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TECHNICAL ASSISTANCE CIRCULAR

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ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES
STATE REHABILITATION COUNCILS
CLIENT ASSISTANCE PROGRAMS
TECHNICAL ASSISTANCE & CONTINUING
EDUCATION CENTERS
AMERICAN INDIAN VOCATIONAL REHABILITATION
SERVICES PROJECTS
CONSUMER ADVOCACY ORGANIZATIONS

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

PURPOSE: Recently the Rehabilitation Services Administration (RSA) received several inquiries regarding options available to vocational rehabilitation (VR) agencies to obtain nonfederal matching funds for the VR program as required by the *Rehabilitation Act of 1973*, as amended (*Rehabilitation Act*), and its implementing regulations. Although the specifics of these inquiries differ, they all describe an existing or potential decrease in non-federal funding from state appropriations for the program and not only seek guidance pertaining to federal requirements governing the use of other allowable sources of state match but also the relative advantages and disadvantages of each. Therefore, RSA is providing guidance through this technical assistance circular regarding the various sources of non-federal match for use in the VR program, which includes a description of the benefits to, as well as the potential consequences for, the VR program if agencies engage in these options.

TECHNICAL ASSISTANCE: In general, the VR program is administered through a federal and state partnership, with the federal government contributing 78.7 percent of the total program funding and each state contributing a non-federal share equal to 21.3 percent (34 CFR 361.60(a)(1) and (b)). In recognition of this federal-state partnership, states typically contribute the required non-federal share through appropriated funds, thus demonstrating their

commitment to the program and enabling the VR agencies to receive approximately four federal dollars for every state-appropriated dollar to pay for the costs of administering the VR program and, most importantly, providing critical services to individuals with disabilities as they pursue employment.

Although the *Rehabilitation Act* and program regulations permit VR agencies to obtain the required non-federal match through other means, some of which will be discussed below, there are significant advantages to the use of state appropriations for this purpose. VR agencies are not encumbered by the same restrictions in the use of state-appropriated funds as they are when obtaining the non-federal share through other sources, which generally must be used for prescribed purposes and/or to provide services to specific groups of individuals. 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 an area of need at any point in time.

VR agencies do not possess an equivalent degree of flexibility when obtaining non-federal share through other sources, which most commonly include third-party cooperative arrangements with other state or local public entities; the establishment, development or improvement of community rehabilitation programs (CRP); and the transfer of non-federal funds from other state or local public programs to the VR program.

Third-Party Cooperative Arrangements

VR agencies and other state and local public agencies can enhance and improve the provision of services to individuals with disabilities by entering into third-party cooperative arrangements; however, they must adhere to the following requirements set forth in regulations at 34 CFR 361.28.

1. The cooperating agency must provide part or all of the non-federal share of the costs of the arrangement (34 CFR 361.28(a))
2. The services provided by the cooperating agency through the arrangement must be new, expanded or modified to include a VR focus. The services cannot be those typically or customarily provided by the cooperating agency (34 CFR 361.28(a)(1)).
3. The services provided through the cooperative arrangement must be provided only to individuals who are applicants for, or eligible to receive, VR services (34 CFR 361.28(a)(2)).

4. The VR agency must maintain administrative control over the services provided and the personnel providing the services (34 CFR 361.28(a)(3)).
5. The provision of services through the cooperative arrangement must be consistent with the VR State Plan, including the implementation of an order of selection (34 CFR 361.28(a)(4)).
6. The services must be provided statewide, unless the VR agency receives a waiver of statewideness pursuant to regulations at 34 CFR 361.26 (34 CFR 361.28(b)).
7. If a waiver of statewideness is required, the following additional conditions must be met in order 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 CFR 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 CFR 361.26 (a)(2)).
 - The State must include a request for a waiver of statewideness in its State plan for approval by the Secretary of the Department of Education (34 CFR 361.26 (b)).

Each of these requirements may affect the ability of either the VR or the cooperating agency to engage in such arrangements, consequently limiting their usefulness as an alternative source of non-federal match. For instance, the limited numbers of VR agencies that enter into these arrangements do so typically with local school districts for the provision of transition services, which must provide at least 21.3 percent of the total costs of the arrangements. Currently, state and local public agencies, including local school districts, are experiencing significant reductions in state funding, which diminishes their ability to provide the non-federal funds required to engage in such arrangements.

Likewise, the implementation of an order of selection by a VR agency due to the lack of financial or staffing resources can have a similar effect. The implementation of the order may necessitate that individuals who do not meet the criteria for the prioritization of service provision be placed on a waiting list for services, including youths with disabilities served through the cooperative arrangement. If a sufficient number of youths with disabilities would not be able to receive services through the arrangement, a school district may determine not to enter into or to terminate an existing cooperative arrangement. Through its monitoring of VR agencies, RSA is aware that this has occurred in some states already.

Some VR agencies rely upon third-party cooperative arrangements to obtain a significant portion of the required non-federal share for the VR program due to the lack of state-appropriated funds. In a few cases the portion associated with these arrangements approaches 50 percent. If the cooperating agencies can no longer participate in these arrangements as a result of their own budgetary concerns or the inability to serve adequate numbers of individuals with disabilities due to the implementation of an order of selection, the level of non-federal funds available for match may be jeopardized and the amount of federal funds available for use in the VR program reduced.

Establishment, Development or Improvement of CRPs

The *Rehabilitation Act* and program regulations also impose a variety of requirements on VR agencies when engaging in the establishment, development or improvement of a public or non-profit CRP for the purpose of providing vocational rehabilitation services that promote integration and competitive employment (Section 103(b)(2)(A) of the *Rehabilitation Act* and 34 CFR 361.49(a)(1)).

1. Prior to entering into the establishment, development or improvement of a CRP, a VR agency must engage in substantial planning activities, including the conduct of a comprehensive statewide needs assessment demonstrating the need for such activity, the development of goals and priorities related to the need, and strategies for the achievement of the goals, all of which information must be contained in the agency's VR State Plan (Sections 101(a)(15)(A), (C) and (D) of the *Rehabilitation Act* and 34 CFR 361.29(a), (c) and (d)).
2. In addition to these State Plan requirements, the VR agency must develop and maintain written policies covering the nature and scope of VR services that will be provided to groups of individuals with disabilities, including those involving the establishment, development or improvement of CRPs (34 CFR 361.49(b)(1)). These policies also must set forth the criteria under which these services will be provided (Id.).
3. The manner in which VR program funds can be used in connection with establishment projects 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 CFR 361.5(b)(17)(i) and(18));

- building the staff capacity of a CRP for a maximum period of four years, with federal financial participation available at the applicable matching rate, ranging from 100 percent in the first year to 45 percent in the fourth and final year (34 CFR 361.5(b)(17)(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 CFR 361.5(b)(17)(iii))
4. The VR services provided through establishment projects must be delivered only to applicants for, or individuals who have been determined eligible to receive, such services (Section 103(b)(2)(A) of the *Rehabilitation Act* and 34 CFR 361.5(b)(17)(i) – (iii)).

Although VR agencies can use the establishment authority for the 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, 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 third-party cooperative arrangements. CRPs may not possess the financial ability to provide the required non-federal share, especially in today’s economic climate. 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 processes can take considerable time to complete. Furthermore, establishment projects are not well suited as a long-term source of 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.

Interagency Transfers

VR agencies can sometimes receive non-federal funds from other state or local agencies to enhance and improve the provision of VR services to individuals with disabilities, including persons with developmental disabilities or mental illness. They may also use the non-federal funds received through such transfers to satisfy the VR program matching requirements. Prior to the VR regulations implemented in 1997, provisions at 34 CFR 361.76(a) made it clear that all state funds received by the VR agency – regardless of whether they were received by direct

appropriation or by interagency transfer from another public agency – were acceptable sources of match. However, when the VR regulations were amended in February 1997, 34 CFR 361.76 was deleted and all match provisions were consolidated at 34 CFR 361.60 (Notice of Proposed Rule Making, 60 Fed. Reg. 64475, 64494 (December 15, 1995); Final Regulations, 62 Fed. Reg. 6307, 6332 (February 11, 1997)). In making that change, the Secretary of Education further streamlined the regulatory provision by not mentioning all of the allowable sources of match and instead simply including a reference to the Education Department General Administrative Regulations (EDGAR) at 34 CFR 80.24 (NPRM at 64494). This EDGAR provision, at 34 CFR 80.24(a)(1), makes it clear that all allowable expenditures incurred by the grantee and paid for with non-federal funds provided by grants or other cash donations, including those from non-federal third-parties, are allowable sources for match. In 1997, at the time the VR regulations were revised, the secretary made it clear that the deletion of the list of allowable sources of match from the prior regulations at 34 CFR 361.76 was not to be construed to mean that these sources of match no longer existed (NPRM at 64494). Therefore, although interagency transfers are no longer specifically mentioned in the VR regulations, they are an allowable source of match.

Nonetheless, the ability of another state or local agency to transfer non-federal funds to a VR agency, which in turn can be used to satisfy the VR program matching requirements, is constrained by the same decreases in state funding now being experienced by the VR agencies. For this reason, interagency transfers may not prove a reliable 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 third-party cooperative arrangements. 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 limiting 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 CFR 361.13(c)).

SUMMARY:

Certain advantages are inherent in the use of state-appropriated match for the VR program, chief among them being the flexibility VR agencies possess in the manner in which these funds can be used to support the administrative and operational costs of the program. In comparison, VR agencies must adhere to specific requirements pertaining to other sources of match, including third-party cooperative arrangements, establishment

projects and interagency transfers, which can inhibit the ability of the agencies themselves or other entities to become involved in these activities. In addition, the over reliance on sources of match other than state appropriations can further affect the availability of VR program funding, both on the state and federal levels, as these methods of service provision become less attractive to other public and nonprofit agencies and they withdraw their participation. When considering whether to engage in these activities, VR agencies should first determine that they are of sound programmatic benefit to the individuals with disabilities served through the VR program, rather than viewing them foremost as sources of non-federal share, in light of the potential disadvantages associated with each mechanism.

CITATIONS: *Rehabilitation Act of 1973*, as amended, Sections 101(a)(15) and 103(b)

Vocational Rehabilitation Program Regulations @ 34 CFR 361.5(b)(17) and (18), .28, .29, .49 and .60

Education Department General Administrative Regulations at 34 CFR 80.24

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cc: Council of State Administrators of Vocational Rehabilitation
National Council of State Agencies for the Blind
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