

Establishment Projects – Construction Expenditures

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Responsibility of VR Agencies to Assure that Expenditures are Allowable

It is the responsibility of the VR agency to determine the authority to be used under the Rehabilitation Act of 1973, as amended (the Act) prior to incurring any costs for maintenance, repairs, construction, renovation or alterations of buildings. The requirements differ for each authority and a full understanding of the facts of the proposed expenditures is essential to making this determination.

Purpose of Session

- A. Learn how to determine if, and to what extent, State agencies are permitted to charge expenditures for construction, building maintenance, repairs, alterations, etc. as:
- Administrative costs of the VR program;
 - Expenditures for the establishment, development or improvement (commonly known as the "establishment" authority) of a community rehabilitation program (CRP) facility; or
 - Construction of a CRP facility expenses; and
- B. Identify the applicable non-Federal share of administrative, establishment and construction costs (Match).

Allowable Use of VR Funds

Section 111(a)(1) of the Rehabilitation Act of 1973, as amended (the Act), and 34 C.F.R. § 361.3 require that **VR funds** be used solely:

- 1) For the cost of providing VR services under the VR services portion of the Unified or Combined State Plan; and
- 2) For the administrative costs under the VR services portion of the Unified or Combined State Plan.

Federal Share – Allowable Use of VR Funds (cont.)

The Federal share of expenditures made by State VR agencies for the provision of VR services and the administration of the VR services portion of the Unified or Combined State Plan (excluding construction) is 78.7 percent (34 C.F.R. § 361.60(a)).

Note: Slide 36 will present the requisite information needed to calculate the Federal share for construction expenditures.

Meaning of VR Services – Allowable Use of VR Funds (cont.)

- VR services are those services provided to an individual pursuant to an individualized plan for employment in accordance with Section 103(a) of the Rehabilitation Act and 34 C.F.R. § 361.48, or to groups of individuals with disabilities pursuant to Section 103(b) of the Rehabilitation Act and 34 C.F.R. § 361.49 (Section 7(40) of the Rehabilitation Act and 34 C.F.R. § 361.5(b)(58)).
- For purposes of this discussion, “services to groups” includes the establishment of CRPs, as well as the construction of CRP facilities for the benefit of VR agency consumers (Section 103(b)(2) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(1)).

Administrative Cost – Allowable Use of VR Funds (cont.)

Before discussing the requirements related to establishment of CRPs and the construction of CRP facilities, it is important to note that some expenditures related to construction, building maintenance, repairs, alterations, etc., may be treated as administrative costs, depending upon the facts of the situation.

Administrative Cost – Allowable Use of VR Funds (cont.)

VR program administrative costs include removal of architectural barriers in State VR agency offices and State-operated rehabilitation facilities (e.g., comprehensive rehabilitation centers, orientation and training centers), and operating and maintaining VR agency facilities, equipment and grounds Section 7(1)(G) and (H) of the Act and 34 C.F.R. § 361.5(c)(2)(vii) and (viii). Such expenditures also are permitted as administrative costs under the Federal cost principles (2 C.F.R. part 200).

Administrative Cost – Allowable Use of VR Funds (cont.)

Administrative Costs for necessary maintenance and normal repairs and alterations are allowable to the extent they:

- 1) Keep the property in an efficient operating condition; and
- 2) **Do not add to the permanent value** of property or appreciably prolong its intended life (2 C.F.R. § 200.452).

Administrative Cost – Allowable Use of VR Funds (cont.)

Examples of allowable and unallowable administrative costs -

- If the cost of a project component involves the installation of new heating and cooling equipment—not simply the repair of this equipment, the costs do not constitute an administrative cost under the VR program.
- The repair of a roof may be an allowable administrative cost; however, replacement of a roof is not.

Administrative Cost – Allowable Use of VR Funds (cont.)

Costs must be allocated to all benefiting programs in accordance with the relative benefits received (2 C.F.R. § 200.405). For example, when staff working under multiple programs (State, Federal or private) benefit from administrative expenditures, the costs must be allocated proportionately to each funding source.

Administrative Cost – Allowable Use of VR Funds (cont.)

Additional considerations regarding administrative costs

- 1) The cost for capital improvements or renovation must not be included in the rent charged to the program.
- 2) If the facility is being leased, the cost of repairs and maintenance would generally be the responsibility of the building's owner. As such, the cost of building repairs and maintenance would not be allowable under the VR program because they wouldn't be reasonable and necessary under 2 C.F.R. §§ 200.403 and 200.404.
- 3) The costs must be necessary and reasonable under the Uniform Guidance at 2 C.F.R. §§ 200.403 through 200.405.

Capital Expenditures – Allowable Use of VR Funds

Building-related expenditures which add to the permanent value of property or appreciably prolong its intended life are to be treated as capital expenditures (2 C.F.R. §§ 200.439 and 200.452). The Act only allows for capital expenditures under the establishment and construction authorities.

Establishment, Development or Improvement of a CRP – Allowable Use of VR Funds (cont.)

VR funds can be used for capital expenditures related to the establishment, development, or improvement of a public or non-profit CRP to provide VR services to applicants and eligible individuals that promote integration and competitive employment (Section 103(b)(2) of the Act and 34 C.F.R. § 361.49(a)(1)).

Community Rehabilitation Program (CRP) Defined



CRP is defined at 34 C.F.R. § 361.5(c)(7) as programs that provide directly or facilitate the provision of one or more VR services to individuals with disabilities to enable them to maximize opportunities for employment, including career advancement (e.g., orientation and mobility services for individuals who are blind, rehabilitation technology, job development, placement and retention services, and supported employment services).

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Community Rehabilitation Program Defined (cont.)

CRPs are defined as programs, not as agencies. Therefore, for public or non-profit organizations that provide a variety of services to different populations, the definition of a CRP may apply only to the portion of the building in which VR services are provided.

Establishment, Development or Improvement of a CRP (cont.)

The establishment, development or improvement of a CRP includes:

- 1) Construction of a facility for a public or non-profit CRP under special circumstances (Section 103(b)(2) of the Act and 34 C.F.R. §§ 361.49(a)(1) and 361.5(c)(10)).
- 2) Establishment of a facility for a public or nonprofit CRP (Section 103(b)(2) and 34 C.F.R. §§ 361.49(a)(1), 361.5(c)(16)(i) and 361.5(c)(17)).

VR Services to Individuals on an Individualized Basis V. Brick and Mortar

The Act and its implementing regulations place limitations on the use of VR funds for the establishment or construction of CRP facilities. An in-depth review of the legislative history surrounding the Act clearly indicates that these constraints were built into the Act to ensure that the construction or establishment of CRP facilities does not divert the VR program from its historic mission to provide services to individuals on an individualized basis, in light of their employment-related needs and aspirations.

General Requirements

Regardless of which authority is used for capital expenditures (establishment or construction), we will now discuss general requirements, including those outlined on slides 20 through 32 below, that State agencies must first satisfy:

- 1) Pre-Planning: The agency must establish written policies describing the nature and scope of the establishment and construction authorities; and the VR services portion of the Unified or Combined State Plan must document the need to use the authorities, as well as specific goals and strategies to address the need (Section 101(a)(15) of the Act and 34 C.F.R. §§ 361.29 and 361.49(b)(1)).
- 2) Prior Approval: The agency must receive prior written approval for various grant award activities and proposed obligations and expenditures, consistent with the requirements set forth in the Uniform Guidance at 2 C.F.R. part 200.

General Requirements (cont.)

- 3) Purpose: Promote Integration and Competitive Employment in the Community.
- 4) Non-Federal Share: Reporting Requirements.
- 5) Davis-Bacon Act: Applicability of Prevailing Wage and Rate Requirements.

1. Policy: Pre-Planning

The State VR agency must have written policies that set forth the nature and scope of services that will be provided to groups of individuals with disabilities, and the criteria that will be used to determine the provision of those services (34 C.F.R. § 361.49(b)(1)).

1. Specific Need Identified in CSNA: Pre-Planning (cont.)

Establishment activities must have been clearly identified as a need in the State agency's triennial comprehensive Statewide needs assessment (CSNA). Based upon the CSNA, the State VR agency is, likewise, required to provide a thorough explanation in its VR services portion of the Unified or Combined State Plan, including both measurable goals and specific strategies, that it is proposing to address the particular needs identified in its CSNA (Section 101(a)(15) of the Act and 34 C.F.R. § 361.29).

1. Detailed Explanation in the VR Services Portion of the Unified or Combined State Plan: Pre-Planning (cont.)

Vague references in the VR services portion of the Unified or Combined State Plan to an insufficient number of CRPs identified in the CSNA to provide a particular service do not provide a sufficient basis to engage in the establishment or construction of CRP facilities. The explanation must discuss in detail how the proposed establishment activities address the specific unmet VR need identified in the CSNA.

2. Prior Approval – Citation and Definition

The Uniform Guidance requires prior approval for various grant award activities and proposed obligations and expenditures. Prior approval is written approval from an official of the Department who is authorized to grant such approval to assign a proposed expenditure to a Federal program. (2 C.F.R. § 200.407)

2. Prior Approval (cont.)

Most prior approval requests that RSA receives besides those related to general purpose equipment or participant support costs involve proposed capital expenditures for construction and renovation projects for the VR agency's own office space or those for the establishment, development, or improvement of a CRP facility. These expenditures typically pose a higher risk to the Federal interest with respect to the allowability and allocability of the costs.

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2. Prior Approval (cont.) – Project Specific

- A State VR agency must submit separate prior approval requests for each projected activity. For example, if the agency plans to incur capital expenditures in an FFY related to three different CRP establishment projects, the agency must submit separate prior approval request for each proposal for review and approval based on the accepted contractor's bid or some other method of calculating actual proposed costs that supports the reasonableness of the proposed expenditures.
- RSA provided technical assistance, in TAC 18-02, to VR agencies regarding when and how to submit prior approval requests.

2. Prior Approval (cont.) – Capped at Amount Approved

In granting any prior approval, RSA will approve the expenditure of program funds up to the amount proposed in the prior approval request submitted by the State VR agency. This means the State VR agency will be approved to spend up to that amount. If actual costs indicate the need for an increase in the approved proposed amount during the FFY, the agency must submit an amendment to the prior approval request for the anticipated additional costs.

2. Prior Approval (cont.) – Amendment Example

For example, if a contractor needs to amend its bid for a particular establishment of a CRP project because the cost of steel increased during the FFY, the State VR agency must submit an amended prior approval request that reflects the increased cost for that particular proposed establishment of a CRP project.

3. Purpose of Establishment and Construction - Integration and Competitive Employment

The establishment and construction authorities can only be used for costs that are related to promoting integration and competitive employment in the community for groups of individuals with disabilities (Section 103(b)(2) of the Act and 34 C.F.R. § 361.49(a)(1)).

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4. Non-Federal Share Requirements

Contributions from private CRPs used to meet the non-Federal share of an establishment or construction of a CRP facility project **must** be deposited into the account of the State agency in accordance with 34 C.F.R. § 361.60(b)(3). Non-Federal share of costs must be reported on line 12a of the Federal Financial Report (SF-425).

4. Non-Federal Share Requirements (cont.)

Non-Federal costs incurred for the establishment of a CRP facility and the construction of a CRP facility will be subtracted from the State's total non-Federal share when calculating compliance with Maintenance of Effort requirements (Section 101(a)(17)(C) of the Act and 34 C.F.R. § 361.62(b)).

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5. Davis-Bacon Act Requirements

The Davis-Bacon Act - GEPA, at 20 USC 1232b, requires that all laborers and mechanics, employed by contractors on all construction and minor remodeling projects assisted under applicable programs **must be paid wages at rates not less than the prevailing wage** on similar construction or minor remodeling projects in the locality, as determined by the Department of Labor in accordance with the Davis-Bacon Act. The VR program, pursuant to Title I of the Act, is administered by the Department of Education and, therefore, is covered by 20 USC 1232b. It is also important to note that Section 101(a)(17)(B) of the Act also makes the VR program subject to the Davis-Bacon Act.

Recap:

The preceding slides outlined the general requirements to engage in establishment activities with VR dollars regardless of which establishment authority is used. We will now proceed to discuss additional requirements outlined on slides 34 to 46 that are specific to the construction and establishment of CRP facilities.

Construction - Meaning

Pursuant to 34 C.F.R. § 361.5(c)(10), the term “construction” means -

- (i) The acquisition of land in connection with the construction of a new building for a community rehabilitation program;
- (ii) The construction of new buildings;
- (iii) The acquisition of existing buildings;
- (iv) The expansion, remodeling, alteration, or renovation of existing buildings;

Construction – Meaning (cont.)

- (v) Architect's fees, site surveys, and soil investigation, if necessary, in connection with the construction project;
- (vi) The acquisition of initial fixed or movable equipment of any new, newly acquired, newly expanded, newly remodeled, newly altered, or newly renovated buildings that are to be used for community rehabilitation program purposes; and
- (vii) Other direct expenditures appropriate to the construction project, except costs of off-site improvements.

Construction – Federal and Non-Federal Share

- The Federal share for expenditures made by VR agencies for the construction of a facility for a public or nonprofit CRP cannot exceed 10 percent of the State's VR allotment under Section 110 of the Act (Section 101(a)(17)(A) of the Act and 34 C.F.R. § 361.61).
- The non-Federal share is at least 50 percent (34 C.F.R. § 361.60(a)(2)).

Constructing a Facility for a CRP to Provide VR Services

A State VR agency may construct a facility for a public or nonprofit CRP program to provide VR services that promote integration and competitive employment only under special circumstances (Section 103(b)(2) of the Act and 34 C.F.R. § 361.49(a)(1)).

Construction – Examples of Special Circumstances

According to 34 C.F.R. § 361.49(a), examples of special circumstances that permit construction of a public or nonprofit CRP facility include, but are not limited to, when a State VR agency deems it necessary to do so 1) because there are no other public agencies or private nonprofit organizations currently able to provide VR services to consumers as a result of the destruction by natural disaster of the only available center serving an area, or 2) because of the absence of any public agencies or private nonprofit organization in a rural area.

Establishment of a Facility for a Public or Nonprofit CRP

Pursuant to 34 C.F.R. § 361.5(c)(17), establishment of a facility for a public or nonprofit community rehabilitation program means –

- (i) The acquisition of an existing building and, if necessary, the land in connection with the acquisition, if the building has been completed in all aspects for a least 1 year prior to the date of the acquisition and the Federal share of the cost of acquisition is not more than \$300,000.

Establishment of a Facility for a Public or Nonprofit CRP (cont.)

Pursuant to 34 C.F.R. § 361.5(c)(17), establishment of a facility for a public or nonprofit community rehabilitation program means – (continued)

- (ii) The remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building.

Establishment of a Facility for a Public or Nonprofit CRP (cont.)

*Pursuant to 34 C.F.R. § 361.5(c)(17), establishment of a facility for a public or nonprofit community rehabilitation program means –
(continued)*

- (iii) The expansion of an existing building, provided that-
 - A. The existing building is **complete in all respects**;
 - B. The total size in square footage of the expanded building, notwithstanding the number of expansions, is **not greater than twice the size of the existing building**;
 - C. The expansion is **joined structurally to the existing building and does not constitute a separate building**; and
 - D. The costs of the expansion do not exceed the **appraised value** of the existing building.

Establishment of a Facility for a Public or Nonprofit CRP (cont.)

Pursuant to 34 C.F.R. § 361.5(c)(17), establishment of a facility for a public or nonprofit community rehabilitation program means (continued) –

- (iv) Architect's fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building.
- (v) The acquisition of fixed or movable equipment, including the cost of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

Establishment of a Facility for a Public or Nonprofit CRP (cont.)

Pursuant to 34 C.F.R. § 361.60, a VR agency must contribute a non-Federal share of 21.3 percent of the total cost of most VR expenditures, including those expenditures incurred for the establishment, development, or improvement of a facility for a CRP.

Establishment of a Facility for a Public or Nonprofit CRP (cont.)

The VR regulations permit a VR agency to accept contributions from private entities, such as a CRP, for satisfying its non-Federal share of expenditures made under the VR services portion of the Unified or Combined State Plan, in a few narrow circumstances, only one of which is applicable here. A VR agency may count expenditures incurred with contributions from private entities toward satisfying its VR match requirements if those contributions are earmarked for meeting the State's share of establishing a CRP (34 C.F.R. § 361.60(b)(3)(i)):

Establishment of a Facility for a Public or Nonprofit CRP (cont.)

Contributions by private entities. Expenditures made from contributions by private organizations, agencies, or individuals that are deposited in the account of the State agency or sole local agency in accordance with State law and that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the funds are earmarked for —

Meeting in whole or in part the State's share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes...

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Establishment of a Facility for a Public or Nonprofit CRP (cont.)

Cautions—

Neither the statutory nor regulatory definition of a facility for a public or non-profit CRP include activities related to off-site improvements (Section 7(6) of the Act and 34 C.F.R. § 361.5(c)(10)). These include access roads, sidewalks and curbs, sewers, utility lines, etc. that are off the land being developed (34 C.F.R. § 361.5(c)(10)(vii)).

The definition of establishment of a public or non-profit CRP at 34 C.F.R. § 361.5(c)(16)(iii) specifically excludes operating expenses. Examples of ongoing operating expenses include depreciation, utilities, supplies, travel, and communications (34 C.F.R. § 361.5(c)(16)(iii)).

Recap:

Slides 19 to 32 outlined the general requirements to develop or improve a public or non-profit CRP regardless of which authority for capital expenditures is applied. We then proceeded to discuss additional requirements on slides 34 to 46 that are specific to either the construction or establishment of a CRP facility. The remaining 7 content slides outline two special considerations applicable to both authorities – namely, 1) cost allocation and 2) Federal interest.

Methodology — Cost Allocation

CRPs may serve consumers who are neither VR applicants nor eligible individuals. CRPs likewise often provide services other than those permitted by the Act. Accordingly, VR agencies must review the cost categories included in establishment or construction projects to determine an appropriate methodology by which the costs will be distributed in accordance with the benefits received (2 C.F.R. § 200.405).

Cost Objective: Cost Allocation (cont.)

Under the Uniform Guidance in 2 C.F.R. § 200.403, a cost is allowable if it is reasonable, necessary, and allocable to a Federal award. Under 2 C.F.R. § 200.405(a), a cost is allocable to a Federal award “if the goods and services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.”

Commensurate to Benefit Received: Cost Allocation (cont.)

Costs associated with the construction and establishment of CRP facilities are allowable under the VR program only to the extent that VR program participants benefit from that expenditure. The amount that is allocable to the VR program is only that which is commensurate with the benefit that the VR program derives from the facility, not the benefit the CRP provides to other individuals or entities.

Percentage of Building Used: Cost Allocation (cont.)

- When determining the portion of the costs that may be charged to the VR program, it may be necessary to calculate the percentage of the buildings that will be used by the VR agency's consumers and applicants, as well as the CRP staff serving them, but not related to the employment of these or any other individuals at the facility.
- For example, if a VR agency's applicants and consumers would benefit from only a limited amount of space in a building, the VR agency may determine, based upon the relevant data, that the most proportional cost distribution would be based upon the space utilized in the building (i.e., square footage) by VR applicants and consumers for VR purposes as opposed to use by other CRP consumers or by these consumers when employed by the facility.

Percentage of Time: Cost Allocation (cont.)

- When determining the portion of the costs incurred by a CRP that may be charged to the VR program for equipment or furniture purchased (i.e., computers, chairs, and desks), it may be necessary to calculate the percentage of time each staff person utilizes for VR purposes for VR applicants and consumers; not the employment of these or any other individuals at the facility.
- For example, if a VR agency's applicants and consumers would benefit from only some of the equipment's use, the VR agency may determine, based upon the relevant data, that the most proportional cost distribution is based upon the amount of time each staff person uses the equipment for VR purposes for VR applicants and consumers; not their employment or that of anyone else at the facility.

Recoupment of Costs— Federal Interest

Contract requirements should protect the nature of the Federal investment in the establishment project, i.e.:

- 1) Depending upon the amount of funds involved, the agency may require repayment of the funds expended on the establishment project should the CRP facilities being renovated or expanded no longer be used for VR purposes.
- 2) If the percentage of costs allocated to the VR program based upon intended usage is less than actual usage, the contract should allow for recoupment of costs not allocable to the VR program.

Twenty-Year Provision— Federal Interest (cont.)

Section 101(a)(17)(B) of the *Rehabilitation Act*, makes it clear that the requirements of section 306 of the *Act*, as that provision existed prior to the passage of the *Rehabilitation Act Amendments of 1998*, apply to construction paid for, in part, with Title I VR funds. Therefore, buildings constructed with Federal funds must be used for a least 20 years for the purposes for which they were constructed. If the buildings cease to be used for such purpose within that 20-year period, the grantee must reimburse the Federal government for some of its costs.

Questions?

If you have additional questions, please email them to RSAfiscal@ed.gov.

