

---

This content is from the eCFR and is authoritative but unofficial.

---

## **Title 34 – Education**

### **Subtitle B – Regulations of the Offices of the Department of Education**

#### **Chapter III – Office of Special Education and Rehabilitative Services, Department of Education**

##### **Part 367 Independent Living Services for Older Individuals Who Are Blind**

###### **Subpart A General**

**§ 367.1** What is the Independent Living Services for Older Individuals Who Are Blind program?

**§ 367.2** Who is eligible for an award?

**§ 367.3** What activities may the Secretary fund?

**§ 367.4** What regulations apply?

**§ 367.5** What definitions apply?

###### **Subpart B Training and Technical Assistance**

**§ 367.20** What are the requirements for funding training and technical assistance under this chapter?

**§ 367.21** How does the Secretary use these funds to provide training and technical assistance?

**§ 367.22** How does the Secretary make an award?

**§ 367.23** How does the Secretary determine funding priorities?

**§ 367.24** How does the Secretary evaluate an application?

###### **Subpart C What Are the Application Requirements Under This Part?**

**§ 367.30** How does a designated State agency (DSA) apply for an award?

**§ 367.31** What assurances must a DSA include in its application?

###### **Subpart D How does the Secretary award discretionary grants?**

**§ 367.40** Under what circumstances does the Secretary award discretionary grants to States?

**§ 367.41** How does the Secretary evaluate an application for a discretionary grant?

###### **Subpart E How Does the Secretary Award Formula Grants?**

**§ 367.50** Under what circumstances does the Secretary award formula grants to States?

**§ 367.51** How are allotments made?

**§ 367.52** How does the Secretary reallocate funds under this program?

###### **Subpart F What Conditions Must Be Met After an Award?**

**§ 367.60** When may a DSA make subawards or contracts?

**§ 367.61** What matching requirements apply?

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

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

**§ 367.64** What is the prohibition against a State's condition of an award of a sub-award or contract based on cash or in-kind contributions?

**§ 367.65** What is program income and how may it be used?

**§ 367.66** What requirements apply to the obligation of Federal funds and program income?

- § 367.67 May an individual's ability to pay be considered in determining his or her participation in the costs of OIB services?
- § 367.68 What notice must be given about the Client Assistance Program (CAP)?
- § 367.69 What are the special requirements pertaining to the protection, use, and release of personal information?
- § 367.70 What access to records must be provided?
- § 367.71 What records must be maintained?

## **PART 367—INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND**

**Authority:** Sections 751-753 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j-796l, unless otherwise noted.

**Source:** 81 FR 55583, Aug. 19, 2016, unless otherwise noted.

### **Subpart A—General**

#### **§ 367.1 What is the Independent Living Services for Older Individuals Who Are Blind program?**

This program supports projects that—

- (a) Provide any of the independent living (IL) services to older individuals who are blind that are described in § 367.3(b);
- (b) Conduct activities that will improve or expand services for these individuals; and
- (c) Conduct activities to help improve public understanding of the challenges of these individuals.

(Authority: Section 752 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(a) and (d))

#### **§ 367.2 Who is eligible for an award?**

Any designated State agency (DSA) is eligible for an award under this program if the DSA—

- (a) Is authorized to provide rehabilitation services to individuals who are blind; and
- (b) Submits to and obtains approval from the Secretary of an application that meets the requirements of section 752(h) of the Act and §§ 367.30-367.31.

(Authority: Section 752(a)(2) and 752(h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(a)(2) and (h))

#### **§ 367.3 What activities may the Secretary fund?**

- (a) The DSA may use funds awarded under this part for the activities described in § 367.1 and paragraph (b) of this section.

- (b) For purposes of § 367.1(a), IL services for older individuals who are blind include—
- (1) Services to help correct blindness, such as—
    - (i) Outreach services;
    - (ii) Visual screening;
    - (iii) Surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions; and
    - (iv) Hospitalization related to these services;
  - (2) The provision of eyeglasses and other visual aids;
  - (3) The provision of services and equipment to assist an older individual who is blind to become more mobile and more self-sufficient;
  - (4) Mobility training, Braille instruction, and other services and equipment to help an older individual who is blind adjust to blindness;
  - (5) Guide services, reader services, and transportation;
  - (6) Any other appropriate service designed to assist an older individual who is blind in coping with daily living activities, including supportive services and rehabilitation teaching services;
  - (7) IL skills training, information and referral services, peer counseling, individual advocacy training, facilitating the transition from nursing homes and other institutions to home and community-based residences with the requisite supports and services, and providing assistance to older individuals who are blind who are at risk of entering institutions so that the individuals may remain in the community; and
  - (8) Other IL services, as defined in § 367.5.

(Authority: Section 752(d) and (e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k (d) and (e))

### § 367.4 What regulations apply?

The following regulations apply to the Independent Living Services for Older Individuals Who Are Blind program:

- (a) The Education Department General Administrative Regulations (EDGAR) as follows:
- (1) 34 CFR part 75 (Direct Grant Programs), with respect to grants under subpart B and D.
  - (2) 34 CFR part 76 (State-Administered Programs), with respect to grants under subpart E.
  - (3) 34 CFR part 77 (Definitions That Apply to Department Regulations).
  - (4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
  - (5) 34 CFR part 81 (General Education Provisions Act—Enforcement).
  - (6) 34 CFR part 82 (New Restrictions on Lobbying).
  - (7) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.
  - (8) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(b) The regulations in this part 367.

(Authority: Sections 12(c) and 752 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 796k)

### § 367.5 What definitions apply?

(a) The definitions of terms used in this part that are included in the regulations identified in § 367.4 as applying to this program.

(b) In addition, the following definitions also apply to this part:

(1) **Act** means the Rehabilitation Act, as amended by WIOA.

(2) **Advocacy** means pleading an individual's cause or speaking or writing in support of an individual. To the extent permitted by State law or the rules of the agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. Advocacy may—

(i) Involve representing an individual—

(A) Before private entities or organizations, government agencies (whether State, local, or Federal), or in a court of law (whether State or Federal); or

(B) In negotiations or mediation, in formal or informal administrative proceedings before government agencies (whether State, local, or Federal), or in legal proceedings in a court of law; and

(ii) Be on behalf of—

(A) A single individual, in which case it is individual advocacy;

(B) A group or class of individuals, in which case it is systems (or systemic) advocacy; or

(C) Oneself, in which case it is self advocacy.

(3) **Attendant care** means a personal assistance service provided to an individual with significant disabilities in performing a variety of tasks required to meet essential personal needs in areas such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

(4) **Contract** means a legal instrument by which RSA in subpart B or the DSA receiving a grant under this part purchases property or services needed to carry out the program under this Part. The term as used in this part does not include a legal instrument, even if RSA or the DSA considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward.

(Authority: 20 U.S.C. 1221e-3)

(5) **Designated State Agency** means the agency described in section 101(a)(2)(A)(i) of the Rehabilitation Act as the sole State agency authorized to provide rehabilitation services to individuals who are blind and administer the OIB grant.

(6) **Independent living services for older individuals who are blind** means those services listed in § 367.3(b).

- (7) **Legally authorized advocate or representative** means an individual who is authorized under State law to act or advocate on behalf of another individual. Under certain circumstances, State law permits only an attorney, legal guardian, or individual with a power of attorney to act or advocate on behalf of another individual. In other circumstances, State law may permit other individuals to act or advocate on behalf of another individual.
- (8) **Minority group** means Alaska Natives, American Indians, Asians, Blacks (African Americans), Hispanics (Latinos), Native Hawaiians, and Pacific Islanders.
- (9) **Older individual who is blind** means an individual age fifty-five or older whose severe visual impairment makes competitive employment extremely difficult to obtain but for whom IL goals are feasible.
- (10) **Other IL services** include:
- (i) Counseling services, including psychological, psychotherapeutic, and related services;
  - (ii) Services related to securing housing or shelter, including services related to community group living, that are supportive of the purposes of the Act, and adaptive housing services, including appropriate accommodations to and modifications of any space used to serve, or to be occupied by, older individuals who are blind;
  - (iii) Rehabilitation technology;
  - (iv) Services and training for older individuals who are blind who also have cognitive and sensory disabilities, including life skills training and interpreter services;
  - (v) Personal assistance services, including attendant care and the training of personnel providing these services;
  - (vi) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;
  - (vii) Consumer information programs on rehabilitation and IL services available under the Act, especially for minorities and other older individuals who are blind who have traditionally been unserved or underserved by programs under the Act;
  - (viii) Education and training necessary for living in a community and participating in community activities;
  - (ix) Supported living;
  - (x) Transportation, including referral and assistance for transportation;
  - (xi) Physical rehabilitation;
  - (xii) Therapeutic treatment;
  - (xiii) Provision of needed prostheses and other appliances and devices;
  - (xiv) Individual and group social and recreational services;
  - (xv) Services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of older individuals who are blind;

- (xvi) Appropriate preventive services to decrease the need of older individuals who are blind who are assisted under the Act for similar services in the future;
  - (xvii) Community awareness programs to enhance the understanding and integration into society of older individuals who are blind; and
  - (xviii) Any other services that may be necessary to improve the ability of an older individual who is blind to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment and that are not inconsistent with any other provisions of the Act.
- (11) **Peer relationships** mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.
  - (12) **Peer role models** means individuals with significant disabilities whose achievements can serve as a positive example for other older individuals who are blind.
  - (13) **Personal assistance services** means a range of IL services, provided by one or more persons, designed to assist an older individual who is blind to perform daily living activities on or off the job that the individual would typically perform if the individual was not blind. These IL services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.
  - (14) **Service provider** means—
    - (i) The DSA that directly provides services authorized under § 367.3; or
    - (ii) Any other entity that receives a subaward or contract from the DSA to provide services authorized under § 367.3.
  - (15) **Significant disability** means a severe physical, mental, cognitive, or sensory impairment that substantially limits an individual's ability to function independently in the family or community or to obtain, maintain, or advance in employment.
  - (16) **State** means, except where otherwise specified in the Act, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.
  - (17) **Subaward** means a grant or a cooperative agreement provided by the DSA to a subrecipient for the subrecipient to carry out part of the Federal award received by the DSA under this part. It does not include payments to a contractor or payments to an individual that is a beneficiary of a program funded under this part. A subaward may be provided through any form of legal agreement, including an agreement that the DSA considers a contract.

(Authority: 20 U.S.C. 1221e-3)

- (18) **Subrecipient** means a non-Federal entity that receives a subaward from the DSA to carry out part of the program funded under this part; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

(Authority: 20 U.S.C. 1221e-3)

- (19) **Transportation** means travel and related expenses that are necessary to enable an older individual who is blind to benefit from another IL service and travel and related expenses for an attendant or aide if the services of that attendant or aide are necessary to enable an older individual who is blind to benefit from that IL service.
- (20) **Unserved and underserved groups or populations**, with respect to groups or populations of older individuals who are blind in a State, include, but are not limited to, groups or populations of older individuals who are blind who—
- (i) Have cognitive and sensory impairments;
  - (ii) Are members of racial and ethnic minority groups;
  - (iii) Live in rural areas; or
  - (iv) Have been identified by the DSA as unserved or underserved.

(Authority: Unless otherwise noted, Section 7 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705)

## Subpart B—Training and Technical Assistance

### § 367.20 What are the requirements for funding training and technical assistance under this chapter?

For any fiscal year, beginning with fiscal year 2015, the Secretary shall first reserve not less than 1.8 percent and not more than 2 percent of funds appropriated and made available to carry out this chapter to provide training and technical assistance to DSAs, or other providers of independent living services for older individuals who are blind, that are funded under this chapter for such fiscal year.

(Authority: Section 751A(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j-1(a))

### § 367.21 How does the Secretary use these funds to provide training and technical assistance?

- (a) The Secretary uses these funds to provide training and technical assistance, either directly or through grants, contracts, or cooperative agreements with State and public or non-profit agencies and organizations and institutions of higher education that have the capacity to provide technical assistance and training in the provision of independent living services for older individuals who are blind.
- (b) An entity receiving assistance in accordance with paragraph (a) of this section shall provide training and technical assistance to DSAs or other service providers to assist them in improving the operation and performance of programs and services for older individuals who are blind resulting in their enhanced independence and self-sufficiency.

(Authority: Section 751A(a) and (c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j-1(a) and (c))

### § 367.22 How does the Secretary make an award?

- (a) To be eligible to receive a grant or enter into a contract or cooperative agreement under section 751A of the Act and this subpart, an applicant shall submit an application to the Secretary containing a proposal to provide training and technical assistance to DSAs or other service providers of IL services to older individuals who are blind and any additional information at the time and in the manner that the Secretary may require.

- (b) The Secretary shall provide for peer review of applications by panels that include persons who are not Federal or State government employees and who have experience in the provision of services to older individuals who are blind.

(Authority: Section 751A(a) and (c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j-1(a) and (c))

### § 367.23 How does the Secretary determine funding priorities?

The Secretary shall conduct a survey of DSAs that receive grants under section 752 regarding training and technical assistance needs in order to inform funding priorities for such training and technical assistance.

(Authority: Section 751A(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j-1(b))

### § 367.24 How does the Secretary evaluate an application?

- (a) The Secretary evaluates each application for a grant, cooperative agreement or contract under this subpart on the basis of the selection criteria chosen from the general selection criteria found in EDGAR regulations at 34 CFR 75.210.
- (b) If using a contract to award funds under this subpart, the Secretary may conduct the application process and make the subsequent award in accordance with 34 CFR part 75.

(Authority: Section 751A of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j-1(b), 20 U.S.C. 1221e-3, and 3474)

## Subpart C—What Are the Application Requirements Under This Part?

### § 367.30 How does a designated State agency (DSA) apply for an award?

To receive a grant under section 752(h) or a reallocation grant under section 752(i)(4) of the Act, a DSA must submit to and obtain approval from the Secretary of an application for assistance under this program at the time, in the form and manner, and containing the agreements, assurances, and information, that the Secretary determines to be necessary to carry out this program.

*(Approved by the Office of Management and Budget under control number 1820-0660)*

(Authority: Sections 752 (h) and (i)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(h) and (i))

### § 367.31 What assurances must a DSA include in its application?

An application for a grant under section 752(h) or a reallocation grant under section 752(i)(4) of the Act must contain an assurance that—

- (a) Grant funds will be expended only for the purposes described in § 367.1;
- (b) With respect to the costs of the program to be carried out by the State pursuant to this part, the State will make available, directly or through donations from public or private entities, non-Federal contributions toward these costs in an amount that is not less than \$1 for each \$9 of Federal funds provided in the grant;



- (c) At the end of each fiscal year, the DSA will prepare and submit to the Secretary a report, with respect to each project or program the DSA operates or administers under this part, whether directly or through a grant or contract, that contains information that the Secretary determines necessary for the proper and efficient administration of this program, including—
  - (1) The number and demographics of older individuals who are blind, including older individuals who are blind from minority backgrounds, and are receiving services;
  - (2) The types of services provided and the number of older individuals who are blind and are receiving each type of service;
  - (3) The sources and amounts of funding for the operation of each project or program;
  - (4) The amounts and percentages of resources committed to each type of service provided;
  - (5) Data on actions taken to employ, and advance in employment, qualified—
    - (i) Individuals with significant disabilities; and
    - (ii) Older individuals with significant disabilities who are blind;
  - (6) A comparison, if appropriate, of prior year activities with the activities of the most recent year; and
  - (7) Any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded under this part;
- (d) The DSA will—
  - (1) Provide services that contribute to the maintenance of, or the increased independence of, older individuals who are blind; and
  - (2) Engage in—
    - (i) Capacity-building activities, including collaboration with other agencies and organizations;
    - (ii) Activities to promote community awareness, involvement, and assistance; and
    - (iii) Outreach efforts; and
- (e) The applicant has been designated by the State as the sole State agency authorized to provide rehabilitation services to individuals who are blind.

*(Approved by the Office of Management and Budget under control numbers 1820-0660 and 1820-0608)*

(Authority: Section 752(h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(h))

## **Subpart D—How does the Secretary award discretionary grants?**

### **§ 367.40 Under what circumstances does the Secretary award discretionary grants to States?**

- (a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is less than \$13,000,000, the Secretary awards discretionary grants under this part on a competitive basis to States in accordance with section 752(b) of the Act and EDGAR regulations at 34 CFR part 75 (Direct Grant Programs).

- (b) The Secretary awards noncompetitive continuation grants for a multi-year project to pay for the costs of activities for which a grant was awarded under this part—as long as the grantee satisfies the applicable requirements in this part, the terms of the grant, and 34 CFR 75.250 through 75.253 (Approval of Multi-year Projects).
- (c) Subparts A, C, D, and F of this part govern the award of competitive grants under this part.

(Authority: Section 752(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(b); 20 U.S.C. 1221e-3 and 3474)

### **§ 367.41 How does the Secretary evaluate an application for a discretionary grant?**

- (a) The Secretary evaluates an application for a discretionary grant based on the selection criteria chosen from the general selection criteria found in EDGAR regulations at 34 CFR 75.210.
- (b) In addition to the selection criteria, the Secretary considers the geographic distribution of projects in making an award.

(Authority: Section 752(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(b); 20 U.S.C. 1221e-3 and 3474)

### **Subpart E—How Does the Secretary Award Formula Grants?**

#### **§ 367.50 Under what circumstances does the Secretary award formula grants to States?**

- (a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is equal to or greater than \$13,000,000, grants under this part are made to States from allotments under section 752(c)(2) of the Act.
- (b) Subparts A, C, E, and F of this part govern the award of formula grants under this part.

(Authority: Section 752(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(c))

#### **§ 367.51 How are allotments made?**

- (a) For purposes of making grants under section 752(c) of the Act and this subpart, the Secretary makes an allotment to each State in an amount determined in accordance with section 752(i) of the Act.
- (b) The Secretary makes a grant to a DSA in the amount of the allotment to the State under section 752(i) of the Act if the DSA submits to and obtains approval from the Secretary of an application for assistance under this program that meets the requirements of section 752(h) of the Act and §§ 367.30 and 367.31.

*(Approved by the Office of Management and Budget under control number 1820-0660)*

(Authority: Section 752(c)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(c)(2))

#### **§ 367.52 How does the Secretary reallocate funds under this program?**

- (a) From the amounts specified in paragraph (b) of this section, the Secretary may make reallocation grants to States, as determined by the Secretary, whose population of older individuals who are blind has a substantial need for the services specified in section 752(d) of the Act and § 367.3(b), relative to the populations in other States of older individuals who are blind.

- (b) The amounts referred to in paragraph (a) of this section are any amounts that are not paid to States under section 752(c)(2) of the Act and § 367.51 as a result of—
  - (1) The failure of a DSA to prepare, submit, and receive approval of an application under section 752(h) of the Act and in accordance with §§ 367.30 and 367.31; or
  - (2) Information received by the Secretary from the DSA that the DSA does not intend to expend the full amount of the State's allotment under section 752(c) of the Act and this subpart.
- (c) A reallocation grant to a State under paragraph (a) of this section is subject to the same conditions as grants made under section 752(a) of the Act and this part.
- (d) Any funds made available to a State for any fiscal year pursuant to this section are regarded as an increase in the allotment of the State under § 367.51 for that fiscal year only.
- (e) A State that does not intend to expend the full amount of its allotment must notify RSA at least 45 days prior to the end of the fiscal year that its grant, or a portion of it, is available for reallocation.

*(Approved by the Office of Management and Budget under control number 1820-0660)*

(Authority: Section 752(i)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(i)(4))

## **Subpart F—What Conditions Must Be Met After an Award?**

### **§ 367.60 When may a DSA make subawards or contracts?**

A DSA may operate or administer the program or projects under this part to carry out the purposes specified in § 367.1, either directly or through—

- (a) Subawards to public or private nonprofit agencies or organizations; or
- (b) Contracts with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations.

(Authority: Sections 752(g) and (h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(g) and (h)(2)(A))

### **§ 367.61 What matching requirements apply?**

Non-Federal contributions required by § 367.31(b) must meet the requirements in 2 CFR 200.306 (Cost sharing or matching).

(Authority: Section 752(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f))

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

- (a) Expenditures that meet the non-Federal share requirements of 2 CFR 200.306 may be used to meet the non-Federal share matching requirement. Expenditures used as non-Federal share must also meet the following requirements:
  - (1) The expenditures are made with funds made available by appropriation directly to the DSA or with funds made available by allotment or transfer from any other unit of State or local government;

- (2) The expenditures are made with cash contributions from a donor that are deposited in the account of the DSA in accordance with State law for expenditure by, and at the sole discretion of, the DSA for activities authorized by § 367.3; or
- (3) The expenditures are made with cash contributions from a donor that are earmarked for meeting the State's share for activities listed in § 367.3;
- (b) Cash contributions are permissible under paragraph (a)(3) of this section only if the cash contributions are not used for expenditures that benefit or will benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest.
- (c) The receipt of a subaward or contract under section 752(g) of the Act from the DSA is not considered a benefit to the donor of a cash contribution for purposes of paragraph (b) of this section if the subaward or contract was awarded under the State's regular competitive procedures. The State may not exempt the awarding of the subaward or contract from its regular competitive procedures.
- (d) For purposes of this section, a donor may be a private agency, a profit-making or nonprofit organization, or an individual.

(Authority: Section 752(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f))

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

In-kind contributions may be—

- (a) Used to meet the matching requirement under section 752(f) of the Act if the in-kind contributions meet the requirements and are allowable under 2 CFR 200.306; and
- (b) Made to the program or project by the State or by a third party (i.e., an individual, entity, or organization, whether local, public, private, for profit, or nonprofit), including a third party that is a subrecipient or contractor that is receiving or will receive assistance under section 752(g) of the Rehabilitation Act.

(Authority: Section 752(f) and (g) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f) and (g))

### § 367.64 What is the prohibition against a State's condition of an award of a sub-award or contract based on cash or in-kind contributions?

- (a) A State may not condition the making of a subaward or contract under section 752(g) of the Act on the requirement that the applicant for the subaward or contract make a cash or in-kind contribution of any particular amount or value to the State.
- (b) An individual, entity, or organization that is a subrecipient or contractor of the State, may not condition the award of a subcontract on the requirement that the applicant for the subcontract make a cash or in-kind contribution of any particular amount or value to the State or to the subrecipient or contractor of the State.

(Authority: Section 752(f) and (g) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f) and (g))

### § 367.65 What is program income and how may it be used?

- (a) **Definition** —*Program income* means gross income earned by the grantee, subrecipient, or contractor that is directly generated by a supported activity or earned as a result of the grant, subaward, or contract.

- (1) Program income received through the transfer of Social Security Administration program income from the State Vocational Rehabilitation Services program (Title I) in accordance with 34 CFR 361.63(c)(2) will be treated as program income received under this part.
- (2) Payments received by the State agency, subrecipients, or contractors from insurers, consumers, or other for IL services provided under the Independent Living Services for Older Individuals Who Are Blind program to defray part or all of the costs of services provided to individual consumers will be treated as program income received under this part.

(b) *Use of program income.*

- (1) Program income, whenever earned, must be used for the provision of services authorized under § 367.3.
- (2) Program income must be added to the Federal Award in accordance with 2 CFR 200.307(e)(2).
- (3) Program income may not be used to meet the non-Federal share requirement under § 367.31(b).

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

**§ 367.66 What requirements apply to the obligation of Federal funds and program income?**

- (a) Except as provided in paragraph (b) of this section, any Federal funds, including reallocated funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated or expended by the DSA prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended by the DSA prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the DSA during that succeeding fiscal year.
- (b) Federal funds appropriated for a fiscal year under this part remain available for obligation in the succeeding fiscal year only to the extent that the DSA complied with its matching requirement by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.
- (c) Program income is considered earned in the fiscal year in which it is received. Program income earned during the fiscal year must be disbursed during the time in which new obligations may be incurred to carry out the work authorized under the award, and prior to requesting additional cash payments.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

**§ 367.67 May an individual's ability to pay be considered in determining his or her participation in the costs of OIB services?**

(a) *Participation of individuals in cost of services.*

- (1) A State is neither required to charge nor prohibited from charging consumers for the cost of IL services provided under the Independent Living Services for Older Individuals Who Are Blind program;

- (2) If a State charges consumers or allows other service providers to charge for the cost of IL services provided under the Independent Living Services for Older Individuals Who Are Blind program, a State is neither required to nor prohibited from considering the ability of individual consumers to pay for the cost of these services in determining how much a particular consumer must contribute to the costs of a particular service.
- (b) **State policies on cost of services.** If a State chooses to charge or allow other service providers to charge consumers for the cost of IL services provided under the Independent Living Services for Older Individuals Who Are Blind program and if a State chooses to consider and allow other service providers to consider the ability of individual consumers to pay for the cost of IL services provided under the Independent Living Services for Older Individual Who Are Blind program, the State must maintain policies that—
  - (1) Specify the type of IL services for which costs may be charged and the type of IL services for which a financial need test may be applied;
  - (2) Explain the method for determining the amount charged for the IL services and how any financial need test will be applied;
  - (3) Ensure costs are charged uniformly so that all individuals are treated equally;
  - (4) Ensure that if costs are charged or financial need is considered, the consumer's required participation is not so high that it effectively denies the individual a necessary service;
  - (5) Require documentation of an individual's participation in the cost of any IL services provided, including the determination of an individual's financial need; and
  - (6) Provide that individuals who have been determined eligible for Social Security benefits under Titles II and XVI of the Social Security Act may not be charged any cost to receive IL services under this program.
- (c) **Policies on consumer financial participation.** If a State permits other service providers to charge the costs of IL services provided under the Independent Living Services for Older Individuals Who Are Blind program, or chooses to allow other service providers to consider the ability of individual consumers to contribute to the cost of IL services provided through the Independent Living Services for Older Individuals Who Are Blind program, the State must require that such service providers comply with the State's written policies regarding consumer financial participation in the cost of IL services.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c)).

### § 367.68 What notice must be given about the Client Assistance Program (CAP)?

The DSA and all other service providers under this part shall use formats that are accessible to notify individuals seeking or receiving services under this part about—

- (a) The availability of CAP authorized by section 112 of the Act;
- (b) The purposes of the services provided under the CAP; and
- (c) How to contact the CAP.

(Authority: Section 20 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 717)

## § 367.69 What are the special requirements pertaining to the protection, use, and release of personal information?

- (a) **General provisions.** The DSA and all other service providers under this part shall adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that—
- (1) Specific safeguards protect current and stored personal information, including a requirement that data only be released when governed by a written agreement between the DSA and other service providers and the receiving entity under paragraphs (d) and (e)(1) of this section, which addresses the requirements in this section;
  - (2) All applicants for, or recipients of, services under this part and, as appropriate, those individuals' legally authorized representatives, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for gaining access to and releasing this information;
  - (3) All applicants or their legally authorized representatives are informed about the service provider's need to collect personal information and the policies governing its use, including—
    - (i) Identification of the authority under which information is collected;
    - (ii) Explanation of the principal purposes for which the service provider intends to use or release the information;
    - (iii) Explanation of whether providing requested information to the service provider is mandatory or voluntary and the effects to the individual of not providing requested information;
    - (iv) Identification of those situations in which the service provider requires or does not require informed written consent of the individual or his or her legally authorized representative before information may be released; and
    - (v) Identification of other agencies to which information is routinely released;
  - (4) Persons who do not speak, listen, read, or write English proficiently or who rely on alternative modes of communication must be provided an explanation of service provider policies and procedures affecting personal information through methods that can be meaningfully understood by them;
  - (5) At least the same protections are provided to individuals served under this part as provided by State laws and regulations; and
  - (6) Access to records is governed by rules established by the service provider and any fees charged for copies of records are reasonable and cover only extraordinary costs of duplication or making extensive searches.
- (b) **Service provider use.** All personal information in the possession of the service provider may be used only for the purposes directly connected with the provision of services under this part and the administration of the program under which services are provided under this part. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for the provision of services under this part or the administration of the program under which services are provided under this part. In the provision of services under this part or the administration of the program under which services are provided under this part, the service provider may

obtain personal information from other service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

**(c) Release to recipients of services under this part.**

- (1) Except as provided in paragraphs (c)(2) and (3) of this section, if requested in writing by a recipient of services under this part, the service provider shall release all information in that individual's record of services to the individual or the individual's legally authorized representative in a timely manner.
- (2) Medical, psychological, or other information that the service provider determines may be harmful to the individual may not be released directly to the individual, but must be provided through a qualified medical or psychological professional or the individual's legally authorized representative.
- (3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

**(d) Release for audit, evaluation, and research.** Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research activities only for purposes directly connected with the administration of a program under this part, or for purposes that would significantly improve the quality of life for individuals served under this part and only if, in accordance with a written agreement, the organization, agency, or individual assures that—

- (1) The information will be used only for the purposes for which it is being provided;
- (2) The information will be released only to persons officially connected with the audit, evaluation, or research;
- (3) The information will not be released to the involved individual;
- (4) The information will be managed in a manner to safeguard confidentiality; and
- (5) The final product will not reveal any personally identifying information without the informed written consent of the involved individual or the individual's legally authorized representative.

**(e) Release to other programs or authorities.**

- (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's legally authorized representative, the service provider may release personal information to another agency or organization, in accordance with a written agreement, for the latter's program purposes only to the extent that the information may be released to the involved individual and only to the extent that the other agency or organization demonstrates that the information requested is necessary for the proper administration of its program.
- (2) Medical or psychological information may be released pursuant to paragraph (e)(1) of this section if the other agency or organization assures the service provider that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.
- (3) The service provider shall release personal information if required by Federal laws or regulations.
- (4) The service provider shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to judicial order.



- (5) The service provider also may release personal information to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

### § 367.70 What access to records must be provided?

For the purpose of conducting audits, examinations, and compliance reviews, the DSA and all other service providers shall provide access to the Secretary and the Comptroller General, or any of their duly authorized representatives, to—

- (a) The records maintained under this part;
- (b) Any other books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under this part; and
- (c) All individual case records or files or consumer service records of individuals served under this part, including names, addresses, photographs, and records of evaluation included in those individual case records or files or consumer service records.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

### § 367.71 What records must be maintained?

The DSA and all other service providers shall maintain—

- (a) Records that fully disclose and document—
  - (1) The amount and disposition by the recipient of that financial assistance;
  - (2) The total cost of the project or undertaking in connection with which the financial assistance is given or used;
  - (3) The amount of that portion of the cost of the project or undertaking supplied by other sources; and
  - (4) Compliance with the requirements of this part; and
- (b) Other records that the Secretary determines to be appropriate to facilitate an effective audit.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))