

unit at an organizational level comparable to other organizational units within the State agency. This proposed change is intended to reduce paperwork burdens on State agencies in developing their State plans.

The Secretary is not proposing any substantive changes in paragraph (d) of this section to the requirements in current § 361.5(e) with regard to the responsibility of the designated State unit for administration of the vocational rehabilitation program, but is soliciting public comment on the need for changes.

The current regulations specify certain program functions or activities (determinations of eligibility, development of IWRPs, and decisions regarding the provision of services) that must be the responsibility of the DSU and that cannot be delegated to any other agency or individual. This non-delegation provision has been interpreted by RSA to mean that the DSU must carry out these functions or activities using its own staff. The draft proposed regulations, consistent with RSA subregulatory policy, specified additional program functions that must be carried out by the DSU: determinations that service recipients have achieved appropriate employment outcomes, the formulation and implementation of program policy, and the allocation and expenditure of program funds. The draft proposed regulations also would have strengthened the role of the State unit by requiring that the unit have a substantial role in all decisions affecting the administration of the VR program whenever management functions within the State agency are centralized.

Public comment on these draft proposed changes was neither extensive nor consistent. Some State VR directors supported a strengthening of the role and authority of the DSU but thought the draft proposed regulations were not strong enough, while other commenters thought the regulations were too prescriptive and believed that the only program function that must be carried out directly by DSU staff is eligibility determinations.

In light of the mixed public comment received thus far and the Administration's regulatory reinvention initiative, which is intended to increase State flexibility in administering Federally funded programs whenever permitted by statute, the Department is soliciting additional public comment on the following questions: Should the regulations expand or otherwise clarify essential program functions for which the DSU must be responsible in order to meet the statutory requirement in

section 101(a)(2)(A) that it be responsible for the VR program? Must these essential program functions be carried out by DSU staff or should the regulations provide States as much flexibility as possible to determine how to carry out these functions as long as the DSU retains administrative oversight in these areas? Any changes made to provide increased flexibility to States would not require DSUs to change their current administrative practices but would provide States additional flexibility to restructure, consolidate, or contract out program operations as long as the DSU retains ultimate responsibility.

Section 361.14—Substitute State Agency

This proposed section revises certain requirements regarding the selection of a substitute State agency (§ 361.7 of the existing regulations) in order to simplify the process and reduce the paperwork burden. The existing regulations permit applications from a potentially unlimited number of substitute State agency applicants, from which the Secretary selects the substitute State agency based on detailed criteria in the existing regulations. The proposed regulations place the authority and responsibility for the selection of a substitute State agency on the State so that the Secretary would need only to review and approve a State plan from one substitute State agency prior to providing funds.

Section 361.15—Local Administration

This proposed section simplifies § 361.9 of the current regulations by removing the requirements related to a written agreement between a sole local agency and the State unit in order to reduce the paperwork burden on States. It proposes to replace the written agreement requirements with assurances from the State unit in the State plan relating to the administration and supervision of a sole local agency.

Section 361.16—Establishment of an Independent Commission or a State Rehabilitation Advisory Council

This proposed new section implements the new requirements related to the State Rehabilitation Advisory Council (Council) in section 101(a)(36) of the Act. The proposed section clarifies that a State does not need to establish a Council or meet the requirements related to a Council if the State agency is a consumer-controlled independent commission. The proposed section also clarifies that if the State has a separate State agency for individuals who are blind, four options regarding

the possible combinations of the two State agencies exist. Although only three options are identified in the Act, the section-by-section analysis of the Act in the Conference Report clarifies that the fourth option, a mirror image of the third combination identified in the Act, is also acceptable. This option is contained in proposed paragraph (b)(4) of this section.

Section 361.17—Requirements for a State Rehabilitation Advisory Council

This proposed new section incorporates the new statutory requirements in section 105 of the Act with the clarification that the director of the DSU is a nonvoting member of the State Rehabilitation Advisory Council. Since the purpose of the Council is to advise the State unit, and the statute is clear that the director is an ex-officio member of the Council, the Secretary does not believe that Congress intended that the director of the State unit provide advice to herself or himself by voting on Council decisions. Similarly, the Secretary has clarified the regulations to state that any employee of the designated State agency may serve only as a nonvoting member of the Council.

Several commenters on the draft regulation sought clarification with respect to the appointment of Council representatives from the Client Assistance Program (CAP) and the Statewide Independent Living Council (SILC). In response, the Secretary proposes to amend the regulations to clarify that the role of the CAP and SILC is to recommend to the Governor, or other appropriate appointment authority designated by State law, Council representatives for their respective organizations. Based on these recommendations, the Governor or other State-designated authority determines who will be the Council appointees, since the statute clearly vests appointment authority in those entities. The Secretary also notes that those individuals recommended for Council membership by the CAP or SILC need not be CAP or SILC members.

In addition, in response to public comment on the draft regulations, the Secretary emphasizes that, although the Council must be composed of at least 13 members (unless the State qualifies for an exception under paragraph (b)(4) of this section), a State is not precluded from having more than 13 individuals serve on its Council.

The Secretary also encourages States to consider appointing Council members from minority backgrounds consistent with the 1992 Amendments to the Act, which emphasizes outreach