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INFORMATION MEMORANDUM

TO: Chairpersons, State Developmental Disabilities
Councils
Executive Directors, State Developmental
Disabilities Councils
Directors, Designated State Agencies
Directors, State Protection and Advocacy Systems
Directors, University Affiliated Programs

SUBJECT: Compilation of the Developmental Disabilities
Assistance and Bill of Rights Act, as amended

LEGAL
REFERENCES: Public Law 103-230: Developmental Disabilities
Assistance and Bill of Rights Act of 1994

DISCUSSION: The purposes of this Information Memorandum are
threefold: first, we are pleased to provide you
with the new compilation of The Developmental
Disabilities Assistance and Bill of Rights Act,
as it was amended by Public Law 103-230 in 1994.

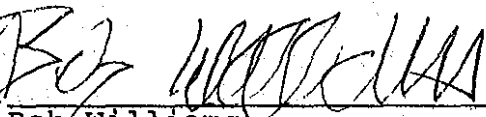
Second, please be advised that we will soon issue
a Notice of Proposed Rulemaking to implement the
new law and that we will greatly appreciate both
your and the public's review of and comments on
the forthcoming proposed regulations.

Finally, I would like to take this opportunity to say how delighted I am to be working with you to enhance our national response to the diverse goals of individuals with developmental disabilities. Working together, I am confident that we can build on and strengthen the public policies that affect individuals with developmental disabilities and their families.

ATTACHMENT: Compilation of the Developmental Disabilities Assistance and Bill of Rights Act, as amended

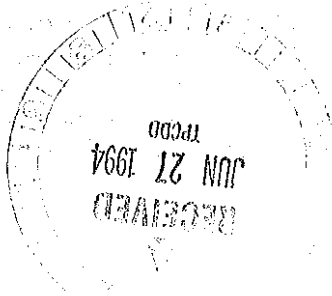
INQUIRIES

TO: Regional Administrators, ACF
 Regions I-X



Bob Williams
Commissioner
Administration on Developmental
Disabilities

cc: Regional Administrators, ACF, Regions I-X
 Director, Regional Operations Staff, ACF
 Executive Director, National Association of Developmental
 Disabilities Councils
 Executive Director, National Association of Protection and
 Advocacy Systems, Inc.
 Executive Director, American Association of University
 Affiliated Programs



THE DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT

June 8, 1994

Legislative Authority: Developmental Disabilities Assistance
and Bill of Rights Act, as amended.

U.S. Code Citation: 42 USC 6000 et seq.

HDS Regulations: 45 CFR 1385-1388.

Legislative History Summary:

The program was originally enacted as Title I of the Mental Retardation Facilities and Construction Act of 1963, Pub. L. 88-164; and has been amended by Pub. L. 91-517; Pub. L. 94-103; Pub. L. 95-602; the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35; the Developmental Disabilities Assistance and Bill of Rights Act, Pub. L. 98-527; the Developmental Disabilities and Bill of Rights Act Amendments of 1987, Pub. L. 100-146; the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990, Pub. L. 101-496; and the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994, Pub. L. 103-230.

Note: This compilation was prepared by the ACF Office of Policy and Evaluation (Duke Wilson: 202-260-5981) and by the Administration on Developmental Disabilities (Elsbeth Wyatt: 202-690-5841). The compilation was cleared by the Department of Health and Human Services Office of the General Counsel on June 8, 1994.

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TITLE I--PROGRAMS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

PART A--GENERAL PROVISIONS

SEC. 101. FINDINGS, PURPOSES, AND POLICY.

(a) FINDINGS.--The Congress finds that--

(1) in 1993 there are more than 3,000,000 individuals with developmental disabilities in the United States;

(2) disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity to live independently, enjoy self-determination, make choices, contribute to society, and experience full integration and inclusion in the economic, political, social, cultural, and educational mainstream of American society;

(3) individuals with developmental disabilities continually encounter various forms of discrimination in critical areas;

(4) there is a lack of public awareness of the capabilities and competencies of individuals with developmental disabilities;

(5) individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;

(6) individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families;

(7) a substantial portion of individuals with developmental disabilities and their families do not have access to appropriate support and services from generic and specialized service systems and remain unserved or underserved;

(8) family members, friends, and members of the community can play an important role in enhancing the lives of individuals with developmental disabilities, especially when the family and community are provided with the necessary services and supports;

(9) there is a need to ensure that services, supports, and other assistance are provided in a culturally competent manner, that individuals from racial and ethnic minority backgrounds are fully included in all activities under this Act, and that greater efforts are made to recruit individuals from minority backgrounds into the field of developmental disabilities; and

(10) the goals of the Nation properly include the goal of providing individuals with developmental disabilities with the opportunities and support to--

- (A) make informed choices and decisions;
- (B) live in homes and communities in which such individuals can exercise their full rights and responsibilities as citizens;
- (C) pursue meaningful and productive lives;
- (D) contribute to their family, community, State, and Nation;
- (E) have interdependent friendships and relationships with others; and
- (F) achieve full integration and inclusion in society; in an individualized manner, consistent with unique strengths, resources, priorities, concerns, abilities and capabilities of each individual.

(b) PURPOSE.--The purpose of this Act is to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, and integration and inclusion into the community, through--

(1) support to State Developmental Disabilities Councils in each State to promote, through systemic change, capacity building, and advocacy activities that are consistent with the policy under subsection (c)(2), a consumer and family-centered, comprehensive system, and a coordinated array of services, supports, and other assistance for individuals with developmental disabilities and their families;

(2) support to protection and advocacy systems in each State to protect the legal and human rights of individuals with developmental disabilities;

(3) support to university affiliated programs to provide interdisciplinary preservice preparation of students and fellows, community service activities, and the dissemination of information and research findings; and

(4) support to national initiatives to collect necessary data, provide technical assistance to State Developmental Disabilities Councils, protection and advocacy systems and university affiliated programs, and support other nationally significant activities.

(c) POLICY.--It is the policy of the United States that all programs, projects, and activities receiving assistance under this Act shall be carried out in a manner consistent with the principles that--

(1) individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, and integration and inclusion into the community, and often require the provision of services, supports and other assistance to achieve independence, productivity, and integration and inclusion;

(2) individuals with developmental disabilities and their families have competencies, capabilities and personal

goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;

(3) individuals with developmental disabilities and their families are the primary decisionmakers regarding the services and supports such individuals and their families receive and play decisionmaking roles in policies and programs that affect the lives of such individuals and their families;

(4) services, supports, and other assistance are provided in a manner that demonstrates respect for individual dignity, personal preferences, and cultural differences;

(5) specific efforts must be made to ensure that individuals from racial and ethnic minority backgrounds enjoy effective and meaningful opportunities for full participation in the developmental disabilities service system;

(6) recruitment efforts within developmental disabilities at the level of preservice training, community training, practice, administration and policymaking must focus on bringing larger numbers of racial and ethnic minorities into the field in order to provide appropriate skills, knowledge, role models, and sufficient manpower to address the growing needs of an increasingly diverse population;

(7) with education and support, communities can be responsive to the needs of individuals with developmental disabilities and their families and are enriched by the full and active participation and the contributions by individuals with developmental disabilities and their families; and

(8) individuals with developmental disabilities have access to opportunities and the necessary support to be included in community life, have interdependent relationships, live in homes and communities, and make contributions to their families, community, State, and Nation.

SEC. 102. DEFINITIONS.

For purposes of this title:

(1) AMERICAN INDIAN CONSORTIUM.--The term 'American Indian Consortium' means any confederation of two or more recognized American Indian tribes, created through the official action of each participating tribe, that has a combined total resident population of 150,000 enrolled tribal members and a contiguous territory of Indian lands in two or more States.

(2) ASSISTIVE TECHNOLOGY DEVICE.--The term 'assistive technology device' means any item, piece of equipment, or product system, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with developmental disabilities.

(3) ASSISTIVE TECHNOLOGY SERVICE.--The term 'assistive technology service' means any service that directly assists an individual with a developmental disability in the selection, acquisition, or use, of an assistive technology device. Such term includes--

(A) the evaluation of the needs of an individual with a developmental disability, including a functional evaluation of the individual in the individual's customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by an individual with a developmental disability;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices;

(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) training or technical assistance for an individual with a developmental disability, or, where appropriate, a family member, guardian, advocate, or authorized representative of an individual with a developmental disability; and

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of, an individual with developmental disabilities.

(4) CHILD DEVELOPMENT ACTIVITIES.--The term 'child development activities' means such priority area activities as will assist in the prevention, identification, and alleviation of developmental disabilities in children, including early intervention services.

(5) COMMUNITY LIVING ACTIVITIES.--The term 'community living activities' means such priority area activities as will assist individuals with developmental disabilities to obtain and receive the supports needed to live in their family home or a home of their own with individuals of their choice and to develop supports in the community.

(6) COMMUNITY SUPPORTS.--The term 'community supports' means activities, services, supports, and other assistance designed to--

(A) assist neighborhoods and communities to be

more responsive to the needs of individuals with developmental disabilities and their families;

(B) develop local networks that can provide informal support; and

(C) make communities accessible and enable communities to offer their resources and opportunities to individuals with developmental disabilities and their families. Such term includes community education, personal assistance services, vehicular and home modifications, support at work, and transportation.

(7) CULTURALLY COMPETENT.--The term 'culturally competent' means services, supports, or other assistance that are conducted or provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language and behaviors of individuals who are receiving services, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program.

(8) DEVELOPMENTAL DISABILITY.--The term 'developmental disability' means a severe, chronic disability of an individual 5 years of age or older that--

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the individual attains age 22;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity--

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency; and

(E) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated,

except that such term, when applied to infants and young children means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

(9) EARLY INTERVENTION SERVICES.--The term 'early intervention services' means services provided to infants, toddlers, young children, and their families to--

(A) enhance the development of infants, toddlers, and young children with disabilities and to minimize

their potential for developmental delay; and

(B) enhance the capacity of families to meet the special needs of their infants, toddlers, and young children.

(10) EMPLOYMENT ACTIVITIES.--The term 'employment activities' means such priority area activities as will increase the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities in work settings.

(11) FAMILY SUPPORT SERVICE.--The term 'family support service' means services, supports, and other assistance provided to families with members with developmental disabilities that are designed to--

(A) strengthen the family's role as primary caregiver;

(B) prevent inappropriate out-of-the-home placement and maintain family unity; and

(C) reunite families with members who have been placed out of the home, whenever possible. Such term includes respite care, rehabilitation technology, personal assistance services, parent training and counseling, support for elderly parents, vehicular and home modifications, and assistance with extraordinary expenses associated with the needs of individuals with developmental disabilities.

(12) FEDERAL PRIORITY AREAS.--The term 'Federal priority areas' means community living activities, employment activities, child development activities, and system coordination and community education activities.

(13) INDEPENDENCE.--The term 'independence' means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(14) INDIVIDUAL SUPPORTS.--The term 'individual supports' means services, supports, and other assistance that enable an individual with a developmental disability to be independent, productive, integrated, and included into such individual's community, and that are designed to--

(A) enable such individual to control such individual's environment, permitting the most independent life possible;

(B) prevent placement into a more restrictive living arrangement than is necessary; and

(C) enable such individual to live, learn, work, and enjoy life in the community. Such term includes personal assistance services, rehabilitation technology, vehicular and home modifications, support at work, and transportation.

(15) INTEGRATION AND INCLUSION.--The term 'integration and inclusion', with respect to individuals with developmental disabilities, means--

(A) the use by individuals with developmental disabilities of the same community resources that are

used by and available to other citizens;

(B) living in homes close to community resources, with regular contact with citizens without disabilities in their communities;

(C) the full and active participation by individuals with developmental disabilities in the same community activities and types of employment as citizens without disabilities, and utilization of the same community resources as citizens without disabilities, living, learning, working, and enjoying life in regular contact with citizens without disabilities; and

(D) having friendships and relationships with individuals and families of their own choosing.

(16) NONPROFIT.--The term 'nonprofit' means an agency, institution, or organization that is owned or operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(17) OTHER ORGANIZATIONS.--The term 'other organizations' means those organizations that are not State agencies or nonprofit agencies, except such organizations may be consulting firms, independent proprietary businesses and providers, and local community groups not organizationally incorporated, and that are interested in supporting individuals with developmental disabilities.

(18) PERSONAL ASSISTANCE SERVICES.--The term 'personal assistance services' means a range of services, provided by one or more individuals, designed to assist an individual with a disability to perform daily living activities on or off a job that such individual would typically perform if such individual did not have a disability. Such services shall be designed to increase such individual's control in life and ability to perform everyday activities on or off such job.

(19) PREVENTION.--The term 'prevention' means activities that address the causes of developmental disabilities and the exacerbation of functional limitations, such as activities that--

(A) eliminate or reduce the factors that cause or predispose individuals to developmental disabilities or that increase the prevalence of developmental disabilities;

(B) increase the early identification of existing problems to eliminate circumstances that create or increase functional limitations; and

(C) mitigate against the effects of developmental disabilities throughout the individual's lifespan.

(20) PRODUCTIVITY.--The term 'productivity' means--

(A) engagement in income-producing work that is measured by increased income, improved employment status, or job advancement; or

(B) engagement in work that contributes to a household or community.

(21) PROTECTION AND ADVOCACY SYSTEM.--The term 'protection and advocacy system' means a protection and advocacy system established in accordance with section 142.

(22) REHABILITATION TECHNOLOGY.--The term 'rehabilitation technology' means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with developmental disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. Such term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(23) SECRETARY.--The term 'Secretary' means the Secretary of Health and Human Services.

(24) SERVICE COORDINATION ACTIVITIES.--The term 'service coordination activities' (also referred to as 'case management activities') means activities that assist and enable individuals with developmental disabilities and their families to access services, supports and other assistance, and includes--

(A) the provision of information to individuals with developmental disabilities and their families about the availability of services, supports, and other assistance;

(B) assistance in obtaining appropriate services, supports, and other assistance, which may include facilitating and organizing such assistance;

(C) coordination and monitoring of services, supports, and other assistance provided singly or in combination to individuals with developmental disabilities and their families to ensure accessibility, continuity, and accountability of such assistance; and

(D) follow-along services that ensure, through a continuing relationship, that the changing needs of individuals with developmental disabilities and their families are recognized and appropriately met.

(25) STATE.--The term 'State', except as provided in section 155, includes, 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, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect).

(26) STATE DEVELOPMENTAL DISABILITIES COUNCIL.--The term 'State Developmental Disabilities Council' means a Council established under section 124.

(27) STATE PRIORITY AREA.--The term 'State priority area' means priority area activities in an area considered essential by the State Developmental Disabilities Council.

(28) SUPPORTED EMPLOYMENT.--The term 'supported employment' means competitive work in integrated work settings for individuals with developmental disabilities--

(A)(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(B) who, because of the nature and severity of their disability, need intensive supported employment services or extended services in order to perform such work.

(29) SYSTEM COORDINATION AND COMMUNITY EDUCATION ACTIVITIES.--The term 'system coordination and community education activities' means activities that--

(A) eliminate barriers to access and eligibility for, supports, and other assistance;

(B) enhance systems design, redesign, and integration, including the encouragement of the creation of local service coordination and information and referral statewide systems;

(C) enhance individual, family, and citizen participation and involvement; and

(D) develop and support coalitions and individuals through training in self-advocacy, educating policymakers, and citizen leadership skills.

(30) UNIVERSITY AFFILIATED PROGRAM.--The term 'university affiliated program' means a university affiliated program established under section 152.

(31) UNSERVED AND UNDERSERVED.--The term 'unserved and underserved' includes populations such as individuals from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited-English proficiency, individuals from underserved geographic areas (rural or urban), and specific groups of individuals within the population of individuals with developmental disabilities, including individuals with developmental disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments.

SEC. 104. RECORDS AND AUDITS.

(a) RECORDS.--Each recipient of assistance under this title shall keep such records as the Secretary shall prescribe; including--

(1) records which fully disclose--

(A) the amount and disposition by such recipient of the proceeds of such assistance;

(B) the total cost of the project or undertaking in connection with which such assistance is given or used; and

(C) the amount of that portion of the cost of the project or undertaking supplied by other sources; and
(2) such other records as will facilitate an effective audit.

(b) ACCESS.--The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of assistance under this title that are pertinent to such assistance.

SEC. 106. STATE CONTROL OF OPERATIONS.

Except as otherwise specifically provided, nothing in this title shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any programs, services, and supports for individuals with developmental disabilities with respect to which any funds have been or may be expended under this title.

SEC. 107. REPORTS.

(a) DEVELOPMENTAL DISABILITIES COUNCIL REPORTS.--By January 1 of each year, each State Developmental Disabilities Council shall prepare and transmit to the Secretary a report of activities carried out during the preceding fiscal year with funds paid to the State under part B for such fiscal year. Each report shall be in a form prescribed by the Secretary by regulation and shall contain--

- (1) a description of activities and accomplishments ;
- (2) a comparison of accomplishments with the goals, objectives, and proposed activities specified in the State plan submitted under section 122 for such fiscal year;
- (3) an accounting of the manner in which funds paid to a State under part B for a fiscal year were expended;
- (4) a description of the State Developmental Disabilities Council's response to significant actions taken by the State with respect to any intermediate care facility for the mentally retarded in such State, and with respect to annual survey reports prepared pursuant to section 1902(a)(31) of the Social Security Act and correction or reduction plans prepared pursuant to section 1922 of such Act;

(5) a description of--

(A) the trends and progress made in the State concerning systemic change (including policy reform), capacity building, advocacy, and other actions on behalf of individuals with developmental disabilities, with attention to individuals who are traditionally

unserved and underserved, particularly individuals who are members of ethnic and racial minority groups, and individuals from underserved geographic areas;

(B) systemic change, capacity building, and advocacy activities that affect individuals with disabilities other than developmental disabilities; and

(C) a summary of actions taken to improve access and services for unserved and underserved groups;

(6) a description of resources leveraged by activities directly attributable to State Developmental Disabilities Council actions; and

(7) a description of the method by which the State Developmental Disabilities Council shall widely disseminate the annual report to affected constituencies as well as the general public and to assure that the report is available in accessible formats.

(b) PROTECTION AND ADVOCACY SYSTEM REPORTS.--By January 1 of each year, each protection and advocacy system established in a State pursuant to part C shall prepare and transmit to the Secretary a report which describes the activities, accomplishments, and expenditures of the system during the preceding fiscal year, including a description of the system's priorities for such fiscal year, the process used to obtain public input, the nature of such input, and how such input was used.

(c) SECRETARY REPORTS.--

(1) IN GENERAL.--By July 1 of each year the Secretary shall prepare and transmit to the President, the Congress, and the National Council on Disability a report which describes--

(A) the activities and accomplishments of programs supported under parts B, C, D, and E of this title;

(B) the progress made in States in improving the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities and any activities or services needed to improve such independence, productivity, and integration and inclusion ;

(C)(i) the trends and progress made in the States concerning systemic change (including policy reform), capacity building, advocacy, and other actions on behalf of individuals with developmental disabilities, with attention to individuals who are traditionally unserved and underserved, particularly individuals who are members of ethnic and racial minority groups, and individuals from underserved geographic areas;

(ii) systemic change, capacity building, and advocacy activities that affect individuals with disabilities other than developmental disabilities; and

(iii) a summary of actions taken to improve access and services for unserved and underserved groups;

(D) the significant Federal policies that impact

on the ability of States to address the needs of individuals with developmental disabilities attributable to physical impairments, mental impairments, or a combination of mental and physical impairments; and

(E) the number of meetings held by the interagency committee established under section 108(b) during the period for which the report is made, which agencies were represented at each such meeting, and the accomplishments of the interagency committee in comparison to the goals and objectives of such committee.

(2) INCLUSION OF COUNCIL AND SYSTEM INFORMATION.--In preparing the report required by this subsection, the Secretary shall include and analyze information submitted to the Secretary in the reports required under subsections (a) and (b) of this section.

SEC. 108. RESPONSIBILITIES OF THE SECRETARY.

(a) REGULATIONS.--The Secretary, not later than one hundred eighty days after the date of enactment of any Act amending the provisions of this title, shall promulgate such regulations as may be required for the implementation of such amendments.

(b) INTERAGENCY COMMITTEE.--Within 90 days after the date of enactment of the Developmental Disabilities Act of 1984, the Secretary of Health and Human Services and the Secretary of Education shall establish an interagency committee composed of representatives of the Administration on Developmental Disabilities, the Administration on Children, Youth and Families, the Administration on Aging, and the Health Resources and Services Administration of the Department of Health and Human Services, the Office of Special Education and Rehabilitative Services of the Department of Education, the Department of Labor, and such other Federal departments and agencies as the Secretary of Health and Human Services and the Secretary of Education consider appropriate. Such interagency committee shall meet regularly to coordinate and plan activities conducted by Federal departments and agencies for persons with developmental disabilities. Each meeting of the interagency committee (except for any meetings of any subcommittees of the committee) shall be open to the public. Notice of each meeting, and a statement of the agenda for the meeting, shall be published in the Federal Register not later than 14 days before the date on which the meeting is to occur.

SEC. 109. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

As a condition of providing assistance under this title, the Secretary shall require that each recipient of such assistance take affirmative action to employ and advance in employment qualified individuals with disabilities on the same terms and conditions required with respect to the employment of such individuals by the provisions of the Rehabilitation Act of 1973 that govern employment--

- (1) by State rehabilitation agencies and community rehabilitation programs; and
- (2) under Federal contracts and subcontracts.

SEC. 110. RIGHTS OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.

Congress makes the following findings respecting the rights of individuals with developmental disabilities:

(1) Individuals with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.

(2) The treatment, services, and habilitation for an individual with developmental disabilities should be designed to maximize the developmental potential of the individual and should be provided in the setting that is least restrictive of the individual's personal liberty.

(3) The Federal Government and the States both have an obligation to assure that public funds are not provided to any institutional or other residential program for individuals with developmental disabilities that--

(A) does not provide treatment, services, and habilitation which is appropriate to the needs of such individuals ; or

(B) does not meet the following minimum standards:

(i) Provision of a nourishing, well-balanced daily diet to the individuals with developmental disabilities being served by the program.

(ii) Provision to such individuals of appropriate and sufficient medical and dental services.

(iii) Prohibition of the use of physical restraint on such individuals unless absolutely necessary and prohibition of the use of such restraint as a punishment or as a substitute for a habilitation program.

(iv) Prohibition on the excessive use of chemical restraints on such individuals and the use of such restraints as punishments or as a substitute for a habilitation program or in quantities that interfere with services,

treatment, or habilitation for such individuals.

(v) Permission for close relatives of such individuals to visit them at reasonable hours without prior notice.

(vi) Compliance with adequate fire and safety standards as may be promulgated by the Secretary.

(4) All programs for individuals with developmental disabilities should meet standards which are designed to assure the most favorable possible outcome for those served, and--

(A) in the case of residential programs serving individuals in need of comprehensive health-related, habilitative, or rehabilitative services, which are at least equivalent to those standards applicable to intermediate care facilities for the mentally retarded promulgated in regulations of the Secretary on June 3, 1988, as appropriate when taking into account the size of the institutions and the service delivery arrangements of the facilities of the programs;

(B) in the case of other residential programs for individuals with developmental disabilities, which assure that care is appropriate to the needs of the individuals being served by such programs, assure that the individuals admitted to facilities of such programs are individuals whose needs can be met through services provided by such facilities, and assure that the facilities under such programs provide for the humane care of the residents of the facilities, are sanitary, and protect their rights; and

(C) in the case of nonresidential programs, which assure the care provided by such programs is appropriate to the individuals served by the programs.

The rights of individuals with developmental disabilities described in findings made in this section are in addition to any constitutional or other rights otherwise afforded to all individuals.

PART B--FEDERAL ASSISTANCE TO STATE DEVELOPMENTAL DISABILITIES COUNCILS

SEC. 121. PURPOSE.

The purpose of this part is to provide for allotments to support State Developmental Disabilities Councils in each State to promote, through systemic change, capacity building, and advocacy activities that are consistent with the policy under section 101(c)(2), the development of a consumer and family-centered, comprehensive system and a coordinated array of culturally competent services, supports, and other assistance designed to achieve independence, productivity, and integration

and inclusion into the community for individuals with developmental disabilities.

SEC. 122. STATE PLAN.

(a) IN GENERAL.--Any State desiring to take advantage of this part shall have a State plan submitted to, and approved by, the Secretary under this section.

(b) PLANNING CYCLE.--The plan under subsection (a) shall be reviewed annually and revised at least once every 3 years.

(c) STATE PLAN REQUIREMENTS.--In order to be approved by the Secretary under this section, a State plan shall meet the requirements in paragraphs (1) through (5).

(1) STATE COUNCIL.--The plan shall provide for the establishment and maintenance of a State Developmental Disabilities Council in accordance with section 124 and describe the membership of such Council.

(2) DESIGNATED STATE AGENCY.--The plan shall identify the agency or office within the State designated to support the State Developmental Disabilities Council in accordance with this section and section 124(d).

(3) COMPREHENSIVE REVIEW AND ANALYSIS.--The plan shall contain a comprehensive review and analysis of the extent to which services and supports are available to, and the need for services and supports for, individuals with developmental disabilities and their families. Such review and analysis shall include--

(A) a description of the services, supports and other assistance being provided to, or to be provided to, individuals with developmental disabilities and their families under other federally assisted State programs, plans, and policies that the State conducts and in which individuals with developmental disabilities are or may be eligible to participate, including programs relating to education, job training, vocational rehabilitation, public assistance, medical assistance, social services, child welfare, maternal and child health, aging, programs for children with special health care needs, children's mental health, housing, transportation, technology, comprehensive health and mental health, and such other programs as the Secretary may specify;

(B) a description of the extent to which agencies operating such other federally assisted State programs pursue interagency initiatives to improve and enhance services, supports, and other assistance for individuals with developmental disabilities; and

(C) an examination of the provision, and the need for the provision, in the State of the four Federal priority areas and an optional State priority area, including--

(i) an analysis of such Federal and State priority areas in relation to the degree of support for individuals with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical and mental impairments;

(ii) an analysis of criteria for eligibility for services, including specialized services and special adaptation of generic services provided by agencies within the State, that may exclude individuals with developmental disabilities from receiving such services;

(iii) an analysis of the barriers that impede full participation of members of unserved and underserved groups;

(iv) consideration of the report conducted pursuant to section 124(e);

(v) consideration of the data collected by the State educational agency under section 618 of the Individuals with Disabilities Education Act;

(vi) an analysis of services, assistive technology, or knowledge that may be unavailable to assist individuals with developmental disabilities;

(vii) an analysis of existing and projected fiscal resources;

(viii) an analysis of any other issues identified by the State Developmental Disabilities Council; and

(ix) the formulation of objectives in systemic change, capacity building, and advocacy to address the issues described in clauses (i) through (vi) for all subpopulations of individuals with developmental disabilities that may be identified by the State Developmental Disabilities Council.

(4) PLAN OBJECTIVES.--The plan shall--

(A) specify employment, and at the discretion of the State, any or all of the three other Federal priority areas and an optional State priority area that are selected by the State Developmental Disabilities Council for such Council's major systemic change, capacity building, and advocacy activities to be addressed during the plan period and describe the extent and scope of the Federal and State priority areas that will be addressed under the plan in the fiscal year;

(B) describe the specific 1-year and 3-year objectives to be achieved and include a listing of the programs, activities, and resources by which the State Developmental Disabilities Council will implement its systemic change, capacity building, and advocacy

activities in selected priority areas, and set forth the non-Federal share required to carry out each objective; and

(C) establish a method for the periodic evaluation of the plan's effectiveness in meeting the objectives described in subparagraph(B).

(5) ASSURANCES.--The plan shall contain or be supported by the assurances described in subparagraphs (A) through (N), which are satisfactory to the Secretary.

(A) USE OF FUNDS.--With respect to the funds paid to the State under section 125, the plan shall provide assurances that--

(i) such funds will be used to make a significant contribution toward enhancing the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities in various political subdivisions of the State;

(ii) such funds will be used to supplement and to increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant non-Federal funds;

(iii) such funds will be used to complement and augment rather than duplicate or replace services for individuals with developmental disabilities and their families who are eligible for Federal assistance under other State programs;

(iv) part of such funds will be made available by the State to public or private entities;

(v) not more than 25 percent of such funds will be allocated to the agency designated under section 124(d) for service demonstration by such agency and that such funds and demonstration services have been explicitly authorized by the State Developmental Disabilities Council;

(vi) not less than 65 percent of the amount available to the State under section 125 shall be expended for activities in the Federal priority area of employment activities, and, at the discretion of the State, activities in any or all of the three other Federal priority areas and an optional State priority area; and

(vii) the remainder of the amount available to the State from allotments under section 125 (after making expenditures required by clause (vi)) shall be used for the planning, coordination, administration, and implementation of priority area activities, and other activities relating to systemic change, capacity building, and advocacy to implement the responsibilities of

the State Developmental Disabilities Council pursuant to section 124(c).

(B) STATE FINANCIAL PARTICIPATION.--The plan shall provide assurances that there will be reasonable State financial participation in the cost of carrying out the State plan.

(C) CONFLICT OF INTEREST.--The plan shall provide assurances that the State Developmental Disabilities Council has approved conflict of interest policies as of October 1, 1994, to ensure that no member of such Council shall cast a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest.

(D) URBAN AND RURAL POVERTY AREAS.--The plan shall provide assurances that special financial and technical assistance shall be given to organizations that provide services, supports, and other assistance to individuals with developmental disabilities who live in areas designated as urban or rural poverty areas.

(E) PROGRAM STANDARDS.--The plan shall provide assurances that programs, projects, and activities assisted under the plan, and the buildings in which such programs, projects, and activities are operated, will meet standards prescribed by the Secretary in regulation and all applicable Federal and State accessibility standards.

(F) INDIVIDUALIZED SERVICES.--The plan shall provide assurances that any direct services provided to individuals with developmental disabilities and funded under this plan will be provided in an individualized manner, consistent with unique strengths, resources, priorities, concerns, abilities and capabilities of an individual.

(G) HUMAN RIGHTS.--The plan shall provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who are receiving services under programs assisted under this part will be protected consistent with section 110 (relating to rights of individuals with developmental disabilities).

(H) MINORITY PARTICIPATION.--The plan shall provide assurances that the State has taken affirmative steps to assure that participation in programs under this part is geographically representative of the State, and reflects the diversity of the State with respect to race and ethnicity.

(I) INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED SURVEY REPORTS.--The plan shall provide assurances that the State will provide the State Developmental Disabilities Council with a copy of each

annual survey report and plan of corrections for cited deficiencies prepared pursuant to section 1902(a)(31) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in such State not less than 30 days after the completion of each such report or plan.

(J) VOLUNTEERS.--The plan shall provide assurances that the maximum utilization of all available community resources including volunteers serving under the Domestic Volunteer Service Act of 1973 and other appropriate voluntary organizations will be provided for, except that such volunteer services shall supplement, and shall not be in lieu of, services of paid employees.

(K) EMPLOYEE PROTECTIONS.--The plan shall provide assurances that fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) will be provided to protect the interests of employees affected by actions under the plan to provide community living activities, including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

(L) STAFF ASSIGNMENTS.--The plan shall provide assurances that the staff and other personnel of the State Developmental Disabilities Council, while working for the Council, are responsible solely for assisting the Council in carrying out its duties under this part and are not assigned duties by the designated State agency or any other agency or office of the State.

(M) NONINTERFERENCE.--The plan shall provide assurances that the designated State agency or other office of the State will not interfere with systemic change, capacity building, and advocacy activities, budget, personnel, State plan development, or plan implementation of the State Developmental Disabilities Council, except that the designated State agency shall have the authority necessary to carry out the responsibilities described in section 124(d)(3).

(N) OTHER ASSURANCES.--The plan shall contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this part.

(d) PUBLIC REVIEW, SUBMISSION, AND APPROVAL.--

(1) PUBLIC REVIEW.--The plan shall be made available for public review and comment with appropriate and sufficient notice in accessible formats and take into account and respond to significant suggestions, as prescribed by the Secretary in regulation.

(2) CONSULTATION WITH THE DESIGNATED STATE AGENCY.-- Before the plan is submitted to the Secretary, the State Developmental Disabilities Council shall consult with the designated State agency to ensure that the State plan is consistent with State law and to obtain appropriate State plan assurances.

(3) PLAN APPROVAL.--The Secretary shall approve any State plan and annual updates of such plan that comply with the provisions of subsections (a), (b), and (c). The Secretary may not finally disapprove a State plan except after providing reasonable notice and an opportunity for a hearing to the State.

SEC. 124. STATE DEVELOPMENTAL DISABILITIES COUNCILS
AND DESIGNATED STATE AGENCIES.

(a) IN GENERAL.--Each State that receives assistance under this part shall establish and maintain a State Developmental Disabilities Council (hereafter in this section referred to as the 'Council') to promote, through systemic change, capacity building, and advocacy activities (consistent with section 101(c)(2)), the development of a consumer and family-centered comprehensive system and a coordinated array of culturally competent services, supports, and other assistance designed to achieve independence, productivity, and integration and inclusion into the community for individuals with developmental disabilities. The Council shall have the authority to fulfill its responsibilities described in subsection (c).

(b) COUNCIL MEMBERSHIP.--

(1) COUNCIL APPOINTMENTS.--The members of the Council of a State shall be appointed by the Governor of the State from among the residents of that State. The Governor shall select members of the Council, at his or her discretion, after soliciting recommendations from organizations representing a broad range of individuals with developmental disabilities and individuals interested in individuals with developmental disabilities, including the non-State agency members of the Council. The Council may, at the request of the Governor, coordinate Council and public input to the Governor regarding all recommendations. To the extent feasible, the membership of the Council shall be geographically representative of the State and reflect the diversity of the State with respect to race and ethnicity.

(2) MEMBERSHIP ROTATION.--The Governor shall make appropriate provisions to rotate the membership of the Council. Such provisions shall allow members to continue to serve on the Council until such members' successors are appointed. The Council shall notify the Governor regarding membership requirements, when vacancies remain unfilled for a significant period of time.

(3) REPRESENTATION OF AGENCIES AND ORGANIZATIONS.--Each

Council shall at all times include representatives of the principal State agencies (including the State agencies that administer funds provided under the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, the Older Americans Act, and title XIX of the Social Security Act), institutions of higher education, each university affiliated program in the State established under part D, the State protection and advocacy system established under part C, and local agencies, nongovernmental agencies, and private nonprofit groups concerned with services for individuals with developmental disabilities in the State in which such agencies and groups are located. Such representatives shall--

(A) have sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program such representatives represent; and

(B) recuse themselves from any discussion of grants or contracts for which such representatives' departments, agencies, or programs are grantees or applicants and comply with the conflict of interest policies required under section 122(c)(5)(C).

(4) REPRESENTATION OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.--Not less than 50 percent of the membership of each Council shall consist of individuals who are--

(A)(i) individuals with developmental disabilities;

(ii) parents or guardians of children with developmental disabilities; or

(iii) immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves; and

(B) not employees of a State agency that receives funds or provides services under this part, and who are not managing employees (as defined in section 1126(b) of the Social Security Act) of any other entity that receives funds or provides services under this part.

(5) COMPOSITION OF MEMBERSHIP WITH DEVELOPMENTAL DISABILITIES.--Of the members of the Council described in paragraph (4)--

(A) one-third shall be individuals with developmental disabilities as described in paragraph (4)(A)(i);

(B) one-third shall be parents of children with developmental disabilities as described in paragraph (4)(A)(ii), and immediate relatives or guardians of adults with mentally impairing developmental disabilities as described in paragraph (4)(A)(iii); and

(C) one-third shall be a combination of individuals described in paragraph (4)(A).

(6) INSTITUTIONALIZED INDIVIDUALS.--Of the members of the Council described in paragraph (5), at least one shall

be an immediate relative or guardian of an institutionalized or previously institutionalized individual with a developmental disability or an individual with a developmental disability who resides or previously resided in an institution. This paragraph shall not apply with respect to a State if such an individual does not reside in that State.

(c) COUNCIL RESPONSIBILITIES.--A Council, through Council members, staff, consultants, contractors, or subgrantees, shall have the responsibilities described in paragraphs (1) through (11).

(1) SYSTEMIC CHANGE, CAPACITY BUILDING, AND ADVOCACY ACTIVITIES.-- The Council shall serve as an advocate for individuals with developmental disabilities and conduct programs, projects, and activities that carry out the purpose under section 121.

(2) EXAMINATION OF PRIORITY AREAS.--Not less than once every 3 years, the Council shall examine the provision of and need for the four Federal priority areas and an optional State priority area to address, on a statewide and comprehensive basis, urgent needs for services, supports, and other assistance for individuals with developmental disabilities and their families, pursuant to section 122.

(3) STATE PLAN DEVELOPMENT.--The Council shall develop and submit to the Secretary the State plan required under section 122 after consultation with the designated State agency under the State plan. Such consultation shall be solely for the purposes of obtaining State assurances and ensuring consistency of the plan with State law.

(4) STATE PLAN IMPLEMENTATION.--The Council shall implement the State plan by conducting and supporting the Federal priority area of employment, not less than one of the remaining three Federal priority areas, and an optional State priority area as defined in section 102, through systemic change, capacity building, and advocacy activities such as those described in subparagraphs (A) through (K).

(A) DEMONSTRATION OF NEW APPROACHES.--The Council may conduct, on a time-limited basis, the demonstration of new approaches to enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities. This may include making successful demonstrations generally available through sources of funding other than funding under this part, and may also include assisting those conducting such successful demonstration activities to develop strategies for securing funding from other sources.

(B) OUTREACH.--The Council may conduct activities to reach out to assist and enable individuals with developmental disabilities and their families who otherwise might not come to the attention of the Council to obtain services, supports, and other

assistance, including access to special adaptation of generic services or specialized services.

(C) TRAINING.--The Council may conduct training for individuals with developmental disabilities, their families, and personnel (including professionals, paraprofessionals, students, volunteers, and other community members) to enable such individuals to obtain access to, or to provide, services, supports and other assistance, including special adaptation of generic services or specialized services for individuals with developmental disabilities and their families. To the extent that training activities are provided, such activities shall be designed to promote the empowerment of individuals with developmental disabilities and their families.

(D) SUPPORTING COMMUNITIES.--The Council may assist neighborhoods and communities to respond positively to individuals with developmental disabilities and their families by encouraging local networks to provide informal and formal supports and enabling communities to offer such individuals and their families access, resources, and opportunities.

(E) INTERAGENCY COLLABORATION AND COORDINATION.--The Council may promote interagency collaboration and coordination to better serve, support, assist, or advocate for individuals with developmental disabilities and their families.

(F) COORDINATION WITH RELATED COUNCILS, COMMITTEES, AND PROGRAMS.--The Council may conduct activities to enhance coordination with--

- (i) other councils or committees, authorized by Federal or State law, concerning individuals with disabilities (such as the State Interagency Coordinating Council under part H of the Individuals with Disabilities Education Act, the State Rehabilitation Advisory Council and the Statewide Independent Living Council under the Rehabilitation Act of 1973, the State Mental Health Planning Council under part B of title XIX of the Public Health Service Act and other similar councils or committees);

- (ii) parent training and information centers under Part D of the Individuals with Disabilities Education Act and other federally funded projects that assist parents of children with disabilities; and

- (iii) other groups interested in systemic change, capacity building, and advocacy for individuals with disabilities.

(G) BARRIER ELIMINATION, SYSTEMS DESIGN, AND CITIZEN PARTICIPATION.--The Council may conduct activities to eliminate barriers, enhance systems

design and redesign, and enhance citizen participation to address issues identified in the State plan.

(H) PUBLIC EDUCATION AND COALITION DEVELOPMENT.--The Council may conduct activities to educate the public about the capabilities, preferences, and needs of individuals with developmental disabilities and their families and to develop and support coalitions that support the policy agenda of the Council, including training in self-advocacy, educating policymakers, and citizen leadership skills.

(I) INFORMING POLICYMAKERS.--The Council may provide information to Federal, State, and local policymakers, including the Congress, the Federal executive branch, the Governor, State legislature, and State agencies, in order to increase the ability of such policymakers to offer opportunities and to enhance or adapt generic services or provide specialized services to individuals with developmental disabilities and their families by conducting studies and analyses, gathering information, and developing and disseminating model policies and procedures, information, approaches, strategies, findings, conclusions, and recommendations.

(J) PREVENTION.--The Council may conduct prevention activities as defined in section 102.

(K) OTHER ACTIVITIES.--The Council may conduct other systemic change, capacity building, and advocacy activities to promote the development of a consumer and family-centered comprehensive system and a coordinated array of culturally competent services, supports, and other assistance designed to achieve independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities throughout the State on a comprehensive basis.

(5) STATE PLAN MONITORING.--Not less than once each year, the Council shall monitor, review, and evaluate the implementation and effectiveness of the State plan in meeting such plan's objectives.

(6) REVIEW OF DESIGNATED STATE AGENCY.--The Council shall periodically review the designated State agency with respect to the activities carried out under this Act and make any recommendations for change to the Governor.

(7) REPORTS.--The Council shall submit to the Secretary, through the Governor, periodic reports on its activities as the Secretary may reasonably request, and keep such records and afford such access thereto as the Secretary finds necessary to verify such reports.

(8) BUDGET.--Each Council shall prepare, approve, and implement a budget using amounts paid to the State under this part to fund and implement all programs, projects, and activities under this part including--

(A) conducting such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council, reimbursing Council members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care and personal assistance services), paying compensation to a member of the Council, if such member is not employed or must forfeit wages from other employment, for each day such member is engaged in performing the duties of the Council, supporting Council member and staff travel to authorized training and technical assistance activities including inservice training and leadership development, and appropriate subcontracting activities;

(B) hiring and maintaining sufficient numbers and types of staff (qualified by training and experience) and obtaining the services of such professional, consulting, technical, and clerical personnel (qualified by training and experience), consistent with State law, as the Council determines to be necessary to carry out its functions under this part, except that such State shall not apply hiring freezes, reductions in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the Council from carrying out its functions under this Act; and

(C) directing the expenditure of funds for grants, contracts, interagency agreements that are binding contracts, and other activities authorized by the approved State plan.

(9) STAFF HIRING AND SUPERVISION.--A Council shall, consistent with State law, recruit and hire a Director of the Council, should the position of Director become vacant, and supervise and annually evaluate the Director. The Director shall hire, supervise, and annually evaluate the staff of the Council. Council recruitment and hiring of staff shall be consistent with Federal and State nondiscrimination laws. Dismissal of personnel shall be consistent with State law and personnel policies.

(10) STAFF ASSIGNMENTS.--The staff and other personnel, while working for the Council, shall be responsible solely for assisting the Council in carrying out its duties under this part and shall not be assigned duties by the designated State agency or any other agency or office of the State.

(11) CONSTRUCTION.--

(A) ACTIVITIES OF THE COUNCIL.--Nothing in this part shall be construed to preclude a Council from engaging in systemic change, capacity building, and advocacy activities for individuals with disabilities other than developmental disabilities, where appropriate.

(B) AUTHORITY OF THE COUNCIL.--Nothing in this Act shall be construed to authorize a Council to direct, control, or exercise any policymaking authority or administrative authority over any programs assisted under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) and the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.)

(d) DESIGNATED STATE AGENCY.--

(1) IN GENERAL.--Each State that receives assistance under this part shall designate the State agency that shall, on behalf of the State, provide support to the Council. After the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994, any designation of a State agency shall be made in accordance with the requirements of this subsection.

(2) DESIGNATION.--

(A) TYPE OF AGENCY.--Except as provided in this subsection, the designated State agency shall be--

(i) the Council if such Council may be the designated State agency under the laws of the State;

(ii) a State agency that does not provide or pay for services made available to individuals with developmental disabilities; or

(iii) a State office, including the immediate office of the Governor of the State or a State planning office.

(B) CONDITIONS FOR CONTINUATION OF STATE SERVICE AGENCY DESIGNATION.--

(i) DESIGNATION BEFORE ENACTMENT.--If a State agency that provides or pays for services for individuals with developmental disabilities was a designated State agency for purposes of this part on the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994, and the Governor of the State (or legislature, where appropriate and in accordance with State law) determines prior to June 30, 1994, not to change the designation of such agency, such agency may continue to be a designated State agency for purposes of this part.

(ii) CRITERIA FOR CONTINUED DESIGNATION.--The determination at the discretion of the Governor (or legislature as the case may be) shall be made after the Governor has considered the comments and recommendations of the general public and a majority of the non-State agency members of the Council with respect to the designation of such State agency, and after the Governor (or legislature as the case may be) has made an independent assessment that the designation of such agency shall not interfere with the budget,

personnel, priorities, or other action of the Council, and the ability of the Council to serve as an advocate for individuals with developmental disabilities.

(C) REVIEW OF DESIGNATION.--After April 1, 1994, the Council may request a review of the designation of the designated State agency by the Governor (or legislature as the case may be). The Council shall provide documentation concerning the reason the Council desires a change to be made and make a recommendation to the Governor (or legislature as the case may be) regarding a preferred designated State agency.

(D) APPEAL OF DESIGNATION.--After the review is completed under subparagraph (C), a majority of the non-State agency members of the Council may appeal to the Secretary for a review of the designation of the designated State agency if Council independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(3) RESPONSIBILITIES.--The designated State agency shall, on behalf of the State, have the responsibilities described in subparagraphs (A) through (F).

(A) SUPPORT SERVICES.--The designated State agency shall provide required assurances and support services as requested by and negotiated with the Council.

(B) FISCAL RESPONSIBILITIES.--The designated State agency shall--

(i) receive, account for, and disperse funds under this part based on the State plan required in section 122; and

(ii) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, funds paid to the State under this part.

(C) RECORDS, ACCESS, AND FINANCIAL REPORTS.--The designated State agency shall keep such records and afford access thereto as the Secretary and the Council determine necessary. The designated State agency, if other than the Council, shall provide timely financial reports at the request of the Council regarding the status of expenditures, obligations, liquidation, and the Federal and non-Federal share.

(D) NON-FEDERAL SHARE.--The designated State agency, if other than the Council, shall provide the required non-Federal share defined in section 125A(c).

(E) ASSURANCES.--The designated State agency shall assist the Council in obtaining the appropriate State plan assurances and in ensuring that the plan is consistent with State law.

(F) MEMORANDUM OF UNDERSTANDING.--On the request of the Council, the designated State agency shall enter into a memorandum of understanding with the Council

delineating the roles and responsibilities of the designated State agency.

(4) USE OF FUNDS FOR DESIGNATED STATE AGENCY RESPONSIBILITIES.--

(A) NECESSARY EXPENDITURES OF STATE DESIGNATED AGENCY.--At the request of any State, a portion of any allotment or allotments of such State under this part for any fiscal year shall be available to pay up to one-half (or the entire amount if the Council is the designated State agency) of the expenditures found necessary by the Secretary for the proper and efficient exercise of the functions of the State designated agency, except that not more than 5 percent of the total of the allotments of such State for any fiscal year, or \$50,000, whichever is less, shall be made available for the total expenditure for such purpose by the State agency designated under this subsection.

(B) CONDITION FOR FEDERAL FUNDING.--Amounts shall be provided under subparagraph (A) to a State for a fiscal year only on condition that there shall be expended from State sources for carrying out the responsibilities of the designated State agency under paragraph (3) not less than the total amount expended for carrying out such responsibilities from such sources during the previous fiscal year, except in such year as the Council may become the designated State agency.

(C) SUPPORT SERVICES PROVIDED BY OTHER AGENCIES.--With the agreement of the designated State agency, the Council may use or contract with agencies other than the designated State agency to perform the functions of the designated State agency.

(e) 1990 REPORT.--Not later than January 1, 1990, each Council shall complete the reviews, analyses, and final report described in this section.

(1) COMPREHENSIVE REVIEW AND ANALYSIS.--Each Council shall conduct a comprehensive review and analysis of the eligibility for services provided, and the extent, scope, and effectiveness of, services provided and functions performed by, all State agencies (including agencies that provide public assistance) that affect or that potentially affect the ability of individuals with developmental disabilities to achieve the goals of independence, productivity, and integration and inclusion into the community, including individuals with developmental disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments.

(2) CONSUMER SATISFACTION.--Each Council shall conduct a review and analysis of the effectiveness of, and consumer satisfaction with, the functions performed by, and services provided or paid for from Federal and State funds by, each

of the State agencies (including agencies that provide public assistance) responsible for performing functions for, and providing services to, all individuals with developmental disabilities in the State. Such review and analysis shall be based upon a survey of a representative sample of individuals with developmental disabilities receiving services from each such agency, and if appropriate, shall include such individuals' families.

(3) PUBLIC REVIEW AND COMMENT.--Each Council shall convene public forums, after the provision of notice within the State, in order to--

(A) present the findings of the reviews and analyses prepared under paragraphs (1) and (2);

(B) obtain comments from all interested individuals in the State regarding the unserved and underserved populations of individuals with developmental disabilities that result from physical impairment, mental impairment, or a combination of physical and mental impairments; and

(C) obtain comments on any proposed recommendations concerning the removal of barriers to services for individuals with developmental disabilities and to connect such services to existing State agencies by recommending the designation of one or more State agencies, as appropriate, to be responsible for the provision and coordination of such services.

(4) BASIS FOR STATE PLAN.--Each Council shall utilize the information developed pursuant to paragraphs (1), (2), and (3) in developing the State plan.

SEC. 125. STATE ALLOTMENTS.¹

(a) ALLOTMENTS.--

(1) IN GENERAL.--For each fiscal year, the Secretary shall, in accordance with regulations and this paragraph, allot the sums appropriated for such year under section 130 among the States on the basis of--

(A) the population,

(B) the extent of need for services for persons with developmental disabilities, and

(C) the financial need,

of the respective States. Sums allotted to the States under this section shall be used in accordance with approved State plans under section 122 for the provision under such plans of services for persons with developmental disabilities.

(2) ADJUSTMENTS.--Adjustments in the amounts of State allotments based on subparagraph (A), (B), and (C) of paragraph (1) shall be made not more often than annually. The Secretary shall notify States of any adjustment made and the percentage of the total appropriation for each State not

less than six months before the beginning of the fiscal year in which such adjustment is to take effect.

(3) MINIMUM ALLOTMENT FOR APPROPRIATIONS LESS OR EQUAL TO \$75,000,000.--

(A) IN GENERAL.--Except as provided in paragraph (4), for any fiscal year the allotment under this section--

(i) to each of American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Republic of Palau (until the Compact of Free Association with Palau takes effect) may not be less than the greater of--

(I) \$210,000; or

(II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)); and

(ii) to any State not described in clause (i) may not be less than the greater of--

(I) \$400,000; or

(II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)).

(B) REDUCTION OF ALLOTMENT.--Notwithstanding subparagraph (A), if the aggregate of the amounts to be allotted to each State pursuant to subparagraph (A) in any fiscal year exceeds the total amount appropriated under section 130 for such fiscal year, the amount to be allotted to a State for such fiscal year shall be an amount which bears the same ratio to the amount which is to be allotted to the State pursuant to such subparagraph as the total amount appropriated under section 130 for such fiscal years bears to the total of the amount required to be appropriated under such section for allotments to provide each State with the allotment required by such subparagraph.

(4) MINIMUM ALLOTMENT FOR APPROPRIATIONS IN EXCESS OF \$75,000,000.--

(A) IN GENERAL.--In any case in which amounts appropriated under section 130 for a fiscal year exceeds \$75,000,000, the allotment under this section for such fiscal year--

(i) to each of American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands or the Republic of Palau (until the Compact of Free Association with

Palau takes effect) may not be less than the greater of--

(I) \$220,000; or

(II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)); and

(ii) to any State not described in clause (i) may not be less than the greater of--

(I) \$450,000; or

(II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)).

(B) REDUCTION OF ALLOTMENT.--The requirements of paragraph (3)(B) shall apply with respect to amounts to be allotted to States under subparagraph (A), in the same manner and to the same extent as such requirements apply with respect to amounts to be allotted to States under paragraph (3)(A).

(5) STATE SUPPORTS, SERVICES, AND OTHER ACTIVITIES.--In determining, for purposes of paragraph (1)(B), the extent of need in any State for services for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services described, pursuant to section 122(c)(3)(A), in the State plan of the State.

(6) INCREASE IN ALLOTMENTS.--In any case in which the total amount appropriated under section 130 for a fiscal year exceeds the total amount appropriated under such section for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary shall increase each of the minimum allotments under paragraphs (3) and (4) by an amount which bears the same ratio to the amount of such minimum allotment (including any increase in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between--

(A) the total amount appropriated under section 130 for the fiscal year for which the increase in minimum allotment is being made, minus

(B) the total amount appropriated under section 130 for the immediately preceding fiscal year, bears to the total amount appropriated under section 130 for such preceding fiscal year.

(b) UNOBLIGATED FUNDS.--Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

(c) OBLIGATION OF FUNDS.--For the purposes of this part, State Interagency Agreements are considered valid obligations for the purpose of obligating Federal funds allotted to the State under this part.

(d) COOPERATIVE EFFORTS BETWEEN STATES.--Whenever the State plan approved in accordance with section 122 provides for cooperative or joint effort between States or between or among agencies, public or private, in more than one State, portions of funds allotted to one or more such cooperating States may be combined in accordance with the agreements between the agencies involved.

(e) REALLOTMENTS.--The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallocation by the Secretary from time to time, on such date or dates as the Secretary may fix (but not earlier than thirty days after the Secretary has published notice of the intention of the Secretary to make such reallocation in the Federal Register), to other States with respect to which such a determination has not been made in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amount so reallocated to a State for a fiscal year shall be deemed to be a part of its allotment under subsection (a) for such fiscal year.

SEC. 125A. FEDERAL AND NON-FEDERAL SHARE.

(a) AGGREGATE COSTS.--The Federal share of all projects in a State supported by an allotment to the State under this part may not exceed 75 percent of the aggregate necessary costs of all such projects as determined by the Secretary, except that--

(1) in the case of projects whose activities or products target individuals with developmental disabilities who live in urban or rural poverty areas, the Federal share of all such projects may not exceed 90 percent of the aggregate necessary costs of such projects or activities, as determined by the Secretary; and

(2) in the case of projects or activities undertaken by the Council or Council staff to implement State plan priority activities, the Federal share of all such activities may be up to 100 percent of the aggregate necessary costs of such activities.

(b) NONDUPLICATION.--In determining the amount of any State's Federal share of the expenditures incurred by such State under a State plan approved under section 122, the Secretary shall not consider--

(1) any portion of such expenditures that are financed by Federal funds provided under any provision of law other than section 125; and

(2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.

(c) NON-FEDERAL SHARE.--

(1) IN KIND CONTRIBUTIONS.--The non-Federal share of the cost of any project assisted by a grant or an allotment under this part may be provided in kind.

(2) CONTRIBUTIONS OF POLITICAL SUBDIVISIONS, PUBLIC, OR PRIVATE ENTITIES.--

(A) IN GENERAL.--Expenditures on projects or activities by a political subdivision of a State or by a public or private entity shall, subject to such limitations and conditions as the Secretary may by regulation prescribe, be considered to be expenditures by such State in the case of a project under this part.

(B) STATE CONTRIBUTIONS.--State contributions, including contributions by the designated State agency to provide support services to the Council pursuant to section 124(d)(4), may be counted as part of such State's non-Federal share of allotments under this part.

(3) VARIATIONS OF THE NON-FEDERAL SHARE.--The non-Federal share required on a grant-by-grant basis may vary.

SEC. 126. PAYMENTS TO THE STATES FOR PLANNING, ADMINISTRATION, AND SERVICES.

(a) STATE PLAN EXPENDITURES.--From each State's allotments for a fiscal year under section 125, the State shall be paid the Federal share of the expenditures, other than expenditures for construction, incurred during such year under its State plan approved under this part. Such payments shall be made from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend under the State plan, except that such adjustments as may be necessary shall be made on account of previously made underpayments or overpayments under this section.

(b) SUPPORT SERVICES.--Payments to States for support services provided by the designated State agency pursuant to section 124(d)(4) may be made in advance or by way of reimbursement, and in such installments as the Secretary may determine.

SEC. 127. WITHHOLDING OF PAYMENTS FOR PLANNING,
ADMINISTRATION, AND SERVICES.

Whenever the Secretary, after reasonable notice and opportunity for hearing to the State Planning Council and the appropriate State agency designated pursuant to section 122(b)(1) finds that--

(1) there is a failure to comply substantially with any of the provisions required by section 122 to be included in the State plan, particularly section 122(b)(3) or 122(f); or

(2) there is a failure to comply substantially with any regulations of the Secretary which are applicable to this part,

the Secretary shall notify such State Council and agency or agencies [sic] that further payments will not be made to the State under section 125 (or, in the discretion of the Secretary, that further payments will not be made to the State under section 125 for activities in which there is such failure), until the Secretary is satisfied that there will no longer be such failure. Until the Secretary is so satisfied, the Secretary shall make no further payment to the State under section 125, or shall limit further payment under section 125 to such State to activities in which there is no such failure.

SEC. 129. APPEALS BY STATES.

If any State is dissatisfied with the Secretary's action under section 122(c) or section 127, such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by the Secretary for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Secretary may modify or set aside the order of the Secretary. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of the fact and may modify the previous action of the Secretary, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to

review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Secretary's action.

AUTHORIZATION OF APPROPRIATIONS

SEC. 130. For allotments under section 125, there are authorized to be appropriated \$70,000,000 for fiscal year 1994 and such sums as may be necessary for each of the fiscal years 1995 and 1996.

PART C--PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

SEC. 141. PURPOSE.

It is the purpose of this part to provide for allotments to support a Protection and Advocacy system (hereafter referred to in this part as the 'system') in each State to protect the legal and human rights of individuals with developmental disabilities in accordance with section 142.

SEC. 142. SYSTEM REQUIRED.

(a) SYSTEM REQUIRED.--In order for a State to receive an allotment under part B--

(1) the State must have in effect a system to protect and advocate the rights of individuals with developmental disabilities;

(2) such system must--

(A) have the authority to--

(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of ethnic and racial minority groups; and

(ii) provide information on and referral to programs and services addressing the needs of individuals with developmental disabilities;

(B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the

system or if there is probable cause to believe that the incidents occurred;

(C) on an annual basis, develop a statement of objectives and priorities for the system's activities; and

(D) on an annual basis, provide to the public, including individuals with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical or mental impairments, and their representatives, as appropriate, non-State agency representatives of the State Developmental Disabilities Council, and the university affiliated program (if applicable within a State), an opportunity to comment on-

(i) the objectives and priorities established by the system and the rationale for the establishment of such objectives; and

(ii) the activities of the system, including the coordination with the advocacy programs under the Rehabilitation Act of 1973, the Older Americans Act of 1965, and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, and with other related programs, including the parent training and information centers, education ombudsman programs and assistive technology projects;

(E) establish a grievance procedure for clients or prospective clients of the system to assure that individuals with developmental disabilities have full access to services of the system;

(F) not be administered by the State Developmental Disabilities Council authorized under Part B ;

(G) be independent of any agency which provides treatment, services, or habilitation to individuals with developmental disabilities;

(H) have access at reasonable times and locations to any resident who is an individual with a developmental disability in a facility that is providing services, supports, and other assistance to such a resident;

(I) have access to all records of--

(i) any individual with developmental disabilities who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual person, has authorized the system to have such access;

(ii) any individual with developmental disabilities--

(I) who, by reason of such individual's mental or physical condition, is unable to authorize the system to have such access;

(II) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

(III) with respect to whom a complaint has been received by the system or with respect to whom as a result of monitoring or other activities there is probable cause to believe that such individual has been subject to abuse or neglect; and

(iii) any person with a developmental disability who has a legal guardian, conservator, or other legal representative with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy whenever--

(I) such representatives have been contacted by such system upon receipt of the name and address of such representatives;

(II) such system has offered assistance to such representatives to resolve the situation; and

(III) such representatives have failed or refused to act on behalf of the individual;

(J) hire and maintain sufficient numbers and types of staff, qualified by training and experience, to carry out such system's function except that such State shall not apply hiring freezes, reductions in force, or prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the system from carrying out its functions under the Act;

(K) have the authority to educate policymakers; and

(L) provide assurances to the Secretary that funds allotted to the State under this section will be used to supplement and increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds;

(3) the State must provide to the system a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to section 1902(a)(31) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in the State within 30 days after the completion of each such report or plan; and

(4) the agency implementing the system will not be redesignated unless there is good cause for the redesignation and unless--

(A) notice has been given of the intention to make such redesignation to the agency that is serving as the system including the good cause for such redesignation and the agency has been given an opportunity to respond to the assertion that good cause has been shown;

(B) timely notice and opportunity for public comment in an accessible format has been given to individuals with developmental disabilities or their representatives; and

(C) the system has the opportunity to appeal to the Secretary that the redesignation was not for good cause.

(b) AMERICAN INDIAN CONSORTIUM.--Upon application to the Secretary, an American Indian consortium, as defined in section 102, established to provide protection and advocacy services under this part, shall receive funding pursuant to subsection (c)(5). Such consortium shall coordinate activities with existing systems.

(c) ALLOTMENTS.--

(1) IN GENERAL.--To assist States in meeting the requirements of subsection (a), the Secretary shall allot to the States the amounts appropriated under section 143. Allotments and reallotment of such sums shall be made on the same basis as the allotments and reallotment are made under the first sentence of subsection (a)(1) and subsection (d) of section 125, except that in any case in which--

(A) the total amount appropriated under section 143 for a fiscal year is at least \$20,000,000--

(i) the allotment of each of American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect) for such fiscal year may not be less than the greater of--

(I) \$107,000; or

(II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)); and

(ii) the allotment of any State not described in clause (i) for such fiscal year may not be less than the greater of--

(I) \$200,000; or

(II) the greater of the allotments received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)).

(B) the total amount appropriated under section 143 for a fiscal year is less than \$20,000,000--

(i) the allotment of each of American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect) for such fiscal year may not be less than the greater of--

(I) \$80,000; or

(II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)); and

(ii) the allotment of any State not described in clause (i) for such fiscal year may not be less than the greater of--

(I) \$150,000; or

(II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)).

(2) INCREASE IN ALLOTMENTS.--In any case in which the total amount appropriated under section 143 for a fiscal year exceeds the total amount appropriated under such section for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary shall increase each of the minimum allotments under subparagraphs (A) and (B) of paragraph (1) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between--

(A) the total amount appropriated under section 143 for the fiscal year for which the increase in minimum allotment is being made, minus

(B) the total amount appropriated under section 143 for the immediately preceding fiscal year, bears to the total amount appropriated under section 143 for such preceding fiscal year.

(3) MONITORING THE ADMINISTRATION OF THE SYSTEM.--A State may use not more than 5 percent of any allotment under this subsection for the costs of monitoring the administration of the system required under subsection (a).

(4) REDUCTION OF ALLOTMENT.--Notwithstanding paragraph (1), if the aggregate of the amounts of the allotments to be made in accordance with such paragraph for any fiscal year

exceeds the total of the amounts appropriated for such allotments under section 143, the amount of a State's allotment for such fiscal year shall bear the same ratio to the amount otherwise determined under such paragraph as the total of the amounts appropriated for that year under section 143 bears to the aggregate amount required to make an allotment to each of the States in accordance with paragraph (1).

(5) TECHNICAL ASSISTANCE AND AMERICAN INDIAN CONSORTIUM.--In any case in which amounts appropriated under section 143 for a fiscal year exceeds \$24,500,000, the Secretary shall--

(A) use not more than 2 percent of the amounts appropriated to provide technical assistance (consistent with requests by such systems for such assistance in the year that appropriations reach \$24,500,000) to eligible systems with respect to activities carried out under this title; and

(B) provide grants in accordance with paragraph (1)(A)(i) to American Indian Consortiums to provide protection and advocacy services.

(d) UNOBLIGATED FUNDS.--Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

(e) GOVERNING BOARD.--In States in which the system is organized as a private nonprofit entity with a multimember governing board, or a public system with a multimember governing board, such governing board shall be selected according to the policies and procedures of the system, except that--

(1) the governing board shall be composed of members who broadly represent or are knowledgeable about the needs of the individuals served by the system and include individuals with developmental disabilities who are eligible for services, or have received or are receiving services, or parents, family members, guardians, advocates, or authorized representatives of such individuals;

(2) not more than 1/3 of the membership of the governing board may be appointed by the chief executive officer of the State involved, in the case of any State in which such officer has the authority to appoint the membership of the board;

(3) any vacancy in the board shall be filled not later than 60 days after the date on which the vacancy occurs; and

(4) in States in which the system is organized as a public system without a multimember governing or advisory board, the system shall establish an advisory council that shall--

(A) advise the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with developmental disabilities; and

(B) consist of a majority of individuals with developmental disabilities who are eligible for services, or have received or are receiving services, or parents, family members, guardians, advocates, or authorized representatives of such individuals.

(f) RECORDS.--As used in this section the term "records" includes reports prepared or received by any staff of a facility rendering care or treatment, or reports prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury or death occurring at such facility that describes incidents of abuse, neglect, injury, or death occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

(g) ACCESS TO RECORDS.--If the laws of a State prohibit a system from obtaining access to records of individuals with developmental disabilities the provisions of subparagraph (A) of paragraph (2) of subsection (a) shall not apply to such system before--

(1) the date such system is no longer subject to such prohibition; or

(2) the expiration of the 1-year period beginning on October 31, 1990, whichever occurs first.

(h) LEGAL ACTION.--

(1) IN GENERAL.--Nothing in this Act shall preclude the systems described under this section from bringing a suit on behalf of individuals with developmental disabilities against a State, or agencies or instrumentalities of a State.

(2) USE OF AMOUNTS FROM JUDGMENT.--Amounts received pursuant to paragraph (1) through court judgments and used by the system are limited to furthering the purpose of this part and shall not be used to augment payments to legal contractors or to award personal bonuses.

(i) PAYMENT TO SYSTEMS.--Notwithstanding any other provision of law, the Secretary shall pay directly to any system which complies with the provisions of this section the amount of such system's allotment under this section, unless the system delegates otherwise.

(j) DISCLOSURE OF INFORMATION.--For purposes of any periodic audit, report, or evaluation required under this Act, the Secretary shall not require a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

(k) PUBLIC NOTICE OF FEDERAL ONSITE REVIEW.--The Secretary shall provide advance public notice of any Federal programmatic and administrative review and solicit public comment on the system funded under this part through such notice. The findings of the public comment solicitation notice shall be included in the onsite visit report. The results of such review shall be distributed to the Governor of the State and to other interested public and private parties.

SEC. 143. AUTHORIZATION OF APPROPRIATIONS.

For allotments under section 142, there are authorized to be appropriated \$24,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

PART D--UNIVERSITY AFFILIATED PROGRAMS

SEC. 151. PURPOSE AND SCOPE OF ACTIVITIES

The purpose of this part is to provide for grants to university affiliated programs that are interdisciplinary programs operated by universities, or by public or nonprofit entities associated with a college or university, to provide a leadership role in the promotion of independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities through the provision of the following activities, which are conducted in a culturally competent manner:

(1) Interdisciplinary preservice preparation of students and fellows, including the preparation of leadership personnel.

(2) Community service activities that shall include community training and technical assistance for or with individuals with developmental disabilities, family members of individuals with developmental disabilities, professionals, paraprofessionals, students, and volunteers. Such activities may include state-of-the-art direct services including family support, individual support, personal assistance services, educational, vocational, clinical, health, prevention, or other direct services.

(3) Dissemination of information and research findings, which may include the empirical validation of activities relevant to the purposes described in paragraphs (1) and (2) and contributions to the development of new knowledge in the field of developmental disabilities.

SEC. 152. GRANT AUTHORITY.

(a) ADMINISTRATION AND OPERATIONS.--From appropriations under section 154(a), the Secretary shall make grants to university affiliated programs to assist in the administration and operation of the activities described in section 151. Grants may be awarded for a period not to exceed 5 years .

(b) TRAINING PROJECTS.--

(1) IN GENERAL.--From amounts appropriated under section 156(a), the Secretary shall make grants to university affiliated programs receiving grants under

subsection (a) to support training projects to train personnel to address the needs of individuals with developmental disabilities in areas of emerging national significance, as described in paragraph (3). Grants awarded under this subsection shall be awarded on a competitive basis and may be awarded for a period not to exceed 5 years.

(2) ELIGIBILITY LIMITATIONS.--A university affiliated program shall not be eligible to receive funds for training projects under this subsection unless--

(A) such program has operated for at least 1 year; or

(B) the Secretary determines that such program has demonstrated the capacity to develop an effective training project during the first year such program is operated.

(3) AREAS OF FOCUS.--Training projects under this subsection shall train personnel to address the needs of individuals with developmental disabilities in the areas of emerging national significance described in subparagraphs (A) through (H).

(A) EARLY INTERVENTION.--Grants under this subsection for training projects with respect to early intervention services shall be for the purpose of assisting university affiliated programs in providing training to family members of children with developmental disabilities and personnel from all disciplines involved with interdisciplinary intervention to infants, toddlers, and preschool age children with developmental disabilities. Such training projects shall include instruction on family-centered, community-based, coordinated care for infants, toddlers, and preschool age children with developmental disabilities and their families.

(B) AGING.--Grants under this subsection for training projects with respect to aging and developmental disabilities shall be for the purpose of supporting the planning, design, and implementation of coordinated interdisciplinary training programs between existing aging or gerontological programs and university affiliated programs in order to prepare professional staff to provide services for aging individuals with developmental disabilities and their families.

(C) COMMUNITY SERVICES.--Grants under this subsection for training projects with respect to community services shall be for the purpose of providing training that enhances direct supports and services for individuals with developmental disabilities, including training to community members, families, individuals with developmental disabilities, and community-based direct service providers. The Secretary shall ensure that all grants under this

subparagraph are made only to university affiliated programs that involve community-level direct support services in the preparation of the application for such grant and that assure that any training under the university affiliated program will be coordinated with local community services and support systems and with State, local, and regional governmental or private agencies responsible for the planning or delivery of services to individuals with developmental disabilities.

(D) POSITIVE BEHAVIORAL SUPPORTS.--Grants awarded under this subsection for training projects with respect to positive behavioral supports shall be for the purpose of assisting university affiliated programs in providing training to family members of individuals with developmental disabilities and personnel in methods of developing individual supports that maximize opportunities for independence, productivity, and integration and inclusion into the community for individuals with developmental disabilities and severe behavior problems. Such training projects shall provide training to--

(i) address ethical and legal principles and standards, including the role of personal and cultural values in designing assessments and interventions;

(ii) address appropriate assessment approaches that examine the range of factors that contribute to problem behavior;

(iii) address the development of a comprehensive plan that considers the needs and preferences of an individual with a developmental disability;

(iv) address the competence in the types of skills training, environmental modification, and incentive procedures that encourage alternative behaviors;

(v) familiarize training participants with crisis intervention approaches and the separate role of such approaches as short-term emergency procedures;

(vi) familiarize training participants with medical interventions and how to evaluate the effect of such interventions on behavior; and

(vii) address techniques for evaluating the outcomes of interventions.

(E) ASSISTIVE TECHNOLOGY SERVICES.--Grants under this subsection for training projects with respect to assistive technology services shall be for the purpose of assisting university affiliated programs in providing training to personnel who provide, or will provide, assistive technology services and devices to

individuals with developmental disabilities and their families. Such projects may provide training and technical assistance to improve access to assistive technology services for individuals with developmental disabilities and may include stipends and tuition assistance for training project participants. Such projects shall be coordinated with State technology coordinating councils wherever such councils exist.

(F) AMERICANS WITH DISABILITIES ACT.--Grants under this subsection for training projects with respect to the provisions of the Americans with Disabilities Act of 1990 shall be for the purpose of assisting university affiliated programs in providing training to personnel who provide, or will provide, services to individuals with developmental disabilities, and to others concerned with individuals with developmental disabilities.

(G) COMMUNITY TRANSITION.--Grants under this subsection for training projects with respect to transition from school to adult life shall be for the purpose of assisting university affiliated programs in providing training to individuals with developmental disabilities and their families, generic community agencies, advocacy organizations and others in order to stimulate the development and improvement of policies, procedures, systems, and other mechanisms that prepare youth with developmental disabilities to enter adult life. Such projects shall be coordinated with State transition projects funded under section 626(e) of the Individuals with Disabilities Education Act, where such State transition projects exist.

(H) OTHER AREAS.--Grants under this subsection for training projects with respect to programs in other areas of national significance shall be for the purpose of training personnel in an area of special concern to the university affiliated program, and shall be developed in consultation with the State Developmental Disabilities Council.

(4) COURSES, TRAINEESHIPS AND FELLOWSHIPS.--Grants under this subsection may be used by university affiliated programs to-

(A) assist in paying the costs of courses of training or study for personnel to provide services for individuals with developmental disabilities and their families; and

(B) establish fellowships or traineeships providing such stipends and allowances as may be determined by the Secretary.

(5) PROHIBITED ACTIVITIES.--Grants awarded under this subsection shall not be used for administrative expenses for the university affiliated program under subsection (a).

(6) CRITERIA.--Grants awarded under this subsection shall meet the criteria described in subparagraphs (A) and (B).

(A) APPLICATION.--An application that is submitted for a grant under this subsection shall present evidence that training projects assisted by funds awarded under this section are--

- (i) competency and value based;
- (ii) designed to facilitate independence, productivity, and integration and inclusion for individuals with developmental disabilities; and
- (iii) evaluated utilizing state-of-the-art evaluation techniques in the programmatic areas selected.

(B) GENERAL PROJECT REQUIREMENTS.--Training projects under this subsection shall--

- (i) represent state-of-the-art techniques in areas of critical shortage of personnel that are identified through consultation with the consumer advisory committee described in section 153(d) and the State Developmental Disabilities Council;
- (ii) be conducted in consultation with the consumer advisory committee described in section 153(d) and the State Developmental Disabilities Council;
- (iii) be integrated into the appropriate university affiliated program and university curriculum;
- (iv) be integrated with relevant State agencies in order to achieve an impact on statewide personnel and service needs;
- (v) to the extent practical, be conducted in environments where services are actually delivered;
- (vi) to the extent possible, be interdisciplinary in nature;
- (vii) utilize strategies to recruit and train members from racial and ethnic minority backgrounds and individuals with disabilities; and
- (viii) address the issue of cultural competence in the training provided.

(c) SUPPLEMENTAL AWARDS.--From amounts appropriated under section 156(a), the Secretary may make grants to university affiliated programs receiving grants under subsection (a) to support one or more of the following activities:

- (1) The provision of interdisciplinary training, community training and technical assistance, community services, or dissemination of information to individuals with developmental disabilities, family members of such individuals, professionals, volunteers, or other personnel to enable such individual, family members, professionals, volunteers, or personnel to provide services to increase or

maintain the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities and not otherwise specified in subsection (b) .

(2) The conduct of an applied research program designed to produce more efficient and effective methods for the delivery of services to individuals with developmental disabilities, and the training of professionals, paraprofessionals, and family members who provide such services.

(d) FEASIBILITY STUDIES.--From the amounts appropriated under section 156(a) the Secretary may make a grant to a university or a public or nonprofit entity which is associated with, or is an integral part of, a college or university, to study the feasibility of establishing a university affiliated program. Such study shall include an assessment of the needs of the area in which the university is located for such a program or center. The amount of a grant under this subsection may not exceed \$35,000 for any fiscal year. A grant under this subsection may only be made in a State in which there is no university affiliated program.

SEC. 153. APPLICATIONS.

(a) IN GENERAL.--No grants may be made under section 152(a) unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner, and contain such information, as the Secretary may require.

(b) STANDARDS.--Not later than 12 months after the date of the enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994, the Secretary shall establish by regulation standards for university affiliated programs. Such standards shall reflect the special needs of all individuals with developmental disabilities who are of various ages, and shall include performance standards relating to each of the activities described in section 151.

(c) ASSURANCES.--The application under subsection (a) shall be approved by the Secretary only if the application contains or is supported by reasonable assurance that--

(1) the making of the grant will--

(A) not result in any decrease in the use of State, local, and other non-Federal funds for services for individuals with developmental disabilities and for training of individuals to provide such services, which funds would (except for such grant) be made available to the applicant; and

(B) be used to supplement and, to the extent practicable, increase the level of such funds;

(2)(A) the applicant's program is in full compliance with the standards established under subsection (b), or

(B)(i) the applicant will make substantial progress toward bringing the program into compliance with such standards, and (ii) the program will, not later than three years after the date of approval of the initial application or the date standards are promulgated under subsection (b), whichever is later, fully comply with such standards;

(3) the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who are receiving services under programs assisted under this part will be protected consistent with section 110 (relating to rights of individuals with developmental disabilities);

(4) the activities conducted under this part are consistent with, and to the extent feasible, complement and further, the objectives contained in the State plan required under section 122; and

(5) before the submission of such application, an opportunity for comment has been provided to the general public and the State Developmental Disabilities Council of the State in which the program will be conducted.

(d) CONSUMER ADVISORY COMMITTEE.--The Secretary shall only make grants under section 152(a) to university affiliated programs that establish a consumer advisory committee comprised of individuals with developmental disabilities, family members of individuals with developmental disabilities, representatives of State protection and advocacy systems, State developmental disabilities councils (including State service agency directors), local agencies, and private nonprofit groups concerned with providing services for individuals with developmental disabilities, which may include representatives from parent training and information centers. The consumer advisory committee shall reflect the racial and ethnic diversity of the geographic area served by the university affiliated program.

(e) FEDERAL SHARE.--

(1) IN GENERAL.--The Federal share of any project to be provided through grants under this part may not exceed 75 percent of the necessary cost of such project, as determined by the Secretary, except that if the project activities or products target individuals with developmental disabilities who live in an urban or rural poverty area, the Federal share may not exceed 90 percent of the project's necessary costs as so determined by the Secretary.

(2) PROJECT EXPENDITURES.--For the purpose of determining the Federal share with respect to any project, expenditures on that project by a political subdivision of the State or by a public or private entity shall, subject to such limitations and conditions as the Secretary may by regulation prescribe, be considered to be expenditures made by a university affiliated program under this part.

(f) PEER REVIEW.--

(1) IN GENERAL.--The Secretary shall require appropriate technical and qualitative peer review of applications for assistance under this part by peer review groups established under paragraph (4), including on-site visits or inspections as necessary.

(2) REGULATIONS.--Regulations promulgated under paragraph (1) shall provide that the review of the application required by such paragraph shall be conducted by groups established under paragraph (4) that are composed of non-Federal individuals who, by experience and training, are highly qualified to assess the comparative quality of applications for assistance.

(3) APPROVAL.--

(A) IN GENERAL.--The Secretary may approve an application under this part only if such application has been recommended by a peer review group that has conducted the peer review required under paragraph (1).

(B) APPLICABILITY.--This paragraph shall apply to the approval of grant applications received for fiscal year 1990 and succeeding fiscal years.

(4) ESTABLISHMENT OF PEER REVIEW GROUPS.--The Secretary, acting through the Commissioner of the Administration on Developmental Disabilities, may, notwithstanding--

(A) the provisions of title 5, United States Code, concerning appointments to the competitive service;

(B) the provisions of chapter 51, and subchapter III of chapter 53 of title 5, United States Code, concerning classification and General Schedule pay rates;

establish such peer review groups as are necessary to carry out this subsection, and appoint and set the rates of pay for members of such groups.

(5) WAIVERS OF APPROVAL.--The Secretary may waive the provisions of paragraph (3) concerning approval of an application if the Secretary determines that exceptional circumstances warrant such a waiver.

(g) REVIEW BY OTHER FEDERAL AGENCIES.--The Secretary shall establish such a process for the review of applications for grants under section 152(a) as will ensure, to the maximum extent feasible, that each Federal agency that provides funds for the direct support of the applicant's program reviews the application.

SEC. 154. PRIORITY FOR GRANT AWARDS.

(a) IN GENERAL.--In awarding and distributing grant funds under this part, the Secretary, subject to the availability of appropriations, shall award and distribute grant funds in accordance with the following order of priorities:

(1) EXISTING STATE UNIVERSITY AFFILIATED PROGRAMS.--First priority shall be given, with respect to the provision of grant awards under section 152(a) in the amount of \$200,000, to an existing State university affiliated program that meets the requirements under section 153.

(2) UNSERVED STATES.--Second priority shall be given, with respect to the provision of grant awards under section 152(a) in the amount of \$200,000, to a university or public or nonprofit entity associated with a college or university that desires to establish a university affiliated program in a State that is unserved by a university affiliated program as of the date of enactment of the Developmental Assistance and Bill of Rights Act Amendments of 1994.

(3) TRAINING PROJECTS IN ALL UNIVERSITY AFFILIATED PROGRAMS.--Third priority shall be given, with respect to the provision of grant awards, to each university affiliated program that receives funding under section 152(a) and that meets the eligibility limitations under section 152(b) to the establishment of training projects under section 152(b) in the amount of \$90,000 in each such program.

(4) INCREASED FUNDING FOR TRAINING PROJECTS.--Fourth priority shall be given, with respect to the provision of grant awards, to the provision of an increase in the amount of a training project grant award under section 152(b) to \$100,000.

(5) INCREASED FUNDING FOR UNIVERSITY AFFILIATED PROGRAMS.--Fifth priority shall be given, with respect to the provision of grant awards, to the provision of an increase in the amount of a university affiliated program grant award under section 152(a) to \$250,000.

(6) ADDITIONAL TRAINING.--Sixth priority shall be given, with respect to the provision of grant awards, to an existing university affiliated program in a State that is served by such program under section 152(a) to provide additional training under subsection (b) or (c) of section 152 within such State or other geographic regions, or to a university or public or nonprofit entity associated with a college or university that desires to establish another university affiliated program within such State under section 152(a). All applications submitted to the Secretary for such grant awards shall document plans for coordinating activities with an existing university affiliated program in the State (if applicable) and in consultation with the State Developmental Disabilities Council.

(b) ADDITIONAL PROGRAMS.--For purposes of making grants under subsection (a)(6), the Secretary shall consider applications for grants for university affiliated programs--

(1) for States that are currently underserved by a university affiliated program; and

(2) that are in addition to the total number of university affiliated programs receiving grants under this subsection for the preceding fiscal year.

(c) SINGLE APPLICATION.--When every State is served by a university affiliated program under section 152(a) in the amount of \$200,000 and every such program has been awarded a training grant under section 152(b) in the amount of \$90,000, the Secretary may accept applications under such sections in a single application.

SEC. 155. DEFINITION.

For purposes of this part, the term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Guam.

SEC. 156. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.--For the purpose of making grants under subsections (a) through (e) of section 152, there are authorized to be appropriated \$19,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(b) LIMITATION.--With respect to peer review or other activities directly related to peer review, the Secretary may not use--

(1) for fiscal year 1994, more than \$300,000 of the funds made available under subsection (a) for such review or such other activities; and

(2) for any succeeding fiscal year, more than the amount of the funds made available under paragraph (1) adjusted to take into account the increase in the Consumer Price Index for such fiscal year for such review or such other activities.

PART E--PROJECTS OF NATIONAL SIGNIFICANCE.

SEC. 161. PURPOSE.

The purpose of this part is to provide for grants and contracts for projects of national significance that support the development of national and State policy to enhance the independence, productivity, and integration and inclusion of individuals with developmental disabilities through--

(1) data collection and analysis;

(2) technical assistance to enhance the quality of State Developmental Disabilities Councils, protection and advocacy systems, and university affiliated programs; and

(3) other projects of sufficient size and scope that hold promise to expand or improve opportunities for

individuals with developmental disabilities, including--

(A) technical assistance for the development of information and referral systems;

(B) educating policymakers;

(C) Federal interagency initiatives;

(D) the enhancement of participation of racial and ethnic minorities participation in public and private sector initiatives in developmental disabilities;

(E) transition of youth with developmental disabilities from school to adult life; and

(F) special pilots and evaluation studies to explore the expansion of programs under part B to individuals with severe disabilities other than developmental disabilities.

SEC. 162. GRANT AUTHORITY.

(a) IN GENERAL.--The Secretary--

(1) shall make grants to and enter into contracts with public or nonprofit private entities for projects of national significance relating to individuals with developmental disabilities to--

(A) support ongoing data collection on expenditures, residential services and employment, and develop an ongoing data collection system, including data collection on the accomplishments of State Developmental Disabilities Councils, protection and advocacy systems, and university affiliated programs that includes data on the participation of individuals from racial and ethnic minority backgrounds; and

(B) provide technical assistance (including research, training, and evaluation) that expands or improves the effectiveness of State Developmental Disabilities Councils under part B, protection and advocacy systems under part C, and university affiliated programs under part D, including the evaluation and assessment of the quality of services provided to individuals with developmental disabilities and other activities performed by programs under parts B, C, and D; and

(2) may make grants to and enter into contracts with public or nonprofit private entities for projects of national significance relating to individuals with developmental disabilities to conduct other nationally significant initiatives of sufficient size and scope that hold promise of expanding or otherwise improving opportunities for individuals with developmental disabilities, including--

(A) conducting research and providing technical assistance to assist States to develop statewide, comprehensive information and referral and service

coordination systems for individuals with developmental disabilities and their families that are culturally competent and that improve supportive living and quality of life opportunities that enhance recreation, leisure, and fitness;

(B) educating policymakers, including the training of self-advocates and family members of individuals with developmental disabilities;

(C) pursuing Federal interagency initiatives that enhance the ability of Federal agencies to address the needs of individuals with developmental disabilities and their families;

(D) expanding or otherwise improving opportunities for individuals with developmental disabilities who are from racial and ethnic minority backgrounds including projects to encourage members of such groups to participate in the Developmental Disabilities Programs authorized under parts B, C, and D, and increase the involvement of students and professionals of such groups in the provision of services to, supports to, and advocacy for, individuals with developmental disabilities.

(E) conducting research and providing technical assistance to policymakers concerning the transition of youth with developmental disabilities from school to work and to adult life.

(b) INVESTIGATIONS.--

(1) IN GENERAL.--Not later than April 1, 1994, there shall be a special initiative to support grants to investigate the expansion of part B activities to individuals with severe disabilities other than developmental disabilities. Such investigations shall be implemented through the following activities:

(A) A national study of State Developmental Disabilities Councils that are currently mandated under State law or Executive order to focus on individuals with disabilities other than developmental disabilities. Such study shall be completed not later than June 30, 1995.

(B) Pilot initiatives by not more than five additional State Developmental Disabilities Councils, in consultation with and with the support of the protection and advocacy system and the university affiliated program in such State, to study the implications of such expansion in States in which such Councils are located and to delineate barriers, opportunities, and critical issues. Such initiatives shall be completed not later than January 1996.

(C) A national study of the process and outcomes of the pilot studies conducted under subparagraph (B). Such study shall be completed not later than May 30, 1996.

(2) APPLICATION.--No grant may be made under this subsection unless an applicant submits to the Secretary an application, and meets the additional application requirements, under subsection (c).

(c) APPLICATION AND OTHER GRANT REQUIREMENTS.--No grant may be made under subsection (a) unless--

(1) an application has been submitted to the Secretary in such form, in such manner, and containing such information as the Secretary shall by regulation prescribe and such application has been approved by the Secretary;

(2) each State in which the applicant's project will be conducted has a State plan approved under section 122;

(3) the application provides assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who are receiving services under projects assisted under this part will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities);

(4) the applicant demonstrates, where appropriate, how the project will address, in whole or in part, the needs of individuals with developmental disabilities from racial and ethnic minority backgrounds; and

(5) the Secretary provides to the State Developmental Disabilities Council in such State an opportunity to review the application for such project and to submit its comments on the application.

(d) PRIORITIES FOR GRANTS.--Not later than January 1 of each year, the Secretary shall publish in the Federal Register proposed priorities for grants and contracts under this part and shall allow a period of 60 days for public comments and suggestions concerning such proposed priorities. After analyzing and considering such comments, the Secretary shall publish final priorities for such grants and contracts in the Federal Register.

(e) GRANT PAYMENTS.--Payments under grants under subsection (a) may be made in advance or by way of reimbursement and at such intervals and on such conditions, as the Secretary finds necessary. The amount of any grant under subsection (a) shall be determined by the Secretary, except as otherwise provided under section 163.

(f) LIST OF RECIPIENTS.--Not later than September 1 of each fiscal year, the Secretary shall publish in the Federal Register a list of the recipients of grants and contracts in each of the areas authorized in subsections (a) and (b), including a brief description of the project, and the amount of funds granted to each such project. The amounts for such grants and contracts shall total the amount appropriated under this part for such fiscal year.

AUTHORIZATION OF APPROPRIATIONS

SEC. 163. (a) To carry out this part, there are authorized to be appropriated \$4,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1995.

(b) LIMITATIONS.--

(1) PROJECTS OF NATIONAL SIGNIFICANCE.--At least 8 percent, but in no event less than \$300,000, of the amounts appropriated pursuant to subsection (a) shall be used to carry out the provisions of section 162(a)(1)(B).

(2) INVESTIGATIONS.--

(A) IN GENERAL.--The additional authority to fund projects under section 162(b) shall not be construed as requiring the Secretary to supplant funding for other priorities described in this part.

(B) TIME LINE FOR FUNDING.--If amounts are available to carry out subparagraphs (A), (B), and (C) of section 162(b)(1), the Administration shall provide funding to carry out such subparagraphs not later than May 1 of the fiscal year in which such funds become available.

(3) PROGRAMMATIC REVIEWS OR OTHER ADMINISTRATIVE ACTIVITIES.--The Secretary may not use the funds made available under subsection (a) for programmatic reviews as prescribed by regulation or other administrative activities under parts B, C, and D.

(4) TECHNICAL ASSISTANCE FOR PROTECTION AND ADVOCACY SYSTEMS.--If technical assistance to improve the effectiveness of protection and advocacy systems under part C is provided under section 142(c)(5)--

(A) no funding for the provision of such technical assistance to protection and advocacy systems shall be provided under this part; and

(B) the amount set aside for technical assistance under section 162(a)(1)(B) shall be proportionally reduced.

1. Section 213 of Pub. L. 103-230, shown in full below, directs the Secretary to do a study of the State allotment formula under current law, but does not establish or modify any section of the Developmental Disabilities Assistance and Bill of Rights Act.

SEC. 213. REVIEW, ANALYSIS, AND REPORT.

(a) REVIEW AND ANALYSIS.--The Secretary of Health and Human Services shall review and analyze the allotment formula in effect under parts B and C of title I of the Developmental Disabilities Assistance and Bill of Rights Act prior to the date of enactment of this Act, including the factors described in such parts, and the data elements and measures used by the Secretary, to determine whether such formula is consistent with the purpose of the Act.

(b) ALTERNATIVE FORMULAS.--The Secretary of Health and Human Services shall identify alternative formulas for allocating funds, consistent with the purpose of this Act.

(c) REPORT.--Not later than October 1, 1995, the Secretary of Health and Human Services shall submit a report on the review conducted under subsection (a) and a copy of the alternative formulas identified under subsection (b) to the Committee on Labor and Human Resources of the Senate and to the Committee on Energy and Commerce of the House of Representatives.