232 of the amended Perkins Act) must—

(i) Provide for the full participation of individuals who are members of special populations by providing supplementary and other services necessary for them to succeed in vocational education; and * * *

The negotiators intended the phrase "and other" to give additional flexibility by allowing provision of services not included in the definition of "supplementary services" in section 521(38) of the Perkins Act.

• In the example following § 403.74(a)(2) of the draft proposed regulations, the negotiators also agreed to substitute, for the phrase "vocational education course," the phrase "course that is part of a vocational education program." The negotiators also agreed to place the example in a question-and-answer format in the preamble or in an appendix to the regulations rather than within the text of the regulations. (See appendix A).

• As a general matter, the negotiators agreed that the preamble to the regulations should contain a note that examples provided in the regulations or elsewhere are only illustrations of ways in which a recipient of funds can comply with a particular requirement, and are not intended to be exclusive.

Issue 2: Sections 235 (a) and (b) of the Act require recipients to use funds to give priority to a limited number of sites or programs that serve the highest concentrations of special populations. *How Can a Recipient Implement the Requirement to give Priority to a Limited Number of Sites or Programs that Serve the Highest Concentrations of Special Populations?*

The draft regulations repeated the statutory language requiring priority and gave an example of providing priority to a limited number of sites, and an example of giving priority to a limited number of program areas, by ranking sites or programs according to special population enrollment and funding only those above the district-wide average.

Decision: Consensus

The negotiators agreed to the draft regulations with the addition of a third example that will be contained in the regulations after § 403.74(b) (currently § 403.111(b)). The negotiators intended the additional example to illustrate a way of providing new and better opportunities in vocational education for special population members. The added example reads:

Example 3:

First, an LEA or postsecondary institution identifies a site with a high concentration of special populations.

Second, the LEA or postsecondary institution identifies a program area at the site (such as health occupations) in which the participation rate for members of special populations is lower than the overall rate of participation for members of special populations at the site.

Third, the LEA or postsecondary institution funds a project at the site designed to improve the participation rate of members of special populations in that program area.

Issue 3: Section 235(c)(1)(C) of the Act requires recipients to use funds to provide for the equitable participation of special populations, consistent with the assurances and requirements of section 118 of the Act. *How Should the Department Interpret the Requirement To Provide "Equitable Participation"?*

The draft proposed regulations required recipients to provide special population members with an opportunity for participation in vocational education that is equal to the opportunity provided to the general population. The draft regulations provided two examples to illustrate how the equitable participation of special populations may be provided in vocational education programs.

Decision: Consensus

• The negotiators agreed to include only the statutory language in the regulation, revising § 403.74(c)(3) (currently § 403.111(c)) to delete the explanatory language "so that these populations have an opportunity for participation that is equal to the opportunity afforded to the general student population." As revised,

§ 403.74(c)(3) (currently § 403.111(c)(3)) would read:

(3) Provide for the equitable participation of members of special populations in vocational education consistent with the assurances and requirements in (section 118 of the amended Perkins Act).

• The negotiators also agreed to place the examples that followed § 403.74(c)(3) (currently § 403.111(c)(3)) in a question-and-answer format in the preamble or in an appendix to the regulations, not within the text of the regulations. (See appendix A).

Issue 4: Section 235(c)(1)(B) of the Act requires recipients to use funds in vocational education programs that integrate academic and vocational education in those programs through "coherent sequences of courses" so that students attain academic and occupational competencies. The term "coherent sequence of courses" is also used in the Act in sections 201(b)(2)(B) (State programs and leadership) and 240 (11)(B) and (12)(A) (local application). *How Should the Department Interpret the Term "Coherent Sequence of Courses?"*

The draft proposed regulations defined *coherent sequence of courses* to mean a series of courses, or a single course, in which vocational education and academic skills are integrated, so long as the courses or course directly relates to and leads to educational and occupational competencies. The definition specifically provided that competency-based education, academic education, and adult training or retraining that meet these requirements are included in the term "coherent sequence of courses."

Decision: Consensus

• In order to more closely reflect the statutory requirement, the negotiators agreed to delete "or a single course" from the definition of "coherent sequence of courses" in § 400.4(b). As amended, § 400.4(b) would define the term as follows:

Coherent sequence of courses means a series of courses in which vocational education and academic skills are integrated, and that directly relates to, and leads to, both educational and academic competencies. The term includes competency-based education, academic education, and adult retraining that meet these requirements.

• To ensure the eligibility of adult retraining courses for funding, the negotiators agreed to include, in a question-and-answer format in the preamble or in an appendix to the regulations, a statement that the term "coherent sequence of courses" includes sequential units encompassed within a single adult retraining course that otherwise meets the requirements of the definition. (See the Preamble).

Evaluations Under Standards and Measures

Issue: Section 117 of the Act requires a recipient of title II–C funds to perform an annual evaluation using the Statewide system of standards and measures developed under section 115 of the Act. *What Must a Recipient Evaluate?*

The options for resolving this issue include requiring a title II–C recipient to evaluate:

(1) The recipient's entire vocational education program;

(2) Only those particular projects funded under title II–C; or

(3) Only those projects receiving Perkins funds under the State plan.

The draft proposed regulations reflected option (1), requiring a title II–C recipient to evaluate its entire vocational education program regardless of which specific projects were funded with Perkins Act funds.

Decision: No Consensus

The positions taken by the negotiators included the following:

• Some negotiators preferred option (1), requiring a recipient's entire vocational education program to be evaluated. These negotiators believed that a recipient should evaluate its entire vocational education program to determine if progress was made and that it was not possible to measure the effect of Perkins Act funds alone.

• Other negotiators preferred option (3), which would only require an evaluation of specific projects receiving Perkins Act funds under the State plan. Some of these negotiators agreed that it would be desirable to require recipients to evaluate their entire vocational education programs. However, they believed that recipients will not have sufficient local and State funds to do an acceptable evaluation of their entire programs.

Services and Activities for Special Populations

Issue 1: Section 118(c) of the Act requires a recipient of Title II funds to make certain assurances with respect to providing services to special population members. *To Which Particular Students Do the Assurances Apply?*

The options for resolving this issue include requiring a title II recipient to provide assurances with respect to:

(1) Students in the recipient's projects funded with title II funds;

(2) Students in any of the recipient's projects funded with title II or title III funds under the State plan; or

(3) Students in the recipient's entire vocational education program (including activities funded from non-Federal sources).

The draft proposed regulations reflected option (2), requiring a title II recipient to provide the services described in section 118(c) of the Act for all students who are members of special populations in projects funded with title II or title III funds under the State plan.

Decision: No Consensus

There was some support for each of the options discussed above. The positions taken by the negotiators included the following:

• Option (1), which would only apply the section 118(c) assurances to projects funded under title II, was supported because it takes into account that there will not be sufficient State and local funds available to fulfill a more broadly applied assurance.

• Option (2) was supported with an amendment to the draft proposed regulation to clarify that the section 118(c) assurances were triggered by receipt of title II funds, but applied to any funds received under the State plan (title II or title III of the Act). The negotiators supporting option (2) were concerned that the services and activities required by the section 118(c) assurances be provided to the extent possible with Perkins Act funds but that the limitation on the availability of State and local funds for this purpose also be taken into account.

• Option (3), which would apply the section 118(c) assurances to a recipient's entire program, was supported because it takes into account numerous other statutory requirements, such as those requiring the provision of equitable participation of special population members and requiring Federal funds to be used to improve programs, which dictate that section 118(c) of the Act be given a broad application.

Issue 2: In addition to the assurances required in section 118(c) of the Act, section 118(b) of the Act requires a local educational agency to provide certain information to special population students and their parents. *May a Recipient Spend Only Perkins Act Funds To Provide the Services and Information Required Under Sections 118 (b) and (c) of the Act?*

The options for resolving this issue include:

(1) Permitting a recipient to spend only Perkins Act funds to meet the

requirements of sections 118 (b) and (c) of the Act; or

(2) Requiring a recipient to spend State and local funds, in addition to Perkins Act funds, to meet the requirements of sections 118 (b) and (c) of the Act.

Under the draft proposed regulations, a recipient would only be required to spend Perkins funds to provide the services and activities required in sections 118 (b) and (c) of the Act.

Decision: No Consensus

There was support for both options discussed above. The positions taken by the negotiators included the following:

• Option (1), which would only require expenditures from Perkins funds, was supported by some negotiators who believed that there will not be sufficient State and local funds to support more broadly interpreted requirements under sections 118 (b) and (c) of the Act, but that the requirements should be met to the extent possible with Perkins Act funds.

• Option (2), which would require that recipients spend State or local funds, as well as Perkins Act funds, to provide the services and activities required in sections 118 (b) and (c) of the Act was supported because it met the concern that a contrary interpretation imposing a lesser requirement to provide funding for these services and activities would result in fewer supplemental services being provided to special population members in the Federally-funded projects.

Issue 3: Who Provides the Information Required by Section 118(b) of the Act to Students in a Local Educational Agency That Transferred All of Its Allocation Under Section 231(d) of the Act?

Under the draft proposed regulations, an area vocational education school or intermediate educational agency would provide the information described in section 118(b) of the Act to special population students and their parents in any local educational agency whose allocation was distributed under section 231(d) of the Act in its entirety to the area vocational education school or intermediate educational agency.

Decision: Consensus

All negotiators agreed to the draft proposed regulations.

Note: This appendix is to be published in the **Federal Register** with the proposed regulations, but it is not to be codified in the Code of Federal Regulations.

Appendix C—Synthesis of Comments from Regional Meetings

In compliance with the provisions of section 504 of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Act), the U.S. Department of Education convened regional meetings during October and November of 1990 to obtain public comment for the development of proposed regulations. The major purpose of the regional meetings was to "provide for a comprehensive discussion and exchange of information" regarding regulatory issues under the Act.

The Act specified that the Secretary of Education identify at least four key regulatory issues for discussion at the regional conferences. Beginning in late August of 1990, the U.S. Department of Education initiated a process to identify these issues by convening a series of focus group discussions with representatives from more than thirty national professional associations with an interest in the administration of the Act. From these discussions, four key regulatory issue areas were identified. The four issue areas were:

• Standards and Measures; Assessment; Evaluation; and Program Improvement.

• State Administration and Leadership.

• Use of Funds and Allocation Among Secondary-Level Eligible Recipients.

• Special Populations.

The regional meetings were held in Philadelphia, Pennsylvania, October 30–31, 1990; Atlanta, Georgia, November 5–6, 1990; San Francisco, California, October 7–8, 1990; and Kansas City, Missouri, November 14–15, 1990. A small group process was utilized at these meetings for discussing the regulatory issues and receiving recommendations from the participants. The participants indicated the issue area of their interest and were assigned to groups of approximately 25 individuals to discuss the issue area. In most cases, there were two small groups assigned to each issue area. Reports of the discussions with recommendations were prepared by each group and presented orally at the conclusion of each regional meeting. Written reports were also submitted by each small group to the U.S. Department of Education for review and comparison across the four meetings.

Summary of Consensus—Non-Consensus

The following charts represent a consensus/non-consensus matrix that summarizes the recommendations and comments from the small groups. Where there was major disagreement as to the recommendations between the small groups with the same issue areas, both perspectives are reported.

CONSENSUS—NON-CONSENSUS MATRIX

[Standards & Measures; Assessment]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 115(b)1 (b)2: Issue #1	No Consensus on whether to Regulate:	Regulations/Clarification Needed:	Regulatory Guidance Requested:	No Regulations; Guidance should be provided.
Consensus—Non-Consensus.	Both groups made generally the same types of recommendations.	Both groups made similar recommendations.	One group	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Standards & Measures; Assessment]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Should the U.S. Department of Education (hereafter the Department) define by regulation the measures of performance enumerated in section 115(b) and, if so, how should they be defined?	One group reported that the law, as written, provides sufficient information and does not require further regulation. However, it was recommended that the Department define all key terms in section 115 relating to standards and measures. The other group also reported a need for definitions of terms and recommended regulations as follows: The State, in the development of its system of core standards and measures, shall develop measures for the full range of both academic and occupational skills and knowledge for each program.	The regulations should not be more directive than the Act. However, the Department should provide technical assistance (written guidance and inservice) to further define/clarify certain aspects of this section. Some parts of performance measures described in section 115 (a) and (b) need definitions through regulation.	Performance measures need to be defined in regulatory guidelines. Occupational skills should be included with academic skills in definitions that clarify section 115(b)(1).	Each State shall define the specific measures of performance. In acknowledgment of the diversity among states, the regulations should recognize each State Committee of Practitioners and the State planning process as providing adequate guidance and direction in the development of standards and measures. Further, experimentation and innovation should be allowed and encouraged.
Section 115(a): Issue #2	Regulations/Clarification Needed:	No Consensus on need for Regulations:	Guidelines Requested:	Regulations Needed:
Consensus—Non-Consensus.	Both groups made somewhat different types of recommendations.	No Consensus between groups	One group	Both groups made similar recommendations.
To what extent and in what ways should eligible recipients be allowed to make local modifications to the statewide system of core standards and measures required in section 115(a). Should this be regulated, and, if so how?	One group believed that regulations should indicate that each State plan will describe a process for LEAs to utilize in order to make modifications to the State system of core standards and measures. Furthermore, the fact that the law says that LEAs "may modify" does not automatically empower/entitle the LEA to modify the system. All local modifications must be approved by the State prior to implementation. The other group reported that section 115 adequately addresses the fact that modifications of the State's system are allowable. However, it was recommended that no modifications to the *standards* be made at the local level, rather the locals may make modifications in the *progress* toward reaching the standards.	One group reported that statewide performance measures and standards should be set for program completers. These should not be modifiable locally. LEAs would have flexibility in attainment, and be able to set appropriate exit points, and to give credit for incremental gains. Statewide program performance standards for placement and retention should be set, as appropriate. These standards could be modified based on local conditions and populations served. The other group reported that the Department should not provide further definition or guidance in regulation.	Each State should establish minimum core standards and measures in the State plan as well as the procedures for allowable local modification.	The State plan shall identify the process and establish criteria for local modification of performance standards based on assessment criteria contained in the State plan. Local modification should include evidence of improvement or commitment to improvement. A minority report indicated that local modifications of standards and measures should be made primarily for the purpose of increasing access and participation of special populations and targeted groups. These modifications should be reviewed as an "incentive" to serve more special needs and targeted groups.
Section 115/Section 116: Issue #3	No Regulations Needed:	Guidance Requested:	Guidelines Requested:	No Regulations; Guidance should be provided.
Consensus—Non-Consensus.	Both groups made essentially the same recommendations.	Both groups made essentially the same recommendations.	One group	Both groups made similar recommendations.
How can consistency be achieved between the standards and measures as required in section 115 of the Act and those required by the JTPA and JOBS programs. Should this be regulated, and if so, how?	No regulations needed	The Perkins Act focuses on a complete integrated system of performance standards and measures, along with components aimed at attaining the standards. JTPA and JOBS focus on parts of a system. Where the two overlap, there should be consistency developed by each state.	Complete consistency between standards and measures in the Perkins Act and JTPA and JOBS cannot be achieved. Where objective measures overlap they should be consistent. A common definition of terms for data collections is needed.	Encourage development of complementary standards in JTPA, JOBS, & the Perkins Act at the State level where there are mutual interests and issues. Each State shall have the flexibility to define the measures and establish standards.
Section 115: Issue #4	Regulations Needed:	Guidance Requested:	Regulations Needed:	No Regulations; Guidance should be provided.
Consensus—Non-Consensus.	Both groups made generally the same types of recommendations.	Both groups made essentially the same recommendations.	One group	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Standards & Measures; Assessment]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Are separate standards and measures needed for secondary and post-secondary levels? Section 115 does not address this issue but the legislative history in the conference report says different standards *may* be established.	There may be several reasons for having separate standards and measures for secondary and postsecondary. Regulations should require that in the development of the State plan and the core system of standards and measures, the State must address whether or not separate standards and measures are needed for secondary, adult, and postsecondary vocational education. If separate standards and measures are developed, there must be articulation between the sets of standards and measures.	No additional regulations are needed beyond the law and the conference report. The standards may be the same or may be different. It is and should be a state and local decision. Wherever practicable, the same performance measures should be encouraged for secondary and postsecondary levels. Where possible, there should be proficiency levels such that secondary and postsecondary levels as seamless as possible.	Regulations should clarify governance and difference in secondary and postsecondary standards. Maximum flexibility should be given to States and incorporated into the State Plan. In states where there is more than one governing board, it is the responsibility of each to develop their own standards which should be brought together in the State Plan. A minority opinion was that separate standards should not be allowed.	Separate standards and measures for secondary/post secondary should be a state decision. Separate standards and measures may be established by the State Board for secondary and postsecondary or adult programs under the Act. If a State decides to develop two sets of standards and measures, there should be language reflecting articulation.
Section 117:				
Issue #5	No Consensus:	No Consensus:	No Consensus:	Regulations Needed:
Consensus—Non-Consensus.	No consensus within each group.	No consensus within or between groups.	One group....................................	No consensus within or between groups.
Should the program evaluation and improvement requirements in section 117 be applied to the entire vocational education program of an eligible recipient or only to those particular programs receiving assistance under the Perkins Act Amendments?.	Realizing that State and local education agencies need to evaluate all vocational education programs, two dominate views were considered in each group. First, official evaluation and reporting should follow funding. That is, those programs actually receiving Federal financial assistance must be evaluated and reported for purposes of the Perkins Act. Second, if one occupational program receives federal support, then there should be reporting on the recipient's entire vocational education program. However, concern was expressed about the costs of evaluating all programs. A definition of "program" is needed.	Majority—The program evaluation and improvement requirements in section 117 should be applied to the entire vocational education program of an eligible recipient. This will be especially important if national evaluations of vocational education focus on comprehensive changes in vocational education. Minority—The evaluation and improvement requirements should be required of programs receiving Perkins Act assistance. Non-binding guidance should encourage and describe how these evaluations/improvements would apply to all local vocational programs. Regulations should make funds eligible for use to evaluate all local vocational programs.	No Consensus: There is a great deal of confusion regarding the definition of a "program." At a minimum, a program should be those programs and activities funded under the Act as described in the State plan.	Only Perkins funded programs will be evaluated under the Perkins law and regulations. Other Perspective: Each recipient of Title II(c) financial assistance shall annually evaluate the effectiveness of programs described in the local applications.
Section 115/Section 117:				
Issue #6	No Consensus:	Regulations Needed:	Regulations Needed:	Regulations Needed:
Consensus—Non-Consensus.	Both groups made generally the same types of recommendations.	Both groups made essentially the same recommendations.	One group....................................	Both groups made similar recommendations.
Should the standards and measures requirement in section 115 and the program evaluation and improvement requirements in section 117 apply to the State administered programs as well as to the Title II basic grant?	One group recommended that standards and measures should apply to both Title II and Title III programs. The other group recommended that the State develop appropriate systems for program evaluation for all State administered programs in Title III, which *may* include program appropriate standards and measures.	Section 115 should apply to programs under Title III as well as Title II (where appropriate). States should have the option of writing separate or different standards and evaluation criteria for the programs under Title II and Title III.	Standards and measures apply to state administered programs in Title III as well as to the basic grant and should be consistent in the State plan. This should be clarified through regulations.	Responsibility for regulation of Title III should be left to the States. Standards and measures shall be developed for all programs assisted under this Act. The State may establish performance standards and measures for Title III and single parent displaced homemaker and sex equity programs in accord ance with the individual program objectives which may or may not be consistent with Sec. 115(b). Program evaluation and improvement requirements in section 117 shall apply to all programs assisted under the Act.
[illegible]tion [illegible](a)[illegible] and Section 116:				
Issue #7	No Consensus:	Regulations Needed:	Regulations Needed:	Regulations Needed:
Consensus—Non-Consensus.	Both groups made somewhat different types of recommendations.	Both groups made essentially the same recommendations.	One group....................................	Both groups made essentially the same recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Standards & Measures; Assessment]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
How often should the State assessment be conducted?	One group recommended that regulations indicate that the statewide assessment of the quality of vocational education programs be conducted once for each State plan period. The other group did not reach consensus. However, they indicated that no further regulations were needed for the initial assessment for the State plan.	The statewide assessment should be done each time the new State plan is developed. Regulations should clarify that the assessment should be conducted each time there is a State plan required in the Act (specifically once for the 3 year plan and once for the 2 year plan). However, for the second planning cycle, the criteria in section 116 should be tied to performance standards utilized in the statewide system.	The assessment should be conducted, at a minimum, for each State planning period. This should be defined via regulation.	An assessment shall be conducted prior to the development of the initial 3 year plan and a second assessment prior to the next State plan.

CONSENSUS—NON-CONSENSUS MATRIX

[State Administration & Leadership]

Issue	Philadelpnia	Atlanta	San Francisco	Kansas City
Section 102(a)(4)(3): Issue #1	No Regulations Needed:	No Regulations Needed:	No Consensus on whether to Regulate:	Flexibility Requested:
Consensus—Non-Consensus.	Both groups made essentially the same recommendations.	Both groups made essentially the same recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.
What kind of expenditures are allowable under the 5 percent limit for State administration under section 102(a)(4) and under the 8.5% limit for State programs and leadership under section 102(a)(3)? Should the regulations define what the Department will consider to be "technical assistance"? Should allowable expenditures under each setaside be regulated and, if so, how?	Both groups agreed that no regulations are needed as the law is specific enough. One group indicated that "technical assistance" should not be defined while the other group indicated that *if* defined, parameters should be established under which technical assistance would be permissible under section 201. States should be afforded flexibility in providing technical assistance and/or in meeting the requirements of section 102(c) with any funds carried over into years affected by these amendments.	States must have flexibility to address the needs of business and industry if they are to fill a viable role in preparing a competitive workforce. Let the States define what goes under each category and do not define (regulate) technical assistance—that would limit flexibility.	No Regulations: Law is clear concerning the 5% for State administration & the 8.5% for State leadership. No need for further clarity or regulation regarding a definition for technical assistance.	Regulation Needed: Regulation is needed to make permissible or allowable expenditures for technical assistance under State leadership. Assure flexibility for States to define technical assistance but ensure that it will be an allowable expenditure for 8.5% and other setasides. Regulations should be developed which allow States to reserve a portion of the funds for equity, criminal offenders, and each part of Title III for technical assistance and to carry out the provisions of sections. Furthermore, one of the groups went "on record" in their recommendation to provide flexibility to the States through the provision of technical assistance with any funds that are "carried over" from prior years into the years affected by these amendments (July 1, 1991 thru July 1, 1992). The group stated that this was the intent of the managers on the part of the House and the Senate.
Section 118(d): Issue #2	No Regulations Needed:	No Regulations; Guidance would be helpful:	No Regulations Needed:	No Regulations Needed:
Consensus—Non-Consensus.	Both groups made essentially the same recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[State Administration & Leadership]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
What should the State Board's responsibilities be for the establishment of procedures for participation and appeals as required by section 118(d)? What kind of "expedited appeals procedure" is required?	No regulations needed as the law states that "The State Board shall establish effective procedures . . ." These procedures are to be included in the state and local plans. Any regulation should be in the form of guidance.	An appeals procedure must be a part of the State plan as required under the law. Guidance may be helpful for some States in identifying procedures to involve parents, teachers, students, and area residents i.e., public meetings or hearings, advisory councils, etc.	The law is clear. There is no need for Federal regulations. However, the requirement of establishing effective procedures for direct participation should be included in the State plan.	Additional regulations are not needed because the "procedures" and the appeal process are to be addressed in the State plan section of the Act. Clarify that appeal procedures must observe minimum due process procedures.
Section 118(d): Issue #3	No Consensus:	No Regulations Needed:	No Regulations Needed:	No Consensus:
Consensus—Non-Consensus.	Both groups made different recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.	No Consensus.
Should section 118(d) apply only to programs for special populations or to all programs assisted under the Act?	One group concluded that section 118(d) applied *only* to programs for special populations. A minority report from the other group concurred. The other group reported that regulations should state that section 118(d) applies to *all* programs assisted under the Act and assurances of equal access should be included in each State plan.	"Under the Act" is interpreted to mean participatory planning across the board and, therefore, does meet the needs of special populations. Section 118(d) should apply to all, not just special populations. States should be sure to add other groups to those being served.	The law is clear. There is no need for Federal regulations. Rationale: Section 118(a)(2) assurances refers to "the full range of programs" and section 118(d) refers to "programs under the Act". However, State plans should describe existing procedures for general as well as special populations. Expedited appeals procedures for special populations must be established in the State plan.	No Regulations Needed: The language of section 118(c) which addresses "Assurances" and section 118(d) which addresses "participatory planning" provides the necessary guidelines. No additional guidelines are recommended. Regulations Needed: Regulations should specify that section 118(d) applies to all programs funded by the Act.
Section 115: Issue #4	No Regulations Needed:	No Regulations Needed:	No Regulations Needed:	No Regulations Needed:
Consensus—Non-Consensus.	Both groups made essentially the same recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.
Section 115 requires the State board to convene a State Committee of Practitioners "on a regular basis" to review the statewide system of standards and measures. What should the consultative relationship between the State board and the Committee of Practitioners be?	No regulations needed. The relationship with the Committee of Practitioners is advisory. The State Board shall given reasons for not accepting recommendations of the Committee.	States should be given the flexibiity to determine the structure and organization for the "committee". The State must consult, but should not be required to take the Committee's advice. The Committee should have access to the State board. These provisions are allowed under the law—no regulations required.	The law is clear. No further regulations needed. The committee is already in place and relationships should be worked out at the State level as jurisdiction is at different levels in different states.	No further regulation is needed as the law says that the committee will "review" and "comment" on the proposal of core standards and measures of performance. Clarify that should any recommendation of the Committee of Practitioners not be acceptable to the State board, the State board shall provide a written explanation of why the recommendation is unacceptable. If a State does not accept the committee recommendations, the law requires a written response.

CONSENSUS—NON-CONSENSUS MATRIX

[Uses of Funds]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 235(b): Issue #1	No Consensus	No Consensus on Regulations:	No Regulations Needed; Guidance Requested	No Regulations; Guidance Needed:
Consensus—Non-Consensus.	The three groups made somewhat different recommendations.	The three groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Uses of Funds]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Under Section 235(b), how does the requirement to give "priority" to sites or programs with the highest concentrations of special populations relate to the requirement that funds be used in a "limited number of sites or programs?"	Priority means to give first consideration to sites or programs with the highest concentrations of special populations and highest concentration should be calculated differently for secondary and postsecondary. The secondary criteria for highest concentration should follow Chapter 1 guidelines. Another group proposed that the definition of "highest concentration" should be based on a percentage of special populations first, then raw numbers may be used (under the exemption rule). This should be described in the State plan. The State plan must include criteria to invoke an exemption. The third group indicated that clarification was needed on the issue of distribution of funds versus usage of funds for both secondary and postsecondary disadvantaged populations.	*No regulations needed* because it would duplicate Sec. 113(b)(6). State plan must indicate how the State will define "highest concentration" and what criteria will be used to give priority to schools or programs with the highest concentration of special populations. The other perspective was that *regulations are needed.* Federal regulations should require the State to include in the State plan its definitions and expressed methodology for determining highest concentration and how to give priority to limited numbers of programs or sites.	Provide Federal guidelines and keep regulations to a minimum, just enough so State plans can meet the Federal intent. Define measurable criteria to determine "highest concentration". The more discretion given to the State to regulate definitions the better.	Each State should provide guidelines defining and applying the terms "limited numbers," "priority," and "highest concentration". LEAs should describe the process in their local applications. Priority implies preference, not exclusivity.
Section 235(c)(1)(A): Issue #2	No Regulations Needed;	Non-Regulatory Guidance	Regulations Needed:	No Regulations or Guidance Needed:
Consensus—Non-Consensus.	The three groups made essentially the same recommendations.	The three groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.
Pursuant to section 235, under what circumstances and in what ways may vocational education students who are not members of special populations be served? What is meant by the "full participation" and "equitable participation" of members of special populations?	Meeting the "equitable participation" requirements should not mean exclusion of non-special populations. Full participation of members of special populations does not necessarily mean exclusive participation.	Guidelines are needed to assure that priority is given to special populations to ensure that they are represented and benefit from the programs under this section. However, flexibility should be maintained so that non-special population students may also be served in these programs. The State and local units must be held accountable for addressing the needs of special populations but are not precluded from serving the general population. Guidance is needed to define: "Full participation" as allowing any student to participate in a program regardless of the student's status as a regular or special needs student. "Equitable participation" refers to a program that is equally accessible for any student whether regular or special needs.	Clearly written regulations are needed to assure that special needs populations are served, but not segregated. The intent for the use of funds is to serve special populations in the most integrated vocational education setting possible in order to adequately serve special populations. Other populations shall not be excluded. Vocational students who are not members of special populations may be served if they are also users as a result of special populations users and priorities.	Vocational education students who are not members of special populations may be served in those programs on sites that receive Perkins Act funds under the "priority" of serving the "highest concentrations" of special populations. The "full participation" and "equitable participation" of special populations means the assurance that these individuals are actually represented in and benefit from the programs funded under the Act.
Section 113(b)(19): Issue #3	No Consensus:	Regulatory Guidance Needed.	No Regulations, but Guidelines.	No Regulations
Consensus—Non-Consensus.	There was no consensus among the groups.	The three groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Uses of Funds]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Should the comparability requirements in section 113(b)(19) be regulated, and, if so, how?	One group recommended that secondary level comparability regulations should follow Chapter 1 requirements. Another group recommended that comparability *not* be defined as in Chapter 1. The third group recommended that the definition of comparability must reflect services to students, not the cost-per-pupil basis.	Regulations needed to ensure that recipients have the responsibility to assure that overall services are at least comparable to other schools not receiving funds before forwarding funds to such schools. If assurances are not adhered to then States should withhold funds and initiate return of funds from the eligible participant as appropriate. The regulations should include a definition of comparable services, which should include more than level of funding and address level of services to meet needs.	Comparability requirements are already addressed on P. 110, #67 of the Conference Report which indicates that funds must supplement and *not* supplant. Agencies must prove comparable spending from other sources on both funded and non-funded programs under #67 statement above.	Both groups unanimously recommended no binding regulations on comparability, but guidelines should include examples of acceptable measures of comparability. States should describe comparability requirements. LFAs should make assurances in their local applications.
Section 113(b)(19): Issue #4	No Regulations:	No Consensus on Regulations:	Regulations Needed:	Regulatory Guidance Requested:
Consensus—Non-Consensus.	The three groups made essentially the same recommendations.	The three groups made similar recommendations.	Both groups made essentially the same recommendations.	Both groups made similar recommendations.
What are the responsibilities of the State and eligible recipient if a school that would otherwise be eligible to receive funds is found to be non-comparable under the provisions of Section 113(b)(19)?	The State plan must address the issue of comparability and should include a remediation process to correct non-comparability. States should provide technical assistance and a grace period, perhaps a year, should be provided when non-comparability is found.	No Regulations Needed/Regulations Needed: The State plan should identify what measures the State will take if a local unit is found "non-comparable." The State plan will outline the State's method for determining comparability.	Comparability guidelines should be included in each State plan. LEAs found in non-compliance should be given a period to bring themselves into compliance. If the time deadline is not met, States should be given authority to withhold funds in the event of non-compliance.	Customary regulatory guidance requested regarding the responsibilities of the States and eligible recipients where non-comparable situations arise.
Sections 116(a)(2); 201(b(2); 235(c)(1)(B); 521(41) Issue #5	Regulations Needed:	Regulations or Non-regulatory Guidance:	Regulations Needed:	No Consensus Whether Regulations Are Needed:
Consensus—Non-Consensus.	The three groups made essentially the same recommendations.	The three groups made essentially the same recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.
What does the phrase "coherent sequence of courses" as used in section 116(a)(2), 201(b)(2), 235(c)(1)(B), and 521(41) mean? Should this phrase be interpreted by regulation, and if so, how?.	"Coherent sequences of courses" means a series of integrated and interrelated learning experiences, or sequence of study, leading toward development of job skills or advanced study. This would not preclude single courses of study for adult training or competency-based programs.	Define "coherent sequences of courses" and/or its relationship to "sequential course of study". A coherent sequence of courses must be in place but not every student must take every offering. Competency-based instruction is allowable. Do not eliminate single course offerings including those for adult retraining.	Regulations should indicate that "coherent sequence of courses" shall include funds for competency-based programs and single courses where those programs or courses directly lead to marketable skills. The regulations should include a broad definition of "coherent sequence" to include modular structures, units of instruction and upgrading of vocational skills. The regulations should also be flexible for content areas, levels of instruction and needs of students. Vocational programs should be integrated with academic instruction, articulation should be emphasized.	*No Regulation Needed:* A definition is requested/suggested. "Coherent sequence of courses" could apply to competency-based programs, single-course programs, and adult retraining when such programs meet the requirements for integration of academic and vocational curricula and learning. *Regulation Needed:* Regulation is proposed to specify that "vocational students who are enrolled in applied academic courses should be in a *sequential course of study,* as defined in Section 521(29) of the Act, which includes occupational specific courses. Further, these students' applied academics should relate *directly* to their occupational goals. Thus, use of funds for instructional purposes must include occupational specific courses.
Section 231(d)(2)(A) Issue #6	Regulations Needed:	No Regulations Needed	No Regulations Needed:	No consensus Whether Regulations Are Needed:
Consensus—Non-Consensus.	The three groups made essentially the same recommendations.	The three groups made essentially the same recommendations.	Both groups made similar recommendations.	No Consensus:

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Uses of Funds]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 231(d) establishes provisions for direct allocations of basic grant funds to area vocational education schools or intermediate educational agencies. Under what circumstances and conditions should these allocations be made?	Funds should be allocated to the area vocational education schools or to intermediate educational agencies to the extent that the area/intermediate school serves the populations intended to be served. Existing consortia should be considered eligible to receive direct allocations of Perkins funds from the State if they were previously authorized for that purpose.	No regulations needed as long as provisions in section 231(d) are met.	Allocation of grants to area vocational schools or intermediate agencies should be determined by individual states under the Act without additional regulations. The State and local plans should provide necessary evidence of compliance with the law. Allocations are spelled out very specifically in the law as passed. No further restrictions in addition to what is now in the law are necessary.	The "relative share of students" calculation may be computed on a full time equivalency (FTE) basis. Each State may determine an appropriate definition of FTE for funding purposes. No regulation or non-binding guidance is needed. There was some discussion in favor of nationwide standardization, at a minimum level.

CONSENSUS—NON-CONSENSUS MATRIX

[Special Populations]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 118				
Issue #1	Regulations Needed:	Guidance Needed:	Regulations: Majority-No, Minority-yes	Regulations Needed:
Consensus—Non-Consensus.	One group	One group	One group	Both groups made similar recommendations.
Does section 118 (Criteria for Services and Activities for Individuals Who Are Members of Special Populations) apply only to the Basic Grant or to all programs under the State plan?	Section 118 applies to all programs and at all sites or institutions at the secondary and postsecondary levels, under all titles of the Act. The State must be clear about this and must address this as policy in the State plan. Any State receiving Title II funds must comply with section 118 assurances in the "full range of programs" (section 113 & 118). Also, a program means "total program" (total vocational technical program in that state).	Section 118 sets forth the criteria for services and activities for individuals who are members of special populations and it applies to *all* parts of the Act. Guidance needs to be provided to insure all special population groups are included, i.e., rural-urban disadvantaged, single parents, displaced homemakers, etc..	Consensus—Section 118's criteria for services/activities for individuals who are members of Special Populations applies to all programs under the State plan.	Section 118 (a), (c), and (d) shall apply to all programs and services covered under the Act. Section 118 should have regulations which clarify that provisions in this section apply to all titles of the Perkins Act and are not limited to the Basic Grant programs. *Minority View*—section 118 provisions should be limited to the Basic Grant programs as set down in the State plan. No regulations or guidance is needed.
Section 118, 204				
Issue #2	Regulations Needed:	Regulations and Guidance Needed:	Regulations: Majority-No, Minority-yes	No Regulations, Guidance is Needed.
Consensus—Non-Consensus.	One group	One group	One group	Both groups made similar recommendations.
Under the provisions of section 118, what is the fiscal responsibility, if any, of a State or an eligible recipient to provide equal access from non-Federal funds?	Equal access does not merely mean access to what there are funds for, nor does it mean only at "selected sites." Receipt of Federal funds carries with it the provisions for compliance with Title IX, EHA, Section 504 of the Rehabilitation Act, and Chapter I. This should be included in regulations.	Equal access must be applied to all funds supporting the amendments regardless if they are Federal, State or local. This provision must be included in the regulations.	Consensus—Requirements of Section 118 must be met without regard to source of funds.	The State or eligible participant will provide equal access to all programs regardless of the funding source. *Minority*—Section 118 does not impose a financial obligation on States or local education agencies beyond the use of their federally allocated funds. Leave as stated.
Section 118(a)(5)A(i)				
Issue #3	Regulations Needed:	Regulations and Guidance Needed:	Regulations: Majority-Yes, Minority No	Regulations Needed.
Consensus—Non-Consensus.	One group	One group	One group	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Special Populations]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 118(a)(5)A(i) specifies that requirements relating to special populations are to be carried out under the general supervision of individuals "who are responsible for students who are members of special populations." How does this provision affect, if at all, the administrative authority of the State Director of vocational education over special population programs?	Every State must have a coordinator of special populations programs with the "sole" responsibility of providing leadership, technical assistance, program coordination and monitoring of the assurances of section 118. The State Director of vocational education has the overall authority for all vocational education programs and services in terms of "general supervision." However, the State Director of vocational education must not work in isolation, but in concert with the vocational special needs coordinator and others to ensure coordination and that assurances for special populations are met.	The Act requires that the requirements, relating to special populations are to be carried out under the general supervision of individuals who are responsible for students who are members of special populations. This does not affect the administrative authority of the State director of vocational education over special populations programs, but does require review of local plans and consultation with the State director of handicapped programs on their appropriateness.	Consensus—State plans must cover the assignment of responsibility of overall supervision as required by Section 118(a)(5)(A)(i) addressing *each* category of special populations as defined in the Act.	It is the responsibility of the State Board and State Director of vocational education to administer the funds and programs under the Carl Perkins Act. Regulations should clarify that section 118(a)(5)(A)(i) refers to the official within, or designated by, the sole State agency which is responsible for vocational education services and not the State official responsible for individuals from each of the special populations.
Section 516(a)(1)(B) Issue #4	Regulations Needed:	Regulations and Guidance Needed:	No Regulations:	Guidance Recommended.
Consensus—Non-Consensus.	One group	One group	One group	Both groups made similar recommendations.
What expenditures should be exempt from the supplanting requirement in accordance with section 516(a)(1)(B)?	Supplanting can take place to ensure "quality" services only when documentation can be provided and it can clearly be shown as an integral part of the student's IEP and IVTEP.	It is the consensus of the group that as written, this provision may bring about less services to special populations rather than more services. However, to ensure that a reduction of funds to offset the "cost" does not occur, States shall be allowed to regulate programmatic maintenance of effort.	Consensus—There should be *no* specific exemptions and no regulations.	Supplanting may take place to ensure "quality" services only when documentation can be provided and it can be clearly shown to be an integral part of the student's vocational education program. There should be specific language in the State plan to set procedure to allow for supplanting exceptions as needed at the State and local levels.

Appendix D—Reporting Requirements

Note: This appendix is to be published in the **Federal Register** with the proposed regulations, but it is not to be codified in the Code of Federal Regulations.

Recipients of grants and cooperative agreements will be required to provide the following information in accordance with 34 CFR 400.10:

(a) Each recipient of an award under the National Tech-Prep Education Program (34 CFR part 405), Community Education Employment Centers Program (34 CFR part 408), Vocational Education Lighthouse Schools Program (34 CFR part 409), Demonstration Centers for the Training of Dislocated Workers Program (34 CFR part 415), Vocational Education Dropout Prevention Program (34 CFR part 423), Model Centers of Regional Training for Skilled Trades Program (34 CFR part 424), Demonstration Projects for the Integration of Vocational and Academic Learning Program (34 CFR part 425), and Cooperative Demonstration Programs (34 CFR part 426) shall—

(1) Submit to the Secretary quarterly performance reports summarizing project activities for the reporting period; and

(2) Include as appendices to the annual performance report, as appropriate—

(i) Quantitative analyses of data and information regarding student achievement, completion, and placement rates;

(ii) Quantitative analyses of data and information regarding project and product spread and transportability as defined in 34 CFR 400.4(b);

(iii) Copies of "awareness" level materials being distributed about the project;

(iv) Copies of materials related to training used to help others replicate project activities;

(v) Copies of instructional, classroom, or curriculum materials that can be submitted to appropriate dissemination networks such as the National Network for Curriculum Coordination in Vocational and Technical Education and the Clearinghouse on Adult, Career, and Vocational Education of the Educational Resources Information Center;

(vi) A directory of individuals to whom training or technical assistance has been provided to replicate project activities; and

(vii) Demographic and evaluation data from sites where project activities have been replicated.

(b) Each recipient of an award under the Community Education Employment Centers Program (34 CFR part 408) shall also include as an appendix to the annual and final performance reports information documenting activities required in 34 CFR 408.34.

(c) Each recipient of an award under the Indian Vocational Education Program (34 CFR part 401), Native Hawaiian Vocational Education Program (34 CFR part 402), Educational Program for Federal Correctional Institutions (34 CFR part 422), and Bilingual Vocational Training Program (34 CFR part 427) shall—

(1) Submit to the Secretary quarterly performance reports summarizing significant project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate those barriers; and

(2) Submit to the Secretary a semi-annual statistical report covering quantitative analyses of the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by individuals who complete the program.

(d) Each recipient of an award under the Indian Vocational Education Program (34 CFR part 401) shall include in the semi-annual statistical report described in paragraph (c)(2) of this appendix, quantitative analyses of data and information regarding—

(1) Student enrollment, completion, and placement rates for the most recently completed training cycle(s), by sex and by occupations for which training is being provided; and

(2) Project referrals to social services and related services for participant employment readiness.

(e) Each recipient of an award under the Native Hawaiian Vocational Education Program (34 CFR part 402) shall—

(1) Include in the semi-annual statistical report described in paragraph (c)(2) of this appendix quantitative analyses of student enrollment, completion, and placement for the most recently completed training cycle(s), by sex and socio-economic status for each occupation for which training is being provided; and

(2) Submit to the Secretary an annual evaluation report that must include descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on—

(i) The academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(ii) Participant enrollment, completion, and placement by sex, and socio-economic status for each occupation for which training has been provided.

(f) Each recipient of an award under the Educational Program for Federal Correctional Institutions (34 CFR part 422) shall include in the quarterly performance report described in paragraph (c)(1) of this appendix quantitative analyses of data and information regarding—

(1) Student enrollment and completion rates by sex, ethnic or racial group, and where appropriate, by level of English proficiency for each occupation for which training is being provided; and

(2) Project referrals to pre and post release services for employment enhancement.

(g) Each recipient of an award under the Bilingual Vocational Training Program (34 CFR part 427) shall include in the semi-annual statistical report described in paragraph (c)(2) of this appendix quantitative analyses of—

(1) Student enrollments, completions, and placements for the most recently completed training cycle by sex, ethnic or racial group, socioeconomic status, and where appropriate, by level of English proficiency for each occupation for which training is being provided; and

(2) Data and information regarding activities to enhance project operations such as coordination activities, training or upgrading of personnel, and the provision of support services.

(h) Each recipient of an award under the Tribally Controlled Postsecondary Vocational Institutions Program (34 CFR part 410) shall—

(1) Submit the following to the Secretary:

(i) On an annual basis, an accurate and detailed accounting of its operating and maintenance expenses, and other information concerning costs as the Secretary may require.

(ii) Information in the detail as the Secretary may require to prepare a budget needs estimate to support each institution's subsequent year of operation including updated information on employment needs, economic development needs, and population training needs.

(iii) Any information the Secretary may require to determine the feasibility of awarding additional grants to pay training equipment costs necessary for implementing training programs.

(2) Participate in the study of training and housing needs authorized by section 389(a) of the Act, and the long-term study of facilities authorized by section 389(b) of the Act, including providing information on—

(i) Training equipment needs;

(ii) Housing needs of families whose heads of household are students and whose dependents have no alternative source of support while those heads of household are students; and

(iii) A five year projection of training facilities, equipment, and housing needs, projected service population, and employment and economic development projections.

(i) Each recipient of an award under the National Network for Curriculum Coordination in Vocational and Technical Education (34 CFR part 412) shall submit to the Secretary—

(1) Monthly progress reports summarizing project activities for the reporting period;

(2) Monthly financial reports summarizing project spending for the reporting period; and

(3) An annual impact report of the curriculum coordination center's activities. The report must highlight the CCC's services and the program improvement practices resulting from these services. This report is due on December 31 of each year of the award

(j) Each recipient of an award under the National Center or Centers for Research in Vocational Education (34 CFR part 413) shall submit to the Secretary the following:

(1) Monthly exception reports that describe—

(i) Any problems, delays, or adverse conditions that materially impair the ability of the National Center to accomplish its purposes, along with an explanation of any action taken or contemplated to resolve the difficulties; and

(ii) Any favorable developments that will permit the National Center to accomplish its purposes sooner, at less cost, or more effectively than projected.

(2) Quarterly performance reports that describe the progress, problems, and future plans for each significant activity of the National Center within 30 days of the end of each quarter.

(3) Quarterly financial status reports within 30 days of the end of each quarter. The annual financial status report may be submitted in place of the quarterly financial status report for the fourth quarter of each year.

(4) Ten copies of all substantive reports and products produced.

(k) Each recipient of an award under the Vocational Education Training and Study Grants Program (34 CFR part 416) shall—

(1) Submit to the Secretary quarterly performance reports summarizing project activities for the reporting period and, if applicable, actions taken by the grantee to address any significant barriers impeding progress; and

(2) Append to the annual performance report an evaluation report that includes both statistical tables and narrative responding to the key evaluation questions in 34 CFR 416.21(f).

(l) Each institution receiving an award under the Vocational Education Leadership Development Awards Program (34 CFR part 417) shall—

(1) Provide to the Secretary, prior to disbursing awards, a certification from an appropriate official at the institution stating whether each proposed recipient of a leadership development award

qualifies for the award based on the requirements in 34 CFR 417.34(a);

(2) Keep such records as are necessary to establish the timing and amount of all disbursements of awards;

(3) Keep records verifying that recipients of leadership development awards—

(i) Meet the requirements in 34 CFR 417.40; and

(ii) Receive an award for no more than three years;

(4) Submit to the Secretary quarterly performance reports summarizing significant project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate them; and

(5) Submit to the Secretary a semi-annual statistical report covering quantitative analyses, by sex and racial or ethnic groups, of—

(i) Level and duration of learner participation and degree of progress;

(ii) Level of graduate study;

(iii) Institution and program in which enrolled;

(iv) The categories of personnel named in 34 CFR 417.1; and

(v) State from which the participant was selected.

(m) Each institution of higher education participating under the Vocational Educator Training Fellowship Program (34 CFR part 418) shall—

(1) Provide to the Secretary, prior to disbursing funds to a fellow, a certification from an appropriate official at the institution stating whether each proposed recipient of a fellowship meets the requirements in 34 CFR 418.41;

(2) Keep such records as are necessary to establish the timing and amount of all disbursements of fellowship payments; and

(3) Keep records verifying that each fellow—

(i) Meets the requirements in 34 CFR 418.2; and

(ii) Receives a fellowship for no more than two years.

(n) Each agency or organization sponsoring an intern under the Internships for Gifted and Talented Vocational Education Student Program (34 CFR part 419) shall submit to the Secretary two copies of a mid-term and final report summarizing the intern's activities and progress achieved in meeting the goals of the internship.

(o) Each recipient of an award under the Bilingual Vocational Instructor Training Program (34 CFR part 428) shall submit to the Secretary—

(1) A quarterly performance report summarizing significant and project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate them;

(2) A semi-annual statistical report of learner participation in instructor training in terms of enrollment, completion, and after-training work commitments of participants by sex and racial or ethnic group and, where appropriate, by level and kinds of language proficiency; and

(3) An annual report on the results of the evaluation to answer the key questions raised in 34 CFR 428.21(f).

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BILLING CODE 4000-01-M

Vocational Education [illegible] (20 U.S.C. 2301 [illegible]) [illegible]

[illegible] the goals of the [illegible] the National Vocational [illegible] Training Programs [illegible] in this section.

(3) A quarterly [illegible] summarizing [illegible] accomplished [illegible]

(4) A semi-annual [illegible] participants [illegible] training [illegible]

(5) An annual report [illegible] the evaluation [illegible] question [illegible]

[illegible]

(iv) [illegible] in 34 CFR [illegible]

(v) State from which the participant emigrated; and

(vi) Each institution of higher education [illegible] Vocational Education Training [illegible] Program [illegible]

(2) In addition to the [illegible] proposed [illegible] requirements in 34 CFR [illegible] and

[illegible]

(i) Meets the requirements in 34 CFR [illegible]; and

(ii) Retain [illegible] for no more than two years.

[illegible]

[illegible] requirements in 34 CFR [illegible]

(c) Keep [illegible]

(d) Keep records verifying that [illegible] records—

(i) Meet the requirements in 34 CFR [illegible]; and

(ii) Retain [illegible] for no more than three years.

(e) Submit to the Secretary [illegible] performance reports [illegible] and

(f) Submit to the Secretary a [illegible] report [illegible]

(1) Level and duration of [illegible] participation [illegible]

(2) Level of [illegible]

(3) Institution and program in which [illegible]

federal register

Friday
October 11 1991

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Part 966

Public Housing Lease and Grievance Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 966

[Docket Number R-91-1020; FR-1164-09]

RIN 2577-AA18

Public Housing Lease and Grievance Procedures

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: HUD amends regulations on tenancy and administrative hearings in public housing.

The amendments provide: (1) A housing authority can evict for drug-related or other criminal activity by public housing residents; (2) a PHA may adopt reasonable policies concerning residence by a foster child or live-in aide; (3) a housing authority can serve a State-law notice to vacate at the same time as the lease termination notice required by Federal law; (4) a tenant may ask the housing authority to explain a rent change or unit transfer, and has the right to ask for a hearing; (5) a housing authority must notify a tenant of the reasons for a proposed adverse action; (6) before changing the grievance procedures, the housing authority must give tenants and resident organizations an opportunity to comment; (7) the housing authority must give a copy of its grievance procedure to the tenant and to resident organizations; (8) in deciding to evict for criminal activity, the housing authority may consider all the circumstances, including the seriousness of the offense and participation by family members; (9) a public housing tenancy does not terminate until any right to a grievance hearing has expired; (10) before evicting, the housing authority must allow the tenant to examine documents which are directly relevant to the eviction; (11) if HUD determines State law requires a pre-eviction due process hearing in court (known as a "due process determination"), the tenant is not entitled to a hearing by the housing authority before eviction for drug-related and other criminal activity; (12) a housing authority may use an expedited administrative grievance procedure for these evictions; (13) a State-law right to examine housing authority documents is deleted from the definition of "due process" elements (and does not affect HUD's due process determination); (14) a housing authority must notify the tenant if the tenant is not entitled to an administrative hearing on an eviction; (15) a housing authority must notify the local post office if a tenant is evicted for criminal activity; (16) after consulting resident organizations, the housing authority may appoint an impartial hearing officer by a method approved by the majority of affected tenants or by appointing a person (who may be an officer or employee of the housing authority) selected in accordance with the housing authority's hearing procedure; (17) if a housing authority consents, members of the family may use the unit for legal profitmaking activities incidental to primary use as a residence; (18) a person with disabilities must be given an equal opportunity to use and occupy the unit.

EFFECTIVE DATE: This final rule is effective on November 12, 1991.

FOR FURTHER INFORMATION CONTACT: Casimir Bonkowski, Acting Director, Policy Division, Office of Management and Policy, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC. 20410, telephone (202) 708–0713. A telecommunications device for deaf persons (TDD) is available at (202) 708–9300. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980, and have been approved under OMB control number 2577–0006. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided below under the heading "Information Collection" at 6.6.

Abbreviations Used In Preamble

NAHA. The National Affordable Housing Act of 1990, Public Law 101–625, approved 11/28/90.

PHA. A Public Housing Agency (housing authority). The governmental agency which administers a public housing program.

U.S.H. Act. The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*). The statutory charter for the public housing program.

Discussion Of Final Rule

Contents

1. Introduction

This rulemaking revises lease and grievance regulations for the public housing program. The regulations describe provisions which must be included in public housing leases (24 CFR part 966, subpart A). The regulations also state requirements on hearings for public housing tenants (24 CFR part 966, subpart B). The rule includes changes to reflect statutes enacted in 1983, 1988 and 1990 (U.S.H. Act, sections (k) and (l); 42 U.S.C. 1437d (k) and (l)).

A proposed rule was published on February 14, 1991 (56 FR 6248). The main purposes of the rulemaking are described in the proposed rule. This Preamble describes public comments on the proposed rule, and revisions by HUD after consideration of the comments.

Forty-two comments were received, from public housing agencies ("PHAs") and PHA organizations, from legal aid and resident organizations, and from other commenters. PHA comments generally support the proposed rule, but point out significant practical concerns. PHA comments recognize that HUD must implement the laws as passed by the Congress, and that some of the most serious PHA concerns are actually criticisms of the underlying statute. Comments from legal aid and resident organizations recommend substantial changes in the proposed rule.

2. Lease Requirements

2.1 When PHA Charges Are Due

A PHA may charge the tenant for costs of maintenance and repair of damage beyond normal wear and tear, for excess utility consumption, or for late payment of rent. The proposed rule provided that the PHA must give at least two weeks notice of such charges. The charge would be due on the first day of the month which occurs after such notice has been given. The rule previously provided that the charge is not due until the second month after the charge is "incurred".

PHA comment generally approves the proposed change. The PHAs state that two weeks notice is sufficient, and avoids undue delay in collection of charges. However, a PHA states that it will continue to collect the amounts at the second month after the tenant is notified, since this practice fits the PHA billing cycle.

Comment from legal aid and resident organizations objects to shortening the time for payment of charges, noting that low-income families need extra time to budget for special charges.

Under the proposed provision, the maximum required notice depends both on the minimum two week notice, and when the notice is given during the month. For example, if notice is given 14 days before the first of the next month, the notice would be effective on the first. On the other hand, if two weeks notice is given 13 days before the first of the next month, the notice would not be effective until the first of the second month after the month when notice is given. A comment from the National Housing Law Project points out that while the new provision would cut the minimum warning to tenant roughly in half (from 30 days under the old rule to 14 days as proposed), the maximum required notice period would be much less drastically cut (by about a quarter).

To avoid case by case variations in the length of the maximum notice period required to satisfy the minimum required notice, the rule is revised to establish a simple rule that the charges are due two weeks after the PHA gives written notice to the tenant (§ 966.4(b)(4)). This change eliminates the somewhat confusing link between the length of required notice, and when the first of the following month falls in relation to when the two week notice is given. With this revision, the rule is easier to explain and understand. In practice, most PHAs will probably collect special charges with the rent, on the first of the month after completion of the two week notice.

HUD agrees with PHAs that two weeks is a reasonable national standard for the minimum PHA notice to tenant of such additional charges. The unit damage or the late payment for which a charge is imposed are normally known to the tenant as soon as these circumstances occur. However, the two week Federal minimum notice runs from the subsequent point at which the PHA becomes aware of these circumstances, and then gives notice to the tenant. For example, a notice of late payment is ordinarily given after a grace period or interval established by the PHA, and whatever administrative processing is required to determine payment was not received and then send the required notice to the tenant.

Charges for damage or late payment are primarily a stimulus for avoidance of such behavior in the future—so that the tenant does not damage the unit, and pays the rent on time. Charges for excess utility consumption (i.e., utility use in excess of the PHA allowance for reasonable utility consumption) may induce the tenant to conserve utility use, and minimize the drain on family resources. On the other hand, delay in collectibility of charges may tend to encourage damage to the unit, late payment of rent, or excess use of utilities.

While the rule establishes a Federal minimum notice of PHA charges, individual PHAs have the discretion to establish longer notice periods or modify billing schedules. Each individual PHA can adopt a notice scheme and billing schedule suited to local conditions and local management judgment.

In determining when a charge is due, HUD is also concerned with the aggregate delay in those cases where the PHA finds it must proceed with the eviction process. If the charge is not paid on the due date, and the PHA proceeds with eviction on this ground, the PHA must ordinarily give 30 days additional notice of lease termination. In requiring at least two week minimum notice of PHA charges, HUD bears in mind that the cumulative delay in evicting a tenant for unpaid charges is comprised, at a minimum, of the period between the event that gives rise to the charge and giving of the two week notice, expiration of the notice period, and expiration of additional periods leading to the termination of tenancy and subsequent judicial eviction action.

Technical comment noted that the provisions on when special charges are collectible should not apply to security deposits. HUD agrees, and has moved the security deposit provision (substantively unaltered) to a separate paragraph (§ 966.4(b)(5)), not referenced in the provision (§ 966.4(b)(4)) requiring two weeks notice of special charges.

2.2 Notice of Rent Change

HUD regulations do not now specify the length of PHA notice to tenant of a rent increase or rent determination. Comment by a tenant organization recommends that HUD require thirty days notice.

HUD has not revised the rule in response to this comment. The proposed rule did not contemplate any change concerning this subject, and HUD finds no compelling reason to promulgate at this time a uniform Federally-prescribed minimum notice period. In practice, most PHAs probably provide more than thirty days notice to the tenant to permit practical administration of rental redetermination requirements.

2.3 Occupancy And Use Of Leased Unit

2.3.1 Occupancy By Foster-children Or Live-in Aide

The proposed rule would have provided that a PHA may not "unreasonably withhold" consent to occupancy of a tenant's dwelling unit by a foster child or "live-in aide."

A live-in aide is not a member of the assisted family, but lives in the unit to provide essential care services for an elderly or disabled person. (See new definition at § 966.4(d)(3)(ii).) Income of the live-in aide is not counted as family income.

Legal aid comment concurs that the PHA should not unreasonably withhold consent when a tenant wants to take in a foster child, or to secure a live-in aide for a disabled or elderly family member. The comment objects nevertheless to the requirement for PHA consent. Comment claims the decision to add a foster child or live-in aide should be made by the assisted family, not by the PHA. Comment claims that a requirement for PHA consent intrudes into the privacy of the family, and requires a medical and social services judgment which PHA officials are ill-equipped to make. If foster children cause overcrowding, the PHA may require the family to move to another available unit, or may require the family to choose between moving out or giving up the foster parent role.

PHA comment remarks that the addition of new unit residents may overcrowd the unit, and may force the PHA to transfer a family to another unit. Comment also asks what determines when PHA denial of consent is considered reasonable or unreasonable.

An association of real estate managers states that the number of foster children in a single household should be limited. The comment states that some residents make a "business" out of accepting foster children, and expresses concern that the authority for incidental use of a public housing unit for profitmaking purposes will encourage proliferation of this problem.

It is HUD's view that the addition of a new unit occupant is not simply a private decision of the tenant. The PHA has a primary statutory function and legitimate management interest in deciding who is admitted to a public housing unit and project, both at initial admission of the family and when new unit residents are added. New unit occupants may have significant effects on other residents, on management of the project, and on living conditions in the unit.

A public housing lease lists the persons who may live in the unit (§ 966.4(a)(2)). The tenant only has the right to use the unit for occupancy by the household members whom the PHA has authorized to reside in the unit in accordance with the lease (§ 966.4(d)(1)). The requirement for PHA consent to occupancy does not apply uniquely to new residence by a foster child or live-in aide, but is the normal rule for any additions to the assisted household. There is no reason to insulate the addition of foster children or live-in aides from this normal rule.

A live-in aide is not a member of the assisted low-income family, but occupies space in the public housing project to provide support for an elderly or disabled family member. The PHA has therefore a particular interest in determining whether an additional occupant qualifies as a bona fide live-in aide, and should be allowed to reside in the project. In addition, the PHA needs to determine if a person proposed as a live-in aide is a person who should instead be counted as a member of the assisted family, and whose income should be included in calculation of the family's statutory income-based rent. As for other prospective unit occupants, the requirement for PHA consent also gives the PHA an opportunity for inquiry to determine if the proposed live-in aide meets the PHA's criteria for residency.

For any new occupant, including a foster child or live-in aide, the PHA should have the ability to refuse consent if an addition of another occupant would overcrowd the unit. The PHA may transfer a family if the household size exceeds unit capacity. However, such transfers affect allocation of the PHA's available housing stock for residents and families on the waiting list.

As noted in public comment, the PHA may not discriminate against a person with disabilities, and must make reasonable accommodation for a disabled person. The PHA policy on when to allow a live-in aide for care of a disabled person should be developed with regard to the PHA's obligation to make reasonable accommodation. With respect to admission of foster children, as in other aspects of PHA occupancy policy, the PHA may not discriminate on the basis of family status.

The final rule provides, as did the proposed rule, that a foster child or a live-in aide may reside in the unit only with the consent of the PHA. However, the final rule is revised to clarify the PHA's authority to determine the circumstances in which the PHA may refuse consent. The rule provides (§ 966.4(d)(3)(i)) that:

"With the consent of the PHA, a foster child or a live-in aide may reside in the unit. The PHA may adopt reasonable policies concerning residence by a foster child or a live-in aide, and defining the circumstances in which PHA consent will be given or denied. In adopting such policies, the factors considered by the PHA may include:

(A) Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.

(B) The PHA's obligation to make reasonable accommodation for handicapped persons."

2.3.2 Guests

2.3.2.1 *Definition.* The tenant's right to use and occupy the unit includes "reasonable accommodation" of guests (§ 966.4(d)(1)). "Guest" means a person in the unit "with the consent" of a household member (*Id.*).

Comment suggests there should be further clarification of who should be treated as a "guest" under the lease, and of what constitutes "reasonable" accommodation, including specification of the allowable length of stay. Comment notes various potential issues on who is a guest of the family, for whose activity the tenant is responsible under the lease: Questions concerning actions of a former guest; actions in the project after a guest leaves the unit; actions by a person originally in the unit with consent of a household member, but who thereafter does something objectionable to or unanticipated by the unit resident.

In some cases it may be difficult for a PHA or a court to determine if a person is or should be regarded as a "guest" of the household. In part, these difficulties will occur because there are problems of ascertaining or proving the facts. Such factual problems are real and practically important, but cannot be relieved by a redefinition of terms. In other cases, there may be issues concerning the legal principle or rule to be applied in deciding whether the facts amount to a showing that a person was in the unit with consent of the family at the time of the activity in question. HUD believes, however, that the Department should not attempt a more precise and elaborate Federal specification of when someone is to be deemed a "guest".

First, there should be room for local determination by the PHA, in the light of local experience and practice, of how to determine whether a person is to be considered a family guest in different circumstances. Within the scope of the federally-required lease provisions, a PHA has authority to develop local rules or lease provisions governing a tenant's right to reasonable accommodation of guests, including such concrete questions as limitations on the length of stay by non-residents.

Second, appropriate principles can be developed in response to case-by-case experience by the PHA, PHA hearing officers, and local landlord-tenant courts. Courts are familiar with issues of tenant responsibility for acts of guests, and can resolve these questions as applied to public housing tenants.

2.3.2.2 *Criminal Activity By Guests.* The rule (§ 966.4(l)(2)(ii)) implements statutory provisions confirming that certain criminal activity by "any guest or other person under the tenant's control" is grounds for eviction (U.S.H. Act, section 6(l)(5), 42 U.S.C. 1437d(l)(5)).

Legal aid and tenant organization comment objects to holding the tenant responsible for criminal activity where the guest is not under control of the tenant, such as the case of a former guest or household member. HUD agrees that the responsibility for criminal activity by a "guest", does not apply to the criminal activity by a former guest. The question under the HUD rule is whether the person in question was in the premises with consent of a household member at the time of the criminal activity in question, not whether the person was a guest at some time in the past.

Legal aid comments argue that tenant should not be responsible for criminal activity of a guest if the tenant did not know of the criminal activity, or the activity was not reasonably foreseeable, or if the tenant has taken all reasonable or possible steps to avoid the criminal activity.

The law provides specifically that a public housing tenancy may be terminated for drug-related and other serious criminal activity by a "guest" of the household. Such criminal activities by drug dealers and other persons who enter at the invitation of household members are a threat to the welfare of project residents and PHA employees. Tenants must have the strongest incentive to assure that family members do not consent to entry of the unit by persons who will then engage in drug-dealing and other dangerous criminal activity. Such incentive is provided by the statutory sanction: Termination of tenancy for criminal activity by a household guest. The "guest" definition in this rule provides an appropriate standard and nexus between the contractual obligation of the tenant, and the potential sanction: that the criminal was in the unit by consent of a family member, and that the tenant did not prevent the invitation or the crime. Whether the invitation is given by the tenant (the family member or members who hold the rights of tenancy under the lease), or by some other family member, the prevention of criminal activity by family guests is a statutory obligation of the tenancy under a public housing lease.

2.3.3 Profitmaking Activities In Dwelling Unit

The rule clarifies that with PHA consent, family members may use the unit for legal profitmaking activities "incidental to primary use of the leased unit for residence by members of the household" (§ 966.4(d)(2)). This provision does not create a new right of the tenant to engage in such activities, or a new authority for the PHA to permit such activities. Rather, the provision essentially codifies HUD's construction of when public housing residents may conduct business or profitmaking activities under the lease.

Some comment applauds the new regulatory provisions on this subject, stating that this revision will promote day care and other profitmaking activities, and will encourage employment of residents.

Some comment by PHAs and housing managers objects to the new provision on profitmaking activities by members of a public housing family. Comment notes that such activities pose serious management problems for the PHA, and that it is difficult for the PHA to determine what activities are "incidental" to primary use of the unit for family residence. Congressional comment states that the new provisions are not necessary or appropriate, and not required to implement the public housing statute. The comment states that there is no reason to "alter the balance" of the landlord-tenant relationship, and that tenants are already able to carry out activities such as home based child care if permitted by law and PHA practice.

HUD agrees that any profitmaking activities in a tenant's unit must be consistent with the basic statutory purpose of the public housing program—to provide housing for low-income families. The Preamble to the Proposed Rule states (56 FR 6249, col. 3):

> "The regulation does not * * * authorize the conversion of a public housing dwelling unit to a business use, e.g., by changing an apartment to a store or office. The business activity must not prevent the family from living in the unit. The unit must remain as the actual residence of the family members, and the profitmaking activity must be 'incidental' to the primary residential use."

PHA comment rightly observes that the decision whether or when to allow profitmaking activities in the assisted unit may present significant management issues concerning:

—Building and health codes, and requirements for license or governmental approval.
—PHA insurance coverage.
—Utility consumption.
—Damage to the unit.
—Project traffic and parking.
—Disturbance of other residents.
—Attraction of non-residents to the project.
—Use of tenant business as a cover for drug-dealing.

There are important operational issues for public housing management in deciding whether to consent to proposed profitmaking activities in the unit, and in establishing rules governing these activities. HUD recognizes, moreover, that it may be difficult for the PHA to establish and apply criteria on what types of activity should be allowed.

However, the Federal rule merely establishes a regulatory framework for the local decision. A PHA may or may not allow incidental profitmaking activities by residents of its projects, and individual PHAs may establish very different limitations on such activities. The authority for incidental profitmaking activities by resident families can be an important tool in promoting economic independence and self-sufficiency of assisted families. The regulation amendment does not disturb the existing balance of regulatory authority concerning profitmaking activities in the assisted unit, but serves to inform PHAs and residents of the HUD position on this question.

2.4 Damage To Unit: Offer Of Alternative Accommodations

The PHA must offer alternative accommodation if the occupants are endangered because of damage to the unit (§ 966.4(h)(3)). Provisions on this subject were reprinted in the proposed rule text only because of other unrelated revisions in § 966.4. HUD has not proposed or made any substantive change in these provisions.

PHA comment states that the PHA should not be required to provide a new unit if the damage was caused by the family. On the other hand, legal aid comment asks clarification that the PHA must provide a replacement unit until there is a grievance or judicial determination that the family is responsible for the damage.

The PHA must move the family out of a damaged and dangerous unit. The lease provides the PHA must offer alternative accommodations. There is no stated exception for cases where the damage was caused by the tenant, household or guests (or the PHA believes this is the case). In this situation, the PHA may seek to terminate the lease and tenancy as quickly as possible. If occupancy by the household is a threat to health or safety of tenants or PHA employees, the shortness of the lease termination notice may reflect the exigencies of the case. The PHA must give notice for a "reasonable time considering the seriousness of the situation" (§ 966.4(l)(3)(i)(B)). If HUD issued a due process determination, and if the PHA is evicting for criminal activity (e.g., arson) by a household member that endangers PHA residents or employees, the PHA may begin a judicial eviction action without allowing the tenant a prior administrative hearing.

At this time, HUD does not find sufficient reason to amend the old rule provisions on when the PHA must offer "alternative accommodation" after a casualty. The present rulemaking is not intended as a global reexamination and revision of the lease and grievance rule.

2.5 Tenant Maintenance

The old rule provides that a lease may contain a tenant's agreement to perform certain seasonal or other maintenance tasks in accordance with local custom (§ 966.4(g)). The rule provides that such tenant maintenance requirements may not be used to evade obligations of the PHA. Provisions on this subject were reprinted in the proposed rule text only because of other unrelated revisions in

§ 966.4. However, HUD proposed no change in these provisions.

Tenant organization comment claims that the old tenant maintenance provisions violate a statutory provision, enacted in 1983, that leases must:

"obligate the public housing agency to maintain the project in decent, safe and sanitary conditions * * *." (U.S.H. Act, section 6d(1)(2), 42 U.S.C. 1437d(1)(2); Pub. L. 98–181, section 204)

The comment states that there is no room for the PHA to shift "any maintenance obligations" to the tenant. In the alternative, the comment states the rule should explicitly prohibit any requirement for tenant maintenance of common areas.

As required by law, all public housing leases—including leases with tenant maintenance provisions—must provide that the PHA is obligated "to maintain the dwelling unit and the project in decent, safe and sanitary condition" (§ 966.4(e)(1); cf. also §§ 966.4(e) (2) to (5), which bear on the PHA's duty to provide maintenance under the lease).

The tenant maintenance provisions permitted by the old rule are designed to support the basic PHA maintenance responsibility under the lease. Tenant maintenance helps the PHA keep the project and unit in decent, safe and sanitary condition. The 1983 statutory amendment essentially codifies the basic PHA maintenance obligation under the HUD lease and grievance regulation, and was not intended to uproot the tenant maintenance provisions also contained in the HUD regulation (cf., House Committee Report on the 1983 legislation, H. Rpt. 98-123, May 13, 1983, pp. 35–36).

The old rule provides (§ 966.4(g)) that the PHA must exempt from tenant maintenance requirements "tenants" who are not able to perform such tasks because of age or "physical disability". PHA comment advises that the tenant maintenance exemption should only be available if no one in a household (i.e., not just the "tenant") is capable of performing the maintenance because of age or physical disability. Although this argument has some force, HUD has not adopted the recommended change in the current limited revisions of the lease and grievance rule.

However, HUD has amended to the rule to provide that the PHA must exempt tenants unable to perform the maintenance tasks because of "disability", not just "*physical* disability" as provided in the old rule.

2.6 Accommodation Of Person With Disabilities

The proposed and final rule contain several provisions designed to assist persons with disabilities:

—If a tenant is visually impaired, notices must be in an "accessible format" (§ 966.4(k)(2) and § 966.56(h)(2)).

—The PHA administrative grievance procedure must provide "reasonable accommodation" for persons with disabilities (§ 966.56(h)(1)).

These provisions are commended in public comment, and are retained in the final rule.

In the final rule, HUD has added a new section (§ 966.7) to express the PHA's obligations for reasonable accommodation of persons with disabilities in connection with all aspects of the lease and grievance procedures. § 966.7 provides that:

"(a) For all aspects of the lease and grievance procedures, a handicapped person shall be provided reasonable accommodation to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person.

"(b) The PHA shall provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy."

See section 2.5 above concerning the expanded exemption from tenant maintenance requirements.

3 Eviction

3.1 Lease Termination Notice

3.1.1 Relation of State and Federal Notices

Federal law specifies the minimum notice required to terminate a tenant's lease (U.S.H. Act, section 6(1)(3), 42 U.S.C. 1437d(1)(3)). State eviction laws usually require a landlord to serve a notice to vacate (sometimes called a "notice to quit") before commencing a court action to evict the tenant. The proposed rule contained provisions which were intended to clarify the relationship between the State and Federal notices.

In substance, the proposed rule would have:

(1) Required the PHA to give any notice to vacate required under State or local law (as well as the notice required pursuant to the Federal statute).

(2) Provided that the Federal notice may run "concurrently" with the State law notice (rather than consecutively, as held by a Federal case construing the old rule).

(3) Provided that the PHA may not issue a notice to vacate under State and local law until the tenant's grievance right has been satisfied.

(4) Eliminated a provision specifying what must be included in a notice to vacate issued by the PHA after decision in the tenant's grievance hearing.

Comment indicated there was considerable public confusion about the meaning of the proposed revisions, particularly concerning the relation between the authority for concurrent State and federal notices and the prohibition against issuance of a State notice until satisfaction of the tenant's right to grieve. Some comment incorrectly understood the proposed rule to require the consecutive running of the Federal and State notices.

Comment from a legal aid office asks HUD to clarify that Federal notice requirements do not preempt notice requirement under State law, and that the PHA must give the notice required by State law.

Legal aid comment endorses the proposed provision that a State notice to vacate may not be given until the time to request an administrative hearing has expired. Legal aid comment contends that Federal law prohibits issuance of a State notice to vacate until expiration of the time to grieve. PHAs vehemently object to the proposed bar against issuance of a State notice to vacate until expiration of the Federal grievance right. PHA comment urges that a PHA should be allowed to serve the State notice to vacate at the same time as the Federal notice of lease termination, or in a combined notice that satisfies both the State and Federal notice requirements.

By Federal law, the PHA must give a public housing tenant the opportunity to grieve on any proposed eviction not excluded from the PHA grievance process pursuant to a HUD due process determination. Since enactment of the 1990 NAHA, the PHA may only exclude from its grievance hearing process cases involving evictions for drug-related criminal activity or for a criminal threat to health or safety of PHA residents or employees (where HUD has issued a due process determination) (Pub. L. 101–625, section 503(a), amending 42 U.S.C. 1437d(k)). PHAs correctly point out that the bulk of eviction cases, such as evictions for non-payment, are not eligible for exclusion. Therefore in all such non-excluded cases, the PHA would be precluded—under the rule as proposed by HUD—from issuing a single notice to satisfy the State and Federal notice requirements. The PHA can only issue a single combined notice for the limited class of evictions for criminal activity and where HUD has issued a due process determination.

PHAs note that a requirement for separate issuance of the Federal and State notices presents a new and serious administrative burden and expense for PHAs. They assert that PHAs currently issue a single combined Federal and State notice to a public housing tenant (notwithstanding some Federal caselaw holding that these notices must be issued consecutively under the old rule). Further, the PHAs indicate that later issuance of a State notice will delay the eviction (in cases where the subsequently served State notice terminates after the end of the Federal lease termination period).

PHAs observe that a tenant doesn't need two notices of the same default. Further they remark that successive service of Federal and State termination notices, and with different termination dates, will tend to produce confusion in the minds of the tenant.

PHAs argue that delaying service of the State notice to vacate is not necessary to protect the tenant's right to grieve. PHAs should be allowed to serve the Federal and State termination notices simultaneously, so long as the PHA can't file a complaint until the grievance hearing or opportunity is completed, and the Federal notice period has ended.

Contrary to assertion in legal aid comment, Federal law does not mention the State law notice. Federal law does not affect the time when the State notice may be given, provided the State law notice procedure does not interfere with the Federally required notice of lease termination, or abridge the tenant's Federal right to a grievance hearing. The right to grieve on an eviction is not abridged by issuance of a State law notice to vacate if the tenancy continues until tenant's grievance opportunity has been satisfied (by expiration of the time to request a hearing, or by completion of a hearing when requested by the tenant).

HUD is persuaded that a mandate to hold the State law notice pending completion of the Federal grievance right is unnecessary to protect any tenant right or interest under Federal law or policy, that such double notice may be confusing to the tenant and the courts, and that requiring PHAs to give double notice requirement is an unnecessary burden and expense for PHAs. HUD has therefore eliminated this double-notice requirement contained in the proposed rule.

A tenant is entitled to the full notice of lease termination required by Federal law and this regulation. Therefore, the tenant's lease does not terminate until the end of the Federally required notice, even if the State notice procedure would otherwise permit or provide for an earlier lease termination.

To assure tenant's opportunity to exercise the Federal grievance right, the final rule provides (§ 966.4(l)(3)(iii)) that:

"A notice to vacate which is required by State or local law may be combined with, or run concurrently with, a (Federally-required) notice of lease termination * * *." The final rule further provides (§ 966.4(l)(3)(iv)) that:

"When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination * * *, the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed."

This provision protects the integrity of tenant's grievance hearing right under Federal law and regulation. The opportunity for a PHA grievance hearing is wholly unaffected by the issuance of any State notice to vacate.

The tenancy rights of a public housing tenant are governed by elements of both Federal and State law. The tenant has the set of rights vouchsafed by Federal law. The tenant may have additional rights afforded by State law which do not interfere with or contradict Federal law. The Federal law defines minimum protections for the Federally assisted public housing tenant, but does not preempt additional tenant protections or rights provided by the State which do not violate the Federal law.

Consistent with the Federal scheme and interest, the final rule deletes a proposed provision (proposed § 966.4(l)(1)(iii)(B)) which would require the PHA to give any notice to vacate required under State law. Further, the final rule deletes a section of the old rule (old § 966.58) which required the PHA to issue a notice to vacate after a grievance hearing decision upholding the PHA action to terminate the tenancy, and which specified the content of the notice to vacate. A State requirement for issuance of a notice to vacate is binding on the PHA by force of State law, and need not be enforced by authority of a Federal regulation. Further, there is no need to prescribe the incidents of the State eviction process after the PHA has completed the termination notice and administrative hearing process required by Federal law.

In this rule, we concern ourselves with a State notice requirement only to the extent needed to define the relation of any State notice to the notice mandated by Federal law and regulation. The rule makes clear that the State notice may be combined with the Federal notice, or run at the same time as the Federal notice (§ 966.4(l)(3)(iii)), and also assures that the expiration of the State notice does not affect the Federally required grievance right (§ 966.4(l)(3)(iv)).

3.2 Tenant Right To Examine PHA Documents

3.2.1 Statute and Rule

Section 503(a) of the 1990 NAHA (amending section 6(k) of the U.S.H. Act, 42 U.S.C. 1437d(k)) grants the tenant a right to pre-grievance hearing and pre-trial discovery of PHA documents directly related to an eviction or termination of tenancy. The rule would be amended to establish, the PHA's contractual duty to make PHA documents available for the tenant's inspection (§ 966.4(m)). The tenant has the right to examine PHA documents directly relevant to an eviction before a grievance hearing or court trial concerning eviction.

Section 503(b)(2) of NAHA (adding section 6(1)(6) of the U.S.H. Act, 42 U.S.C. 1437d(1)(6)) provides that a public housing lease must:

"specify that with respect to any notice of eviction or termination, notwithstanding any State law, a public housing tenant shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination."

Thus, in a notice of lease termination, the tenant must be notified of the right to examine relevant PHA documents. To implement this requirement, the rule would provide (§ 966.4(m)) that a notice of lease termination:

"shall inform the tenant of the tenant's right to examine PHA documents concerning the termination of tenancy or eviction".

As a sanction for violation of the tenant's right to pre-hearing or pre-trial discovery of documents in the tenant's file, the rule provides (§ 966.4(m)) that the PHA may not proceed with eviction:

"if the PHA does not make documents available for examination upon request by the tenant (in accordance with the regulatory requirements)".

3.2.2 Scope of Discovery

The PHA must allow a tenant to examine PHA documents "directly related" to an eviction. Legal aid comment asks for more direction on what a tenant can see, including direction that the PHA must produce documents not contained in the tenant file. Another legal aid comment objects that the rule does not in terms require production of documents "relevant" to the subject matter of a case, as required by the law.

Under the law, the PHA must produce for tenant's inspection documents which are "relevant" and "directly related" to an eviction (U.S.H. Act, section 6(k), 42 U.S.C. 1437d(k)). The target of discovery has two basic elements: That the documents must be "relevant", and that the documents must have a "direct" relation to the eviction. The discovery standard in the proposed rule was intended to include both elements, not to allow the PHA to withhold "relevant" documents which are "directly" related to the termination. The proposed rule provided that the PHA's lease termination notice must inform the tenant of the right to examine "relevant" PHA documents in the tenant's file.

In response to comment, § 966.4(m) of the final rule is revised to require production of documents "directly relevant" to the eviction. In addition, HUD has made a conforming revision of § 966.4(l)(3)(ii) (providing that a notice of lease termination must inform the tenant of the opportunity to examine "directly relevant" PHA documents in the tenant's file).

HUD has not revised the rule, as proposed by comment, to specify that the PHA must produce documents not contained in the tenant file, or to otherwise amplify the PHA's obligation to permit inspection of directly relevant documents. (See Conference Report on the 1990 NAHA, H. Rpt. 101–943, October 25, 1990, p. 418.) HUD concludes that the rule adequately expresses the requirement to produce documents directly relevant to defense of the eviction, and that this principle provides an adequate regulatory standard for application to individual cases by the PHA, by grievance hearing officers and by the courts.

Comment from a real estate management organization urges that the PHA should be able to withhold information which would reveal the identity of other residents who provide information on drugs and criminal activities to the PHA. Residents will withhold complaints for fear of retribution.

The comment expresses a real and legitimate concern. The statutory discovery requirement gives a tenant access to PHA documents, so that the tenant can prepare a defense against eviction from the unit. The statute and rule do not purport to establish a Federal privilege against discovery of directly relevant PHA documents, because revelation of documents may expose informants, or because of any other privilege, such as an attorney-client privilege. However, the statute and rule also do not override other independently recognized privileges.

3.2.3 Copying Documents

The rule provides that a tenant must be allowed to copy PHA documents directly relevant to the eviction, and that such copying is "at the tenant's expense" (§ 966.4(m)). Legal aid comment recommends that the PHA should be required to provide free copies of PHA documents. This comment is not adopted.

HUD lacks sufficient justification to impose on PHAs the obligation to provide free copies of documents furnished by the PHA for inspection by the tenant. The tenant's file may be large (for example, where there is a long history of issues concerning nonpayment or criminal activity by family members). The financial burden on the PHA of providing free copies may be substantial in an individual case, or if such files are demanded in many cases. A right to obtain free copies of PHA documents may be abused by the tenant or by tenant counsel. The PHA should have the power to decide whether the PHA should provide the tenant free copies of documents.

3.3 Eviction For Criminal Activity

3.3.1 Crime By Household Member

Federal law provides that certain categories of criminal activity by a public housing household member are grounds for eviction. A PHA must:

"utilize leases which—* * * provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises, *engaged in by * * * any member of the tenant's household* * * * shall be cause for termination of tenancy * * *." (U.S.H. Act, sec. 6(l)(5), 42 U.S.C. 1437d(l)(5)) (emphasis supplied).

The U.S.H. Act statutory prohibition of criminal activity by a public housing household member was originally enacted in the Anti-Drug Abuse Act of 1988 (section 5101, Pub. L. 100–690, November 18, 1988), and was retained in the 1990 NAHA amendments which redefined the classes of criminal activity to which this prohibition applies (Pub. L. 101–625, section 504, amending section 6(l)(5) of the U.S.H. Act). The proposed and final rule provide that the tenant must assure that members of the household (or guests, or other persons under the tenant's control) do not engage in proscribed criminal activity (§ 966.4(f)(12)(i)).

Comment by legal aid and by tenant organizations asserts that the tenant should not be required to "assure" the non-criminal conduct of household members, or should have only a limited responsibility to prevent criminal behavior by members of the household. Comment proposes various possible standards to determine whether the tenant can be evicted for criminal behavior by household members. Comment alleges that the tenant should not be responsible if the criminal activity is beyond the tenant's control, if the tenant did not know or have reason to foresee the criminal conduct, if the tenant did not participate, give consent or approve the criminal activity, or if the tenant has done everything "reasonable" to control the criminal activity. Comment states that under the Constitution a tenant can only be held responsible for activity of a household member within the tenant's control.

PHA comment states that the PHA must be given discretion to evict an entire family for actions of a family member if eviction is in the best interest of other residents. If a PHA lacks clear authority to evict, the PHA may not be able to convince the family to oust a person who engages in criminal activity from the unit.

As in a conventional tenancy, a public housing tenant holds tenure of the unit subject to the requirements of the lease, including obligations concerning the conduct of household members affecting the unit, the management of the housing or the welfare of other residents. By signing the lease, a tenant agrees to comply with leasehold requirements pertaining to the behavior of family members. The ability of a PHA or other landlord to enforce covenants relating to acts of unit residents (e.g., damage to a unit, disturbance of other residents) is a normal and ordinary incident of tenancy, and is important for management of the housing. The power of a landlord to evict for the tenant's breach of lease requirements concerning behavior of any member of the household gives the tenant and other occupants a strong motive to avoid behavior which can lead to eviction. If the tenant does not control criminal, or other harmful or disruptive behavior, by unit occupants, the landlord can evict—removing the occupants from the housing. If the landlord does not or cannot evict for such behavior, the continued presence of the tenant and household may result in harm to the housing and other residents, and the spread of such behavior.

The Congress has determined that drug crime and criminal threats by public housing household members are a special danger to the security and general benefit of public housing residents, warranting special mention in the law. (U.S.H. Act, section 6(l)(5), 42 U.S.C. 1437d(l)(5).) For this reason, the Congress specified that these types of criminal activity by household members are grounds for termination of tenancy (without the need for a separate inquiry as to whether such criminal activity constitutes serious or repeated lease violation or other good cause for eviction). The legislative determination by the Congress rests on a reasonable judgment that the potential for a PHA to exercise eviction as a contractual sanction against criminal behavior by unit occupants will promote the welfare of public housing residents in general, and will support the effective management of the housing. Since this judgment is reasonable, and promotes a legitimate public purpose, the legislation is Constitutional under the normal equal protection standard.

There is no reason of Constitutional necessity or public policy for HUD to impose—as proposed by comment—any additional restriction on when the tenancy may be terminated for criminal activity by a household member.

First, as we have already remarked, contractual responsibility of the tenant for acts of unit occupants is a conventional incident of tenant responsibility under normal landlord-tenant law and practice, and is a valuable tool for management of the housing. The tenant should not be excused from contractual responsibility by arguing that tenant did not know, could not foresee, or could not control behavior by other occupants of the unit.

Second, if household member criminal activity is ground for termination, then the tenant has reason to try to control or prevent the activity to protect the tenant's right to continued occupancy by the family. The standards proposed by some of the public comment would allow a variety of excuses for a tenant's failure to prevent criminal activity by household members. The proposed changes would thereby undercut the tenant's motivation to prevent criminal activity by household members.

Third, in practice it will be extremely difficult for the PHA to show that the tenant knew, could have foreseen, could have prevented, or failed to take all reasonable measures to prevent, crime by a household member. In practice, the tenant may have encouraged or profited from the criminal activity or may have ignored or turned a blind eye. The statute and regulation are based on a different, simpler and more practical test, whether a household member has in fact committed the criminal activity. In terminating tenancy for this reason, the PHA enforces the tenant's contractual duty, expressed in the lease, to prevent such activity by any family member. (If a tenant cannot control criminal activity by a household member, the tenant can request that the PHA remove the person from the lease as an authorized unit occupant, and may seek to bar access by that person to the unit.)

Finally, a family which does not or cannot control drug crime, or other criminal activities by a household member which threaten health or safety of other residents, is a threat to other residents and the project.

3.3.2 Criminal Activities—Ground For Termination: Threats To PHA Employees

The statute provides that criminal activity which threatens "other tenants" is grounds for eviction (42 U.S.C. 1437d(l)(5)), but does not mention activities which are a threat to PHA employees (though the provisions on when the PHA may use an expedited grievance process or bypass the grievance process (42 U.S.C. 1437d(k)) cover threats to both residents and employees). The proposed rule also refers only to criminal activity which threatens PHA residents, but not to activity which threatens PHA employees.

PHA comment states concern that the regulatory language may not permit the PHA to terminate leases if PHA employee health or safety are threatened. HUD shares this concern. The rule is revised to state that a criminal activity which threatens health or safety of PHA employees is a lease violation, and is therefore grounds for termination of tenancy (§ 966.4(f)(12)(i)(A)). The lease provision on threats to PHA employees is not mandated by statute. The PHA may terminate tenancy for criminal threats to PHA employees which are either a serious or repeated violation of the lease, or which constitute "other good cause" for termination.

Grounds for Termination

Section 966.4(l)(2) states the statutory grounds for termination of tenancy (as provided in section 6(l) (4) and (5) of the U.S.H. Act, 42 U.S.C. 1437d(l) (4) and (5)). This provision of the proposed rule covered termination for violation of the lease or other good cause, but did not mention the separate statutory provisions allowing termination of tenancy for criminal activity (U.S.H. Act, section 6(l)(5), added by the Anti-Drug Abuse Act of 1988, and amended by the 1990 NAHA).

In the final rule, § 966.4(l)(2)(ii) is added to state the authority for termination of tenancy for criminal activity by a household member or guest. The rule now provides a unified statement of the statutory grounds for termination of tenancy, including a termination of the lease, or refusal to renew the lease.

3.3.3 Factors Considered By PHA

Where there are proper grounds for eviction—for criminal activity by household members or for some other ground—the decision when and whether to evict is a discretionary management judgment by the individual PHA. The decision is and should be made by the PHA in the light of the particular case and PHA management policy. The Department has stated (54 FR 15998, April 20, 1989) that:

"The decision whether to initiate proceedings to terminate tenancy in a particular case remains a matter for good judgment by the PHA or the RMC (= resident management corporation), based on the factual situation. The statutory policy (authorizing eviction for criminal activity by members of the public housing household or their guests) does not restrict the PHA's or RMCs exercise of wise and humane judgment, weighing the interests of all concerned. On the other hand, the statute makes it clear that PHAs and RMCs have full authority to initiate eviction for violation of the prohibition on criminal activity when they consider such action to be justified."

In this rulemaking, PHA and resident organization comment advises that the rule should include provision clarifying that the PHA may or must consider the whole spectrum of relevant circumstances in deciding how to handle an eviction. Comment notes that the HUD regulations for the certificate and voucher programs make clear that in deciding whether to terminate housing assistance, the PHA may consider all relevant circumstances.

The final rule is amended to indicate that a decision to evict for criminal activity is not automatic, but rests in the discretion of the PHA, upon consideration of the circumstances of each case (§ 966.4(1)(5)(i)). The rule provides that:

"In deciding to evict for criminal activity, the PHA shall have discretion to consider all of the circumstances of the case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity. In appropriate cases, the PHA may permit continued occupancy by remaining family members and may impose a condition that family members who engaged in the proscribed activity will not reside in the unit. A PHA may require a family member who has engaged in the illegal use of drugs to present evidence of successful completion of a treatment program as a condition to being allowed to reside in the unit."

3.3.4 Notice to Post Office

The 1990 NAHA provides that the PHA must notify the local post office if an individual or family is evicted for criminal activity, including drug-related criminal activity (NAHA, section 505, U.S.H. Act, section 6(n)). To implement this provision, the rule provides that the PHA must notify the local post office serving the dwelling unit that the evicted individual or family is no longer residing in the dwelling unit (§ 966.4(l)(5)(ii)).

PHA and other comment expresses bafflement at the purpose of the statutory and regulatory requirement for notice to the post office. The law imposes a new burden on PHAs without apparent reason. Comment suggests that the notification requirement should only apply to eviction for criminal activities involving use of the mails. Commenters doubt that notice by the landlord would be accepted by the post office as a basis for ceasing delivery of mail for the tenant.

The purpose of the statutory post office notice requirement is not expressed in the formal legislative history. However, HUD understands that this provision was intended to halt delivery of mail on behalf of the former occupants who were evicted for criminal activity, so that these persons will not have reason to return to the project to pick up the mail.

HUD must of course follow the statutory requirement. To clarify the purpose of the provision, the rule is amended to add a parenthetical provision describing the purpose of the post office notification provision:

"So that the post office will terminate delivery of mail for such (evicted) persons at the unit, and that such persons not return to the project for pickup of the mail." (§ 966.4(l)(5)(ii))

3.3.5 Relation Between Civil Eviction Action and Criminal Proceeding

The PHA may evict for drug-related criminal activity or for criminal activity that threatens tenants or PHA employees. The PHA may exclude such evictions from the PHA grievance procedure if HUD determines that State law requires a fair pre-eviction hearing. Legal aid comment recommends that the PHA should only be allowed to evict for criminal activity after a criminal conviction. Legal aid comment states that the grievance exclusion for criminal activity should not be allowed until conviction of the crime. Comment also recommends that when the PHA is seeking to evict a tenant for criminal activity, by a civil eviction action in the State landlord-tenant court, the PHA should be required to prove criminal activity beyond a reasonable doubt. Other comment suggests there is a need to clarify the relation between the civil eviction process and the progress of a criminal prosecution.

Under this rule, the PHA may proceed with a civil eviction for criminal activity by family members or guests regardless of whether a criminal prosecution has commenced or completed, and regardless of the stage of any criminal proceeding. In the civil eviction proceeding, the tenant is entitled to a fair judicial hearing on the existence of legal and factual grounds for eviction.

In a criminal prosecution, the court decision may lead to imprisonment or other criminal penalty against the accused individual, and the elements of the crime must be shown by a criminal standard of proof (usually, by proving guilt beyond a reasonable doubt). However, eviction of a public housing tenant is a civil remedy. In an action for termination of tenancy—whether for the specific criminal activities enumerated in the Federal statute, or for other serious or repeated lease violation or other good cause—the decision of the court in the civil possessory action leads to a common remedy: eviction from the unit. If the PHA claims in the civil eviction action that "crime" by a household member is ground for eviction, then the PHA must prove the elements of crime by the civil standard of proof (generally by a preponderance of the evidence). As in any other eviction, the PHA must prove by an ordinary civil standard the facts alleged as the basis for eviction. There is no injustice or denial of proper process in allowing the PHA to proceed with civil eviction before conviction of a crime. There is also no reason to import the criminal standard of proof into a civil possessory action.

3.4 Representation

An American Civil Liberties Union comment states that counsel should be assigned to public housing tenants defending against eviction in State court or administrative grievance proceedings. The comment claims that provision of such publicly paid counsel for indigent tenants is required by due process, and is necessary so tenants can present viable defenses and enforce their rights.

A tenant has a right to be represented in a PHA grievance hearing and in a State court eviction action. In the administrative grievance proceeding, the tenant is entitled to be represented by a person of the tenant's choice. This right is established by Federal law (U.S.H. Act, section 6(k)(4), 42 U.S.C. 1437d(k)(4)) and by HUD regulation (§ 966.56(b)(2)). In a State court eviction proceeding, the tenant may also be represented by counsel in accordance with due process and requirements of State law.

However, there is no Federal Constitutional or statutory right, in the PHA administrative grievance process or in a civil proceeding for eviction of a public housing tenant, to provision of counsel assigned by or paid for by the PHA. HUD will not require PHAs to pay for assigned counsel in eviction proceedings. Such a requirement would be a new administrative burden and expense, and would be a drain on limited PHA financial resources for administration of public housing.

3.5 Grounds For Eviction

3.5.1 Other Good Cause

By law, a PHA may terminate a public housing lease for "other good cause" (in addition to the other statutory grounds for termination of tenancy) (42 U.S.C. 1437d(1)(4)). The rule tracks the statute (§ 966.4(1)(2)(i)).

Comment suggests a revision to provide that the landlord may not evict for "other good cause" until expiration of the lease term. HUD has not accepted this recommendation. Although terminations for "other good cause" are probably much less common than terminations for violation of specific lease requirements, HUD has no basis to suppose that good cause circumstances can only occur at the end of a pre-defined term. The rule should leave flexibility for other good cause terminations whenever the PHA can show such cause exists in the judicial eviction action. The tenant may of course challenge the existence of good cause in fact or in law. The issue is determined by the judge in the State court eviction proceeding.

4 Grievance Procedures

4.1 Hearing Procedure

4.1.1 Changes In Procedure: Opportunity For Tenant Comment

Since 1975, the rule has required that a PHA give tenants 30 days notice and opportunity to comment on proposed changes to the PHA lease form (old § 966.3). The rule also provided that the grievance procedure must be incorporated in dwelling leases (old § 966.50), and that the PHA grievance regulations must be made a part of each tenant lease (old § 966.52). Since the grievance procedure is incorporated in the lease, changes in the grievance procedure were subject to the requirement for tenant notice and opportunity to comment on proposed changes to the lease.

To emphasize the obligation for a PHA to seek tenant comment on a change in the grievance procedure, the final rule is revised to add a separate and explicit provision on this subject. The final rule provides (§ 966.52(c)) that the PHA must provide at least 30 days notice to the tenants and resident organizations setting forth proposed changes to the PHA grievance procedure, and providing an opportunity to present written comments. As under the earlier regulation provision governing comment on changes to the PHA lease form (substantially retained in this rule; § 966.3), comments submitted must be considered by the PHA. However, the PHA retains the ultimate authority to decide the incidents of a grievance procedure adopted in accordance with the regulation. However, comments submitted by the tenants and tenant organizations must be considered by the PHA before adoption of any changes in the grievance procedure.

4.1.2 Grievance Procedure: Copy For Tenant

Legal aid comment recommends that the PHA should be required to provide a copy of the grievance procedure to the tenant.

HUD agrees. The rule is revised to provide that the PHA must furnish a copy of the grievance procedure to each tenant and to resident organizations (§ 966.52(d)).

4.1.3 Adverse Action

4.1.3.1 *Notice Of Proposed Adverse Action.* By law, the PHA is required to give the tenant notice of a proposed "adverse action" (U.S.H. Act, section 6(k)(1), 42 U.S.C. 1437d(k)(1)). The rule provides, in accordance with the statute, that the PHA must notify the tenant of a proposed adverse action (§ 966.4(e)(8)). The rule lists certain PHA activities which are treated as adverse action, but does not attempt to set out a complete list of such actions.

PHA comment recommends that the regulation should give a more comprehensive list of possible "adverse actions" for which notice is required, or that the regulation should not include any list of adverse actions. PHA comment urges that a transfer from the unit, or the imposition of penalties for late payment or other charges, should not be considered an adverse action.

In public housing, tenant rent is based on family income, and is redetermined at least annually. Comment from a legal aid office states that rent changes should be added to the list of specified adverse actions. In addition, the comment suggests that a notice of the redetermined rent should provide, as in the certificate and voucher program, that the tenant may ask for an explanation of the basis of the rent determination and may ask for a hearing if the tenant does not agree with the determination.

The rule enumerates common types of "proposed adverse action" by a PHA affecting a tenant (§ 966.4(e)(8)). However, HUD is unable to state in advance all possible types of proposed adverse action by a PHA affecting the tenant. Any proposed adverse action by the PHA is subject to the statutory notice requirement. In any case, under the existing regulatory definition of grievable subjects (not revised by this rule) the public housing tenant has a broad right to grieve on PHA action or non-action which may adversely affect the individual interest of the tenant (§ 966.53(a)). Whether or not a type of proposed adverse action is explicitly listed in the rule, the tenant has the right to grieve on any such subject.

The final rule retains the provision that a proposed transfer from the unit will be considered as a proposed adverse action, for which the PHA must give notice of adverse action. The PHA must provide a tenant the opportunity to grieve. A proposed transfer individually and adversely affects the tenant. The PHA may have a clear right to transfer the tenant from the unit. However, if the tenant elects to grieve, the correctness of the PHA's proposed action is presented for decision by the hearing officer.

The list of proposed adverse actions (§ 966.4(e)(8)(i)) is revised to specify that imposition of charges for maintenance and repair, or for excess consumption of utilities, is to be treated as a proposed adverse action. Such charges are over-and-above the ordinary rental charge, and directly affect the pocketbook of the tenant.

HUD finds, however, that there is no need to specifically mention in the rule that the PHA's imposition of penalties for late payment is an adverse action (and have therefore eliminated the explicit reference to late payment penalties in § 966.4(e)(8)). In general, the levy of a late payment charge is a ministerial action by the PHA where the tenant fails to make timely payment of the rent in accordance with the lease and PHA rules. As indicated above, the tenant may grieve on a proposed adverse action by the PHA, but HUD has not attempted a comprehensive listing of grievable adverse actions.

HUD has not adopted the suggestion that a notice of rent change (i.e., notice of the new rent as redetermined by the PHA at an annual or interim reexamination) must be treated as a notice of adverse action. Of course, there may be issues as to whether income or rent was correctly determined, and the tenant has a right to grieve on such issues. However, in itself, the regular rent determination is a normal incident of the assisted tenancy, not a penalty or special adverse action against the tenant. All tenants must pay an income-based rent computed in accordance with Federal law.

HUD has, however, amended the rule to provide (§ 966.4(c)(4)) that when the PHA redetermines the rent payable by the tenant, or requires the tenant to transfer to another unit suitable for the family size:

> " * * * the PHA shall notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PHA grievance procedure."

4.1.3.2 *Postponement of Adverse Action.* The statute provides that a PHA must give opportunity for hearing on a "proposed" adverse action (42 U.S.C. 1437d(k)(1)). Resident organization comment states that the PHA should be prohibited from taking any adverse action until the tenant's grievance rights has been satisfied.

The final rule contains two provisions which define the relation between the grievance hearing and a proposed adverse action:

—For a proposed lease termination where the PHA is required to afford the opportunity for an administrative grievance hearing, the rule provides that "the tenancy shall not terminate * * *" until the grievance process is completed (either by expiration of the time to request a hearing, or by completion of the grievance process) (§ 966.4(l)(3)(iv)).

—For other proposed adverse actions, the rule provides that the PHA shall not take any proposed adverse action until the grievance process is completed (§ 966.4(e)(8)(ii)(B)).

4.1.4 Hearing Officer

Under the old grievance procedure, in effect since 1975, the hearing officer must be an "impartial, disinterested" person selected jointly by the PHA and the tenant seeking to grieve. If the PHA and the complainant cannot agree on a hearing officer, the PHA and complainant each appoint members of the hearing panel, who then select a third panel member. If the PHA and complainant appointed members cannot agree on a third panel member, the third member is appointed by an independent arbitration organization. Alternatively, a hearing officer or panel member may be appointed by a method approved by the majority of tenants in affected projects.

In this rulemaking, HUD proposed to replace the cumbersome old rule process for designation of a hearing officer by giving the PHA broader authority to decide how a hearing officer or panel is selected. The PHA could use a method approved by tenants in affected projects (the alternative method allowed under the old rule), or could appoint a person (who may be an officer or employee of the PHA) selected in a manner specified in the PHA grievance procedure. In either instance, the hearing would be conducted by an "impartial person or persons appointed by the PHA" (§ 966.55(b)(1)).

PHAs and PHA organizations strongly support the change in procedures for designating a hearing officer. PHAs state that tenants have used the old requirements to delay the grievance hearing, and to postpone eviction. PHAs state that the old rule requirements for appointment of a hearing officer cause substantial delays in the hearing process. Tenants can hold up the hearing process by refusing to agree to appointment of a hearing officer. A PHA organization states that some PHAs report delays of up to six months. PHA comment indicates delay of as much as a year where the tenant rejects the hearing officer. A PHA states that not having to go outside the agency for a hearing officer will expedite the hearing process. A PHA remarks that the change will help the PHAs negotiate with resident organizations a new procedure for appointment of hearing officers.

Comment from legal aid and resident organizations objects to the changes giving the PHA more discretion on how to designate a hearing officer. Comment claims that a PHA officer or employee cannot serve as an impartial hearing officer. Comment states that HUD should impose guidelines for impartiality.

Comment asserts that changing the procedures for PHA appointment of a hearing officer will undermine tenant confidence in the grievance procedure. Comment states that tenants should have a voice in appointment of a hearing officer, and that the method for appointment of a hearing officer should be approved by the tenant organization. Comment claims that the proposed change disempowers tenants, and is contrary to HUD's emphasis on increasing tenant responsibility and power.

On review of public comment, HUD has decided that the impractical old regulation procedure for appointment of a hearing officer will be modified, as proposed by HUD, to allow PHA appointment of a hearing officer or panel. On its face, the old procedure requiring PHA-complainant agreement on appointment of a hearing officer or hearing panel member delays the hearing by the time necessary to satisfy these procedures. Experience over the years also suggests that the old procedures have been abused by tenant counsel as a deliberate dilatory technique for delay of the hearing process. For some PHAs, the requirements for PHA-complainant agreement on appointment of a hearing officer have apparently resulted in very substantial hearing delays—including delays of six months to a year. Complication and delay of the administrative hearing process results in a diversion of PHA administrative resources and energies. Equally important, such delays defeat the basic objective of the administrative hearing process—to provide a fair, simple and expeditious administrative hearing on individual tenant grievances. Where the grievance concerns a proposed termination of the lease (for example, a termination for family damage to the unit or for nonpayment of rent), the total eviction period is the cumulative sum of the grievance period and the period required for the subsequent judicial eviction process (where the tenant may receive a second *de novo* hearing). In the meantime, the PHA is unable to evict the tenant. During this period, the family may continue the practices for which eviction was originally sought, such as disturbing peaceful occupancy by other residents, or may engage in other harmful behavior.

The rule provides, as required by law, that the administrative grievance hearing must by conducted by an "impartial" person or persons appointed by the PHA (§ 966.55(b)(1); U.S.H. Act, section 6(k)(2), 42 U.S.C. 1437d(k)(2)). HUD does not agree with commenters who contend that a PHA-appointed hearing officer, or a hearing officer who is an officer or employee of the PHA, cannot be impartial or that the regulatory requirement to designate an impartial hearing officer is a mere sham. Such comments proceed from a distrust of the PHA's ability to provide an impartial hearing. This bias is inconsistent with the basic structure and purpose of the statutory administrative grievance mechanism: to provide for decision on the tenant's grievance "by the public housing agency" (42 U.S.C. 1437d(k)(6)) through an impartial party designated under the administrative grievance procedure established by the PHA. There is no reason of policy or statute to prohibit PHA appointment of the hearing officer who will render the PHA decision.

A PHA has the obligation to appoint hearing officers who can provide fair and impartial review of questions at issue in the grievance hearing. By designation as an "impartial" hearing officer, the appointed hearing officer, whether or not connected with the PHA, is responsible to render a disinterested decision.

In operation of governmental programs, it is common that hearing procedures for appeal of agency action provide for designation of a hearing officer by the administrative agency, and for hearing by an official of the same agency. The revised procedure for appointment of a public housing hearing officer under this rule is essentially the same as a procedure used successfully for some years in the section 8 rent certificate and rental voucher programs, which are usually administered by the same PHA as the local public housing program, and which serve a similar class of eligible low-income families under the U.S.H. Act.

Comment by PHAs, and by legal aid and tenant organizations, propose that the rule provide that the PHA-designated hearing officer may not be a person who made the original decision which is the subject of the grievance, and may not be a subordinate of the original decision-maker. This limitation is a requirement of the PHA hearing rules for the certificate and voucher programs. HUD has accepted this recommendation. However, HUD has not adopted a proposal that the rule should prohibit the appointment of a hearing officer who is a superior of the original decision-maker. A superior of the person who rendered the original decision can provide a fair and impartial new look at a challenged decision.

The final rule provides (§ 966.55(b)(1)) that:

> "A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA, other than a person who made or approved the PHA action under review or a subordinate of such person."

To clarify that the grievance may be heard either by a single hearing officer or by a grievance panel, the final rule specifies that the hearing may be heard by a "person or persons" appointed by the PHA.

The rule still permits the prior procedure for appointment of a hearing officer through a method approved by a majority of affected tenants in an election held for that purpose. The principal revisions of the appointment mechanism under the new rule pertain to the case where a hearing officer is not designated through a method determined in a tenant election.

The rule provides that the selected method of hearing officer appointment "shall be stated in the PHA grievance procedure" (§ 966.55(b)(2)). Under this rule, the PHA is now required to provide opportunity for comment by tenants and resident organizations before adopting changes in the procedure for hearing officer appointment, or in any other aspect of the PHA grievance procedure (§ 966.52(c)).

In addition to providing for tenant input before a change in the method for designating a hearing officer, the final rule also provides (§ 966.55(b)(3)) that the PHA:

> "The PHA shall consult the resident organizations before PHA appointment of each hearing officer or panel member. Any comments or recommendations submitted by the tenant organizations shall be considered by the PHA before the appointment."

HUD expects that PHAs will generally conduct this consultation and appoint hearing officers in advance, with authority to hear future grievances filed by tenants, rather than in response to an individual grievance.

The purpose of the revisions in the regulatory procedures for hearing officer designation is to improve management of public housing projects for the benefit of all residents. Problems in operation of the grievance procedure, and the inability of the PHA to apply sanctions against a tenant and household which abuse the disciplines of community living, affects chiefly the other families who reside in the housing, and who will experience directly the deterioration of community living and common security.

HUD encourages the assumption of greater management responsibilities by residents of public housing. As tenants and tenant organizations assume responsibility for management functions, including operation of the grievance process, they will inherit any defects and difficulties of the grievance procedure.

The grievance procedure changes do not (as asserted by some comment) preclude or limit the use of a tenant as a single hearing officer or as a member of a hearing panel.

4.2 Expedited Grievance Procedure

When the PHA evicts a tenant for drug crime or criminal activity which threatens other residents or PHA employees, the PHA has a choice of bypassing the administrative grievance process or establishing an "expedited grievance procedure" (42 U.S.C. 1437d(k); § 966.55(g)). The law provides that the expedited grievance procedure may be used for the same two classes of dangerous criminal activity as the authority to bypass the grievance process after a HUD due process determination:

—Criminal activity that threatens tenant or PHA employee health, safety or right to peaceful enjoyment of the premises.

—Drug-related criminal activity.

However, the PHA may use an expedited grievance procedure even if HUD has not issued a due process determination, or if HUD has issued a determination, but the PHA elects to make the grievance machinery available to the tenant.

For most grievances, the rule provides that the PHA must give opportunity for informal settlement at the start of the grievance process (§ 966.54; not amended in this rulemaking). However, the rule provides that when the PHA is operating under the expedited grievance procedure for criminal evictions, the PHA may proceed directly into the full grievance hearing process, and may omit the informal settlement stage of the grievance procedure (§ 966.55(g)(2)).

In all other respects, the PHA must comply with all regulatory administrative grievance requirements. The PHA may design the expedited grievance procedure to allow expeditious hearing of the grievance (§ 966.55(g)(3)). The expedited grievance process could include provision for expedited notice or scheduling, or for expedited decision by the hearing officer.

A PHA states that the expedited procedure will greatly benenfit PHAs. Other PHA comment accurately notes that the regulation provides little direction to the PHA beyond allowing omission of the informal settlement stage. The comment states that more specific guidelines are desirable, and would result in less discrepancy among PHAs.

HUD appreciates the concern expressed in this comment. However, HUD lacks at this time an adequate basis for more precise guidance to PHAs on how to set up an expedited grievance procedure. The attempt at this time to lay out more detailed Federally prescribed procedures for conduct of an expedited grievance hearing would reduce the operational flexibility of the PHAs, and could produce significant problems without corresponding benenfit. If actual experience under the rule indicates the desirability of a more prescriptive or precise treatment of this subject, HUD may reconsider this question.

4.3 Who May Grieve?

Section 966.53(f) defines the term "tenant" for purposes of the grievance hearing requirements (part 966, subpart B). A "tenant" has the right to invoke the grievance hearing procedures. (There is no "tenant" definition for the dwelling lease retirements at subpart A of the grievance procedure.)

In this rule, a technical amendment clarifies that a "tenant" must be an "adult". The revision also makes clear that a "live-in aide" has no right to a grievance hearing. The live-in aide is not a member of the assisted "family" and only resides in the public housing unit to care for a disabled family member.

PHA comment endorses the revised "tenant" definition.

Comment states that the regulation does not define who is an "adult". Comment asserts that in some States an "emancipated minor" can assume responsibility for a tenancy, and that an emancipated minor should not be barred from taking over the lease because of an arbitrary age limitation.

In this rule, HUD does not impose any arbitrary age limitation, or any Federal imposed definition of adulthood or contractual capacity. In stipulating that the tenant must be an "adult", HUD accepts the definition of contractual capacity as determined by State or local law, but does not seek to impose a uniform Federal definition. If an "emancipated minor" is vested with capacity, as determined by State and local law, to assume the leasehold, then the minor would be deemed an "adult" for purpose of HUD's "tenant" definition. If the remaining head of household is an emancipated minor, who has legal capacity to assume the obligations of the lease, then the remaining household head would qualify as a "tenant" under the definition—i.e., as a person who may exercise the right to grieve.

The right of a remaining family member to grieve does not signify that a remaining family member has the right to succeed to the leasehold interest of the original tenant who entered into a lease with the PHA. The tenancy right rests with the lessee who signed a lease with the PHA as tenant of the unit. When the original lessee dies or departs the unit, then the remaining family members constitute a "family" and are eligible for continued assistance.

However, there is no automatic right of leasehold succession. The decision on whether to renew the tenancy, by executing a new lease with a remaining family member who possesses legal capacity, is a discretionary management determination by the PHA.

Legal aid and tenant organization comment states that a minor child (who remains in the unit after departure of the lessee), should have the right to grieve. A relative or guardian of the minor child can move into the unit, or can take over the responsibilities of the original lessee. Comment states that a minor should have the right to exercise the grievance right through a relative or guardian.

HUD is not persuaded that the grievance right should be extended to a minor, or to a non-resident relative or guardian acting on the family's behalf. Rather, the grievance right should be restricted to a remaining family member with legal capacity to assume the tenancy. Occupancy of public housing is regulated by the set of tenant and PHA rights and duties contained in the lease. The practical and legal structure of the program requires a lease between the PHA and a member of the resident family, who must therefore be a person with legal capacity—who may be bound by and enforce the covenants of the lease. Where there is no longer any adult in the unit, the PHA may decide to admit a relative or guardian to live in the unit and head the reconstituted family, and to assume the obligations of a public housing lease. However, this decision is an exercise of discretionary management judgment by the PHA, not a matter to be determined by a grievance hearing.

Comment also claims that "live-in aides" should have the right to grieve. HUD finds no merit to this contention. A live-in aide is only allowed to reside in a public housing unit for support of a disabled or elderly member of the assisted family.

4.4 Retention of Old Eviction Procedures

Comment by a tenant organization proposes that the PHA should be required to retain prior grievance procedures (under a pre-1975 HUD circular or under the 1975 grievance rule) unless a majority of the tenants vote to revise the old grievance procedure. This comment is not adopted.

Federal grievance requirements should be uniform for all PHAs, and should not depend on the historical accident of whether a PHA has a different grievance procedure which was adopted under the old circular or rule. All PHAs must adopt grievance procedures within the requirements of the new rule. Some changes will generally be required to assure that the PHA grievance procedures comply with statutory requirements—such as the requirement for a notice of proposed adverse action under the 1983 law, or the requirement for a Hub due process determination if the PHA wants to exclude evictions from the grievance process, and the definition of excludable categories. In general, compliance with the new rule will not require extensive revision of the old grievance procedures.

Under this rule, tenants must be given an opportunity to comment before the PHA revises its grievance procedure.

5 Eviction: Exclusion From Grievance Procedure

5.1 Termination Notice

Legal aid comment recommends that where an eviction is excluded from the PHA grievance process the tenant should be notified that the tenant is not entitled to a grievance hearing, and the basis of this exclusion. This recommendation is adopted.

The final rule provides (§ 966.4(l)(3)(v)) that when the PHA is not required to afford tenant the opportunity for a grievance hearing on a lease termination, and has decided to exclude the grievance from the PHA grievance procedure, the notice of lease termination shall:

"(A) State that the tenant is not entitled to a grievance hearing on the termination.

(B) Specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations.

(C) State whether the eviction is for a criminal activity (which threatens health or safety, of PHA residents or employees) * * * or for a drug-related criminal activity * * *."

5.2 What Evictions May Be Excluded From Grievance Procedure?

Before passage of the 1990 NAHA amendments, the PHA could bypass the grievance process for any eviction once HUD issued a due process determination for the judicial eviction procedure used by the PHA. However, NAHA narrows the grievance exclusion to cover only two cases:

—An eviction for "any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other tenants or employees of the public housing agency."

—An eviction for "any drug-related criminal activity on or near such premises."

(U.S.H. Act, section 6(k), 42 U.S.C. 1437d(k))

The rule states the scope of the potential grievance exclusion in accordance with the law (§ 966.51(a)(2)(i)).

PHA comment criticizes the narrowing of the grievance exclusion under the 1990 legislation. A PHA states that this change forces the PHA to go through a time-consuming and ineffective grievance procedure, and the necessity for dual administrative and judicial hearings for eviction of a tenant. Since the statute defines the scope of the grievance exclusion, HUD has no power to broaden the exclusion.

Legal aid comment suggests that the term "premises", as used in the statutory provisions allowing a PHA to bypass the grievance process for eviction of a public housing tenant, should be read to apply to public housing premises of the same public housing agency, not to illegal activity on or near public housing premises of another PHA. HUD concurs that these provisions are intended to refer to criminal activity which endangers residents or employees of the same PHA, or to drug related criminal activity on or near premises of the same PHA. The rule is revised to make clear that the grievance exclusion concerns "the PHA's public housing premises", that is to say public housing premises operated by the PHA which avails itself of the grievance exclusion. (Similar technical revisions are made in the provisions authorizing use of an "expedited" hearing process for the same types of criminal activity (§ 966.55(g)(1)(i)), and in the provisions authorizing termination of tenancy for such criminal activity (§ 966.4(f)(12)(i)(A) and § 966.4(l)(2)(ii)(A)).

Under the 1990 amendments, the grievance exclusion applies only to specific types of serious criminal activity. Comment by legal aid and by a tenant organization recommend that the grievance exclusion should be further constricted: That the exclusion should only apply to criminal activity that is a "serious" threat to tenants or employees, or only to "violent" or "felonious" criminal activity.

Comment also claims that application of the statutory and regulatory standards leaves too much room for subjective judgment by the PHA, such as in determining when drug activity takes place "on or near" public housing. PHA comment states that the "on or near" standard is vague, and constitutes an invitation to protracted litigation. The comment suggests a specific regulatory definition such as two "standard city blocks".

There is no present need for HUD to amplify the statutory standard defining what cases may be excluded from the grievance process. The law plainly expresses the Congressional judgment that drug crimes and threats to health or safety of tenants or PHA employees are so serious that the PHA should have immediate access to local landlord-tenant courts, without the delay and other difficulties of the administrative hearing process. The Conference Report on the 1990 law states that the statutory language "is intended to reach criminal activity that seriously endangers other tenants or PHA employees, while preserving the grievance process for all other categories of evictions" (H. Rpt. 101–943, October 25, 1990, p. 417). The Congressional standard should not be overlaid by HUD restrictions further constricting the scope of the statutory grievance exclusion.

The statutory standard, as incorporated in the rule, affords an adequate objective standard to guide determination in individual cases. This standard will be initially applied by the PHA in deciding what evictions will be brought directly in the local courts. The PHA may moreover adopt local rules or practices concerning what types of cases will be deemed to present a threat to health, safety or peaceful enjoyment, or on determining when drug activities occur "near" the public housing premises. PHAs may articulate reasonable principles in response to local experience. Such locally developed principles are more likely to constitute a reasonable application of the statutory standard to local reality than a HUD attempt at this time to articulate universal rules for this purpose.

Any application of a statutory standard to concrete cases may be subject to dispute at the margins. Ultimately, the question of whether the PHA has correctly excluded an eviction from the hearing process will be subject to review by the landlord-tenant court in the judicial process for eviction of the tenant.

We do not agree with the assertion in certain legal aid comment that the definition of restrictions on the public housing grievance exclusion should be made parallel to recent regulations allowing a PHA to terminate assistance in the certificate or voucher programs. In the certificate and voucher programs, the assisted landlord may always go directly to court for eviction of the tenant.

5.3 HUD Due Process Determination: Must Be Based On Analysis of Legal Requirements For Eviction Under State or Local Law

Legal aid and tenant organization comment argues that HUD has responsibility to determine whether actual practice in the State courts provides the elements of a due process hearing. We disagree. To make a due process determination, HUD examines whether law of the jurisdiction "requires" a due process preeviction judicial hearing (U.S.H. Act of 1937, section 6(k); 42 U.S.C. 1437d(k)). It is not HUD's statutory function to examine the actual practice of local courts in implementing the legal requirements. The attempt to base HUD's due process determination on a factual examination of State court practices would be both impractical and uncertain. (See discussion at 53 FR 33294, August 30, 1988.)

5.4 Definition of Due Process

By statute, HUD is authorized to issue a rule which establishes the "basic elements of due process", and to determine whether eviction procedures under law of a jurisdiction meet HUD's due process definition (42 U.S.C. 1437d(k)). The definition of due process elements may not include a requirement that the tenant be provided an opportunity for discovery of relevant PHA documents.

The old lease and grievance rule contained a definition of due process elements, including opportunity for discovery of PHA documents. As required by the NAHA, the new regulation removes the discovery element from the due process definition. Except for the discovery element, the new rule (§ 966.53(c)) retains verbatim the list of due process elements from the old rule. These elements amply express the core of procedural due process—namely notice and opportunity to be heard.

5.4.1 Nature of the Court Decision

HUD's due process definition requires a "decision on the merits" (§ 966.53(c)(4)). The preamble to the proposed rule states that this element means:

"that the tenant must have a right, pursuant to law of the jurisdiction, to a decision based on the evidence and the law. It does not signify that there must be a right to a written decision, or to a statement by the court of the legal basis of decision." (56 FR 6252, February 14, 1991)

Legal aid comment states that Constitutional due process requires a written decision and an explanation of the reason for decision. In a judicial eviction action, procedural due process requires a decision based on the facts and the law, but does not comport a requirement for written decision and explanation of the basis of decision. (For the present purpose, we need not consider whether a written decision and explanation are Constitutionally necessary in an administrative hearing proceeding, in order to facilitate a subsequent judicial review of the administrative action.) Written decision or explanation is not required in order to produce a decision on the merits, with full opportunity for the tenant to defend the eviction.

For most States, laws governing judicial eviction procedures apparently do not require the landlord-tenant court to give a written decision or statement of the basis of decision, although most or all courts probably maintain docket records that would show the disposition of the eviction. We are not aware of any substantial general challenge to the constitutional validity of State eviction process on this basis, and the Supreme Court has upheld the validity of summary State process for eviction of a tenant (*Lindsay* v. *Normet*, 405 U.S. 56, 92 S.Ct. 862 (1972)).

The position recommended by the comment essentially challenges the Constitutionality of ordinary eviction process in use by most States, not just the validity of HUD's due process definition as a basis for issuance of a HUD due process determination. Furthermore, the position urged by commenter would essentially eviscerate the statutory authority to bypass the grievance process for drug crimes and threats to health or safety of tenants or PHA employees. Commenter's position would preclude issuance of a due process determination for typical State eviction processes, which afford fair notice and opportunity for a hearing, but which do not require written decision or a written articulation of the basis of decision.

Comment claims that NAHA legislative history (i.e., the Conference Report on the 1990 NAHA) requires HUD to literally incorporate in its due process definition (as applied to State court eviction actions) all of the procedural protections for the administrative grievance procedure, including the requirement for a "written decision" by the PHA.

We note first that the actual statutory language (42 U.S.C. 1437d(k)) plainly distinguishes between treatment of the administrative grievance procedure and the analysis of judicial eviction procedure under the HUD-prescribed due process definition. For the PHA's administrative grievance procedure, there is an explicit statutory listing of six required procedural elements. For purposes of the grievance exclusion, HUD has statutory responsibility to determine the "basic elements of due process". However, there is no statutory listing of these due process elements, and no requirement to use the administrative hearing elements to define due process in the court proceeding. HUD is of course bound and authorized to follow the law actually enacted by the Congress.

HUD also does not think that the Conference language should or can be read, as suggested by comment, to literally impose the administrative grievance elements on HUD's due process determination. For example, the elements of the administrative grievance process as defined by the statute mandate a "written decision by the public housing agency" (42 U.S.C. 1437d(k)(6)). In a judicial eviction action, the court's decision is of course issued by a State judge, and is not literally issued "by the public housing agency". In the court eviction action, the PHA is the plaintiff, not the judicial decision-maker. The NAHA Conference language merely means that the judicial eviction action should include the essential due process elements also contained in the administrative grievance action: namely, fair notice and the opportunity to be heard before a decision on the merits. These essential procedural protections are the heart of HUD's due process definition, as of the statutory requirements for an administrative grievance hearing.

5.4.2 Due Process Definition: Right To Counsel

HUD's definition of due process elements includes the "right of the tenant to be represented by counsel" in the judicial eviction proceeding (§ 966.53(c)(2)). Comments by ACLU, and by legal aid and tenant organizations, claim that where an indigent tenant is evicted for criminal activity, the tenant has a due process entitlement to appointment of publicly paid counsel (or that counsel should be provided to protect against the danger of self-incrimination). No revision is made in response to these comments.

HUD's due process determination and due process definition pertain only to the civil eviction process under State law, and do not affect the conduct of any criminal proceeding. In a civil eviction proceeding, the landlord-PHA only seeks to repossess the property from the tenant. In such a proceeding there is no due process or other Federal Constitutional right to representation by publicly paid counsel.

5.5 Due Process Determination: Comments

Comment by a Congressional office, and from legal aid and tenant organizations state that when a PHA seeks approval of an "individual state waiver" (due process determination), HUD should give affected tenants advance notice and opportunity to comment before a due process determination is made. Comment asserts that such notice is required by the NAHA Conference report, and due process, and is also desirable as a matter of policy.

The Conference Report on the 1990 amendments states the "conferees intend that when an individual state waiver is sought, the Secretary should notify tenants in advance and provide them with an opportunity to comment" (H. Rpt. 101–943, October 25, 1990). The actual statutory language empowering HUD to issue a due process determination was originally enacted in 1983 (section 204 of Pub. L. 98–181, November 30, 1983, the Housing and Urban-Rural Recovery Act of 1983), and does not include a requirement to solicit tenant comment before issuance of an individual due process determination. The pertinent statutory language was reenacted verbatim in the 1990 NAHA amendments. (The 1983 law and the 1990 amendments both provide that an agency may exclude a grievance "in any jurisdiction which requires that * * * a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process.") The 1990 Conference statement does not alter the actual statutory language enacted in the 1983 law, and the 1990 law does not add a requirement to provide the tenants notice and opportunity to comment before HUD issues an individual State due process determination.

The 1990 statute provides that HUD must issue a new definition of the basic elements of due process through a notice and comment rulemaking. HUD's new due process definition under the 1990 NAHA has been established by a full notice and comment rulemaking, which is completed by promulgation of this final rule. However, HUD is not required to use any particular procedures for issuance of an individual State due process determination, or to provide tenant notice and opportunity to comment (42 U.S.C. 1437d(k)).

HUD due process determinations are not issued in response to request from an individual State or individual PHA. Rather, HUD's objective is to conduct, so far as possible, a systematic and comprehensive analysis of available eviction procedures in all States, and to issue due process determinations for all eviction procedures which meet the HUD due process definition. Once a due process determination is issued for a State eviction process, the due process determination may be invoked by any PHA in the State which wants to bypass the grievance process for an eviction through the covered process.

HUD welcomes and invites public comments at any time bearing on the due process determination for any State or eviction procedure.

Opportunity for advance public notice and comment on a due process determination is not Constitutionally required. The issuance of a due process determination does not terminate or affect the tenant's property right to occupancy of the unit. Even after issuance of a determination, the PHA may only evict the tenant by bringing a judicial action for eviction of the tenant (through the judicial eviction process covered by a HUD determination). The judicial eviction action must satisfy procedural due process under the fourteenth amendment. The issuance or non-issuance of a due process determination determines whether the tenant has the statutory right to an administrative grievance hearing process prior to, and in addition to, a court hearing in the judicial eviction action.

5.6 Status of Prior Due Process Determinations

Comment asks HUD to clarify the effect of the new rule on existing HUD due process determinations. Since 1989, and before enactment of the NAHA, HUD issued due process determinations for eviction procedures in many jurisdictions. Under transition provisions of the NAHA, these prior determinations all temporarily lapsed 180 days after enactment of the NAHA (May 27, 1990), since HUD had not then issued final rules implementing the NAHA amendments (NAHA, section 503(d)).

Following final promulgation of this rule, a PHA may exclude an eviction from the PHA grievance procedure pursuant to a previously issued due process determination "to the extent that the exclusion complies with (the 1990 NAHA amendments)" (NAHA, section 503(d)). A U.S. district court has stated that:

"under the Cranston-Gonzalez Act (i.e., the NAHA), once the new regulations are promulgated, any prior due process determination, and any exclusion pursuant thereto, will be valid to the extent it is consistent with the new regulatory definition of due process, as well as the other amendments to the Act (pursuant to the NAHA)." (*Housing Authority of the City of Jersey City* v. *Jackson*, U.S.D.C., D. N.J, Civil No. 90–1410, December 13, 1990)

HUD's new regulatory due process definition under this rule eliminated the prior discovery element. All remaining elements of the definition are identical to the due process elements as defined in the old rule (and no new elements have been added). Thus any eviction procedure found to meet the prior regulatory definition will also, necessarily satisfy the new definition. Prior due process determinations are therefore consistent with the new regulation, and are valid and operative after promulgation of the new rule. However, the breadth of the grievance exclusion pursuant to these prior determinations is subject to the limitation in the new law, which permits exclusion only of evictions for drug-related criminal activity and criminal activity which threatens health or safety of residents or PHA employees.

6.0 Findings and Certifications

6.1 Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

6.2 Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

6.3 Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule does not affect the size of a PHA program, or the amount of funds available for administration of the program. Major provisions of this regulation substantially restate requirements already binding on a PHA as a matter of Federal law: the requirement for lease provisions which prohibit drug-related or other criminal activity by public housing residents, the requirement to give a tenant notice of a proposed adverse action by the PHA, the provision that a PHA may exclude a grievance concerning an eviction from the PHA administrative grievance process if HUD has issued a due process determination. Certain provisions are expected to increase the discretion of the PHA, and reduce the PHA's administrative burden: removing from HUD's regulatory due process definition the existence of a State-law right to examination of PHA documents, revising the procedure for appointment of a hearing officer. No procedure of this rule is expected to add significantly to a PHA's administrative burden in administration of its public housing program.

6.4 Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The requirements of this rule are directed to public housing agencies and do not impinge upon the existing relationship between the Federal government and the PHAs as established by the United States Housing Act of 1937. The PHA retains full responsibility for management of the relationship with its tenants in accordance with Federal law and regulation. The rule will also enhance the discretion of the PHA for administration of its public housing program.

6.5 Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. Any effect on the family would likely be indirect and insignificant.

6.6 Information Collections

The Department has identified information collections contained in Part 966, including §§ 966.4(a)(2), 966.4(i), 966.54, 966.55, and 966.57. The public reporting burden of these collections is estimated as follows:

TABULATION OF ANNUAL REPORTING BURDEN

[Lease and Grievance Requirements, 24 CFR Part 966]

Description of information collection and section of CFR affected	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total annual hours
24 CFR 966—Development of new form of dwelling lease	3,115	1	1,038	17.38	18,045
24 CFR 966—Promulgation of new lease and obtaining tenant signatures	3,115	396	411,180	.27	111,691
24 CFR 966.4(a)(2)—Tenant provides the names of family members who will reside in the unit	1,326,308	1	1,326,308	.01	14,411
24 CFR 966.4(i)—PHA retains copy of the report on the move-in inspection	3,115	59	183,785	.09	15,975
24 CFR 966.54—Tenant presents grievance informally to PHA orally or in writing	61,689	1	61,689	.54	33,514
24 CFR 966.55—Tenant submits a written request to the PHA for a hearing specifying the reasons for the grievance	12,388	1	12,388	.54	6,730
24 CFR 966.57—PHA retains a copy of the hearing officer's decision	3,115	4	12,460	.09	1,083
Total annual burden					201,449

6.7 Regulatory Agenda

This rule was listed as Item No. 1281 in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530, 44567) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

6.8 Catalog

The Catalog of Federal Domestic Assistance program number is 14.146, Low Income Housing Assistance Program (public housing).

List of Subjects in 24 CFR Part 966

Public housing, Grant programs—housing and community development.

PART 966—LEASE AND GRIEVANCE PROCEDURES

Accordingly, 24 CFR part 966 is amended as follows:

1. The authority citation for part 966 is revised to read as follows:

Authority: Secs. 3, 6, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 5101, Anti-Drug Abuse Act of 1988 (42 U.S.C. 1437d(1)); secs. 503, 504, 505, Cranston-Gonzalez National Affordable Housing Act (Pub. L. 100–625) (42 U.S.C. 1437d (k), (l) and (n); 42 U.S.C. 1437d note).

§ 966.2 [Removed]

2. Section 966.2 is removed.

3. Section 966.3 is revised to read as follows:

§ 966.3 Tenants' opportunity for comment.

Each PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the lease form used by the PHA, and providing an opportunity to present written comments. Subject to requirements of this rule, comments submitted shall be considered by the PHA before formal adoption of any new lease form.

4. Section 966.4 is revised to read as follows:

§ 966.4 Lease requirements.

A lease shall be entered into between the PHA and each tenant of a dwelling unit which shall contain the provisions described hereinafter.

(a) *Identification of parties and dwelling unit.* The names of the parties to the lease and the identification of the dwelling unit leased shall be set forth, including:

(1) The term of the lease and provisions for renewal, if any;

(2) The members of the household who will reside in the unit.

(b) *Payments due under the lease.* (1) The lease shall state the amount fixed as rent, specifying the utilities and quantities thereof and the services and equipment furnished by the PHA without additional cost.

(2) The lease shall provide for charges to the tenant for maintenance and repair beyond normal wear and tear and for consumption of excess utilities. The lease shall state the basis for the determination of such charges (e.g., by a posted schedule of charges for repair, amounts charged for utility consumption in excess of the allowance stated in the lease, etc.). The imposition of charges for consumption of excess utilities is permissible only if such charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances.

(3) At the option of the PHA, the lease may provide for payment of penalties for late payment.

(4) The lease shall provide that charges assessed under paragraph (b) (2) and (3) of this section shall not be due and collectible until two weeks after the PHA gives written notice of the charges. Such notice constitutes a notice of adverse action, and must meet the requirements governing a notice of adverse action (see § 966.4(e)(8)).

(5) At the option of the PHA, the lease may provide for security deposits which shall not exceed one month's rent or such reasonable fixed amount as may be required by the PHA. Provision may be made for gradual accumulation of the security deposit by the tenant. Subject to applicable laws, interest earned on security deposits may be refunded to the tenant on vacation of the dwelling unit or used for tenant services or activities.

(c) *Redetermination of rent and family composition.* The lease shall provide for redetermination of rent and family composition which shall include:

(1) The frequency of regular rental redetermination and the basis for interim redetermination.

(2) An agreement by the tenant to furnish such information and certifications regarding family composition and income as may be necessary for the PHA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size.

(3) An agreement by the tenant to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the PHA that such a dwelling unit is available.

(4) When the PHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the PHA's schedule of Utility Allowances for families in the PHA's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, the PHA shall notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PHA grievance procedure.

(d) *Tenant's right to use and occupancy.* (1) The lease shall provide that the tenant shall have the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests. For purposes of this Subpart, the term "guest" means a person in the leased unit with the consent of a household member.

(2) With the consent of the PHA, members of the household may engage in legal profitmaking activities in the dwelling unit, where the PHA determines that such activities are incidental to primary use of the leased unit for residence by members of the household.

(3)(i) With the consent of the PHA, a foster child or a live-in aide may reside in the unit. The PHA may adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining the circumstances in which PHA consent will be given or denied. Under such policies, the factors considered by the PHA may include:

(A) Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.

(B) The PHA's obligation to make reasonable accommodation for handicapped persons.

(ii) *Live-in aide* means a person who resides with an elderly, disabled or handicapped person and who:

(A) Is determined to be essential to the care and well-being of the person;

(B) Is not obligated for the support of the person; and

(C) Would not be living in the unit except to provide the necessary supportive services.

(e) *The PHA's obligations.* The lease shall set forth the PHA's obligations under the lease which shall include the following:

(1) To maintain the dwelling unit and the project in decent, safe and sanitary condition;

(2) To comply with requirements of applicable building codes, housing codes, and HUD regulations materially affecting health and safety;

(3) To make necessary repairs to the dwelling unit;

(4) To keep project buildings, facilities and common areas, not otherwise assigned to the tenant for maintenance and upkeep, in a clean and safe condition;

(5) To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, including elevators, supplied or required to be supplied by the PHA;

(6) To provide and maintain appropriate receptacles and facilities (except containers for the exclusive use of an individual tenant family) for the deposit of ashes, garbage, rubbish and other waste removed from the dwelling unit by the tenant in accordance with paragraph (f)(7) of this section;

(7) To supply running water and reasonable amounts of hot water and reasonable amounts of heat at appropriate times of the year (according to local custom and usage) except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or where heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection; and

(8)(i) To notify the tenant of the specific grounds for any proposed adverse action by the PHA. (Such adverse action includes, but is not limited to, a proposed lease termination, transfer of the tenant to another unit, or imposition of charges for maintenance and repair, or for excess consumption of utilities.)

(ii) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning a proposed adverse action:

(A) The notice of proposed adverse action shall inform the tenant of the right to request such hearing. In the case of a lease termination, a notice of lease termination in accordance with § 966.4(1)(3) shall constitute adequate notice of proposed adverse action.

(B) In the case of a proposed adverse action other than a proposed lease termination, the PHA shall not take the proposed action until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.

(f) *Tenant's obligations.* The lease shall provide that the tenant shall be obligated:

(1) Not to assign the lease or to sublease the dwelling unit;

(2) Not to provide accommodations for boarders or lodgers;

(3) To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose;

(4) To abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease;

(5) To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(6) To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition;

(7) To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner;

(8) To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators;

(9) To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project;

(10) To pay reasonable charges (other than for wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest.

(11) To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition;

(12)(i) To assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in:

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or

(B) Any drug-related criminal activity on or near such premises.

Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit.

(ii) For purposes of subparts A and B of this part 966, the term *drug-related criminal activity* means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(g) *Tenant maintenance.* The lease may provide that the tenant shall perform seasonal maintenance or other maintenance tasks, as specified in the lease, where performance of such tasks by tenants of dwellings units of a similar design and construction is customary: *Provided,* That such provision is included in the lease in good faith and not for the purpose of evading the obligations of the PHA. The PHA shall exempt tenants who are unable to perform such tasks because of age or disability.

(h) *Defects hazardous to life, health, or safety.* The lease shall set forth the rights and obligations of the tenant and the PHA if the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants and shall provide that:

(1) The tenant shall immediately notify project management of the damage;

(2) The PHA shall be responsible for repair of the unit within a reasonable time: *Provided,* That if the damage was caused by the tenant, tenant's household or guests, the reasonable cost of the repairs shall be charged to the tenant;

(3) The PHA shall offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time; and

(4) Provisions shall be made for abatement of rent in proportion to the seriousness of the damage and loss in value as a dwelling if repairs are not made in accordance with paragraph (h)(2) of this section or alternative accommodations not provided in accordance with paragraph (h)(3) of this section, except that no abatement of rent shall occur if the tenant rejects the alternative accommodation or if the damage was caused by the tenant, tenant's household or guests.

(i) *Pre-occupancy and pre-termination inspections.* The lease shall provide that the PHA and the tenant or representative shall be obligated to inspect the dwelling unit prior to commencement of occupancy by the tenant. The PHA will furnish the tenant with a written statement of the condition of the dwelling unit, and the equipment provided with the unit. The statement shall be signed by the PHA and the tenant, and a copy of the statement shall be retained by the PHA in the tenant's folder. The PHA shall be further obligated to inspect the unit at the time the tenant vacates the unit and to furnish the tenant a statement of any charges to be made in accordance with paragraph (b)(2) of this section. Provision shall be made for the tenant's participation in the latter inspection, unless the tenant vacates without notice to the PHA.

(j) *Entry of dwelling unit during tenancy.* The lease shall set forth the circumstances under which the PHA may enter the dwelling unit during the tenant's possession thereof, which shall include provision that:

(1) The PHA shall, upon reasonable advance notification to the tenant, be permitted to enter the dwelling unit during reasonable hours for the purpose of performing routine inspections and maintenance, for making improvement or repairs, or to show the dwelling unit for re-leasing. A written statement specifying the purpose of the PHA entry delivered to the dwelling unit at least two days before such entry shall be considered reasonable advance notification;

(2) The PHA may enter the dwelling unit at any time without advance notification when there is reasonable cause to believe that an emergency exists; and

(3) If the tenant and all adult members of the household are absent from the dwelling unit at the time of entry, the PHA shall leave in the dwelling unit a written statement specifying the date, time and purpose of entry prior to leaving the dwelling unit.

(k) *Notice procedures.* (1) The lease shall provide procedures to be followed by the PHA and the tenant in giving notice one to the other which shall require that:

(i) Except as provided in paragraph (j) of this section, notice to a tenant shall be in writing and delivered to the tenant or to an adult member of the tenant's household residing in the dwelling or sent by prepaid first-class mail properly addressed to the tenant; and

(ii) Notice to the PHA shall be in writing, delivered to the project office or the PHA central office or sent by prepaid first-class mail properly addressed.

(2) If the tenant is visually impaired, all notices must be in an accessible format.

(l) *Termination of tenancy and eviction.*—(1) *Procedures.* The lease shall set forth the procedures to be followed by the PHA and by the tenant in terminating the lease.

(2) *Grounds for termination.* (i) The PHA shall not terminate or refuse to renew the lease other than for serious or repeated violation of material terms of the lease such as failure to make payments due under the lease or to fulfill the tenant obligations set forth in § 966.4(f) or for other good cause.

(ii) Either of the following types of criminal activity by the tenant, any member of the household, a guest, or another person under the tenant's control, shall be cause for termination of tenancy:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the PHA's public housing premises by other residents.

(B) Any drug-related criminal activity on or near such premises.

(3) *Lease termination notice.* (i) The PHA shall give written notice of lease termination of:

(A) 14 days in the case of failure to pay rent;

(B) A reasonable time considering the seriousness of the situation (but not to exceed 30 days) when the health or safety of other residents or PHA employees is threatened; and

(C) 30 days in any other case.

(ii) The notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the tenant of the tenant's right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to § 944.4(m)) to examine PHA documents directly relevant to the termination or eviction. When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedure.

(iii) A notice to vacate which is required by State or local law may be combined with, or run concurrently with, a notice of lease termination under paragraph (l)(3)(i) of this section.

(iv) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination (see § 966.51(a)(1)), the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.

(v) When the PHA is not required to afford the tenant the opportunity for a hearing under the PHA administrative grievance procedure for a grievance concerning the lease termination (see § 966.51(a)(2)), and the PHA has decided to exclude such grievance from the PHA grievance procedure, the notice of lease termination under paragraph (l)(3)(i) of this section shall:

(A) State that the tenant is not entitled to a grievance hearing on the termination.

(B) Specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations.

(C) State whether the eviction is for a criminal activity as described in § 966.51(a)(2)(i)(A) or for a drug-related criminal activity as described in § 966.51(a)(2)(i)(B).

(4) *Eviction only by court action.* The PHA may evict the tenant from the unit only by bringing a court action.

(5) *Eviction for criminal activity.*—(i) *PHA discretion to consider circumstances.* In deciding to evict for criminal activity, the PHA shall have discretion to consider all of the circumstances of the case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity. In appropriate cases, the PHA may permit continued occupancy by remaining family members and may impose a condition that family members who engaged in the proscribed activity will not reside in the unit. A PHA may require a family member who has engaged in the illegal use of drugs to present evidence of successful completion of a treatment program as a condition to being allowed to reside in the unit.

(ii) *Notice to Post Office.* When a PHA evicts an individual or family from a dwelling unit for engaging in criminal activity, including drug-related criminal activity, the PHA shall notify the local post office serving that dwelling unit that such individual or family is no longer residing in the dwelling unit. (So that the post office will terminate delivery of mail for such persons at the unit, and that such persons not return to the project for pickup of the mail.)

(m) *Eviction: Right to examine PHA documents before hearing or trial.* The PHA shall provide the tenant a reasonable opportunity to examine, at the tenant's request, before a PHA grievance hearing or court trial concerning a termination of tenancy or eviction, any documents, including records and regulations, which are in the possession of the PHA, and which are directly relevant to the termination of tenancy or eviction. The tenant shall be allowed to copy any such document at the tenant's expense. A notice of lease termination pursuant to § 966.4(l)

(3) shall inform the tenant of the tenant's right to examine PHA documents concerning the termination of tenancy or eviction. If the PHA does not make documents available for examination upon request by the tenant (in accordance with this § 966.4(m)), the PHA may not proceed with the eviction.

(n) *Grievance procedures.* The lease shall provide that all disputes concerning the obligations of the tenant or the PHA shall (except as provided in § 966.51(a)(2)) be resolved in accordance with the PHA grievance procedures. The grievance procedures shall comply with Subpart B of this part.

(o) *Provision for modifications.* The lease shall provide that modification of the lease must be accomplished by a written rider to the lease executed by both parties, except for paragraph (c) of this section and § 966.5.

(p) *Signature clause.* The lease shall provide a signature clause attesting that the lease has been executed by the parties.

5. A new § 966.7 is added to read as follows:

§ 966.7 Accommodation of persons with disabilities.

(a) For all aspects of the lease and grievance procedures, a handicapped person shall be provided reasonable accommodation to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person.

(b) The PHA shall provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy.

6. Section 966.50 is revised to read as follows:

§ 966.50 Purpose and scope.

The purpose of this subpart is to set forth the requirements, standards and criteria for a grievance procedure to be established and implemented by public housing agencies (PHAs) to assure that a PHA tenant is afforded an opportunity for a hearing if the tenant disputes within a reasonable time any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

7. In § 966.51, paragraph (a) is revised to read as follows:

§ 966.51 Applicablity.

(a)(1) The PHA grievance procedure shall be applicable (except as provided in paragraph (a)(2) of this section) to all individual grievances as defined in § 966.53 of this subpart between the tenant and the PHA.

(2)(i) The term *due process determination* means a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in § 966.53(c)) before eviction from the dwelling unit. If HUD has issued a due process determination, a PHA may exclude from the PHA administrative grievance procedure under this subpart any grievance concerning a termination of tenancy or eviction that involves:

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or

(B) Any drug-related criminal activity on or near such premises.

(ii) If HUD has issued a due process determination, the PHA may evict the occupants of the dwelling unit through the judicial eviction procedures which are the subject of the determination. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure.

* * * * *

8. Section 966.52 is revised to read as follows:

§ 966.52 Requirements.

(a) Each PHA shall adopt a grievance procedure affording each tenant an opportunity for a hearing on a grievance as defined in § 966.53 in accordance with the requirements, standards, and criteria contained in this subpart.

(b) The PHA grievance procedure shall be included in, or incorporated by reference in, all tenant dwelling leases pursuant to subpart A of this part.

(c) The PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure, and providing an opportunity to present written comments. Subject to requirements of this Subpart, comments submitted shall be considered by the PHA before adoption of any grievance procedure changes by the PHA.

(d) The PHA shall furnish a copy of the grievance procedure to each tenant and to resident organizations.

9. Section 966.53 is amended by removing paragraph (c)(2), by redesignating paragraphs (c)(3), (c)(4) and (c)(5) as paragraphs (c)(2), (c)(3) and (c)(4), respectively, by revising paragraph (f), and by adding a new paragraph (g), to read as follows:

§ 966.53 Definitions.

* * * * *

(f) *Tenant* shall mean the adult person (or persons) (other than a live-in aide):

(1) Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,

(2) Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.

(g) *Resident organization* includes a resident management corporation.

10. In § 966.55, paragraph (a) introductory text and paragraph (b) are revised and a new paragraph (g) is added to read as follows:

§ 966.55 Procedures to obtain a hearing.

(a) *Request for hearing.* The complainant shall submit a written request for a hearing to the PHA or the project office within a reasonable time after receipt of the summary of discussion pursuant to § 966.54. For a grievance under the expedited grievance procedure pursuant to § 966.55(g) (for which § 966.54 is not applicable), the complainant shall submit such request at such time as is specified by the PHA for a grievance under the expedited grievance procedure. The written request shall specify:

* * * * *

(b) *Selection of Hearing Officer or Hearing Panel.* (1) A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA, other than a person who made or approved the PHA action under review or a subordinate of such person.

(2) The method or methods for PHA appointment of a hearing officer or hearing panel shall be stated in the PHA grievance procedure. The PHA may use either of the following methods to appoint a hearing officer or panel:

(i) A method approved by the majority of tenants (in any building, group of buildings or project, or group of projects to which the method is applicable) voting in an election or meeting of tenants held for the purpose.

(ii) Appointment of a person or persons (who may be an officer or employee of the PHA) selected in the manner required under the PHA grievance procedure.

(3) The PHA shall consult the resident organizations before PHA appointment of each hearing officer or panel member. Any comments or recommendations submitted by the tenant organizations

shall be considered by the PHA before the appointment.

* * * * *

(g) *Expedited grievance procedure.* (1) The PHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

(i) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or

(ii) any drug-related criminal activity on or near such premises.

(2) In the case of a grievance under the expedited grievance procedure, § 966.54 (informal settlement of grievances) is not applicable.

(3) Subject to the requirements of this subpart, the PHA may adopt special procedures concerning a hearing under the expedited grievance procedure, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

11. In § 966.56, paragraph (b) is revised and a new paragraph (h) is added to read as follows:

§ 966.56 Procedures governing the hearing.

* * * * *

(b) The complainant shall be afforded a fair hearing, which shall include:

(1) The opportunity to examine before the grievance hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. (For a grievance hearing concerning a termination of tenancy or eviction, see also § 966.4(m).) The tenant shall be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

(2) The right to be represented by counsel or other person chosen as the tenant's representative, and to have such person make statements on the tenant's behalf;

(3) The right to a private hearing unless the complainant requests a public hearing;

(4) The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies; and

(5) A decision based solely and exclusively upon the facts presented at the hearing.

* * * * *

(h) *Accommodation of persons with disabilities.* (1) The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing.

Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

(2) If the tenant is visually impaired, any notice to the tenant which is required under this subpart must be in an accessible format.

§ 966.58 [Removed]

12. Section 966.58 is removed.

§ 966.59 [Removed]

13. Section 966.59 is removed.

Dated: August 28, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

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October 11, 1991

Part IV

Department of Education

34 CFR Part 307

Services for Children With Deaf-Blindness Program; Final Regulations and Notice Inviting Applications for New Awards for FY 1992

DEPARTMENT OF EDUCATION

34 CFR Part 307

RIN 1820–AA96

Services for Children With Deaf-Blindness Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Services for Children with Deaf-Blindness Program to incorporate changes to section 622 of the Individuals with Disabilities Education Act (IDEA), as amended by Public Law 101–476. These regulations add LEAs and part H lead agencies to SEAs as beneficiaries of assistance provided by recipients; add references to infants and toddlers and early intervention services to the scope of the program; expand the age of youth with deaf-blindness whose transition from educational to other service options is facilitated by the program; provide a definition of children with deaf-blindness; add authority for pilot supplementary activities by single and multi-State projects; authorize establishment of a national clearinghouse; add authority to support pilot, research, demonstration, replication, preservice and inservice training, and family involvement activities; and provide selection criteria for evaluation of newly authorized activities.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Charles Freeman, Severely Handicapped Branch, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 4617), Washington, DC 20202–2734. Telephone: (202) 732–1165. Deaf and hearing impaired individuals may call (202) 732–1169 for TDD services.

SUPPLEMENTARY INFORMATION: These regulations implement changes in section 622 of part C of the Individuals with Disabilities Education Act (IDEA), as amended by Public Law 101–476. This program can help improve learning opportunities and outcomes for all Americans, which is an important principle in the President's America 2000 strategy for reaching the National Education Goals. These changes do not alter principal objectives of the program but clarify and expand upon the types of activities the program supports.

On May 21, 1991, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** at 56 FR 23344–23349. The most significant changes proposed in that notice were:

• Specific inclusion of infants and toddlers and early intervention services in the scope of the program;

• Addition of more flexibility in the provision of services to facilitate transition from educational to other services of adolescents and young adults;

• Addition of LEAs and part H lead agencies as recipients of technical assistance;

• Addition of a definition of children with deaf-blindness and inclusion within that definition of infants and toddlers who have been identified as having deaf-blindness;

• Addition of authority to support pilot supplementary services for children with deaf-blindness and their families by single and multi-State projects; a national clearinghouse for children with deaf-blindness; pilot; research; development, improvement, or demonstration; replication; preservice and inservice training; and parental involvement activities;

• Addition of language to ensure that all parts of the country have an opportunity to receive assistance under the program, and language promoting appropriate dissemination of information concerning activities of funded projects; and

• Addition of selection criteria language for evaluating applications proposing to conduct activities, with varied weights on certain criteria that reflect their relative importance in differing types of competitions.

In addition to minor editorial and technical revisions, these final regulations provide further clarification to the definition of "children with deaf-blindness"; and clarify, in § 307.36(b)(2)(vi)(D), that the term "practicum training sites" includes not only school settings, but also group homes, supported living, and other settings where children are found.

These regulations constitute a step in implementing the AMERICA 2000 strategy for achieving the National Education Goals agreed to by the President and the Governors. One aspect of the President's strategy is to foster better and more accountable schools. Under these regulations, the Secretary will seek to identify innovative approaches that will improve today's schools by enhancing services to children with deaf-blindness.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, eight parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Eligible Applicants for Awards

Comment: One commenter expressed concern that with local educational agencies and lead agencies for part H of IDEA becoming eligible to receive an award under this program, more than one award could be made to serve a given State through a State or multi-State project authorized at § 307.11, thus undermining Statewide coordination.

Discussion: The regulations at § 307.2 establish public or nonprofit private agencies, institutions, or organizations, including an Indian tribe and the Bureau of Indian Affairs of the Department of the Interior, as eligible applicants for State and multi-State projects. However, in order to avoid possible fracturing of the Statewide efforts of those projects, the regulations at § 307.34 clarify that if more than one eligible application is received on behalf of any State the Secretary applies the secretion criteria in § 307.33 and selects only the highest ranked application for funding.

Changes: None.

Definition of Deaf-Blindness

Comment: Four commenters offered recommendations for a change in the definition of "children with deaf-blindness". Two commenters indicated that use in the definition of the term "special education programs" focused the definition on places rather than on services and was therefore inconsistent with other Federal definitions regarding children with disabilities, special education, and related services. One commenter suggested using the term "students with dual sensory impairments." Another commenter suggested that the definition include more precise measures of vision and hearing, including a more specific definition of "at risk" as related to infants and toddlers.

Discussion: The Secretary concurs with the commenters that the definition should be clarified to focus on the need for special education and related services. The Secretary, however, has not incorporated in the definition more precise measures of visual or hearing acuity, since, by legislative intent, this program focuses on the provision of educational services based on the child's learning and functional needs, rather than upon provision of medical or corrective health services based on sensory acuity measurements. Further, the Secretary believes that the definition of "at risk" should be consistent with the part H, IDEA regulations.

Changes: The definition of "children with deaf-blindness" at § 307.4(c) has been changed to incorporate the recommendations of the first comment.

Technical Assistance

Comment: One commenter questioned if technical assistance addressed at § 307.10(a) included funding for the purchase of hearing aids, glasses, and other special equipment for use at home and school.

Discussion: Technical assistance supported at § 307.10(a) does not include payment for these special equipment needs for children. Technical assistance as referenced in these regulations is described at § 307.11(a)(2) as being assistance provided to agencies to assure that they may more effectively provide direct services to children with deaf-blindness.

Changes: None.

Parent and Family

Comment: Two commenters suggested expanding the term "parent" as used in these regulations, to the more inclusive term "family," in keeping with the living and educational environments most often faced by children with deaf-blindness.

Discussion: The importance of family involvement in the provision of services to children with deaf-blindness is addressed at § 307.11(a)(1)(iii) by making available to them consultative, counseling, and training services. The use of the term "parent" in other provisions of the regulations is taken directly from the statute.

Changes: None.

Research

Comment: Two commenters discussed the support of research projects under this program. One stressed the urgent need for those projects in the area of deaf-blindness. The other commenter expressing concern that those activities not be given such a large share of the funding that consequently there is inadequate money for direct services and technical assistance.

Discussion: The critical need for support of research in this field is recognized. However, the level of funding for various authorized activities is not addressed in regulations. The Secretary determines the level of funding for various activities annually.

Changes: None.

Types of Services Provided Under the Program

Comment: One commenter expressed concern that the provision at § 307.11(a)(1)(i) to provide diagnosis and an educational evaluation of children who are likely to be diagnosed as having deaf-blindness is a duplication of services supported under other Federal programs. The commenter further suggested that definitions of adjustment, education, and orientation for children with deaf-blindness, and consultative services for families of children with deaf-blindness, authorized at § 307.11(a)(ii) and (iii), respectively, are unclear.

Discussion: Services supported in paragraphs § 307.11(a)(1) (i), (ii), and (iii), incorporate the language of the statute in promoting flexibility in provision of these services. Duplication in providing those services is addressed at § 307.11(a)(1), which limits provision of these services to children with deaf-blindness to whom States are not obligated to make available a free appropriate public education under part B, IDEA.

Changes: None.

Transition

Comment: Three commenters recommended that the regulations give greater emphasis to provision of transition services to children with deaf-blindness.

Discussion: The importance of providing transition service to this population has been recognized in the regulations. The direct service to be made available by a State or multi-State project authorized at § 307.11(a)(1) may include transition services. Technical assistance to public and private agencies providing transitional services is also authorized at § 307.11(a)(2). Further, a major requirement of a grantee under § 307.13 is the provision of technical assistance to State educational agencies in making available to adolescents and young adults with deaf-blindness programs and services to facilitate their transition from education to employment and other service options. In addition, the significance of transition services has been recognized by the Congress in the types of transition services supported under the Secondary Education and Transitional Services for Youth with Disabilities Program, authorized at 34 CFR part 326, a program under which service providers to children with deaf-blindness may compete for financial support. In consideration of these provisions the Secretary has determined that adequate emphasis on transition services for children with deaf-blindness has been made in the regulations.

Changes: None.

National Clearinghouse for Children With Deaf-Blindness

Comment: Three commenters expressed support for the provision of clearinghouse services. One commenter additionally recommended that expertise in the field be combined to form a consortium of appropriate entities to fulfill the clearinghouse functions. Another commenter suggested that certain responsibilities for the clearinghouse addressed at § 307.15 could be fulfilled with greater cost-effectiveness by providing this new clearinghouse with access to existing federally funded databases and clearinghouse activities.

Discussion: The Secretary acknowledges the importance of clearinghouse activities and the necessity of accomplishing these activities in a cost-effective manner. The value of a consortium arrangement in carrying out these responsibilities is also recognized. However, the regulations at § 307.15 already allow applications proposing to perform the responsibilities through a consortium arrangement or proposing to access existing database and clearinghouse activities to facilitate accomplishment of these responsibilities. The Secretary considers the criteria at § 307.36 appropriate for determining the merits of competing applications, including applications proposing use of a consortium effort or other efficient and effective approaches.

Changes: None.

Funding Level for State and Multi-State Projects

Comment: One commenter expressed concern that with the proposed regulations, it may be difficult to determine the level of an award under § 307.11 for a State or multi-State project.

Discussion: Current regulations at § 307.31 provide the factors which the Secretary considers in determining the funding level for these awards. The revised regulations have not changed these provisions.

Change: None.

Evaluation Criteria

Comment: One commenter, directing attention to provisions in the application evaluation criteria at § 307.36:

(a) Recommended that the word "integration" at § 307.36(b)(2) (iv)(C) and (v)(B) be preceded by the word "meaningful";

(b) Recommended that preservice and inservice training addressed at § 307.36(b)(2)(vi) be required to be provided in collaboration with the national clearinghouse authorized at § 320.10(c);

(c) Recommended that practicum training sites, addressed at § 307.36(b)(2)(vi)(D), be clarified to include not only school settings, but also group homes and other settings where children are found;

(d) Questioned the need for including the words "as appropriate" in § 307.36(c)(1)(v);

(e) Suggested that key personnel referenced at § 307.36(d) be clarified to include technology professionals as well as educators or other education specialists;

(f) Noted that assessment of educational impact is vital to the beneficial use of funds under this program; and

(g) Suggested placing more emphasis in many sections on outreach efforts.

Discussion: The Secretary, in considering these comments:

(a) Considers the evaluation criteria at § 307.36 adequate to determine if an applicant proposes to provide integration that is meaningful to children participating in proposed projects;

(b) Recognizes the importance of collaboration with the clearinghouse and other relevant projects in the provision of preservice and inservice training, by addressing coordination in the application selection criteria at § 307.36(c)(1)(iv);

(c) Considers as appropriate the clarification that "practicum training sites" include group homes and other settings where children are found;

(d) Maintains that the words "as appropriate," used at § 307.36(c)(1)(v), are needed in order to provide maximum flexibility in the design of projects;

(e) Believes that the term "key personnel" is generally accepted in the field as referring to all personnel having a significant and leading role in carrying out the activities of a project, and therefore is understood to include personnel who are technology professionals;

(f) Recognizes that educational impact is an essential measure of the quality of an application by addressing it at § 307.36(a);

(g) Points out that the regulations at §§ 307.10(c), 307.11(a)(2)(iii), 307.12 (b)(3), and 307.13(b)(3) address the need for outreach activities in State and multi-State projects and technical assistance projects through providing for the replication of successful approaches for serving children with deaf-blindness. The importance of outreach procedures is addressed at § 307.36(b)(2)(ii)(C) for clearinghouse projects and specifically covered under § 307.36(b)(2)(v) for replication, outreach, or utilization projects.

Changes: The regulations at § 307.36(b)(2)(vi)(D) have been changed to indicate that in addition to including school settings, "practicum training sites" include group home, supported living, and other settings where children with deaf-blindness are found. No additional changes have been made to the evaluation criteria at § 307.36.

Financial Assistance

Comment: One commenter noted that the regulations make no mention of financial assistance for families, especially for purchasing equipment such as hearing aids and glasses.

Discussion: The program is restricted by statute to making awards to public or nonprofit private agencies, institutions, or organizations. The clearinghouse authorized at § 307.15, however, has authority to provide information on available programs and services.

Changes: None.

Prevention

Comment: One commenter observed that the regulations make no mention of prevention but does mention "at risk" and suggested that some sections could also address prevention techniques.

Discussion: Prevention techniques are already included in the regulations to the extent that providing early intervention services may prevent an infant or toddler from becoming deaf and blind or decrease the effects resulting from these dual sensory impairments. Extension of prevention techniques beyond early intervention services is not authorized by IDEA.

Changes: None.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 307

Education, Education of individuals with disabilities, Education—research, Grants program—education, Reporting and recordkeeping requirements, Teachers.

(Catalog of Federal Domestic Assistance Number 84.025, Services for Children with Deaf-Blindness Program)

Dated: September 9, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 307 of title 34 of the Code of Federal Regulations as follows:

PART 307—SERVICES FOR CHILDREN WITH DEAF-BLINDNESS

1. The title of part 307 is revised to read as set forth above.

2. The authority citation for part 307 continues to read as follows:

Authority: 20 U.S.C. 1422, unless otherwise noted.

§§ 307.1, 307.2, 307.3, 307.4, 307.11, 307.12, 307.31, 307.33, 307.41 [Amended]

3. In 34 CFR part 307 remove the words "deaf-blind children and youth" and add, in their place, the words "children with deaf-blindness" in the following places:

(a) Section 307.1 heading and twice in text;

(b) Section 307.2 heading;

(c) Section 307.3 heading;

(d) Section 307.4 heading;

(e) Section 307.11(a)(1) introductory text, (2) introductory text, (2) (i), (iii), (iv), (v), and (vi); (3); (c) (1), (2), and (3);

(f) Section 307.12(b) introductory text;

(g) Section 307.31 (b) and (c);

(h) Section 307.33(a) (1), (2), (3), and (4); (b) (2), (3), (4), (8), (9); (c) introductory text; (c)(3); (f)(2); and (g);

(i) Section 307.41 introductory text.

§ 307.11 [Amended]

4. In 34 CFR part 307 remove the words "part B of the Education of the Handicapped Act" and add, in their place, the words "part B of the Individuals with Disabilities Education Act" in §§ 307.11 (a)(1), (a)(2)(i), and (a)(3).

§ 307.1 [Amended]

5. Section 307.1 is amended by adding after the words "State educational agencies" a comma and the words "local educational agencies, designated lead agencies under Part H" and a comma, and by adding after the words "involved in the" the words "early intervention or".

§ 307.2 [Amended]

6. Section 307.2 is amended by adding after the words "or organizations" the words ", including an Indian tribe and the Bureau of Indian Affairs of the Department of the Interior (if acting on behalf of schools operated by the Bureau for children and students on Indian reservations) and tribally controlled schools funded by the Department of the Interior,".

7. Section 307.4 is amended by revising the heading and the introductory paragraph (b); removing the definitions "Deaf-blind (§ 300.5(b)(2))", "Handicapped children (§ 300.5)", and "Severely handicapped children and youth (§ 315.4(d))"; and adding a new paragraph (c) before the authority citation at the end of the section to read as follows:

§ 307.4 What definitions apply to the Services for Children with Deaf-Blindness program?

* * * * *

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR part 300.

* * * * *

(c) *Other definitions.*

Children with deaf-blindness. For the purposes of this part, the term, "children with deaf-blindness," means children and youth having auditory and visual impairments, the combination of which creates such severe communication and other developmental and learning needs that they cannot be appropriately educated without special education and related services, beyond those that would be provided solely for children with hearing impairments, visual impairments, or severe disabilities, to address their educational needs due to these concurrent disabilities. This term also means infants and toddlers with deaf-blindness.

Children with disabilities. For the purposes of this part, the term "children with disabilities" means children with mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments, including blindness; serious emotional disturbance; orthopedic impairments; autism; traumatic brain injury; other health impairments; or specific learning disabilities; who, by reason thereof, need special education and related services.

Infants and toddlers with deaf-blindness. For the purposes of this part, the term "infants and toddlers with deaf-blindness" means individuals from birth through age 2 who are experiencing developmental delays in hearing and vision, have a diagnosed physical or mental condition that has a high probability of resulting in developmental delays in hearing and vision, or are at risk of having substantial developmental delays in hearing and vision if early intervention services are not provided.

* * * * *

8. Section 307.10 is revised to read as follows:

§ 307.10 What types of activities are considered for support under this part?

The Secretary may provide financial assistance under this part to support the following activities:

(a) Technical assistance to agencies, institutions, or organizations providing educational or early intervention services to children with deaf-blindness;

(b) Preservice or inservice training to paraprofessionals, professionals, or related services personnel preparing to serve, or serving, children with deaf-blindness;

(c) Replication of successful innovative approaches to providing educational, early intervention, or related services to children with deaf-blindness;

(d) Pilot projects that are designed to—

(1) Expand local educational agency capabilities by providing services to children with deaf-blindness that supplement services already provided to children and youth through State and local resources; and

(2) Encourage eventual assumption of funding responsibility by State and local authorities;

(e) Development, improvement, or demonstration of new or existing methods, approaches, or techniques that contribute to the adjustment, early intervention, and education of children with deaf-blindness;

(f) Facilitation of parent involvement in the education of their children with deaf-blindness;

(g) Research to identify and meet the full range of special needs of those children;

(h) Technical assistance for transitional services, as described in § 307.13; and

(i) A national clearinghouse for children with deaf-blindness as described in § 307.15.

(Authority: 20 U.S.C. 1422)

9. Section 307.11 is amended by revising the heading and paragraph (a) introductory text; amending paragraph (a)(1) introductory text by adding after the words "Special education" a comma and the words "early intervention" and a comma; and by revising paragraphs (a)(1) (i), (ii), and (iii) to read as follows:

§ 307.11 What types of services and technical assistance by State and multi-State projects are considered for support under this part?

(a) The Secretary may provide financial assistance under this part to State and multi-State projects to support the following activities—

(1) * * *

(i) The diagnosis and educational evaluation of children who are likely to be diagnosed as having deaf-blindness;

(ii) Programs of adjustment, education, and orientation for children with deaf-blindness; and

(iii) Consultative, counseling, and training services for the families of children with deaf-blindness.

* * * * *

§ 307.11 [Amended]

10. Section 307.11(a)(1)(iv) is amended by removing the words "child and youth" and adding, in their place, the words "child with deaf-blindness".

11. Section 307.11(a)(2) introductory text is amended by adding after the word "providing" the words "early intervention" and a comma.

12. Section 307.11(a)(2)(i) is amended by adding after the words "some other authority" the words "and provide early intervention services under part H of IDEA".

13. Section 307.11(a)(2)(ii) is amended by removing the words "deaf-blind children or youth" and adding, in their place, the words "children with deaf-blindness".

14. Section 307.11(a)(2)(iii) is amended by adding after the word "providing" the words "early intervention" and a comma.

15. Section 307.11(a)(2)(v) is amended by removing twice the words "and youth" following the words "those children".

16. Section 307.11(a)(2)(vi) is amended by removing the words "other handicapped and nonhandicapped children and youth" and adding, in their place, the words "children with other disabilities and without disabilities".

17. Section 307.11(b)(2) is amended by removing the words "the services described in paragraph (a)(3) of this section" and adding, in their place, the words "pilot projects".

18. Section 307.11(c)(3) is amended by removing the words "part H of the EHA" and adding, in their place, the words "part H of the IDEA".

§ 307.12 [Amended]

19. Section 307.12(b) is amended by adding after the words "grantee under § 307.11" a comma and the words "the lead agency under part H" and a comma; adding after the words "§ 307.11 grantee" a comma and the words "the lead agency under part H" and a comma; adding after the words "educational agency to" the words "local educational agencies and designated lead agencies under part H of IDEA, and".

20. Section 307.12(b)(1) is amended by adding after the word "education" the words "and early intervention"; and removing the words "deaf-blind and severely handicapped children and youth" and adding, in their place, the words "children with deaf-blindness".

21. Section 307.12(b)(2) is amended by adding after the word "educational" the words "and early intervention".

22. Section 307.12(b)(3) is amended by removing the words "deaf-blind children and youth" and adding, in their place, the words "children with deaf-blindness, and in providing early intervention services to children with deaf-blindness".

23. Section 307.12(c) is amended by adding after the words "§ 307.11 grantee" a comma and the words "the lead agency under Part H" and a comma.

§ 307.13 [Amended]

24. Section 307.13(a) is amended by removing the words "deaf-blind youth upon attaining the age of 22" and adding, in their place, the words "adolescents and young adults with deaf-blindness".

25. Section 307.23(b)(1) is amended by removing the words "organizations (in addition to State educational agencies providing, or proposing to provide transitional services to deaf-blind youth who have attained the age of 22)" and adding, in their place, the words "organizations that are preparing adolescents and young adults with deaf-blindness for adult placement, or that are preparing to receive adolescents or young adults with deaf-blindness into adult living and work environments, or that serve, or propose to serve adolescents and young adults with deaf-blindness".

26. Section 307.13(b)(2) is amended by removing the word "youth" and adding, in its place, the words "adolescents and young adults".

27. Sections 307.13(b)(3) and 307.13(c)(2) are amended by adding, after the comma following the word "rehabilitative", the word "supervised" and a comma.

28. Section 307.13(c) (1), (2), and (3) are amended by removing the words "deaf-blind youth" and adding, in their place, the words "adolescents and young adults with deaf-blindness".

29. Section 307.13(d) is amended by removing the words "providing services to deaf-blind youth 22 years of age and older" and adding, in their place, a comma and the words "institutions, and organizations that are preparing adolescents and young adults with deaf-blindness for adult placements, or that are preparing to receive adolescents or young adults with deaf-blindness into adult living and work environments, or that serve, or propose to serve adolescents or young adults with deaf-blindness".

30. Section 307.13(e) is amended by removing the words "deaf-blind children and youth" and adding, in their place, the words "adolescents and young adults with deaf-blindness".

31. A new § 307.14 is added to read as follows:

§ 307.14 What types of pilot projects are considered for support to successful § 307.11 applicants under this part?

The Secretary may provide financial assistance under this part to successful applicants under § 307.11, to support pilot projects described at § 307.10(d).

(Authority: 20 U.S.C. 1422)

32. A new § 307.15 is added to read as follows:

§ 307.15 What types of activities are supported in a national clearinghouse for children with deaf-blindness?

The Secretary may provide financial assistance under this part to support the following activities:

(a) Identification, coordination, and dissemination of information on deaf-blindness, emphasizing information concerning practices developed through research, development or demonstration activities that have produced statistical or narrative data establishing their effectiveness in working with children with deaf-blindness, including—

(1) Special educational and early intervention programs, services, and resources;

(2) Related medical, health, social, and recreational services;

(3) The nature of deaf-blindness and its early intervention, educational, and employment implications;

(4) Legal issues affecting persons with disabilities; and

(5) Information on available services and programs in postsecondary education for adolescents and young adults with deaf-blindness.

(b) Interaction with educators, professional groups, and parents to identify areas for programming, materials development, training, and expansion of specific services.

(c) Maintenance of a computerized data base on local, regional, and national resources.

(d) Responding to information requests from professionals, parents, and members of the public.

(Authority: 20 U.S.C. 1422)

§ 307.31 [Amended]

33. Section 307.31 introductory text is amended by removing the words "deaf-blind services project" and adding, in their place, the words "project for children with deaf-blindness".

34. Section 307.31(a) is amended by removing the words "and youth".

35. Section 307.33 is amended by revising the heading to read as follows:

§ 307.33 What criteria does the Secretary use to evaluate a State or multi-State application under § 307.11?

36. Section 307.33(a)(1) is amended by removing the words "part B of the EHA" and adding, in their place, the words "part B of the IDEA".

37. Section 307.33(a)(2) is amended by removing the word "Specific" and, adding in its place, the word "specific"; removing the words "parts B and H" and adding, in their place, the words "parts B and H of the IDEA"; adding after the words "provision of" the words "early

intervention" and a comma; and adding a comma after the word "educational".

38. Section 307.33(a)(4) is amended by adding after the words "providing the" the words "early intervention" and a comma; and adding a comma after the word "educational".

39. Section 307.33(b)(1) is amended by adding after the words "each of the" the words "early intervention" and a comma; and adding a comma after the word "educational".

40. Section 307.33(b)(4) is amended by adding after the words "provision of" the words "early intervention" and a comma; adding a comma after the word "educational"; and adding a comma after the word "related services".

41. Sections 307.33(b) (6) and (10) and (f) (1) and (2) are amended by removing the acronym "EHA" and adding, in its place, "IDEA".

42. Sections 307.33 (b)(7) and (c)(5) are amended by removing the word "handicapping" and adding, in its place, the word "disabling".

43. Section 307.33(b)(8) is amended by adding after the word "providing" the words "early intervention" and a comma; and adding a comma after the word "consultative".

§ 307.35 [Removed]

44. Section 307.35 is removed.

§ 307.36 [Redesignated as § 307.35 and Amended]

45. Section 307.36 is redesignated as § 307.35 and in paragraphs (a) introductory text, (a) (2) and (3) remove the words "deaf-blind children and youth" and add in their place, the word "children with deaf-blindness".

46. Newly redesignated § 307.35 is amended by revising the heading and introductory paragraph to read as follows:

§ 307.35 What criteria are used to evaluate a technical assistance application under § 307.10, § 307.12, or § 307.13?

The Secretary uses the following criteria to evaluate an application for the provision of technical assistance under § 307.10, § 307.12, and § 307.13. Each application may receive up to a total of 100 points:

* * * * *

§ 307.35 [Amended]

47. In newly redesignated § 307.35(b)(5) and (c)(1)(iv) the word "handicapping" is removed and adding in its place, the word "disabling".

48. A new § 307.36 is added to read as follows:

§ 307.36 What criteria are used to evaluate an application for other than technical assistance under § 307.10, or for an application under § 307.14 or § 307.15?

The Secretary uses the following criteria to evaluate the quality of an application submitted under § 307.10 (except for technical assistance projects), and under § 307.14 and § 307.15. Each applicant may receive up to a total of 100 points.

(a) *Importance and impact.* (20 points) (1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part, including—

(i) The significance of the problem or issues to be addressed;

(ii) The extent to which the project is based on previous results, research and evaluation findings, or other information related to the problem or issue;

(iii) The contribution that project findings or products will make to current knowledge and practice; and

(iv) The extent to which findings, information, or products of the project will be designed to promote their adaptation by and usefulness to others in conducting related projects.

(2) In determining the extent of the importance and impact of the application, the Secretary also considers the relevance of proposed activities in addressing the unique needs of children targeted by the project.

(3) In determining the importance and impact of the application the Secretary considers the extent to which the project addresses the unique needs of children with disabilities from minority backgrounds.

(b) *Technical soundness.* (1) The Secretary reviews each application to determine the technical soundness of the project, including—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, or disabling conditions; and

(iii) The anticipated outcomes.

(2) In determining the technical soundness of an application, the Secretary also considers—

(i) For pilot projects under § 307.14—

(A) The correlation with and relevance to the activities under § 307.11 for a State or multi-State project; and

(B) The extent to which practices of the pilot project can be adopted in other settings within the State;

(ii) For the clearinghouse project under § 307.15—

(A) The extent to which the applicant evidences awareness of the magnitude and importance of effective public awareness, the existence of already existing materials and resources available to meet general and specific educator and consumer needs, and gaps in the bank of resources and materials to meet those needs;

(B) The quality of the information retrieval, assimilation, revision and dissemination systems that the applicant will utilize in meeting general requests of the public as well as the specific needs of educators, administrators, and consumers; and

(C) The adequacy of project procedures for addressing, through products and outreach procedures, the unique needs of users from traditionally underrepresented groups;

(iii) For research projects—

(A) The comprehensiveness of the review of research to the problem or issues to be addressed by the project and to the nature of the population to be included in the project;

(B) The theoretical soundness of the conceptual framework and research hypotheses upon which the research is to be conducted;

(C) The appropriateness of the data analysis, procedures, and instrumentation;

(D) The effectiveness of the research design in testing the research hypotheses; and

(E) How the anticipated research results can be utilized in subsequent research or demonstration projects, if applicable;

(iv) For model development, improvement, or demonstration projects—

(A) The extent to which the project is focused on the development or adaptation of innovative educational practices;

(B) The nature and extent to which the proposed practices to be included in the model demonstration have been identified and validated through prior research or related model developmental efforts with the same or similar target populations;

(C) The extent to which the practices to be demonstrated promote the integration of children with deaf-blindness with peers who are not disabled in least-restrictive environments; and

(D) The extent to which the project will develop materials and procedures that can be used by others to implement the model;

(v) For replication, outreach, or utilization projects—

(A) The nature and extent to which the practices to be disseminated through outreach strategies have been validated for effectiveness;

(B) The extent to which the practices to be replicated or utilized promote the integration of children with deaf-blindness with peers who are not disabled in least-restrictive environments; and

(C) The extent to which the practices to be replicated or utilized are economically feasible for other nonfederally supported replications, and lend themselves for adaptations with other relevant populations.

(vi) For preservice or inservice training projects—

(A) If appropriate, the degree to which the proposed activities relate to and are coordinated with specific training needs identified by the State educational agency under part B and State lead agency under part H in its Comprehensive System of Personnel Development plan;

(B) The extent to which the training will result in certification, recertification or licensure for participants completing the training;

(C) The extent to which the curriculum is theoretically sound, incorporates validated effective practices, is appropriate in scope and sequence, incorporates appropriate practicum experiences, and can be used by others to train personnel with similar training needs;

(D) The quality of the practicum training sites—school, group home, supported living, and other settings where children with deaf-blindness are found—including evidence that they are sufficiently available, apply state-of-the-art services and model teaching practices, materials and technology, provide adequate supervision to trainees, and offer opportunities for trainees to teach and foster interactions between children with disabilities and their peers who are not disabled; and

(E) The extent to which training addresses the needs of a range of children including children with disabilities from minority backgrounds; and

(vii) For parent involvement projects—

(A) The extent to which the project will address specific needs and interests of parents of children with deaf-blindness upon which the project is focused,

(B) The extent to which the project promotes the active involvement of parents of children with deaf-blindness in the design, implementation, and on-going review of the educational and related services to be provided to their children with deaf-blindness for which the project is to provide benefit; and

(C) The extent to which the project is designed to meet the unique needs of parents of children with deaf-blindness from minority backgrounds.

(3) The maximum possible score awarded under this criterion is indicated in parentheses by the type of project proposed, as follows:

(i) For pilot projects (15 points).

(ii) For the clearinghouse project under § 307.15 (10 points).

(iii) For research projects (30 points).

(iv) For development, improvement, demonstration, or other projects (20 points).

(v) For replication, outreach, or utilization projects (15 points).

(vi) For preservice or inservice training projects (15 points).

(vii) For parent involvement projects (15 points).

(c) *Plan of operation.* (1) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The extent to which the plan of management is effective for the type of project proposed and ensures proper and efficient administration of the project;

(ii) The adequacy of the applicant's resources and plan for use of resources and personnel to achieve project objectives;

(iii) How the budget proposed by the applicant is adequate to support the activities and that the costs are reasonable in relation to the objectives of the project;

(iv) The adequacy of the applicant's procedures for initiating and maintaining coordination with relevant State, local and professional organizations and agencies, for the purpose of furthering achievement of the project objectives;

(v) The adequacy of the applicant's plan to involve project participants with disabilities and, as appropriate, their family members in the development, implementation, and on-going review of project outcomes; and

(vi) The adequacy of the applicant's plan to determine the effectiveness and timeliness in completion of the managerial procedures and objectives of the project's plan of operation.

(2) The maximum possible score awarded under this criterion is indicated in parentheses by the type of project proposed, as follows:

(i) For pilot projects (30 points).

(ii) For the clearinghouse project under § 307.15 (35 points).

(iii) For research projects (15 points).

(iv) For development, improvement, demonstration, or other projects (25 points).

(v) For replication, outreach, or utilization projects (30 points).

(vi) For preservice or inservice training projects (30 points).

(vii) For parent involvement projects (30 points).

(d) *Key personnel.* (20 points) (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) Strategies of the applicant to identify and recruit personnel with disabilities or from traditionally underrepresented groups.

(2) In determining the qualifications of each person referred to in paragraphs (d)(1) (i) and (ii) the Secretary also considers—

(i) Experience and training in conducting, documenting, and applying the types of activities to be conducted; and

(ii) Knowledge of the results and findings of relevant projects and potential for application of this information in addressing the unique needs of the children with deaf-blindness to be included in the project.

(e) *Evaluation.* (15 points) (1) The Secretary reviews each application to determine the quality of the plan for evaluating the project, including—

(i) The adequacy of the applicant's plan to determine, to the extent relevant, the effectiveness of the project in achieving measurable change and positive outcomes for children with deaf-blindness who were served by the project and others for whom the project was designed to benefit;

(ii) The adequacy of the applicant's plan to determine the effectiveness and timeliness in completion of the managerial procedures and objectives of the project's plan of operation; and

(iii) The procedures for recording, reviewing, analyzing, and interpreting for relevant audiences, data generated through conducting project activities.

(Approved by the Office of Management and Budget under Control Number 1820-0028)

(Authority: 20 U.S.C. 1422)

49. A new § 307.37 is added to read as follows:

§ 307.37 What additional consideration will be given by the Secretary in carrying out this part?

In carrying out this part, the Secretary takes into consideration the availability and quality of existing services for children with deaf-blindness in the country, and, to the extent practicable, ensures that all parts of the country have an opportunity to receive assistance under this part.

(Authority: 20 U.S.C. 1422)

§ 307.41 [Amended]

50. In § 307.41 the introductory paragraph is amended by removing the words "deaf-blind child or youth" and adding, in their place, the words "child or youth with deaf-blindness".

51. A new § 307.42 is added to read as follows:

§ 307.42 What other conditions must be met by a grantee under this program?

(a) The Secretary, if appropriate, requires grantees to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information.

(b) The Secretary requires delivery of those reports, as appropriate, to—

(1) The regional and Federal resource centers, the clearinghouses, and the technical assistance to parents assisted under parts C and D of the Act;

(2) The National Diffusion Network;

(3) The ERIC Clearinghouse on the Handicapped and Gifted;

(4) The Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health;

(5) Appropriate parent and professional organizations;

(6) Organizations representing individuals with disabilities; and

(7) Such other networks as the Secretary may determine to be appropriate.

(Approved by the Office of Management and Budget under Control Number 1820–0028)

(Authority: 20 U.S.C. 1410(g))

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