



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

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The Rehabilitation Services Administration (RSA), within the U.S. Department of Education's (Department) Office of Special Education and Rehabilitative Services, issues this Questions and Answers document in response to inquiries concerning the administration of the State Vocational Rehabilitation (VR) Services, American Indian Vocational Rehabilitation Services (AIVRS), and Randolph-Sheppard programs as grantees seek to provide continuity of operations for individuals with disabilities in the current COVID-19 environment.

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

## **VR Process**

### **Q1. How can VR agencies manage referrals and applications for VR services during the COVID-19 pandemic?**

#### *Processing Referrals*

VR agencies may amend their standards for processing referrals to meet the needs of individuals with disabilities in a timely manner while also addressing available staff capacity, although the expectation is that VR agencies will not unduly delay the processing of referrals of individuals with disabilities to their VR programs. The amended standards should be maintained by the VR agency

The VR regulations at 34 C.F.R. § 361.41(a) require VR agencies to develop and implement standards for the “prompt and equitable handling” of referrals of individuals with disabilities to the VR program. While there are no specific Federal timelines for processing referrals, the standards for referrals must include timelines for making good faith efforts to inform the individuals of application requirements and for gathering the necessary information to initiate assessments for determining eligibility and priority in the State’s order of selection, if applicable.

#### *Application Procedures*

Once a referral has been made, consistent with 34 C.F.R. § 361.41(b)(2), individuals with disabilities may request VR services in a variety of ways, such as—

- By completing and signing a VR agency’s application form in writing or online;
- By completing a common intake application form at a one-stop center or online requesting VR services; or
- By otherwise requesting services from the VR agency, such as by telephone, email, or letter to the VR agency.

There is no requirement that applications be submitted in writing or that they be signed; once an application is received, the VR agency would then document how the request was received.

**Q2. How may VR agencies address signature requirements and adhere to the time frames for eligibility determinations and development of individualized plans for employment (IPE) given the challenges associated with agency operations during the COVID-19 pandemic?**

*Extensions for Eligibility Determinations and IPE Development*

VR agencies may extend the 60-day timeline for determining the eligibility of applicants for VR services when there are exceptional and uncontrollable circumstances beyond the control of the VR agency and the individual and the VR agency agree to a specific extension of time. VR agencies may extend the 90-day timeline for developing an IPE for eligible individuals with disabilities if both the VR counselor and individual agree to a specific date by which the IPE will be completed. Under the circumstances presented by the COVID-19 pandemic, the 60-day timeline for determining eligibility and the 90-day timeline for developing the IPE may be extended so long as both the VR counselor and individual agree to a specific extension of time.

Section 102(a)(6) of the Rehabilitation Act of 1973 (Rehabilitation Act) and 34 C.F.R. § 361.41(b)(1) that establish the 60-day time frame for eligibility determinations and Section 102(a)(6)(A) of the Rehabilitation Act and 34 C.F.R. § 361.41(b)(1)(i) permit an extension of that 60-day timeline when there are “exceptional and uncontrollable circumstances” beyond the control of the VR agency.

Section 102(b)(3)(F) of the Rehabilitation Act and 34 C.F.R. § 361.45(d) require that the IPE be developed within 90 days of the eligibility determination and permit an extension of that 90-day timeline if both the VR counselor and individual agree to a specific date by which the IPE will be completed.

Further, while many VR agencies have policies and procedures that require signatures from both the counselor and the individual to acknowledge an agreement to extend the timeline for an eligibility determination or for developing the IPE, there are no Federal statutory or regulatory requirements that the VR agency obtain signatures for these purposes. Obtaining written or electronic signatures is a best practice. If permitted by agency policies and procedures in this emergency situation, email correspondence between the VR agency and the individual confirming the agreement for an extension, or a short memorandum placed in a case file with the date an agreement was reached by phone, for example, could suffice for purposes of the Federal requirements to document that both the VR counselor and the individual agree to an extension of time under either of these circumstances.

## *IPE Signatures*

We recognize it may be impossible to obtain required signatures for the IPE or amendments to the IPE in person. If permitted by agency policies and procedures in this emergency situation, VR agencies could satisfy the signature requirements in alternative ways, such as sharing the documents and obtaining the signatures electronically, by fax, or by mail. There may be rare situations in which the VR agency and an individual have reached an agreement on the contents of an IPE (or amendment to an IPE), and the VR agency mails the IPE to the individual but has not received the signed IPE before a necessary and allowable service is to be provided, (*e.g.*, the individual is engaged in employment training but needs to see a doctor immediately to determine whether he or she can continue the training). In rare cases such as that one, the VR counselor should place a short memorandum in the case file documenting the date the agreement was reached and the date the IPE (or amendment to the IPE) was mailed to the individual (signed by the VR counselor), so that the service can be provided pending receipt of the signed IPE (or amendment to the IPE) from the individual. The date on which the memorandum denoting agreement to the IPE or amendment was placed in the case file should be considered the date of the IPE or amendment, not the date on which the IPE or amendment was signed by the individual.

Section 102(b)(4)(C) of the Rehabilitation Act and 34 C.F.R. § 361.45(d)(3) require the IPE to be signed and agreed to by the individual, or his or her representative, and the VR counselor employed by the VR agency. Under Section 103(a) of the Rehabilitation Act and 34 C.F.R. § 361.48(b), allowable VR services are those needed by eligible individuals to achieve an employment outcome, as described in an IPE, and the VR counselor and individual, or his or her representative as appropriate, must sign amendments to the IPE before they will take effect (Section 102(b)(4)(E)(iii) of the Rehabilitation Act and 34 C.F.R. § 361.45(d)(7)). Amendments to the IPE are necessary when there are substantive changes to the employment outcome or services to be provided, or in the providers of those services.

Please note that the advice and analysis provided here is specific and limited to the facts presented, the grants at issue, and the Department's understanding of the [COVID-19 guidance](#) of the Centers for Disease Control and Prevention, as well as [guidance](#) issued by the Office of Management and Budget regarding the national emergency.

## **VR Service Delivery**

### **Q3. What alternatives to face-to-face service delivery are available to VR agencies?**

Telephone, online, or other alternative means may be used in place of providing VR and supported employment services face-to-face, including ongoing support services, during the unprecedented COVID-19 pandemic. RSA strongly encourages VR agencies to use remote or virtual service delivery strategies when physical offices are closed to ensure the continuity of service delivery to individuals with disabilities.

With regard to “ongoing support services” both the statute and regulations permit the VR agency to provide these services to individuals with the most significant disabilities either at the worksite or, in specific circumstances, especially at the request of the individual, away from the worksite. Therefore, VR agencies and their service providers may deliver these services remotely or virtually as well. Ongoing support services are defined at Section 7(27) of the Rehabilitation Act and 34 C.F.R. § 361.5(c)(37), which include services such as job coaching, follow-along, and other services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment. Ongoing support services also include the assessment of employment stability and provision of specific intensive services or the coordination of such services at least twice a month (Section 7(27)(B) of the Rehabilitation Act and 34 C.F.R. § 361.5(c)(37)(iv)).

If a change in services is determined necessary, we urge the VR agency and service providers to communicate with each individual being served as soon as possible to plan for how such virtual ongoing support services will be implemented and to document such changes in each individual’s IPE, as necessary. To the extent the ongoing support services, if provided in a virtual setting, represent a substantive change to the services provided or the provider of those services, then an amendment to the IPE will be required in accordance with Section 102(b)(3)(E)(ii) of the Rehabilitation Act and 34 C.F.R. § 361.45(d)(7).

**Q4. During the COVID-19 outbreak, must VR agencies determine if comparable services and benefits are available before providing VR services to eligible individuals?**

Yes, but the Federal statute and regulations do not prescribe what the search for comparable services and benefits must entail. Therefore, it is reasonable for VR agencies to develop policies and procedures or regulations that describe search parameters, so long as the search for comparable services and benefits does not unduly delay the provision of VR services or cause an interruption in the provision of VR services to eligible individuals.

Section 101(a)(8)(A) of the Rehabilitation Act and 34 C.F.R. § 361.53(a) require VR agencies, before providing accommodations, auxiliary aids and services, or other VR services (except for those services that are exempt), to determine if comparable services and benefits, as defined in 34 C.F.R. § 361.5(c)(8), exist under other Federal, State, or local public agencies, health insurance, or employee benefits and are available to an eligible individual, unless the determination would interrupt or delay the individual’s achievement of an employment outcome, an immediate job placement, or the provision of VR services to an individual at extreme medical risk.

VR agencies may experience difficulties in determining the availability of comparable services or benefits during the COVID-19 pandemic due to the operating status of other programs that generally offer or provide comparable services and benefits, or restrictions implemented by States in response to the COVID-19 pandemic. Under these circumstances, a VR agency would meet its Federal statutory and regulatory obligations by documenting in the individual’s service record in accordance with 34 C.F.R. §§ 361.46 and 361.47(a)(6), the lack of available comparable services and benefits due to the COVID-19 pandemic. However, a VR agency

should seek advice from its own attorneys to ensure the agency complies with all State requirements currently in effect.

Please note that the advice and analysis provided here is specific and limited to the facts presented, the grants at issue, and the Department's understanding of the COVID-19 [guidance](#) of the Centers for Disease Control and Prevention and [guidance](#) issued by the Office of Management and Budget regarding this national emergency.

**Q5. How do accessibility standards for facilities and providers of services apply when community service providers are teleworking or providing virtual services due to the COVID-19 pandemic?**

VR agencies and service providers whose offices and facilities have remained open to the public, and continue to be, must adhere to the requirements in the Architectural Barriers Act pertaining to accessibility standards, including during the COVID-19 pandemic. In addition, a VR provider must make good faith and reasonable efforts to comply with all other requirements set forth in Section 101(a)(6) of the Rehabilitation Act and 34 C.F.R. § 361.51. Specifically, even when providing VR services through virtual and other remote strategies, VR agencies still must continue to ensure they comply with program accessibility requirements in Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. This should not, however, limit or delay efforts to provide services to individuals with disabilities.

The Department recognizes that in this unique and ever-changing environment, these exceptional circumstances may affect how VR services are provided. VR agencies also must ensure that VR service providers communicate with applicants and eligible individuals in their native language when these individuals have limited English proficiency and use appropriate modes of communication to meet the needs of applicants and eligible individuals, as required in 34 C.F.R. § 361.51(c). Finally, as a core partner program in the one-stop centers, VR agencies must ensure they comply with the nondiscrimination requirements of Section 188 of the Workforce Innovation and Opportunity Act (WIOA) and 29 C.F.R. part 38, which includes requirements that the program and its services be provided in an accessible manner to individuals with disabilities. The requirements of Section 101(a)(6) of the Rehabilitation Act and 34 C.F.R. § 361.51, as well as, 29 C.F.R. part 38 continue to apply. Under current law, there is no waiver authority for these requirements.

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

### **Q6. How does the guidance for State VR agencies provided in questions 1 through 5 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 5 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, and Section 121 of the Rehabilitation Act and its implementing regulations at 34 C.F.R. part 371. Section 121(b)(1)(B) of the Rehabilitation Act and 34 C.F.R. § 371.21(a) provide that the VR services provided by AIVRS projects to American Indians with disabilities 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. The AIVRS regulations also provide that AIVRS projects will fully consider any comparable services and benefits available to American Indians with disabilities under any program which might meet in whole or in part the cost of any VR service at 34 C.F.R. § 371.21(h); and, at 34 C.F.R. § 371.21(j) and (k), the regulations address accessibility of facilities and services. 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. If an amendment to those 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.

## **Pre-Employment Transition Services**

### **Q 7. How may VR agencies handle the interruption of pre-employment transition services for students with disabilities during the COVID-19 pandemic?**

VR agencies must continue to make good faith and reasonable efforts to provide pre-employment transition services to each student with a disability based on the student's needs, and consistent with the health, safety and welfare of both individuals with disabilities and those providing services. This means that a VR agency may need to repeat the provision of pre-employment transition services to a student with a disability in the event the provision of those services was interrupted, if doing so is necessary to meet the needs of the student. This would be true whether the interruption is due to the COVID-19 pandemic, a student's illness, or another reason.

Pursuant to Section 113(a) of the Rehabilitation Act and 34 C.F.R. § 361.48(a), VR agencies, in coordination with local educational agencies, must provide, or arrange for the provision of, pre-employment transition services to all students with disabilities in need of such services. Neither the Rehabilitation Act nor its implementing regulations impose any limitations on the number or frequency of these services; however, the VR agency should make the determination to repeat services that have been disrupted on a case-by-case basis, taking into account the resources of the VR agency allocated for this purpose and the reasonable expenditure of funds.

## **Section 511**

### **Q8. How may VR agencies provide required career counseling and information and referral services and meet the requirements under Section 511 of the Rehabilitation Act given the challenges posed by COVID-19?**

#### *Providing Services*

VR agencies may provide career counseling and information and referral (CC&I&R) services in the manner that they consider most appropriate and effective. Because neither the Rehabilitation Act nor its implementing regulations in 34 C.F.R. part 397 prescribe how CC&I&R services must be provided, CC&I&R services may be provided by telephone or remotely through electronic or web-based delivery. These virtual options will enable the continuous delivery of required CC&I&R services for youth with disabilities seeking, and individuals with disabilities of any age engaged in, subminimum wage employment (Sections 511(a)(2)(B)(ii) and 511(c) of the Rehabilitation Act), even if VR agency offices or worksites are closed due to the COVID-19 pandemic.

The purpose of CC&I&R services is to provide career counseling and referrals to Federal and State programs in the individual's geographic area that offer employment-related services and supports designed to enable the individual with a disability to explore, discover, experience, and attain competitive integrated employment (Sections 511(a)(2)(B)(ii)(I) and 511(c)(1)(A) of the Rehabilitation Act). Section 511(c)(1)(A) of the Rehabilitation Act makes clear that CC&I&R services are delivered in a manner that facilitates independent decision making and informed choice.

#### *Documenting services*

A VR agency may transmit the documentation demonstrating completion of CC&I&R services in a variety of ways, including hand-delivery, mail, fax, and email. Though the regulations at 34 C.F.R. §§ 397.10, 397.30, and 397.40 prescribe the content of the documentation required for CC&I&R services (and other required services under Section 511 of the Rehabilitation Act, and Sections 511(a)(2)(B), 511(c), and 511(d)), nothing in the Rehabilitation Act or its implementing regulations limits the VR agency's use of virtual means for transmitting documentation required by Section 511. Similarly, the individual with a disability also may use virtual means, such as mail, email, and fax transmissions to send documentation to the employer required by Section 511, in order to obtain or maintain subminimum wage employment.

#### *Frequency of services and verification of prerequisite activities.*

Employers' compliance with Section 511 requirements, including those related to CC&I&R services that cannot be done in a timely manner due to the inability to reach the individual or due to the closure of the worksite, fall under the jurisdiction of the U.S. Department of Labor, Wage and Hour Division (WHD). Therefore, all decisions regarding flexibility in these limited areas will be made by that agency. The WHD is continuing to review the statutory requirements in light of this unprecedented public emergency and will communicate with its Section 14(c) certificate holders concerning compliance with these requirements.

Section 511(c)(2) of the Rehabilitation Act requires that the CC&I&R services be provided every six months during the first year of the individual's employment at subminimum wage and annually thereafter. Section 511(e) of the Rehabilitation Act requires the employer to verify that the individual has completed all required activities, including CC&I&R, before hiring or continuing to employ that individual with a disability at subminimum wage.

However, if individuals with disabilities are not available because telephone communication or online access is not feasible (*e.g.*, the employee does not have internet access or cannot communicate well over the telephone), thereby making it impossible for the VR agency to meet the timelines for the provision of services, the VR agency should document this fact and communicate it to the holder of the special wage certificate under Section 14(c) of the Fair Labor Standards Act that referred the individual initially.

### **RSA Monitoring**

#### **Q9. How is RSA addressing the time frames for Federal fiscal year (FFY) 2019 monitoring reports and corrective action plans?**

VR agencies should contact their State Liaisons at the Rehabilitation Services Administration to discuss their particular needs in meeting the challenges posed by the COVID-19 pandemic to their ability to engage in monitoring activities, such as reviewing and responding to draft monitoring reports and developing and implementing corrective action plans.

### **Data Collection and Reporting**

#### **Q10. Will RSA delay implementation of the revised Case Service Report (RSA-911) scheduled for Program Year (PY) 2020?**

RSA still plans to implement the revised RSA-911 for PY 2020 beginning July 1, 2020. The first quarterly report using the revised RSA-911 is due by November 15, 2020.

In May 2020, RSA plans to share the updated Edit Specifications related to the revised RSA-911 to assist VR agencies with developing internal controls for collecting and reporting accurate and valid performance data.

RSA issued the revised RSA-911 for PY 2020 and future years on May 6, 2019, through RSA Policy Directive 19-03, The revised RSA-911 will collect data required by both the Rehabilitation Act and Section 116 of WIOA necessary for determining compliance with requirements under the VR program and levels of performance for purposes of the performance accountability system under WIOA.

If VR agencies have specific issues in using the revised RSA-911, they should contact their State Liaisons at the Rehabilitation Services Administration to discuss their particular needs.

**Q11. Does the VR program’s statistical adjustment model for Measurable Skill Gains address unusual situations such as what VR agencies are experiencing with COVID-19?**

It is too soon to estimate the extent to which this model can address the effects of COVID-19. The U.S. Departments of Education and Labor (Departments) will closely monitor the impact of COVID-19 on grantee performance and service delivery and will ensure objective and fair performance assessments.

Title I of WIOA requires the Departments to use statistical adjustment models to adjust for changes in economic conditions and participant characteristics when establishing and adjusting levels of performance. Once States submit PY 2020 and PY 2021 indicator data (on October 1, 2021 and 2022, respectively), performance indicators will be re-estimated using the actual participant characteristics and economic conditions for the States to calculate the adjusted levels of performance. At that time, the impact of COVID-19 will be reflected in the participant and State employment predictor values when performance indicators are re-estimated.

**Business Enterprise Program**

**Q12. May RSA waive the requirement of 34 C.F.R. § 395.4(a), which requires States to submit rules and regulations, including any changes in policies related to the use of set-aside funds, to RSA for review and approval prior to implementation?**

No. RSA has no authority to waive this requirement. However, RSA is committed to expediting its review of changes in State policies due to the COVID-19 pandemic, including those related to the use of set-aside funds. Only in reviewing the proposed policies can RSA help ensure that the change in policies have been reached with the consent of the State’s Elected Committee of Blind Vendors (34 C.F.R. § 395.14(b)(1)), and, if applicable voted on by a majority of the blind vendors licensed in the State (34 C.F.R. § 395.9(b)(5)). RSA must ensure that, if implemented, any policy changes will comply with Federal requirements under both the Rehabilitation Act and the Randolph-Sheppard Act. RSA has expedited the review for States that have submitted policy changes to RSA related to the COVID-19 pandemic in recent weeks and will continue to do so, thereby enabling States to implement revised policies in a timely manner that comply with Federal requirements.

**Q13. Are VR agencies that serve as State Licensing Agencies (SLAs) for the Business Enterprise Program (BEP) allowed to use VR program funds to pay blind vendors a fair minimum return, a permitted purpose of set-aside funds under the BEP program at 34 C.F.R. § 395.9(b)(4)?**

No. VR funds may not be used to pay blind vendors a fair minimum return. VR agencies may only use VR program funds to pay for expenditures incurred in carrying out activities specified in Section 103(b)(1) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(5), including the acquisition of vending facilities or other vending equipment by VR agencies, management and supervision services, initial stocks and supplies, and initial operating expenses. A fair minimum return is not a cost that is allowable or allocable to the VR program, pursuant to

2 C.F.R. §§ 200.403 through 200.405. Under current law, there is no legal authority to waive these requirements.

States do have the discretion to set aside funds from the net proceeds of the operations of vending facilities for specific allowed purposes, consistent with Section 107(b)(3) of the Randolph-Sheppard Act and 34 C.F.R. § 395.9. Among the options States could consider is to use their set-aside funds to assure a fair minimum return for vendors during the time their businesses are affected by the COVID-19 pandemic.

Many States traditionally use the BEP set-aside funds, which are non-Federal funds, for purposes that are also allowable activities under the VR program (i.e., maintenance and replacement of equipment, purchase of new equipment, and management and supervision services) in order to assist with satisfying their match and maintenance of effort (MOE) requirements under the VR program. However, there is no requirement that VR agencies use the set-aside funds for these expenditures. It is permissible for the VR program to pay all costs associated with allowable BEP activities with VR program funds. In so doing, the VR agencies, as the SLAs, would have the entire amount of set-aside funds available to use for purposes not permitted under the VR program, such as the payment of a fair minimum return. Should a State decide to implement this option, if it is a change in current policy, it must seek agreement of the Elected Committee of Blind Vendors and approval of RSA, and it must also take into consideration its effect on the State's ability to satisfy match and MOE requirements under the VR program. RSA staff will provide technical assistance, upon request, to any State needing assistance in this area.