

**DEPARTMENT OF EDUCATION****34 CFR Part 371**

RIN 1820-AB32

**Vocational Rehabilitation Service Projects for American Indians With Disabilities**

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** The Secretary amends the regulations implementing the Vocational Rehabilitation Service Projects for American Indians with Disabilities program authorized under Title I, Part D, section 130 of the Rehabilitation Act of 1973, as amended (Act). Changes are needed to implement section 130(b)(3) of the Act to provide greater funding continuity for tribal projects that are performing effectively by extending the normal 36-month project period for up to 24 additional months. Changes are also needed to conform the purpose and outcome of the program, consistent with section 100(a)(2) of the Act as revised by the 1992 Amendments, from placement in suitable employment to placement in gainful employment consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

**EFFECTIVE DATE:** These regulations take effect December 26, 1995.

**FOR FURTHER INFORMATION CONTACT:** Barbara M. Sweeney, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3225, Mary E. Switzer Building, Washington, D.C. 20202-2575. Telephone: (202) 205-9544. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** These regulations implement, in part, section 130(b)(3) of the Act, which authorizes the Secretary to prescribe regulations that would extend the project period for certain tribal projects beyond the maximum 36 months specified in the Act. The Secretary may grant, on a case-by-case basis, extensions of up to 24 months to tribal projects that meet the requirements established in a new § 371.5. In order to receive an extension of its project period, a tribal grantee must submit a written request for extension that contains an assurance of compliance with all program requirements and that provides satisfactory evidence that there is a continuing need for the project and that

the project has been effective in meeting the rehabilitation needs of the American Indians it has served, including achieving employment outcomes that are consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

The program supports the National Education Goal that, by the year 2000, every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

On July 27, 1995, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (60 FR 38608). Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, 26 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. The comments have been grouped according to subject, with appropriate sections of the regulations referenced in parentheses.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

**Gainful Employment (Section 371.1)**

**Comments:** Twelve parties commented on the proposed change of the purpose and outcome of the program from placement in suitable employment to placement in gainful employment consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. All twelve parties requested that the term "suitable employment" be retained. Some of these commenters were concerned that "gainful employment" was synonymous with competitive employment and would require that individuals be placed in jobs paying at least the minimum wage. Competitive employment opportunities, according to these commenters, might not be available on many reservations, thus forcing some individuals to leave the reservation to achieve this kind of employment goal. Other commenters were concerned that this change would lessen individual choice in the selection of a vocational goal and would preclude certain kinds of employment outcomes, such as subsistence employment or

placement in a small family-operated business, that are available on reservations, culturally appropriate, and meet individual needs.

**Discussion:** This change in the regulations is necessary to conform the purpose and outcome of the program with new legislative language in section 100(a)(2) of the Act. This change does not restrict the range of employment outcomes that are permissible under the program, which continue to include, as appropriate to the needs of the individual, outcomes such as supported employment, self-employment, extended employment, homemaker, or farm or family work for which payment may be in kind rather than cash. The Secretary interprets the term "gainful employment" to be any employment outcome that is consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. "Gainful employment" is not synonymous with competitive employment; the term includes, but is not limited to, competitive employment. The Secretary believes that the new legislative language, as reflected in the regulations, strengthens consumer choice of a vocational goal under the program rather than diminishing it as some commenters feared.

**Changes:** None.

**Length of the Project Period (Section 371.5)**

**Comments:** There were thirteen comments received on the proposed extension of the normal 36-month project period for up to 24 additional months and on the requirements for submitting an extension request. All commenters supported the proposal to extend the project period. There were no comments proposing any changes to the content requirements of an extension request.

**Discussion:** None.

**Changes:** None.

**Intergovernmental Review**

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79.

**List of Subjects in 34 CFR Part 371**

Education, Grant programs—education, Vocational rehabilitation, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.250 Vocational Rehabilitation Service Projects for American Indians With Disabilities)

Dated: November 20, 1995.  
 Judith E. Heumann,  
*Assistant Secretary for Special Education and  
 Rehabilitative Services.*

The Secretary amends Part 371 of  
 Title 34 of the Code of Federal  
 Regulations as follows:

**PART 371—VOCATIONAL  
 REHABILITATION SERVICE  
 PROJECTS FOR AMERICAN INDIANS  
 WITH DISABILITIES**

1. The authority citation for Part 371  
 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 750, unless  
 otherwise noted.

2. Section 371.1 is revised to read as  
 follows:

**§ 371.1 What is the Vocational  
 Rehabilitation Services Program for  
 American Indians with Disabilities?**

This program is designed to provide  
 vocational rehabilitation services to

American Indians with disabilities who  
 reside on Federal or State reservations,  
 consistent with their individual  
 strengths, resources, priorities,  
 concerns, abilities, capabilities, and  
 informed choice, so that they may  
 prepare for and engage in gainful  
 employment.

(Authority: Secs. 100(a)(2) and 130(a) of the  
 Act; 29 U.S.C. 720(a)(2) and 750(a))

3. A new § 371.5 is added to Subpart  
 A to read as follows:

**§ 371.5 What is the length of the project  
 period under this program?**

(a) The Secretary approves a project  
 period of up to three years.

(b) The Secretary may extend a grant  
 for up to two additional years if the  
 grantee includes in its extension  
 request—

(1) An assurance that the project is in  
 compliance with all applicable program  
 requirements; and

(2) Satisfactory evidence that—

(i) The project has made substantial  
 and measurable progress in meeting the  
 needs of American Indians with  
 disabilities on the reservation or  
 reservations it serves;

(ii) American Indians with disabilities  
 who have received project services have  
 achieved employment outcomes  
 consistent with their strengths,  
 resources, priorities, concerns, abilities,  
 capabilities, and informed choice; and

(iii) There is a continuing need for the  
 project.

(Approved by the Office of Management and  
 Budget under control number 1820-0018.)

(Authority: Section 130(b)(3) of the Act; 29  
 U.S.C. 750(b)(3))

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