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**Questions and Answers on Vocational  
Rehabilitation Agencies' Responsibilities  
During COVID-19**

**Office of Special Education and  
Rehabilitative Services**

N/A

**October 16, 2020**

**Related Index Numbers**

**513.001 Postsecondary Transition**

**265.005 Contents of IEP**

**Judge / Administrative Officer**

N/A

**Ruling**

Vocational rehabilitation agencies must consider how to provide job experiences to students with disabilities on a virtual basis during the COVID-19 pandemic to meet their obligation to provide preemployment transition services. The Rehabilitation Services Administration, a division of OSERS, stated that agencies may not automatically shift funds to other activities simply because schools are closed to in-person learning.

**Meaning**

With the COVID-19 pandemic still impeding the ability of some schools to remain open, districts planning a student's postsecondary transition services should work with other agencies that are able to provide pre-employment opportunities in an online setting. Even if there are no pandemic-related social distancing rules currently in place, those rules could be reinstated with little warning. Having a contingency plan for providing virtual work experiences to transition-aged students will help a district meet its IDEA obligations regardless of the state of the pandemic.

**Case Summary**

The Rehabilitation Services Administration provided another reason for school districts to

proactively work with vocational rehabilitation agencies to provide employment opportunities to transition-aged students, even when in-person job experiences may be off the agenda. The RSA stated that VR agencies must consider how such services may be provided on a virtual basis, rather than automatically shifting their funds to other activities. The RSA touched on the topic while addressing whether a VR agency must consider the unique circumstances of COVID-19 to re-evaluate the availability of funds remaining for authorized activities when arranging for the provision of pre-employment transition services. "Although the physical closure of schools and many [community rehabilitation programs] due to the COVID-19 pandemic presents unique challenges for the provision of pre-employment transition services to students with disabilities, a VR agency must consider how to provide these services virtually in order to comply with Federal requirements and ensure continuity of service delivery," the Rehabilitation Services Administration wrote. Therefore, the RSA concluded, a VR agency is not automatically entitled to use funds earmarked for pre-employment transition activities simply because schools or community programs are closed for in-person services. "The provision of pre-employment transition services to students with disabilities directly (i.e., the "required" activities) and the coordination activities related to the direct provision of those services are required under ... the Rehabilitation Act, and there is no authority for the Department to waive these requirements," the RSA wrote.

**Full Text**

**FAQ-21-01**

As grantees continue operations for the benefit of individuals with disabilities during the COVID-19 pandemic, the Rehabilitation Services Administration (RSA), within the U.S. Department of Education's (Department) Office of Special Education and Rehabilitative Services, issues these Questions and Answers in response to inquiries concerning the

administration of the State Vocational Rehabilitation (VR) Services and American Indian Vocational Rehabilitation Services (AIVRS) programs under the Rehabilitation Act of 1973, as amended (Rehabilitation Act) and Business Enterprise programs under the Randolph-Sheppard Act. While these questions were submitted by grantees under these programs, many of the answers apply generally to RSA formula grantees.

To review other Questions and Answers that RSA has provided related to COVID-19, please visit [rsa.ed.gov](https://www.ed.gov/coronavirus). VR agencies should contact their RSA State Liaison or project officer with additional questions. Additional information specific to the COVID-19 pandemic may be found online at <https://www.ed.gov/coronavirus>.

### **VR Service Delivery**

Q1. What may a VR agency do if it takes longer to complete services on an individualized plan for employment (IPE) or if the eligible individual needs additional VR services due to the COVID-19 pandemic?

A VR agency and the individual, or the individual's representative, may collaborate to amend an IPE to make substantive changes to the employment outcome, VR services to be provided, or the providers of those services. For example, if an eligible individual with a disability needs longer than the time specified in the IPE to complete a particular VR service, the VR counselor and individual would need to amend the IPE. If additional services are needed due to the passage of time (e.g., maintenance, transportation, or additional training, to name a few) or a different provider is needed due to a provider's closure due to the pandemic (regardless of whether the closure is permanent or temporary), the individual and VR counselor would have to agree to amend the IPE in accordance with Section 102 (b)(3)(E)(ii) of the Rehabilitation Act and 34 C.F.R. § 361.45(d)(6).

The changes on the IPE do not take effect until the IPE amendment is agreed to and signed by both the individual, or his or her representative, and the

VR counselor. In the event there is a dispute regarding how the IPE should be amended, the individual, or his or her representative, may request resolution through an informal or formal due process, including mediation, established by section 102(c) of the Rehabilitation Act and 34 C.F.R. § 361.57. As is true with any IPE amendment process, the new services may not begin until the dispute is resolved and the IPE amendment is signed by both the individual, or his or her representative, and the VR counselor. Therefore, if the parties agree that the individual needs more time to complete a VR service, but the original time period specified on the IPE has already passed, the individual must wait until the IPE amendment process, and any applicable dispute resolution process, has been completed before resuming those services. VR counselors and individuals, or their representatives, are encouraged to proactively review time periods for services established in IPEs and, as appropriate, make amendments to prevent unnecessary lapses in services.

Similarly, if the eligible individual needs an additional service that is not on the existing IPE, such as maintenance to pay for additional costs incurred while participating in the VR program, the new service cannot begin until the IPE amendment has been signed by both parties. This IPE amendment process, as well as any applicable dispute resolution process, is the same regardless of the underlying cause for a substantive change to the employment outcome, VR services, or provider of those services. For additional information regarding the signing of initial or amended IPEs, see Q2 in the questions and answers document issued by RSA on May 14, 2020 at:

<https://www2.ed.gov/policy/speced/guid/rsa/supporting/rsa-faq-vr-aivrs>

Q2. May a VR agency provide services after the determination of eligibility but prior to the development of the IPE if its development is delayed due to factors related to the COVID-19 pandemic?

Prior to development of an IPE, a VR agency may only provide: (1) assessment services when

needed by the eligible individual to determine his or her VR needs for purposes of developing the IPE; (2) counseling and guidance services when needed to assist the individual to exercise informed choice during the IPE development process; and (3) pre-employment transition services to students with disabilities, regardless of whether they have been determined eligible (Sections 103(a)(1)-(2) and 113(a) of the Rehabilitation Act). No other VR services may be provided prior to the development of the IPE. Section 102(b)(4)(B) of the Rehabilitation Act requires the IPE to specify the VR services that the eligible individual will receive. VR agencies should use available technology (e.g., virtual meetings, teleconferences) or other means in response to challenges related to COVID-19 to facilitate the timely development of IPEs.

Q3. Can work-based learning experiences for students with disabilities include online activities as an alternative to working directly on-site at a business location?

Yes. Students with disabilities may engage in work-based learning experiences under the VR program, either as a pre-employment transition service under Section 113(b)(2) of the Rehabilitation Act, or, in accordance with an approved IPE, as a training service or transition service under Section 103(a)(5) and (15) of the Rehabilitation Act, as applicable. Online activities could be paid or unpaid work-based learning experiences to the extent that internet businesses or businesses that can engage in remote service delivery or telework offer work-based learning opportunities that can be documented and reported and meet the needs, career exploration interests, and informed choices of students with disabilities. Section 113(b) and 34 C.F.R. § 361.48(a)(2) do not require that work-based learning experiences, or any other preemployment transition service, for students with disabilities be provided in person. VR agencies should make every effort to provide or arrange for work-based learning experiences available in the current economy that enable students with disabilities to explore their

potential career goals leading to competitive integrated employment. This means that virtual work-based learning experiences would be permissible, regardless of the pandemic, to the extent businesses offer such opportunities for students with disabilities.

Q4. Can VR program funds be used to continue to pay wages or stipends of individuals with disabilities whose work-based learning experiences were cancelled due to the COVID-19 pandemic?

No. A VR agency may only use funds awarded by the Department to pay for allowable and allocable costs incurred under the VR program during the period of performance of a Federal award (2 C.F.R. §§ 200.403 through 200.405). Individuals with disabilities may engage in work-based learning experiences under the VR program, either as a pre-employment transition service under Section 113(b)(2) of the Rehabilitation Act or, in accordance with an approved IPE, as a training service or a transition service under Section 103(a)(5) and (15) of the Rehabilitation Act, as applicable.

Neither the Rehabilitation Act nor its implementing regulations require that work-based learning experiences be in-person. Therefore, the Department encourages a VR agency to work with its community service providers and with employers to devise alternative ways (e.g., through virtual and other remote strategies) to continue providing those work-based learning experiences, particularly during the COVID-19 pandemic when many businesses are operating virtually rather than in person. In so doing, the VR agency can ensure continuity of these work-based learning experiences under the VR program.

To the extent work-based learning experiences are cancelled or interrupted because the employers or providers have suspended them due to the COVID-19 pandemic, a VR agency may not use VR program funds to continue paying for these work-based learning experiences since individuals with disabilities are not engaged in the work-based learning activity. Individuals with disabilities would

be permitted to start the work-based learning experience again once the activity is available. Neither the Rehabilitation Act nor its implementing regulations impose any limitations on the number or frequency of these services. This would be true whether the interruption is due to the COVID-19 pandemic, the individual's illness, or another reason.

Q5. May a VR agency provide a broader range of services under 34 C.F.R. § 361.49 (Services for Groups) to support individuals with disabilities with living or other expenses during the COVID-19 pandemic?

No. When providing services that benefit groups of individuals with disabilities, a VR agency may provide only those services authorized under Section 103(b) of the Rehabilitation Act and 34 C.F.R. § 361.49(a). These services are limited to the following services that benefit groups of individuals:

- The establishment, development, or improvement of community rehabilitation programs;
- Telecommunication systems;
- Special services that provide access to information for individuals who are blind, deafblind, or deaf;
- Technical assistance to businesses;
- Costs for establishment and management of small business enterprises;
- Consultation and technical assistance services to assist State educational agencies and local educational agencies in planning for the transition of students and youth with disabilities from school to postsecondary life, including employment;
- Transition services to benefit a group of students with disabilities or youths with disabilities, which are not individualized services directly related to an IPE goal;
- The establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs; and
- Support for advanced training in a field of science, technology, engineering, or mathematics

(including computer science), medicine, law, or business.

Services that benefit groups of individuals with disabilities are not individualized to meet specific needs. If an eligible individual needs individualized VR services, such as maintenance to assist with additional costs incurred while participating in the VR program, the individual or the individual's representative and the VR counselor must develop an IPE or an amendment to the IPE to include such individual services in accordance with the requirements of Sections 102(b) and 103(a) of the Rehabilitation Act.

Q6. How does a VR agency ensure it meets confidentiality requirements during the COVID-19 pandemic?

A VR agency must meet the confidentiality requirements in 34 C.F.R. § 361.38 regarding the protection, use, and release of personal information in the agency's possession. While the VR regulations set general requirements for the protection, use, and release of personal information, 34 C.F.R. § 361.38(a)(1)(v) makes clear that these policies and procedures provide no fewer protections than those provided in accordance with State law and regulations.

When conducting virtual activities involving potentially eligible and eligible recipients of VR services, such as virtual meetings and e-mail transmissions of personal information, a VR agency must ensure it satisfies State and Federal requirements governing the protection, use, and release of personal information and has the appropriate security protections. RSA does not endorse particular virtual meeting platforms or methodologies for ensuring confidentiality. While the pandemic might present unique circumstances that put personal information in a VR agency's possession at risk, this requirement must be satisfied by the VR agency at all times, and, as a result, because of the virtual activities that may be undertaken, extra precautions may need to be taken by the VR agency during the COVID-19 pandemic.

### Due Process

Q7. Can a VR agency extend the timeline for conducting a due process hearing for individuals with disabilities in dispute with the VR agency during the COVID-19 pandemic?

Yes, if all parties agree to an extension. VR program regulations at 34 C.F.R. 361.57(e)(1) provide that a due process hearing conducted by an impartial hearing officer "must be held within 60 days of an applicant's or eligible individual's request for review of a determination made by personnel of the State unit that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of time." However, before pursuing an extension for the conduct of the hearing with the applicant or eligible individual, the parties should make every effort to conduct the hearing by telephone or video-conference or through other technologies so that the hearing can be conducted within the required timeline and the individual's participation in VR services is not unduly delayed.

### Use of Program Funds

Q8. May a VR agency use program funds to provide financial payments to assist unemployed eligible individuals with disabilities during the COVID-19 pandemic?

No. VR funds may not be used to pay financial assistance to unemployed eligible individuals with disabilities, such as to make direct payments to them or to pay for their daily living expenses (34 C.F.R. § 361.5(c)(34)). A VR agency may provide any of the services listed in Section 103(a) of the Rehabilitation Act and 34 C.F.R. § 361.48(b) that are needed by an eligible individual to achieve an employment outcome, including "maintenance" when needed by the eligible individual to cover additional costs incurred while participating in the VR program at any time (Section 103(a)(7) of the Rehabilitation Act and 34 C.F.R. § 361.48(b)(7)). For example, if an eligible individual must relocate temporarily to a different city

to participate in a training program, the VR agency could provide financial assistance as "maintenance" to cover the additional housing and food costs incurred by the individual while participating in that training. If the individual then needed to purchase clothing needed for the training, the VR agency could pay for those expenses as "maintenance." For any of these service needs, the eligible individual and VR counselor would need to amend the IPE to ensure the services are included in the approved IPE.

For other financial assistance for the individual, however, a VR agency must make available information and referral services to other programs through which the individual might be able to obtain assistance, including the Unemployment Insurance program or Social Security Administration programs, consistent with the coordination requirements at Section 101(a)(11) of the Rehabilitation Act.

Q9. May a grantee use program funds to purchase cleaning and hygiene supplies (e.g., face masks, hand sanitizers, disinfectant spray or wipes, etc.)?

Yes, when necessary, reasonable, and allocable to the award. The use of program funds by a grantee for purchases of cleaning and hygiene supplies necessary for work activities is an allowable administrative cost to the extent the expenditure meets the Federal cost principles in the Uniform guidance. The requirements at 2 C.F.R. § 200.403 indicate that, to be allowable, a cost must be, among other things, necessary and reasonable for the performance of the award and be allocable to that award.

In light of the COVID-19 pandemic, it is necessary and reasonable that a grantee would need to acquire cleaning and hygiene supplies to keep employees and program participants safe while maintaining the continuous operation of the program. A grantee must ensure that the costs comply with the Federal cost principles set forth at 2 C.F.R. §§ 200.403 through 200.405 when determining the amount that is allocable to the program and the portion that should be allocated to other programs

they administer.

This response is applicable to all formula grant programs administered by RSA.

Q10. Would a reimbursement by Federal Emergency Management Agency (FEMA) to the State for VR staff expenses associated with the response to the pandemic be considered program income?

The Department is unaware of any FEMA reimbursements offered to States for expenditures incurred under the VR, Supported Employment, and Independent Living Services for Older Individuals Who are Blind programs. However, if any State VR agency receives such reimbursements, please contact RSA directly.

Q11. Can grant funds be used to cover the cost of approved contracted services that were not performed by a contractor because of the COVID-19 pandemic?

Yes, in some limited circumstances, grant funds may be used to cover the costs of contracted services that were cancelled or otherwise not performed due to the COVID-19 pandemic if the contractor was ready and able to perform such services at the time. In determining whether grant funds may be used, the grantee or subgrantee should follow the steps set forth below.

Check on alternative arrangements first: If the contracted services are necessary to carry out the Federal award, the Department encourages grantees and subgrantees to work with their third-party contractors to, first, devise alternative ways to provide those services (e.g., teleconferencing, training via webinars, and other virtual or remote strategies for service delivery) to carry out the intent and purpose of the contracts, to the greatest extent practicable. In so doing, the grantee or subgrantee should demonstrate its best efforts to ensure continuity of needed services under the Federal award during the pandemic. The provision of services through an alternative means may require modification of the contract in order to enable payment for the services rendered via

alternative or virtual means. Any such modification of the contract should be negotiated so that the costs paid are reasonable and necessary.

Steps to take if services cannot be provided in an alternative manner: If the services cannot be provided in an alternative manner and funds were already paid to the contractor, as we also discussed, in the guidance on travel and conferences (Fact Sheet Final - Fiscal questions- 4-8-20 .pdf), the grantee or subgrantee must first seek to recover refundable and nonrefundable costs from the relevant entity that was paid (i.e., the contractor). Some entities and businesses are offering flexibility regarding refunds, credits, and other remedies for losses due to the COVID-19 pandemic. Moreover, many agreements or contracts for conferences, training, or other activities related to a grant contain emergency or "act of God" or "force majeure" provisions, and the grantee and its subgrantees must seek to enforce such provisions to the maximum extent possible in light of the COVID-19 pandemic.

If a grantee or subgrantee is unable to recover funds paid, and the contractor was prevented from performing under the contract, but was ready and able to perform such services at the time, due to the grantee's or subgrantee's closure or other inability to accept the services, caused by the pandemic, the grantee or subgrantee should try to negotiate a reasonable compromise amount.

However, if no compromise can be negotiated, the grantee or subgrantee may charge the appropriate grant for the costs of cancelling the contract, provided the contract costs were reasonable and incurred in order to carry out an allowable activity under the grant, consistent with the Federal cost principles described at 2 C.F.R. Part 200 Subpart E of the Uniform Guidance (Federal cost principles).

If the grantee or subgrantee was ready and able to accept the contracted services, but the contractor could not provide the contracted services due to the pandemic, the grantee or subgrantee must not pay for the services because such costs would not satisfy the requirements of the Federal cost principles.

If there are State or local laws, regulations, or executive orders directly addressing a specific cost item or items during this emergency situation as affected by COVID-19, their effect on the grant will be reviewed on a case-by-case basis to determine allowability and allocability under the Federal cost principles.

Grantees and subgrantees should not assume additional funds will be available to cover any shortage in funds that may occur as a result of payments for services that were not provided and/or received. Grantees and subgrantees must maintain appropriate records and cost documentation as required by 2 C.F.R. § 200.302 (financial management) and 2 C.F.R. § 200.333 (retention requirements for records) to substantiate the charging of any cancellation or other fees related to interruption of operations or services. This response is applicable to all formula grant programs administered by RSA.

### **Amendment of State Plans**

Q12. Must a VR agency obtain public comment and amend its State Plan when experiencing challenges due to the COVID-19 pandemic that result in changes in service delivery or possible implementation of an order of selection?

Generally, as discussed below the answer is no--we expect public comment and amending the State Plan will not be necessary in many cases. As also explained below, however, when the VR agency is considering substantive changes to policies and procedures, amending the State Plan and receiving public comment may be necessary.

In the event a State needs to shift from an in-person strategy of delivering services to a virtual or remote service delivery system due to the COVID-19 pandemic, such a change would not be considered a substantive change requiring public comment pursuant to Section 101(a)(16) of the Rehabilitation Act and 34 C.F.R. § 361.20, because changing from in-person to virtual service delivery does not necessarily affect the nature and scope of the services

themselves. Neither Title I of the Rehabilitation Act nor its implementing regulations at 34 C.F.R. part 361 prescribe the manner in which VR agencies are to provide services, nor is there a requirement in the VR services portion of the Unified or Combined State Plan for VR agencies to describe how they would provide services to individuals with disabilities. VR agencies should consider implementing virtual service delivery for as many of its services as possible and work with their service provider partners to implement such virtual options, thereby ensuring the continuity of the delivery of VR services to individuals with disabilities throughout the COVID-19 pandemic.

Nonetheless, the COVID-19 pandemic may result in potential limitations or reductions in services or service delivery, or the possibility of implementing an order of selection or closing priority categories because of office closures, reduction or unavailability of VR staff, loss of available community rehabilitation programs (CRPs), or loss of other service vendors. If a VR agency is considering substantive changes to policies and procedures, for example, or if a VR agency is contemplating implementing an order of selection or closing one or more priority categories, these actions would constitute a substantial change to policies and procedures that would directly affect the nature and scope of services provided to individuals with disabilities. Therefore, the VR agency would need to adhere to public participation requirements in Section 101(a)(16) of the Rehabilitation Act and 34 C.F.R § 361.20, such as holding public hearings and including assurances, amendments, or modifications to the VR services portion of the Unified or Combined State plan, as applicable. There is no Federal requirement that the public meetings be held in person. If VR agencies are not able to conduct public meetings across the State due to "shelter in place" and social distancing requirements, VR agencies should consider the use of virtual public meetings consistent with applicable State meeting laws and regulations.

### **Pre-Employment Transition Services**

Q13. When providing or arranging for the provision of pre-employment transition services, may a VR agency consider the unique circumstances of COVID-19 to reevaluate its fiscal forecast and availability of funds remaining for authorized activities?

A State VR agency should engage in a continuous evaluation of its fiscal forecast with respect to the amount of VR program funds it will need to provide, or arrange for the provision of, preemployment transition services to students with disabilities in the State. Only in constantly assessing the need and adjusting the financial forecast for this need can the VR agency know whether it will have funds remaining to engage in systemic activities for the benefit of students with disabilities, known as "authorized" activities under Section 113(c) of the Rehabilitation Act. Although the physical closure of schools and many CRPs due to the COVID-19 pandemic presents unique challenges for the provision of pre-employment transition services to students with disabilities, a VR agency must consider how to provide these services virtually in order to comply with Federal requirements and ensure continuity of service delivery to students who need them. The closure of in-person service providers would not automatically mean that a VR agency could use those funds for "authorized" activities rather than the "required" or "coordination" activities instead. The provision of pre-employment transition services to students with disabilities directly (i.e., the "required" activities) and the coordination activities related to the direct provision of those services are required under Section 113(b) and (d) of the Rehabilitation Act, and there is no authority for the Department to waive these requirements.

However, once a VR agency reserves sufficient funds under Section 110(d)(1) of the Rehabilitation Act for the provision of direct services to students who need them during a fiscal year (e.g., virtual counseling and virtual work readiness training) and for the staff time spent coordinating those activities (e.g., attending virtual individualized education

program meetings or setting up virtual work-based learning experiences with employers), the agency may allocate any remaining reserved funds for other "authorized" pre-employment transition services.

These include activities that may support strategies and training of staff and providers for virtual or remote service delivery of required activities for students with disabilities, such as instruction to VR counselors, school transition personnel, and other persons supporting students with disabilities (Section 113(c) of the Rehabilitation Act).

There is no requirement that a VR agency wait until all students with disabilities have received direct services before it can spend funds on other authorized activities; the VR agency just has to ensure sufficient funds are available to provide the required direct services and coordination activities before engaging in the other "authorized" activities.

This response is consistent with guidance RSA has provided to VR agencies since the requirement governing the provision of pre-employment transition services took effect in 2014. See related guidance provided in the preamble to the Final Regulations at 81 FR 55630, 55703 (Aug. 19, 2016) and a PowerPoint presentation made by RSA during three regional trainings for VR agencies in the fall 2016 posted at <https://www2.ed.gov/about/offices/list/osers/rsa/wioa/transition-of-stud>

Q14. Can a VR agency provide pre-employment transition services to students with disabilities who graduated from high school at the end of the 2019-2020 academic year and whose services were disrupted, delayed, or cancelled due to the COVID-19 pandemic?

Pre-employment transition services are available only to students with disabilities, as defined at Section 7(37) of the Rehabilitation Act of 1973 (Rehabilitation Act) and 34 C.F.R. § 361.5(c)(51). So long as a student who was slated to graduate from secondary school at the end of the 2019-2020 school year continues to participate in an educational program, including postsecondary education or other



recognized educational program, that student would be able to continue receiving pre-employment transition services. Under the unprecedented circumstances caused by the COVID-19 pandemic, many students with disabilities, including those who were slated to graduate at the end of the 2019-2020 school year, were participating in a variety of recognized educational programs, such as remote learning and home schooling. Participation in any of these educational programs would qualify for the receipt of pre-employment transition services.

A graduating student with a disability who took summer school classes would still be participating in an educational program. As such, the student would be able to receive any preemployment transition services provided while participating in summer school classes, through virtual and other remote strategies or in-person pre-employment transition services, to the extent available. The same would be true for a graduating student with a disability who enrolled in a postsecondary education program that started in the fall or later as part of a "gap-year" program.

Both of these categories of students with disabilities would be able to participate in preemployment transition services either now, through virtual and remote strategies, or in-person once in-person services resume. For any of these students, the VR agency should obtain evidence (e.g., a letter of acceptance into the postsecondary program) that demonstrates the student's continued participation in an educational program.

Unfortunately, if a graduating student with a disability does not intend to pursue an educational program of any kind, the student would not be able to receive pre-employment transition services at the end of the school year, regardless of whether those services were interrupted or cancelled during the final year of secondary school. Under existing Federal law, there is no authority to waive the definition of a "student with a disability." However, these individuals may apply for, and if determined eligible, receive VR services as participants in the VR

program.

### **Fiscal Administration of the VR Program**

Q15. May a VR agency pay CRPs retainer fees during the period of the COVID-19 pandemic?

Regulations at 2 C.F.R. § 200.459(c) state that "to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered." Therefore, if such retainers are paid with program funds, they must be supported by evidence of the services that were provided. However, when services are not provided, payment of retainers to CRPs and other vendors are not an allowable cost to the Federal award.

A grantee making such payments must ensure that relevant supporting documentation satisfies the internal controls requirements of 2 C.F.R. §§ 200.302 and 200.303.

This response is applicable to all formula grant programs administered by RSA.

Q16. May a VR agency use the establishment authority under the Rehabilitation Act to pay the ongoing operating expenses of CRPs during the COVID-19 pandemic?

No. Section 103(b)(2) of the Rehabilitation Act authorizes a VR agency to use program funds to establish, develop, or improve a CRP, but not to pay ongoing operating expenses of that CRP. The VR regulations at 34 C.F.R. § 361.5(c)(16) define "establishment, development, or improvement of a public or nonprofit [CRP]" as: (1) the establishment of a facility for a public or nonprofit CRP; (2) staffing, if necessary to establish, develop, or improve a public or nonprofit CRP for the purpose of providing VR services; and (3) other expenditures and activities necessary to make the program functional or to 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)).

Since Federal regulations specifically preclude ongoing expenses from the definition of "establishment, development, or improvement of a

public or nonprofit [CRP]," the establishment authority at Section 103(b)(2) of the Rehabilitation Act may not be used for maintaining ongoing operations of CRPs at any time.

Q17. How quickly will RSA process prior approval requests for anticipated costs incurred to maintain operations during the COVID-19 pandemic, such as the purchase of equipment for telework?

RSA financial management specialists are expediting prior approval requests during this critical time. A VR agency may use the aggregate prior approval submission process for purchases of numerous items, in accordance with the OSERS Grantee Letter dated October 29, 2019 (Prior Approval FAQ), and RSA will expedite these requests.

For States with an equipment capitalization threshold that is less than the \$5,000 established in the Uniform Guidance (e.g., if a State's equipment capitalization cost is less than the cost of laptops an agency might be purchasing so employees can telework), the laptops would constitute "equipment" as that term is defined at 2 C.F.R. § 200.33, not as "supplies" as that term is defined at 2 C.F.R. § 200.94. A VR agency in one of these States must obtain prior approval consistent with the Uniform Guidance at 2 C.F.R. § 200.407(f) and may do so using the aggregate approach.

RSA will issue responses as quickly as possible when all required information is submitted with the prior approval request. To streamline the submission process, RSA recommends that an agency anticipating purchasing multiple items (e.g., multiple laptops and any other equipment) use the aggregate prior approval submission process described in the OSERS Grantee Letter dated October 29, 2019. For example, if the agency plans to purchase 100 laptops at a cost of \$500 each plus five copiers at \$500 each in Federal fiscal year (FFY) 2020, the agency could submit one prior approval request, in the aggregate, for \$52,500 in equipment costs. This response is applicable to all formula grant programs administered by RSA.

Q18. Can RSA waive the VR program maintenance of effort (MOE) requirement for States with changes in non-Federal expenditures for the VR program as a result of the COVID-19 pandemic?

Consistent with existing Federal requirements explained below, States may request an MOE waiver once they have submitted all financial data related to a deficit year in a final Federal Financial Report (SF-425).

The Rehabilitation Act and its implementing regulations allow a State to request a waiver or modification of its MOE requirement if the State does not meet that requirement because of certain circumstances. Section 111(a)(2)(C) of the Rehabilitation Act and 34 C.F.R. § 361.62(d) authorize the Secretary to grant a waiver or modification of the MOE shortfall when such an action would be an equitable response to exceptional or uncontrollable circumstances affecting the State.

For States with decreased non-Federal expenditures incurred in FFY 2020, the MOE level for FFY 2020 will not be calculated until the agency submits its final SF-425 for the FFY 2020 grant award. Only then will RSA have the data necessary to know the actual non-Federal expenditures incurred by the agency during FFY 2020. With that information, RSA will be able to calculate whether the State satisfied the MOE requirement by comparing the FFY 2020 non-Federal expenditures to the non-Federal expenditures incurred by the State in FFY 2018 (Section 111(a)(2)(B) of the Rehabilitation Act). If RSA determines the State has a MOE deficit at that time, the State could request a waiver or modification of the MOE requirement.

By contrast, an increase in non-Federal expenditures incurred in FFY 2020 due to the COVID-19 pandemic will not have a potential negative impact on MOE until after the non-Federal expenditures and MOE level is known for FFY 2022. RSA will not be able to determine whether States satisfied their MOE requirement for FFY 2022 until it receives the final financial report for the FFY 2022 grant award from those States. Only then will RSA

have the data necessary to know the actual non-Federal expenditures incurred by States during FFY 2022, as compared to the non-Federal expenditures incurred in FFY 2020. With that information, RSA will be able to calculate whether the State satisfied the MOE requirement by comparing the FFY 2022 non-Federal expenditures to the non-Federal expenditures incurred by the State in FFY 2020 (Section 111(a)(2)(B) of the Rehabilitation Act). If RSA determines the State has a MOE deficit at that time, the State could request a waiver or modification of the MOE requirement.

### **Assignment of VR Staff to Other Programs**

Q19. What assurance must a State agency submit to RSA when deciding to assign VR program staff to assist other non-VR programs in responding to the COVID-19 pandemic?

A VR agency must submit a written assurance to RSA when deciding to assign VR program staff to assist non-VR programs in response to the COVID-19 pandemic. The designated State agency (DSA) must assure that the designated State unit (DSU) will continue to satisfy the organizational requirements for the Vocational Rehabilitation (VR) program, as set forth in Section 101(a)(2)(B)(ii) of the Rehabilitation Act, particularly with respect to its staffing levels. Specifically, the DSA must assure that the DSU will--

- Continue to employ at least 90 percent of its staff on the rehabilitation work of the DSU in accordance with Section 101(a)(2)(B)(ii)(III) of the Rehabilitation Act and 34 C.F.R. § 361.13(b)(1)(iii);
- Ensure that any reassignment of DSU staff during the COVID-19 pandemic is necessary to meet the needs of the State during the unprecedented circumstances caused by this pandemic, and is expected to be only for a specified period of time;
- Notify RSA in the event the DSA needs to adjust either the number of DSU staff reassigned to another program or the time period for that reassignment;
- Continue to provide the level of VR services

required to meet the needs of individuals with disabilities in a manner consistent with the approved Unified or Combined State Plan and amend eligible individuals' IPEs, as appropriate, if there is a disruption in service because of the reassignment of staff during the COVID-19 pandemic, to ensure the VR service needs of individuals are met. This amendment may include services that make up for the effects of the disruption to the services to meet the needs of the individuals with disabilities, when appropriate;

- Ensure that DSU employees will be paid only from other non-VR program funding sources for the time spent on the activities during the reassignment and that there will be no double payment from VR program funds or other sources; and

- Allocate all direct and indirect costs associated with DSU staff who are reassigned to non-VR activities or programs to those non-VR activities or programs for the duration of the reassignment, in accordance with requirements of 2 C.F.R. § 200.405.

### **American Indian Vocational Rehabilitation Services Program**

Q20. How does the guidance for State VR agencies provided in questions 1 through 11 apply to AIVRS projects?

While the specific statutory requirements in Title I of the Rehabilitation Act and regulatory requirements in 34 C.F.R. part 361 cited in questions 1 through 11 apply only to State VR agencies and not to AIVRS projects, the guidance provided in those questions may also be useful in the implementation of AIVRS projects consistent with their approved applications, their policies and procedures, Section 121 of the Rehabilitation Act, and its implementing regulations at 34 C.F.R. part 371. This is because under Section 121(b)(1)(B) of the Rehabilitation Act and 34 C.F.R. § 371.21(a), VR services provided by AIVRS projects to American Indians with disabilities must be broad in scope and be provided in a manner and at a level of quality at least comparable to those services provided by the State VR agency.

Similarly, under 34 C.F.R. § 371.21(e), AIVRS projects must provide all VR services according to an IPE developed jointly by the representative of the Tribal VR program and each American Indian with disabilities served.

Under 34 C.F.R. § 371.21(i), any American Indian with disabilities who is an applicant or recipient of services and who is dissatisfied with a determination made by a representative of the Tribal vocational rehabilitation program, may file a request for a review and be afforded a review under procedures developed by the Tribal VR program comparable to those under the provisions of Section 102(c)(1)-(5) and (7) of the Rehabilitation Act.

AIVRS projects must develop and maintain policies and procedures regarding the provision of services under 34 C.F.R. § 371.43(d) and informed choice under 34 C.F.R. § 371.43(e) that would address IPE development and service delivery. Projects also must ensure that they adhere to their confidentiality procedures developed under 34 C.F.R. § 371.44.

If an amendment to any of these policies and procedures is necessary in order to implement any of this guidance, AIVRS projects should follow Tribal procedures in doing so. If a modification of an AIVRS project's approved application is necessary, then the AIVRS project director should consult with RSA. If the Tribal VR program director has any questions, they should contact their RSA project officer.

Finally, the guidance and the answers to questions 12 through 19 do not apply to the operation of or the services provided by AIVRS programs.

### **VR Program and the Business Enterprise Program under the Randolph-Sheppard Act**

Q21. Can a VR agency pay for replacement stock and supplies needed by a blind vendor who has been determined eligible for services under the VR program when the vending facility is reopened during or following the COVID-19 pandemic?

Yes, under certain circumstances. As is true for any individual with a disability applying for VR services, whether services can be provided to a blind vendor is a case-by-case determination based on the facts and circumstances present at the time a blind vendor applies for services. Factors a VR agency needs to consider when deciding whether to replace stock and supplies include, but are not limited to--

- Whether the blind vendor is eligible for the VR program under Section 102(a)(1) of the Rehabilitation Act and 34 C.F.R. § 361.42;

- The individual's priority for services, if the State is implementing an order of selection, pursuant to Section 101(a)(5) of the Rehabilitation Act and 34 C.F.R. § 361.36;

- If the State is implementing an order of selection, a determination by the State whether it elected in the VR services portion of its Unified or Combined State Plan, that took effect on July 1, 2020, to exercise its discretion, under Section 101(a)(5)(D) of the Rehabilitation Act and 34 C.F.R. § 361.36(a)(3)(v), to serve eligible individuals outside of the order of selection who need a specific service or equipment to maintain a job;

- Whether the VR agency has developed an IPE with the blind vendor to describe the services needed to ensure the vendor can regain, maintain, or advance in employment pursuant to Section 102(b) of the Rehabilitation Act and 34 C.F.R. §§ 361.45 and 361.46; and

- If the State is implementing an order of selection and has elected to serve eligible individuals outside of the order when they are in jeopardy of losing a job, whether there is a specific service or equipment that would enable the blind vendor to maintain employment.