

U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND
REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
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TECHNICAL ASSISTANCE CIRCULAR
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ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES
STATE REHABILITATION COUNCILS
CLIENT ASSISTANCE PROGRAMS
CONSUMER ADVOCACY ORGANIZATIONS

SUBJECT: Allowable Sources of Non-Federal Share for the State Vocational
Rehabilitation Services Program

PURPOSE:

The Rehabilitation Services Administration (RSA) provides this technical assistance circular (TAC) to promote a better understanding of the various allowable sources of non-Federal match available under the State Vocational Rehabilitation (VR) program. With this improved knowledge and understanding of available sources of match, State VR agencies should be able to maximize the expenditure of available Federal funds to increase competitive integrated employment and supported employment outcomes and self-sufficiency for individuals with disabilities participating in the VR program, thereby minimizing the amount of Federal VR funds left unspent each year. RSA is reissuing, with updates, RSA-TAC-11-02: Sources of Non-Federal Share for the Vocational Rehabilitation Program, previously issued on August 16, 2011. RSA has updated legal citations and examples of other allowable sources of match, such as certain expenditures incurred under the Randolph-Sheppard Vending Facilities Program (RSVFP).

RSA routinely receives inquiries regarding options available to VR agencies to obtain non-Federal matching funds so they may more easily satisfy the matching requirement for the VR program required by the Rehabilitation Act of 1973 (Rehabilitation Act), and VR program regulations. Although the specifics of these inquiries differ, they all describe an existing or potential deficit in non-Federal funding for the VR program and seek guidance pertaining to Federal requirements governing the scope and use of allowable sources of State match. Therefore, RSA is providing guidance regarding the various allowable sources of non-Federal match available for use in the VR program.

TECHNICAL ASSISTANCE:

The VR program is administered through a Federal and State partnership, with the Federal government contributing no more than 78.7 percent of the total program expenditures. In

recognition of this Federal-State partnership, each State must contribute a non-Federal share equal to at least 21.3 percent of total VR program expenditures (34 C.F.R. § 361.60(a)(1) and (b)(1)). By contributing the required non-Federal share through State-appropriated funds or other allowable sources, States are able to receive approximately \$3.69 Federal VR dollars for every non-Federal dollar to pay for the costs of administering the VR program and, most importantly, providing critical services to individuals with disabilities, including individuals with the most significant disabilities, as they pursue employment.

When determining what expenditures can count toward the match requirement of the VR program, the VR agency must first determine whether the cost is allowable with Federal funds under that program. If the cost is allowable with Federal VR funds, then that same cost is allowable as a non-Federal expenditure under the VR program and can be used toward satisfying the program's match requirement. If the cost is not allowable for any reason, then it may not be used toward satisfying the match requirement.

In general, the following sources of funds are allowable sources for acquiring match funds for purposes of the VR program:

- State-appropriated funds;
- Third-Party Cooperative Arrangements;
- Interagency transfers;
- Contributions by private entities;
- Establishment, development, and improvement of community rehabilitation programs; and
- Certain RSVFP expenditures (Business Enterprise Program).

We will discuss each of the above in more detail separately below.

A. Allowable Sources of Match

State-Appropriated Funds

In support of the Federal-State partnership, States typically contribute the required non-Federal share for the VR program through appropriated funds, thus demonstrating their commitment to the program. State appropriations offer certain advantages as match for the VR program. Importantly, VR agencies have flexibility to use these funds for allowable administrative costs of the VR program, in addition to the cost of services, without adhering to specific requirements associated with other allowable sources of match (i.e., non-State-appropriated funds). Because State-appropriated funds can be used to support the full range of costs associated with the administration and operation of the program, VR agencies can use such funds in a highly flexible manner, directing them toward allowable costs in an area of need more easily.

Third-Party Cooperative Arrangements

VR agencies and other State and local public agencies can enhance and improve the provision of VR services to individuals with disabilities by entering third-party cooperative arrangements (TPCAs), which must adhere to the following requirements in 34 C.F.R. § 361.28:

1. The cooperating agency must provide part or all of the non-Federal share of the costs of the arrangement (34 C.F.R. § 361.28(a));
2. The services provided by the cooperating agency are not the customary or typical services provided by that agency but are new services that have a VR focus or existing services that have been modified, adapted, expanded, or reconfigured to have a VR focus (34 C.F.R. § 361.28(a)(1));
3. The services provided through the cooperative arrangement must be provided only to individuals who are applicants for, or recipients of, VR services from the designated State unit (including students with disabilities as defined in 34 C.F.R. § 361.5(c)(51) who are potentially eligible for the VR program) (34 C.F.R. § 361.28(a)(2));
4. The VR agency must maintain administrative supervision over the program expenditures and the personnel providing the services (34 C.F.R. § 361.28(a)(3));
5. The provision of services through the cooperative arrangement must be consistent with the VR services portion of the Unified or Combined State Plan, including the implementation of an order of selection (34 C.F.R. § 361.28(a)(4));
6. The services must be provided statewide, unless the VR agency receives a waiver of statewideness pursuant to 34 C.F.R. § 361.26 (34 C.F.R. § 361.28(b));
7. If a waiver of statewideness is required, the following additional conditions must be met for RSA to approve the waiver:
 - The non-Federal share of the cost of these services must be provided by a local public agency (34 C.F.R. § 361.26(a)(1));
 - The services must be likely to promote the vocational rehabilitation of substantially larger numbers of individuals with disabilities or of individuals with disabilities with particular types of impairments (34 C.F.R. § 361.26(a)(2)); and
 - The State must include a request for a waiver of statewideness in the VR services portion of the Unified or Combined State Plan for approval by the Secretary of Education (34 C.F.R. § 361.26(b)); and
8. The cooperating agency's contribution toward the non-Federal share required under the arrangement may be made through—
 - Cash transfers to the VR agency, which should be deposited into the VR agency's account (34 C.F.R. § 361.28(c)(1));
 - Certified personnel expenditures including salary and fringe benefits for the portion of cooperating agency staff time spent directly providing VR services under the arrangement (34 C.F.R. § 361.28(c)(2)); and
 - Other direct expenditures (e.g., supplies) incurred by the cooperating agency directly related to providing VR services under the arrangement (34 C.F.R. § 361.28(c)(3)).

Interagency Transfers

VR agencies can receive non-Federal funds from other State or local public agencies to enhance and improve the provision of VR services to individuals with disabilities, including persons with developmental disabilities or mental illness. When expended for VR purposes, VR agencies may use the non-Federal funds received through such transfers to satisfy the VR program matching requirements (34 C.F.R. §§ 361.60(b); 2 C.F.R. § 200.306(b)).

It has been RSA's longstanding policy that State VR agencies could use interagency transfers from other State and local public agencies toward satisfying their match requirements under the VR program (notice of proposed rulemaking, 60 Fed. Reg. 64476 (December 15, 1995); final regulations, 62 Fed. Reg. 6308, 6332 (February 11, 1997)). In 2016, when the Department amended the VR program regulations, the Department codified a cross reference to 2 C.F.R. § 200.306(b) in the provisions governing match for the VR program. In so doing, the Department made clear that the government-wide non-Federal share requirements of 2 C.F.R. § 200.306(b) applied to the VR program, unless specifically excluded.

As is true for any other Federal grantee, 2 C.F.R. § 200.306(b), in pertinent part, permits VR program grantees to use interagency transfers toward satisfying their match requirements so long as the expenditures paid with such funds—

- Are verifiable from the grantee's records;
- Are not used as match for any other grant award;
- Are necessary for accomplishing the objectives of the VR program;
- Are allowable under the Federal cost principles;
- Are not paid by the Federal government under another Federal award, unless specifically authorized by Federal statute; and
- Conform to applicable requirements of 2 C.F.R. part 200.

Contributions by Private Entities

In addition to non-Federal funds from public sources, VR agencies may report match from allowable VR expenditures incurred with cash contributions from private entities, deposited into the State VR agency's account, and earmarked for meeting, in whole or in part, the agency's non-Federal share of expenditures under the VR program for—

- Establishment or construction of a Community Rehabilitation Program (CRP) (34 C.F.R. § 361.60(b)(3)(i));
- Particular geographic areas when the State cannot otherwise provide the non-Federal share (34 C.F.R. § 361.60(b)(3)(ii)); and
- Other VR purposes **provided the expenditures do not benefit the donor** in any way (34 C.F.R. § 361.60(b)(3)(iii)).

Establishment, Development, or Improvement of CRPs

VR agencies may receive contributions from public sources or private donations for non-Federal match purposes that expand the capacity of CRPs to provide VR services and assist individuals with disabilities to achieve employment outcomes. When engaging in the establishment, development, or improvement of a public or nonprofit CRP for the purpose of providing VR services that promote integration into the community and that prepare individuals with disabilities for competitive integrated employment, including supported employment and customized employment (Section 103(b)(2)(A) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(1)), VR agencies must—

1. Prior to establishing, developing, or improving a CRP, conduct substantial planning activities, including a comprehensive statewide needs assessment demonstrating the need for such activity, the development of goals and priorities related to the need, and the selection of strategies for the achievement of the goals, all of which must be included in the agency’s VR services portion of the Unified or Combined State Plan (Sections 101(a)(15)(A), (C) and (D) of the Rehabilitation Act and 34 C.F.R. §§ 361.29(a), (c), and (d));
2. Develop and maintain written policies covering the nature and scope of VR services that will be provided to groups of individuals with disabilities, set forth the criteria under which these services will be provided, and include policies involving the establishment, development, or improvement of CRPs (34 C.F.R. § 361.49(b)(1)); and
3. Deliver the VR services provided through establishment projects only to applicants for, or recipients of, VR services (Section 103(b)(2)(A) of the Rehabilitation Act and 34 C.F.R. § 361.5(c)(16)(i) – (iii)).

VR agencies can use the establishment authority for the sole benefit of individuals with disabilities served through the VR program by, for example, expanding the availability of service providers in areas where resources are lacking, particularly in rural locations, or improving the types of services offered by existing CRPs.

Certain RSVFP expenditures (Business Enterprise Program (BEP))

In many States, the RSVFP is commonly known as the “Business Enterprise Program” or “BEP.” Although the RSVFP is authorized under the Randolph-Sheppard Act, Section 103(b)(1) of the Rehabilitation Act creates a nexus between the VR program and RSVFP. In so doing, Congress authorized the VR program to use Title I VR funds to cover many of the costs incurred in establishing vending facilities and purchasing equipment under the RSVFP. Therefore, the VR program requirements must be read in conjunction with those under the Randolph-Sheppard Act to give meaning to both.

Specifically, Section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5) permit the VR agencies to use Federal funds for small business enterprises, including those established under the Randolph-Sheppard Act, for the provision of—

- The management and supervision provided by the VR agency;
- Acquisition by the State agency of vending facilities or other equipment;
- Initial stocks and supplies; and
- Initial operating expenses.

The VR agency that serves individuals who are blind or visually impaired also is the State licensing agency (SLA) for the RSVFP. The SLA is authorized to issue licenses to blind individuals to operate vending facilities on Federal and other properties and administers the State's RSVFP (34 C.F.R. § 395.1(v)).

In addition to the above activities specifically identified in the Rehabilitation Act and its implementing regulations for the benefit of the RSVFP, the VR agency also may use Federal VR funds to pay for the costs of maintenance associated with the vending facilities and equipment, consistent with the requirements given to all Federal grantees by 2 C.F.R. § 200.452 and longstanding RSA policy.

As is true with any VR program activity, these VR costs incurred for the benefit of the RSVFP may be paid with Federal VR grant funds or non-Federal funds used for match purposes under the VR program. The three most common sources of non-Federal funds used for match purposes for expenditures incurred under the VR program for the benefit of the RSVFP are—

- State-appropriated funds (discussed previously in this TAC);
- RSVFP unassigned Federal vending machine income; and
- RSVFP set-aside funds.

RSVFP Unassigned Federal Vending Machine Income and RSVFP Set-Aside Funds

Unassigned Federal vending machine income, for purposes of the RSVFP, is that income from vending machines on Federal property that accrues to the SLA from a property management department, agency, or instrumentality of the United States in accordance with 34 C.F.R. § 395.32 (34 C.F.R. §§ 395.1 and 395.8(a)).

Regulations implementing the Randolph-Sheppard Act at 34 C.F.R. § 395.1(s) define “set-aside funds” as funds that accrue to the SLA from an assessment against the net proceeds of each vending facility in the State's vending facility program and any income from vending machines on Federal property that accrues to the SLA.

The RSVFP regulations at 34 C.F.R. §§ 395.8(c) and 395.9(b) authorize many different uses for the unassigned Federal vending machine income and set-aside funds, respectively; however, only the following RSVFP expenditures, which are also allowable under the VR program, may be used for match purposes:

- Maintenance and replacement of equipment;
- Purchase of new equipment; and
- Management services.

Therefore, any allowable expenditures incurred for these purposes with RSVFP unassigned Federal vending machine income or set-aside funds may be used toward the VR program match requirement.

B. Considerations When Determining Use of Other Sources for Non-Federal Match

Sources Other than State Appropriations

While other sources of match may involve State or local public funds (i.e., TPCAs and interagency transfers), establishment projects may include local or private funds, depending on the nature of the CRP (i.e., whether it is a public or private nonprofit CRP).

When considering the use of TPCAs as a source of match, VR agencies should be aware that the implementation of an order of selection by a VR agency can affect the availability and provision of services provided under a TPCA for eligible individuals with disabilities who are placed in a closed category on a waiting list for services. However, students with disabilities receiving pre-employment transition services under a TPCA while potentially eligible for the VR program may continue to receive pre-employment transition services after an eligibility determination that places them on a waiting list.

Some VR agencies rely upon TPCAs to obtain a significant portion of the required non-Federal share for the VR program due to the lack of State-appropriated funds for the program. However, cooperating agencies experiencing budgetary changes may be limited in their ability to continue participating in these arrangements or to serve adequate numbers of individuals with disabilities. These changes can affect or reduce the level of non-Federal funds available for match and, consequently, the amount of Federal funds available for use in the VR program.

Funding constraints resulting from decreases in State appropriations or budgetary fluctuations also may affect the ability of another State or local agency to transfer non-Federal funds, which may be used to satisfy match requirements under the VR program, to a VR agency. For this reason, VR agencies may not be able to rely consistently on interagency transfers from other agencies as a source of non-Federal share.

In addition, reliance on interagency transfers for significant amounts of the non-Federal share can raise some of the same issues associated with TPCAs. For instance, the implementation of an order of selection could dictate that too few of the transferring agency's population would be able to receive VR services through the program, thus making the continuation of such transfers less attractive to the transferring agency. Also, other agencies may find interagency transfers somewhat limiting or inadequate for their intended purposes, since the VR agency must retain sole responsibility for determining eligibility for the individuals served, the services they would receive, and the expenditure and allocation of all funds (34 C.F.R. § 361.13(c)).

When considering the use of establishment projects for non-Federal match, VR agencies are reminded that the use of VR program funds is limited to—

- Establishing a CRP’s facility with additional limitations imposed regarding the square footage and size, appraised value, and other aspects of the facility (34 C.F.R. §§ 361.5(c)(16)(i) and (17));
- Building the staff capacity of a CRP for a maximum period of four years, with Federal financial participation available at the applicable matching rate of 78.7 percent, applied to a declining range of 100 percent of staffing costs in the first year to 45 percent in the fourth and final year (34 C.F.R. § 361.5(c)(16)(ii)); and
- Other expenditures that are necessary to make the CRP “functional or increase its effectiveness in providing [VR] services... but are not ongoing operating expenses of the program” (34 C.F.R. § 361.5(c)(16)(iii)).

The utility of this mechanism for the purpose of obtaining non-Federal matching funds is limited for some of the same reasons described above in connection with TPCAs. CRPs may not possess the financial ability to provide the expected level of non-Federal share. In addition, VR agencies may not be able to use the establishment authority to address a loss of non-Federal share from other sources in a timely manner, if they have not engaged in the necessary planning activities or have yet to adopt written policies governing the nature and scope of establishment projects, both of which can take considerable time to complete. Furthermore, establishment projects may not be well suited as a long-term source of non-Federal match, because they are inherently short-term in nature, and should last only as long as it takes to complete program development, construction, and (when applicable) the maximum four years of staffing support.

Non-Federal Expenditures

The receipt of non-Federal share (e.g., appropriations, interagency transfers) does not in itself constitute match under the VR program. The funds must be expended for a VR service, as that term is defined at 34 C.F.R. § 361.5(c)(57), or an administrative cost, as that term is defined at 34 C.F.R. § 361.5(c)(2) (34 C.F.R. § 361.3). To be an allowable expenditure under the VR services portion of the Unified or Combined State Plan, all VR program requirements, as applicable, must be satisfied. This includes the requirements governing the non-delegable functions of the DSU related to the determination of eligibility, the provision of services, and the expenditure and allocation of funds (34 C.F.R. § 361.13(c)). The services also must be available statewide in accordance with 34 C.F.R. § 361.25.

VR expenditures counted and reported as non-Federal share must be incurred during the Federal fiscal year (FFY) of appropriation (i.e., the FFY in which the grant was awarded). Obligations may only be counted and reported as non-Federal share when obligated in the FFY of appropriation of an award (i.e., by September 30 of the FFY in which the grant was awarded) and liquidated by the end of the liquidation period for the award (i.e., within 120 days of the end of the period of performance for that grant award). Non-Federal obligations that are cancelled during the carryover period, if applicable, or otherwise not liquidated after the FFY of appropriation, may not be used toward satisfying the match requirement. Therefore, any Federal VR funds carried over on the basis of those obligations for use in the subsequent year, pursuant to Section 19 of the Rehabilitation Act, are no longer available for use by the program in the event those obligations are cancelled or otherwise de-obligated.

Certified Time as Non-Federal Share

As previously noted, a VR agency may enter TPCAs under 34 C.F.R. § 361.28 for providing VR services with another State or local public agency that is furnishing part or all of the non-Federal share under the program. If the third party is contributing funds to provide VR services, those dollars may be used as part of the VR agency's non-Federal share once expended (e.g., staff salaries paid by the third party that are allowable matching expenditures). If, on the other hand, the VR agency enters an arrangement under which a third party provides access to its equipment or property in the administration of the VR program, the costs associated with those items cannot be used as non-Federal share because in-kind expenditures are not permitted as match.

Certified expenditures for staff time under TPCAs are not considered in-kind contributions. To be counted as non-Federal share, certified expenditures for staff time must be incurred for VR purposes before they can be considered match. Therefore, certified expenditures for staff time are only considered match after the staff time in support of the TPCA has been worked and certified. Certified expenditures for staff time, absent a TPCA, would not be an allowable source of match. In contrast, space, equipment, and other property (e.g., supplies) would be considered third-party in-kind contributions and would not be allowable as match under the VR program unless, for example, supplies were specifically purchased for use in the provision of direct services during the time in which the TPCA was effective (34 C.F.R. § 361.28(c)(3)).

Reversion to Donor for Private Contributions

If a business provides funds directly to the VR agency for use as match for the VR program, pursuant to 34 C.F.R. § 361.60(b)(3)(iii), regarding contributions by private entities, the prohibition against reversion to donor is triggered. This means the VR agency would not be permitted to pay the business directly for services provided to VR program participants unless the business was paid through a contract that was implemented under the State's regular competitive procurement procedures, even if the VR agency is typically exempt from some or all of those procedures.

SUMMARY:

The information presented in this guidance is intended to encourage VR agencies to minimize the return of and maximize the use and expenditure of available Federal VR program funds through the understanding and exploration of the various allowable sources of non-Federal match. Certain advantages are inherent in the use of State-appropriated match for the VR programs, chief among them being the flexibility VR agencies possess in the way these funds can be used to support the administrative and service-related costs of the program. VR agencies may also give thoughtful and strategic consideration to the use of other allowable sources of non-Federal match to maximize their ability to expend all available Federal funds to serve individuals with disabilities. When pursuing other sources of non-Federal match, VR agencies must meet specific requirements pertaining to various sources of match, including TPCAs, establishment projects, and interagency transfers. The use of sources of match other than State appropriations can affect the availability of VR program funding, both on the State and Federal levels, as these methods of service provision may be affected by circumstances experienced by

other public and nonprofit agencies, resulting in fluctuations in or withdrawal of their participation with the VR program. Above all, when considering how or whether to engage in these activities to increase non-Federal match, VR agencies should determine that they are of sound programmatic benefit to the individuals with disabilities served through the VR program.

CITATIONS:

Rehabilitation Act of 1973, Sections 101(a)(15), and 103(b)

Vocational Rehabilitation Program Regulations at 34 C.F.R. §§ 361.5(c)((2), 16), (17), and (57); 361.28; 361.29; 361.49; and 361.60

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 C.F.R. Part 200

RSVFP Regulations: 34 C.F.R. §§ 395.1, 395.8, 395.9, and 395.32

INQUIRIES:

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functions and duties of the Commissioner

cc: Council of State Administrators of Vocational Rehabilitation
National Council of State Agencies for the Blind
Consortia of Administrators of Native American Rehabilitation
National Disability Rights Network