determined on the basis of serving first those individuals with the most severe disabilities in accordance with criteria established by the State. The State plan must also describe the outcomes and service goals for the individuals served by the State and the time within which the outcomes and service goals may be achieved.

Several State plans that indicated an inability to serve all eligible individuals have been found not to be substantially approvable because they failed to contain the State's criteria for determining which individuals with disabilities are the individuals with the most severe disabilities. In other cases, State plans were found not substantially approvable because the plans failed to indicate that the State would target its resources to serve individuals with the most severe disabilities first.

## Example 3: Adult Education Act

The Adult Education Act and its implementing regulations require assurances that public and nonprofit agencies, including correctional education agencies, be provided direct and equitable access to all Federal funds provided under the State plan program. However, one State plan stated "Correctional agencies will be eligible for any newly appropriated federal funding directly from the U.S. Department of Education for corrections educational programs." This language was unacceptable under the requirements of the Act and regulations. The State was asked to submit a revision to the plan to correct the deficiency. The State plan was found substantially approvable when the State revised it to say "Eligible recipients for adult basic education funding include correctional educational agencies."

## Example 4: Library Services and Construction Act (LSCA)

One State submitted a plan in which a project for strengthening the capacity of the State Library Agency and an Administration project both included administrative expenses. The plan was not considered substantially approvable because activities that would be considered as administration of the Act are not allowed in a Strengthening project. The State was required to include all administrative expenditures under its Administration project before the plan was found substantially approvable.

Under the LSCA, a State must have an approved Long-range Program (LRP) on record with the Department, and all annual programs must be based on needs, priorities, and plans identified in the LRP. In the second year after the

passage of amendments to LSCA in 1990, several State plans were not found substantially approvable because the States had not changed their LRPs to reflect new statutory priorities under the LSCA amendments. These plans were found substantially approvable when the new priorities were addressed either in a revised or amended LRP.

The examples described above indicate that the kinds of issues that must be resolved before a State plan can be found substantially approvable are not trivial and the Department's decisions in these cases are based on clear mandates in statutes and implementing program regulations. The Secretary assures the States that the Department will not find a State plan not substantially approvable simply because an assurance or other text is misplaced in the plan or there is some other non-substantive problem with the plan.

This preamble discusses the issue of what documents must be submitted under the heading "Should the Department be required to send documents, including a list of any other documents required to prove eligibility under each program, to States by a date certain and what should be the effect of the Department's failure to do so?"

Change: None.

How do the regulations affect Maintenance of Effort and Matching Requirements?

Several commenters addressed the discussion in the NPRM regarding the effect of the proposed regulations on fiscal maintenance of effort requirements (MOE). Some confusion was created by the fact that the preamble described the MOE requirement under the Rehabilitation Act as if it were an eligibility requirement. However, under that Act, failure to meet MOE requirements does not deny eligibility. Instead, the allotment for a State is reduced by the amount that the State fails to meet the MOE requirement unless a waiver or modification of the MOE requirement is granted.

Comment: One commenter was concerned that the regulations appeared to require submission of documents demonstrating that a State had met the MOE requirements before a State plan could be considered substantially approvable. The commenter noted that this would not be workable because the financial report needed to demonstrate that MOE had been met was not available until 90 days after the end of the grant period and the State plan for a current funded program had to be submitted before the end of the prior grant period.

Discussion: The CMIA and these implementing regulations do not independently require submission of any document. The documents that must be submitted under a particular program are based on the program statute and implementing regulations.

Most program offices of the Department do not review actual MOE data before making a decision that a plan is substantially approvable. Instead, these programs require a State to submit an assurance that the State has met the MOE requirement based on currently available data. Under these programs, the Department relies on financial audits, reports, and other information to determine whether a State has met its MOE requirement for a particular year. Thus, for these programs, submission of MOE documentation, other than an assurance, would not be required before the Department made a decision about whether a State plan was substantially

One program office that does review MOE data as part of the State-plan review process is the office administering the LSCA program. Under the LSCA, the determination of whether a State has met a MOE requirement is based on a comparison of the planned expenditures of the State and the expenditures of the State from the second preceding year. Program officials for this program compare the budget of the State-plan submission against the expenditures of the State for the second preceding year before the budgeted year to determine if the State has budgeted sufficient funds to meet the MOE requirement.

*Change:* None.

Comment: Many commenters wanted the Department to accept, for the purpose of meeting MOE and matching requirements, non-federal expenditures made after the date that funds are available for obligation by the Secretary but before the date a State plan was found substantially approvable. Under some programs, the difference of just a few thousand dollars made a difference for a State in determining whether it met its MOE requirements.

Discussion: The Secretary has decided to modify the policy announced in the NPRM regarding pre-award costs, based on the concerns expressed in these comments. Expenditures incurred to meet matching and MOE requirements are not expenditures for which the Federal Government must deposit funds to the account of a State. Thus, these expenditures are not subject to the interest liabilities of the CMIA.

Given that the CMIA does not apply to non-Federal funds used to meet