

of selection requirements in sections 12(d) and 101(a)(5)(A) of the Act, the evaluation standards and performance indicator requirements in section 106 of the Act, and the client assistance program requirements in section 112 of the Act, which are being implemented in separate rulemaking documents) and proposes to incorporate some of the changes that were previously proposed in the 1991 NPRM to reduce the administrative burden on States. This NPRM also proposes other changes that the Secretary believes are important to update, consolidate, clarify, and in other ways improve the regulations for this program.

Executive Order 12866 encourages Federal agencies to facilitate meaningful participation in the regulatory development process. Accordingly, prior to drafting this NPRM, RSA, on March 31, 1994, made draft proposed regulations (draft regulations) available in accessible formats, including an electronic format, to a broad spectrum of parties for informal review and comment. Over 600 letters of comments on the draft regulations were analyzed. RSA also gathered public input on the draft regulations through public meetings held in Washington, D.C. on April 19, May 12, and May 17, 1994; Chicago on April 26, 1994; and Oakland, California on May 4 and May 5, 1994; and through public teleconferences on April 20, May 13, May 18, and June 8, 1994. In addition, three separate focus groups were convened in June 1994 to allow for further discussion of three discrete issues: eligibility under the program, informed choice in the selection of services and service providers, and the standards related to the achievement and maintenance of an employment outcome.

The following is a section-by-section summary of the regulations proposed in this NPRM, including an explanation of the major provisions, how they differ from the existing and the draft regulations, and the reasons the Secretary is proposing them. In addition, in order to clarify proposed organizational changes, the summary identifies the sections of the current regulations, as well as the sections of the statute, on which every section of the proposed regulations is based.

Changes to the draft regulations that appear in this NPRM were made in response to public comments received by RSA and input provided during the public meetings, teleconferences, and focus groups. Significant changes to the draft regulations are discussed in the section-by-section summary. However, minor technical and structural changes

that do not significantly alter the provisions of the draft regulations are not discussed.

In response to public commenters who viewed some of the paperwork requirements in the draft regulations as unduly burdensome, the Secretary has proposed in the NPRM eliminating or consolidating documentation requirements wherever feasible. Those requirements that would remain in the proposed regulations are considered essential to the proper administration of the program. Paperwork requirements in the following sections of the draft regulations have been removed or reduced: §§ 361.13(c), 361.19, 361.20(b), 361.21 (a) and (b), 361.22(a)(1), 361.29 (a)(2) and (a)(4), 361.33(b), 361.46, 361.47, 361.52, and 361.53(a)(3).

In addition, the draft regulations have been reviewed and revised in accordance with the Department's principles for regulating, which were developed as part of the Administration's regulatory reinvention initiative under the National Performance Review II. The principles are designed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. As a result of that review, additional non-statutory requirements in the draft regulations have been eliminated or modified to reduce paperwork or process requirements on States and to increase State flexibility in meeting statutory requirements. These proposed changes are identified in the section-by-section summary.

The proposed regulations, like the draft regulations, provide guidance through examples in the following three areas: permissible expenses under the definition of "maintenance"; permissible expenses under the definition of "transportation"; and meeting the final eligibility criterion (an individual with a disability must require VR services) under § 361.42. Some public commenters on the draft regulations opposed the use of examples on the grounds that they would interfere with individual counselor judgment, whereas other commenters supported their use as an effective means of ensuring that counselors had ready access to information typically found in guidance materials. By including the examples in the regulations, the Secretary intends to make the regulations more comprehensive and useful. The Secretary emphasizes, both here and throughout the section-by-section summary, that the examples are provided solely for the purposes of illustration, do not address all situations that a rehabilitation counselor may face,

and are not intended to preclude individual counselor judgment on a case-by-case basis. The examples are merely guidance material to which rehabilitation professionals can quickly refer.

References in the section-by-section summary to the "proposed regulations," as opposed to the "draft regulations," refer to regulatory provisions included in this NPRM.

Section-by-Section Summary

Section 361.1—Purpose

This proposed new section of the regulations would incorporate the language in section 100(a)(2) of the statute, which emphasizes the goal of gainful employment for individuals with disabilities and the responsibility of States to operate comprehensive, coordinated, effective, efficient, and accountable programs that are designed to assess, plan, develop, and provide vocational rehabilitation services. The Secretary interprets the statutory term "gainful employment" to have the same meaning as the term "employment outcome," as it is defined in the proposed regulations.

Section 361.2—Eligibility for a Grant

This new section is proposed for clarification. A similar section was proposed in the 1991 NPRM.

Section 361.3—Authorized Activities

This new section is proposed to clarify how the funds under this program can be used. A similar section was proposed in the 1991 NPRM. It also incorporates the new statutory provision in section 111(a)(1) of the Act that funds may be used to develop and implement the strategic plan.

Section 361.4—Applicable Regulations

This proposed section would revise § 361.1(b)(1) of the existing regulations to clarify that the reference to 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations) applies only to the award of subgrants by vocational rehabilitation agencies to entities that are not State or local governments or Indian tribal organizations and to remove the reference to 34 CFR Part 78 (The Education Appeal Board) because it has been deleted from the Education Department General Administrative Regulations (EDGAR). In addition, the proposed section would add references to 34 CFR Parts 80, 81, 82, 85, and 86 because those parts have been added to EDGAR since the regulations for this program were last revised, and they are applicable to this program.