

Overview and Discussion of Federal Fiscal Regulations

**U.S. Department of Education
Office of Special Education and Rehabilitative Services
Rehabilitation Services Administration**

Maintenance of Effort

- Section 111(a)(2)(B) of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by title IV of the Workforce Innovation and Opportunity Act (WIOA), and final § 361.62(a) require the Secretary to reduce a State's annual VR program allotment to satisfy a maintenance of effort (MOE) deficit for any previous fiscal year.
- Prior to the enactment of WIOA, RSA could only reduce the subsequent year's grant to satisfy a MOE deficit from the preceding fiscal year. If a MOE deficit was discovered after it was too late to reduce the succeeding year's grant, RSA was required to seek recovery through an audit disallowance, whereby the State repaid the deficit amount with non-Federal funds.

Topics

Maintenance of Effort

Third-Party Cooperative Arrangements

Fiscal Accountability for Pre-employment Transition Services

Maintenance of Effort (cont.)

- The Secretary's ability to reduce any subsequent year's VR program grant, for any prior year's MOE deficit, benefits VR agencies as they are no longer required to repay MOE shortfalls with non-Federal funds, thereby maintaining the availability of non-Federal funds, in those instances, for obligation and expenditure as match under the VR program.
- As has been its long-standing practice, RSA notifies a VR agency in writing of a MOE deficit prior to reducing a grantee's award. The letter also provides details regarding the circumstances and requirements for requesting a MOE waiver.

Third-Party Cooperative Arrangements

During the recent on-site technical assistance visits, RSA identified several areas of concern regarding how VR agencies are using Third-Party Cooperative Arrangements (TPCA) in the provision of pre-employment transition services. The next few slides will cover some of the issues RSA has identified.

Third-Party Cooperative Arrangements (cont.)

- The designated State unit may enter into a TPCA for providing VR services, including pre-employment transition services required activities, with another State agency or a local public agency that is providing part or all of the non-Federal share (§ 361.28(a)).
- TPCAs must be used solely for the provision of ***VR services***, including pre-employment transition services, to applicants and recipients of services from the VR program (34 CFR 361.28(a)(2)).

Third-Party Cooperative Arrangements (cont.)

- VR agencies may not use TPCAs for the provision of case management, other administrative activities, or any of the pre-employment transition services that are not direct services to students with disabilities (e.g., the “authorized” and “coordination” activities described in section 113(c) and (d) of the Rehabilitation Act and 34 CFR 361.48(a)(3) and (4), respectively). RSA has identified that some agencies are including the “authorized” or coordination pre-employment transition services in TPCAs.

Third-Party Cooperative Arrangements (cont.)

- Although authorized activities and coordination may indirectly benefit applicants and recipients of VR services, they are not services that are provided directly to applicants and recipients, as required by 34 CFR 361.28(a)(2) of the VR regulations.
- TPCAs must be entered into only with public agencies – not private entities.

Third-Party Cooperative Arrangements (cont.)

- The services provided by the cooperating agency must not be the customary or typical services provided by that agency, but must be new services that have a VR focus or existing services that have been modified, adapted, expanded, or reconfigured to have a VR focus (§ 361.28(a)(1)).
- The purpose of this requirement is to ensure that VR funds are not being used to supplant what the State is already providing under other programs.

Third-Party Cooperative Arrangements (cont.)

Agencies should be **cautious** when using generic templates for TPCA contracts, because such contract templates typically do not account for the services the cooperating agency may already be providing.

- For example, RSA found that several VR agency TPCA template contracts for the provision of pre-employment transition services did not account for the services the cooperating agency may have already been providing.

Third-Party Cooperative Arrangements (cont.)

- The VR agency must be able to identify what, if any, of the VR services being contracted for are already the responsibility of, or being provided by, the cooperating agency. Only then can the VR agency be sure that the services contracted for via the TPCA are indeed new, expanded, or modified services that have a VR focus, as required by 34 CFR 361.28(a)(1) of the VR regulations.

Third-Party Cooperative Arrangements (cont.)

In accordance with § 361.28(c), the cooperating agency's contribution toward the non-Federal share required under the arrangement may be made through:

- (1) Cash transfers to the designated State unit;
- (2) Certified personnel expenditures for the time cooperating agency staff spent providing direct VR services pursuant to a TPCA that meets the requirements of 34 CFR 361.28. Certified personnel expenditures may include the allocable portion of staff salary and fringe benefits based upon the amount of time cooperating agency staff directly spent providing services under the arrangement; and

Third-Party Cooperative Arrangements (cont.)

(3) Other direct expenditures incurred by the cooperating agency for the sole purpose of providing services under 34 CFR 361.28 pursuant to a TPCA that—

- (i) Meets the requirements of 34 CFR 361.28;
- (ii) Are verifiable as being incurred under the TPCA; and
- (iii) Do not meet the definition of third-party in-kind contributions under 2 CFR 200.96.

Third-Party Cooperative Arrangements (cont.)

Example: For a school that is the cooperating agency for the provision of pre-employment transition services, the cooperating agency may certify the time a teacher spends directly providing pre-employment transition services required activities. This is a permissible source of match since the teacher is directly providing the service(s) to students with disabilities who, therefore, are recipients of VR services under the TPCA. Only the salary and fringe benefit costs may be certified.

Third-Party Cooperative Arrangements (cont.)

- Certified time must include only the time actually spent providing the VR services, including pre-employment transition services, under the TPCA -- not the time spent performing bus duty, lunch duty, recess, study halls, etc. It is the responsibility of the VR agency to ensure that only allowable expenditures are utilized as certified match.

Third Party Cooperative Arrangements (cont.)

- The Uniform Guidance states that an obligation means orders placed for property, and services, contracts and similar transactions during a given period that require payment by the non-Federal entity during the same or future period (2 CFR 200.71).
- Because certification of time from a cooperating agency does not constitute a payment by the VR agency, certified time can be used as match **only** after the time has been worked, certified as an expenditure, and submitted to the VR agency. The VR agency is responsible for monitoring the certifications to verify that the time certified was only for allowable services under the TPCA.

Third Party Cooperative Arrangements (cont.)

- Certified time for other school staff such as principals, vice principals, secretaries, and supervisors, is **not** permissible for match purposes under the VR program because these individuals do not directly provide VR services. The certified time for these individuals is a third-party in-kind contribution as defined in 2 CFR 200.96 and, as such, is not a permissible source of match for the VR program. Additionally, these costs would not be consistent with the TPCA matching requirements under 361.28(c)(2).

Third Party Cooperative Arrangements (cont.)

- Other direct expenditures incurred under the contract with the cooperating agency only for the direct provision of services under the TPCA may be an allowable source of match. These expenditures are distinguished from in-kind contributions because the expenditures were incurred specifically for the purpose of the TPCA, in accordance with the terms and conditions of the contract, and within the contract period, all of which must be verified by supporting documentation from the cooperating agency.

Third Party Cooperative Arrangements (cont.)

- If you reimburse the cooperating agency with Federal funds for the direct expenditure, that expenditure is no longer match because the cooperating agency no longer incurred the cost.

Third Party Cooperative Arrangements (cont.)

Example: If it was necessary for a cooperating agency to purchase instructional materials to provide new or expanded services authorized under the TPCA contract, if those materials were not already available to the cooperating agency, and if the expenditures were incurred during the period of time in which the executed TPCA contract was in force, the expenditures for those materials may be an allowable source of match.

Third Party Cooperative Arrangements (cont.)

Expenditures for costs incurred under the TPCA not directly for the provision of VR services, such as indirect costs, depreciation, existing utilities, space, and supplies are ***not*** an allowable source of match because they are third-party in-kind contributions as defined in 2 CFR 200.96.

Fiscal Accountability for Pre-employment Transition Services

RSA has received several questions regarding whether VR agencies are required to track all pre-employment transition service expenditures or whether they can stop tracking pre-employment transition services after meeting the minimum 15 percent reservation and expenditure requirement.

Fiscal Accountability for Pre-employment Transition Services (cont.)

- Uniform Guidance at 2 CFR 200.28 defines a cost objective as a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc.
- The pre-employment transition services activities meet the definition of a cost objective. As such, it is important that VR agencies maintain internal controls for tracking and reporting these expenditures as a cost objective, regardless of how much funds the agency has expended on the provision of pre-employment transition services.

Fiscal Accountability for Pre-employment Transition Services (cont.)

- Even those pre-employment transition service activities that exceed the minimum 15 percent **must** be accurately tracked and reported.

Questions

**Please refer questions to the RSA Financial Management
Specialist assigned to your State.**

Thank You!