

**FISCAL YEAR 2011  
MONITORING REPORT  
ON THE  
TENNESSEE REHABILITATION SERVICES  
VOCATIONAL REHABILITATION  
PROGRAM**



**U.S. DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND  
REHABILITATIVE SERVICES  
REHABILITATION SERVICES ADMINISTRATION**

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# SECTION 1: EXECUTIVE SUMMARY

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## Background

Section 107 of the *Rehabilitation Act of 1973*, as amended (*Rehabilitation Act*), requires the Commissioner of the Rehabilitation Services Administration (RSA) to conduct annual reviews and periodic on-site monitoring of programs authorized under Title I of the *Rehabilitation Act* to determine whether a state vocational rehabilitation (VR) agency is complying substantially with the provisions of its State Plan under section 101 of the *Rehabilitation Act* and with the evaluation standards and performance indicators established under Section 106. In addition, the commissioner must assess the degree to which VR agencies are complying with the assurances made in the State Plan Supplement for Supported Employment (SE) Services under Title VI, part B, of the *Rehabilitation Act*.

Through its monitoring of the VR and SE programs administered by the Tennessee Division of Rehabilitation Services (TDRS) in fiscal year (FY) 2011, RSA:

- reviewed the VR agency's progress toward implementing recommendations and resolving findings identified during the prior monitoring cycle (FY 2007);
- reviewed the VR agency's performance in assisting eligible individuals with disabilities to achieve high-quality employment outcomes;
- recommended strategies to improve performance and required corrective actions in response to compliance findings related to three focus areas, including:
  - the organizational structure requirements of the designated state agency (DSA) and the designated state unit (DSU);
  - transition services and employment outcomes for youth with disabilities; and
  - the fiscal integrity of the VR program;
- identified emerging practices related to the three focus areas and other aspects of the VR agency's operations; and
- provided technical assistance (TA) to the VR agency to enable it to enhance its performance and to resolve findings of noncompliance.

The nature and scope of this review and the process by which RSA carried out its monitoring activities, including the conduct of an on-site visit from June 20 through 24, 2011, is described in detail in *the FY 2011 Monitoring and Technical Assistance Guide for the Vocational Rehabilitation Program* located at: [www.ed.gov/rschstat/eval/rehab/107-reports/2011/monitoring-and-technical-assistance-guide.doc](http://www.ed.gov/rschstat/eval/rehab/107-reports/2011/monitoring-and-technical-assistance-guide.doc) or, [www.ed.gov/rschstat/eval/rehab/107-reports/2011/monitoring-and-technical-assistance-guide.pdf](http://www.ed.gov/rschstat/eval/rehab/107-reports/2011/monitoring-and-technical-assistance-guide.pdf)

## Emerging Practices

Through the course of its review, RSA collaborated with TDRS, the State Rehabilitation Council (SRC), the Technical Assistance and Continuing Education (TACE) center and other stakeholders to identify the emerging practices below implemented by the agency to improve the performance and administration of the VR program.

- Improvement of employment outcomes, including supported employment and self employment: TDRS developed a career exploration curriculum and expanded its training of staff in career exploration processes in order to improve the quality and quantity of successful outcomes.
- Outreach to unserved and underserved populations: TDRS developed strategies to increase outreach to and improve services and outcomes for individuals who are deaf-blind and those with autism, including strengthening its partnerships with a variety of organizations and developing statewide staff consultation and training resources.

A more complete description of these practices can be found in Section 3 of this report.

## **Summary of Observations**

RSA's review of TDRS resulted in the observations related to the focus areas identified below. The entire observations and the recommendations made by RSA that the agency can undertake to improve its performance are contained in Section 5 of this report.

### **Transition Services and Employment Outcomes for Youth with Disabilities**

- TDRS experienced a decline in the total number of youth with disabilities who received services and who achieved an employment outcome from FY 2006 through FY 2010, which the agency attributed in part to the continuing implementation of an order of selection. The performance trends may also have been affected by the recent implementation of new VR policies pertaining to college training, the lack of a formal inter-agency work group among TDRS transition partners, and the need for more systematic and focused training for VR counselors providing transition services.

### **Fiscal Integrity of the VR Program**

- The Tennessee Department of Human Services Cost Allocation Plan, effective July 1, 2008, has not been updated to reflect the most recent program reorganization.
- TDRS fiscal and program staff were uncertain regarding accountability for shared responsibilities related to the development and monitoring of third-party cooperative arrangements, establishment projects, and match requirements.

## **Summary of Compliance Findings**

RSA's review resulted in the identification of the compliance findings specified below. The complete findings and the corrective actions that TDRS must undertake to bring itself into compliance with pertinent legal requirements are contained in Section 6 of this report.

- TDRS's federal financial reports (SF-269/SF-425) for the VR program were not submitted in a manner consistent with federal regulations at 34 CFR 361.12 and 34 CFR 80.20(a), which require all recipients of federal funds to accurately report the financial results of all federally-assisted activities.
- TDRS is not in compliance with federal regulations at 34 CFR 80.21(f)(2) requiring grantees to disburse program income prior to requesting additional cash payments.

- TDRS is not in compliance with federal regulations at 34 CFR 80.20(a), which require grantees to account for the VR funds to such a degree that it can trace the funds for each activity to ensure that the funds were expended in accordance with federal requirements, and regulations at 34 CFR 361.40(a), which require grantees to monitor and manage the day-to-day operations of all grant-supported activities.
- TDRS's use of in-kind costs to meet part or all of its non-federal share for the VR program is not in compliance with 34 CFR 361.60(b)(2).
- TDRS's use of contributions from private entities for matching purposes is not in compliance with 34 CFR 361.60(b)(3).
- TDRS is not in compliance with section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3 because the indirect costs associated with the Independent Living (IL) and Older Individuals who are Blind (OIB) programs have been charged to the VR program award for FYs 2006—2010.
- TDRS is not in compliance with respect to the manner in which it expended funds for the purpose of renovating its community rehabilitation center at Smyrna.
- The provision of cash and gift incentives to individuals participating in training programs pursuant to TDRS's contracts with community rehabilitation programs (CRP) are not allowable services under the VR program as set forth at regulations at 34 CFR 361.5(b)(58) and 34 CFR 361.48(s).
- The written agreements used to implement the third-party cooperative arrangements under the 22 transition from school to work (TSW) contracts for the provision of services do not sufficiently describe the manner in which TDRS is complying with the requirements governing such arrangements found at 34 CFR 361.28.
- TDRS has not followed the appropriate procedures for the development of a community rehabilitation program (CRP) under the establishment authority as described in the *Rehabilitation Act* and VR program regulations with respect to the Memphis Goodwill Industries.
- TDRS has not followed the appropriate procedures for the establishment of a CRP under the establishment authority as described in the *Rehabilitation Act* and VR program regulations with respect to the call center project with Lions Volunteer Blind Industries.
- TDRS is paying 100 percent of the costs for the operations and provision of services by the Tennessee Council for the Deaf and Hard of Hearing (TCDHH) and the six service centers located throughout the state which is not consistent with the requirements that VR funds only be used to assist individuals, or groups of individuals, receiving VR services for the purpose of achieving a vocational goal.

## **Development of the Technical Assistance Plan**

RSA will collaborate closely with TDRS and the Region IV Southeast TACE center to develop a plan to address the TA needs identified in Appendix A of this report. RSA, TDRS and the Southeast TACE center will conduct a teleconference within 30 days following the publication of the final report to discuss the details of the TA needs, identify and assign specific responsibilities for implementing TA and establish initial timeframes for the provision of the assistance. RSA, TDRS and Southeast TACE will participate in teleconferences at least semi-annually to gauge progress and revise the plan as necessary.

## **Review Team Participants**

Members of the RSA review team included Brian Miller and Carol Dobak (Vocational Rehabilitation Unit); Fred Isbister (Technical Assistance Unit); David Steele, Tanielle Chandler and Katherine Courtnage-Clay (Fiscal Unit); and Steven Zwillinger (data unit). Although not all team members participated in the on-site visit, each contributed to the gathering and analysis of information, along with the development of this report.

## **Acknowledgements**

RSA wishes to express appreciation to the representatives of TDRS for the cooperation and assistance extended throughout the monitoring process. RSA also appreciates the participation of the SRC, the Client Assistance Program and advocates, and other stakeholders in the monitoring process.

## SECTION 2: PERFORMANCE ANALYSIS

This analysis is based on a review of the programmatic data contained in Table 2.1 below and is intended to serve as a broad overview of the VR program administered by TDRS. It should not be construed as a definitive or exhaustive review of all available agency VR program data. As such, the analysis does not necessarily capture all possible programmatic trends. In addition, the data in Table 2.1 measure performance based on individuals who exited the VR program during FY 2006 through FY 2010. Consequently, the table and accompanying analysis do not provide information derived from TDRS' open service records including those related to current applicants, individuals who have been determined eligible and those who are receiving services. TDRS may wish to conduct its own analysis, incorporating internal open caseload data, to substantiate or confirm any trends identified in the analysis.

### Performance Analysis

#### VR Program Analysis

**Table 2.1**  
**TDRS Program Performance Data for FY 2006 through FY 2010**

Tennessee Division of Rehabilitation Services		2006	2007	2008	2009	2010	Change from 2006 to 2010	All Combined Agencies 2010
<b>TOTAL CASES CLOSED</b>	<b>Number</b>	<b>10,648</b>	<b>9,830</b>	<b>15,532</b>	<b>8,935</b>	<b>11,466</b>	<b>818</b>	<b>281,286</b>
	<b>Percent</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>7.7%</b>	<b>100.0%</b>
<b>Exited as an applicant</b>	<b>Number</b>	2,528	1,325	1,437	1,434	1,680	-848	47,487
	<b>Percent</b>	23.7%	13.5%	9.3%	16.0%	14.7%	-33.5%	16.9%
<b>Exited during or after trial work experience/extended employment</b>	<b>Number</b>	27	50	108	88	133	106	1,708
	<b>Percent</b>	0.3%	0.5%	0.7%	1.0%	1.2%	392.6%	0.6%
<b>TOTAL NOT DETERMINED ELIGIBLE</b>	<b>Number</b>	<b>2,555</b>	<b>1,375</b>	<b>1,545</b>	<b>1,522</b>	<b>1,813</b>	<b>-742</b>	<b>49,195</b>
	<b>Percent</b>	<b>24.0%</b>	<b>14.0%</b>	<b>9.9%</b>	<b>17.0%</b>	<b>15.8%</b>	<b>-29.0%</b>	<b>17.5%</b>
<b>Exited without employment outcome after signed IPE</b>	<b>Number</b>	288	225	394	231	350	62	5,824
	<b>Percent</b>	2.7%	2.3%	2.5%	2.6%	3.1%	21.5%	2.1%
<b>Exited from order of selection waiting list</b>	<b>Number</b>	1,660	2,170	1,864	553	305	-1,355	1,390
	<b>Percent</b>	15.6%	22.1%	12.0%	6.2%	2.7%	-81.6%	0.5%
<b>Exited without employment after eligibility</b>	<b>Number</b>	1,736	1,568	3,756	3,157	5,546	3,810	68,696
	<b>Percent</b>	16.3%	16.0%	24.2%	35.3%	48.4%	219.5%	24.4%
<b>TOTAL EXITED AFTER ELIGIBILITY, BUT PRIOR TO RECEIVING SERVICES</b>	<b>Number</b>	<b>3,684</b>	<b>3,963</b>	<b>6,014</b>	<b>3,941</b>	<b>6,201</b>	<b>2,517</b>	<b>75,910</b>
	<b>Percent</b>	<b>34.6%</b>	<b>40.3%</b>	<b>38.7%</b>	<b>44.1%</b>	<b>54.1%</b>	<b>68.3%</b>	<b>27.0%</b>
<b>Exited with employment</b>	<b>Number</b>	2,904	2,828	2,484	1,906	1,651	-1,253	78,860
	<b>Percent</b>	27.3%	28.8%	16.0%	21.3%	14.4%	-43.1%	28.0%
<b>Exited without employment</b>	<b>Number</b>	1,505	1,664	5,489	1,566	1,801	296	77,321
	<b>Percent</b>	14.1%	16.9%	35.3%	17.5%	15.7%	19.7%	27.5%

**Table 2.1  
TDRS Program Performance Data for FY 2006 through FY 2010**

Tennessee Division of Rehabilitation Services		2006	2007	2008	2009	2010	Change from 2006 to 2010	All Combined Agencies 2010
<b>TOTAL RECEIVING SERVICES</b>	<b>Number</b>	<b>4,409</b>	<b>4,492</b>	<b>7,973</b>	<b>3,472</b>	<b>3,452</b>	<b>-957</b>	<b>156,181</b>
	<b>Percent</b>	<b>41.4%</b>	<b>45.7%</b>	<b>51.3%</b>	<b>38.9%</b>	<b>30.1%</b>	<b>-21.7%</b>	<b>55.5%</b>
<b>EMPLOYMENT RATE</b>		<b>65.87%</b>	<b>62.96%</b>	<b>31.16%</b>	<b>54.90%</b>	<b>47.83%</b>		<b>50.49%</b>
Transition aged youth closed	<b>Number</b>	5,271	4,809	7,436	4,069	5,280	9	100,116
	<b>Percent</b>	49.5%	48.9%	47.9%	45.5%	46.0%	1.1%	35.6%
Transition aged youth employment outcomes	<b>Number</b>	1,734	1,588	1,361	977	797	-937	27,745
	<b>Percent</b>	59.7%	56.2%	54.8%	51.3%	48.3%	-54.0%	35.2%
Competitive employment outcomes	<b>Number</b>	2,707	2,640	2,250	1,684	1,528	-1,179	73,995
	<b>Percent</b>	93.2%	93.4%	90.6%	88.4%	92.5%	-43.6%	93.8%
Supported employment outcomes	<b>Number</b>	316	350	470	368	274	-42	7,004
	<b>Percent</b>	10.9%	12.4%	18.9%	19.3%	16.6%	-13.3%	8.9%
Average hourly wage for competitive employment outcomes	<b>Average</b>	\$10.00	\$9.93	\$10.44	\$10.34	\$10.11		\$11.33
Average hours worked for competitive employment outcomes	<b>Average</b>	31.5	31.0	30.8	28.7	28.3		31.4
Competitive employment outcomes at 35 or more hours per week	<b>Number</b>	1,549	1,454	1,202	772	651	-898	38,784
	<b>Percent</b>	53.3%	51.4%	48.4%	40.5%	39.4%	-58.0%	49.2%
Employment outcomes meeting SGA	<b>Number</b>	1,757	1,586	1,329	902	783	-974	48,900
	<b>Percent</b>	60.5%	56.1%	53.5%	47.3%	47.4%	-55.4%	62.0%
Employment outcomes with employer-provided medical insurance	<b>Number</b>	966	870	665	415	336	-630	18,791
	<b>Percent</b>	33.3%	30.8%	26.8%	21.8%	20.4%	-65.2%	23.8%

## VR Performance Trends

### Positive Trends

During the review period, TDRS made progress in reducing the size of its waiting list and moving eligible individuals into active status. The agency implemented its Order of Selection in FY 2001, and closed all priority categories except category 1 in FY 2006. By 2008, TDRS began to intermittently bring individuals assigned to Category 2 off the waiting list since that time. As shown in Table 2.1, the number of individuals who exited the VR program from the waiting list decreased from 1,660 in FY 2006, to 305 in FY 2010.

Also during the review period, TDRS continued to assist a higher percentage of individuals with supported employment goals to achieve employment than the national average among combined agencies. The percentage of individuals who achieved a supported employment outcome of all

those who obtained employment increased from 10.9 percent in FY 2006, to 16.6 percent in FY 2010. In FY 2010, the percentage was nearly twice that of 8.9 percent for all combined agencies.

TDRS served more youth with disabilities than the national average for combined agencies. For example, transition-age youth represented 46 percent of all individuals whose cases were closed by TDRS in FY 2010, as compared to 35.6 percent for all combined agencies that year. In addition, of all individuals who achieved employment during the period, a greater percentage was transition-age youth when compared to the performance of all combined agencies. Again in FY 2010, 48.3 percent of the individuals who achieved employment were transition-age youth, as compared to 35.2 percent for all combined agencies.

### **Trends Indicating Potential Risk to the Performance of the VR Program**

Although TDRS reduced the number of individuals on the waiting list during the period under review and the number of individuals exiting the program from the waiting list also decreased, TDRS experienced a significant increase in the number of individuals who exited the program after eligibility was determined but before the individualized plan for employment (IPE) was developed. As shown in Table 2.1, this figure increased from 1,736 in FY 2006, to 5,546 in FY 2010. Likewise, the total number of individuals who exited the VR program after eligibility was determined, but prior to receiving services, increased from 3,684 in FY 2006, to 6,201 in FY 2010, an increase of 2,517 individuals. This trend resulted in a corresponding decrease in the total number of individuals who received services during the period, from 4,409 in FY 2006, to 3,452 in FY 2010, a decrease of 957 individuals.

Along with the decrease in the number of individuals served during the period, the agency's performance with respect to the quantity and quality of employment outcomes also declined. The agency experienced a 43 percent decline in the number of employment outcomes, from 2,904 in FY 2006, to 1,651 in FY 2010. The number of individuals who did not obtain employment after receiving services also increased during the review period, from 1,505 to 1,801, an increase of 296 individuals. These trends taken together resulted in a significant decline in the agency's employment rate, from 66 percent to 48 percent over the five years under review.

This trend in performance was also evident when considering specific populations served by TDRS. For example, the total number of individuals who achieved a supported employment outcome decreased from 316 to 273 between FY 2006 and FY 2010, despite the increasing percentage these outcomes represented of all outcomes achieved as described above. In addition, the number of employment outcomes for youth with disabilities declined 53 percent during the period, from 1,734 in FY 2006 to 797 employment outcomes in FY 2010. See Section 5.B for more details regarding the agency's performance in the area of transition services and employment outcomes for youth with disabilities.

TDRS experienced a significant decline in its performance with respect to the quality of the outcomes achieved over the five year period under analysis. For example, Table 2.1 above shows a decline in the number of individuals who achieved an employment outcome and worked 35 hours or more per week, earned wages equivalent to or exceeding the level of substantial gainful activity (SGA), and received employer-provided medical insurance. The average hourly wages for competitive employment outcomes has generally remained constant, from \$10.00 in FY 2006

to \$10.11 in FY 2010, compared to the overall state average wage in that year of \$19.78. However, the average number of hours worked per week decreased from 32 to 28 and the number of competitive employment outcomes with employment at 35 hours or more per week declined by 58 percent from 1,549 in FY 2006 to 651 in FY 2010. In addition, the number of individuals who achieved employment outcomes with earnings equal to or exceeding SGA levels declined by 55 percent from 1,757 in FY 2006 to 783 in FY 2010. For each of these three quality indicators, TDRS performed below the national average for all combined VR agencies.

Further analysis of the above measures show that the product of hourly wages and hours worked per week represent a decline in average weekly earnings from \$315 to \$286. Additionally, the number of employment outcomes with employer-provided medical insurance declined by 65 percent, from 966 in FY 2006 to 336 in FY 2010.

RSA discussed possible factors contributing to the contraction of the VR program in terms of the number of individuals served and the employment outcomes achieved with TDRS management and personnel during the course of the review. The agency noted that Tennessee has a high unemployment rate of more than 10 percent, and virtually all TDRS consumers currently served are assigned to Category 1 (most significantly disabled). TDRS indicated that its lower average VR wage is attributable, at least in part, to the relatively high number of individuals with supported employment goals, the type of jobs in which individuals typically do not earn high wages, work full-time and receive benefits such as employer-provided medical insurance.

Despite the challenges posed by the implementation of an order of selection and those stemming from the economic and social conditions that currently exist in Tennessee, TDRS cannot avoid taking aggressive action to address those aspects of the VR process that can mitigate the negative effects of these factors and begin to reverse the decline in performance.

## SECTION 3: EMERGING PRACTICES

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While conducting the monitoring of the VR program, the review team collaborated with TDRS, the SRC, the TACE, and agency stakeholders to identify emerging practices in the following areas:

- strategic planning;
- program evaluation and quality assurance practices;
- human resource development;
- transition;
- the partnership between the VR agency and SRC;
- the improvement of employment outcomes, including supported employment and self-employment;
- VR agency organizational structure; and
- outreach to unserved and underserved individuals.

RSA considers emerging practices to be operational activities or initiatives that contribute to successful outcomes or enhance VR agency performance capabilities. Emerging practices are those that have been successfully implemented and demonstrate the potential for replication by other VR agencies. Typically, emerging practices have not been evaluated as rigorously as "promising," "effective," "evidence-based," or "best" practices, but still offer ideas that work in specific situations.

As a result of its monitoring activities, RSA identified the emerging practices below.

### **Improvement of employment outcomes, including supported employment and self-employment**

From 2008 to 2010, TDRS developed and implemented a pilot innovation project designed to train counselors in the techniques of career exploration and to assist program participants in the identification of vocational objectives in line with local labor market demands. This project was developed in response to TDRS's observations that a significant number of program participants were placed in jobs other than those specified in their IPEs, chose fields with limited employment opportunities, or were placed in jobs for which they were poorly suited. TDRS developed a career exploration curriculum and expanded its training of staff in career exploration processes in order to improve the quality and quantity of successful outcomes. The agency developed a career exploration curriculum for program participants comprised of interest and skills inventories as well as values and personality assessments. The job components were based upon the O\*Net job data base. In addition, TDRS reassigned two caseload carrying VR counselors to serve as regional career exploration counselors and to serve as staff support specialists. The agency reported that in part as a result of the project, one region demonstrated a 13 percent increase in successful outcomes with a \$412,000 reduction in expenditures.

### **Outreach to unserved and underserved individuals**

Individuals who are Deaf-Blind: TDRS implemented strategies to better address the needs of individuals who are deaf-blind due to the growth of this population, as indicated by the increase

in the deaf-blind register from 143 to 475 people, over a short period of time. One of the key strategies was the strengthening of its partnerships with a variety of community organizations with expertise in serving the deaf-blind population to enhance its network of services, including the Rehabilitation Teacher for the Blind and Visually Impaired Program, Senior Neighbors, the Office of Aging and Disability, the Tennessee Device Access Program, the Helen Keller National Center, the Starkey Hear Now Foundation, local Hearing Loss Association of America groups, Vision Impaired Support groups, deaf-blind consumer groups, independent living centers, Lions Clubs, and the Tennessee Project for Individuals with Combined Hearing and Vision Loss at Vanderbilt University. TDRS also works with various technology centers across the state to ensure the population receives up-to-date training and information on technological advances. In addition, TDRS encouraged the growth of consumer-driven support groups located in Knoxville, Nashville, and Chattanooga (with plans to establish an additional support group in Memphis). TDRS has also built natural community supports for program participants by presenting deaf-blind simulations to businesses, volunteer groups, local organizations, as well as to high schools and colleges.

Individuals with Autism: TDRS implemented strategies to address the needs of individual with autism due to an increasing number of individuals with Autism Spectrum Disorders (ASD) served by the agency, primarily through the Transition School to Work program. TDRS established a statewide consultation and training network. TDRS's chief psychologist from its Tennessee Rehabilitation Center (TRC) and the agency's statewide mental health specialist serve as resources to train and consult with staff on ASD issues. The TRC offers a learning, rehabilitation, and educational environment to assist individuals with ASD to overcome day-to-day challenges in achieving successful employment outcomes. TRC developed a detailed ASD questionnaire designed to obtain information from parents and caregivers regarding sensory impairment issues, communication styles, independent living skills, work behaviors, work experiences, and reinforcement strategies. In addition, TDRS developed a more extensive orientation program for individuals with ASD and uses "social stories" that help the population to adjust to new surroundings, explore and discuss stressors, employ stress management techniques, and manage change through a routine daily schedule. TDRS also implemented an ASD communications skills support group and uses a team approach to monitor and address the needs of individuals with ASD.

## SECTION 4: RESULTS OF PRIOR MONITORING ACTIVITIES

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During its review of the VR and SE programs in FY 2011, RSA assessed progress toward the implementation of recommendations that TDRS agreed to address during the prior monitoring cycle in FY 2007 and the resolution of findings from that review. The additional TA requested by the agency to enable it to implement these prior recommendations and to resolve any outstanding compliance findings is contained in Appendix A of this report titled “Agency Response.”

### Recommendations

In response to RSA’s monitoring report dated August 16, 2007, TDRS agreed to implement the recommendations below. A summary of the agency’s progress toward implementation of each recommendation appears below.

#### 1. CRP Performance

**Recommendation:** RSA recommends that TDRS use data regarding the performance of community rehabilitation programs (CRP) to establish a “report card” system in order to increase CRP accountability and improve the quality and quantity of outcomes.

**Status:** TDRS developed a report card to rate the services of CRPs to provide staff and program participants with additional information about the quality of CRP services. A team of individuals consisting of quality assurance staff, as well as contract and field staff, analyzed information and implemented a pilot project in a local office. As a result of the pilot project, TDRS identified barriers to collecting data from various sources. The data was gathered and compiled manually and this was not an efficient operation. TDRS determined to fully implement the scorecard system by the end of FY 2012, once its new case management system is operational.

#### 2. Supported Employment (SE)

**Recommendation:** RSA recommends that TDRS focus on appropriate targeting of SE services by reviewing SE cases, developing tools, guidelines and training to ensure accurate SE referrals.

**Status:** Following the 2007 RSA monitoring visit, TDRS developed an SE eligibility assessment form to identify appropriate candidates for SE services. TDRS provided statewide staff training in November and December 2007, on the use of the form as well as on SE eligibility criteria. In addition, TDRS undertook a review of all SE cases at that time and made a follow-up comparison review in January 2009. With the implementation of the assessment form and the completion of the training, the 2009 comparison review revealed a 36 percent decrease in the number of SE cases. TDRS reported that the decrease was as a result of improved determinations of eligibility for SE cases by staff.

#### 3. Order of Selection

**Recommendation:** RSA recommends that TDRS begin to open the order of selection to Category 2 consumers and assess effects.

**Status:** As recommended in the FY 2007 monitoring report, TDRS began to release cases from its waiting list on October 1, 2007. Since that time, TDRS released a total of 14,397 cases from its waitlist. TDRS found that a large percentage (70 to 80 percent) of the individuals initially released from the waiting list no longer wanted services. This resulted in a decline in TDRS's spending and successful outcomes. Individuals now assigned to Category 2 were more prone to want services since they have been on the waiting list a shorter period of time than the previous Category 2 referrals. TDRS releases individuals from Category 2 from the waiting list bi-monthly and is considering fully opening Category 2.

#### **4. RSA-2 Report and State Plan**

**Recommendation:** RSA recommends that TDRS improve accuracy of the RSA-2 report. The state plan attachment addressing Innovation & Expansion strategies (4.11(d)) may need to be updated to reflect current strategies. Fiscal staff should review these strategies with program staff to ensure that mechanisms are in place to capture all costs associated with carrying out these activities, which are required to be reported on SF-269s and RSA-2s. Further, fiscal staff should review Attachment 4.11(e)(2) to ensure that financial information tied to reported I & E activities agrees with the records maintained by the fiscal unit.

**Status:** TDRS requested more guidance in this area. TDRS will need TA regarding the types of expenditures to include in the category of innovation and expansion.

#### **Compliance Findings and Corrective Actions**

As the result of the monitoring conducted during FY 2007, TDRS developed a corrective action plan (CAP) that included the steps TDRS must take to resolve the compliance finding identified in the monitoring report dated August 16, 2007, timelines for the implementation of the steps and the methods by which the agency and RSA would evaluate the agency's progress toward the resolution of the finding. A summary of TDRS' progress toward the resolution of the finding appears below.

##### **CSPD Standard**

**Corrective Action:** TDRS must comply with the federal CSPD requirement through approval of non-delegable case service functions by CSPD qualified counselors.

**Status:** TDRS resolved this compliance finding by specifying in its FY 2008 and subsequent State Plans that all counselors would meet the agency's CSPD standard by FY 2017. However, the agency continues to struggle to increase the number of VR counselors who meet its standard—that defined by the Commission on Rehabilitation Counselor Certification (CRCC). During FY 2010, a total of 10 incumbent counselors graduated from Master's in rehabilitation counseling distance learning programs. TDRS currently has 21 counseling staff enrolled in graduate level programs in rehabilitation counseling. One counselor has a Master's degree in a related area and is enrolled to complete a few core courses needed to meet the CSPD standard. Currently, 48 percent of caseload carrying VR counselors meet the standard. TDRS is researching strategies that will ensure all VRCs meet CSPD standards by 2017 and will be seeking technical assistance from RSA.

## **Technical Assistance**

During the course of its FY 2011 monitoring activities, RSA provided TA to enable TDRS to implement recommendations and resolve the finding identified through the FY 2007 review. In particular, RSA reviewed the CSPD standards with TDRS management and shared options other than utilizing the national CSPD standard with agency management.

## SECTION 5: FOCUS AREAS

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### A. Organizational Structure Requirements of the Designated State Agency (DSA) and Designated State Unit (DSU)

The purpose of this focus area was to assess the compliance of TDRS with the federal requirements related to its organization within the Tennessee Department of Human Services (DHS), the designated state agency, and the ability of TDRS to perform its non-delegable functions, including the determination of eligibility, the provision of VR services, the development of VR service policies, and the expenditure of funds. Specifically, RSA engaged in a review of:

- compliance with statutory and regulatory provisions governing the organization of the DHS and TDRS under 34 CFR 361.13(b);
- processes and practices related to the promulgation of VR program policies and procedures;
- the manner in which TDRS exercises responsibility over the expenditure and allocation of VR program funds, including procurement processes related to the development of contracts and agreements;
- procedures and practices related to the management of personnel, including the hiring, supervision and evaluation of staff; and
- the manner in which TDRS participates in the state's workforce investment system.

In the course of implementing this focus area, RSA consulted with the following agency staff and stakeholders:

- DHS and TDRS Commissioner, Assistant Commissioner and senior managers;
- DHS and TDRS staff members responsible for the fiscal management of the VR program;
- SRC Chairperson and members;
- Client Assistance Program staff members; and
- TACE center representatives.

In support of this focus area, RSA reviewed the following documents:

- a diagram illustrating the DSU's position in relation to the DSA, its relationship and position to other agencies that fall under the DSA, and the direction of supervisory reporting between agencies;
- a diagram identifying all programs from all funding sources that fall under the administrative purview of the DSU, illustrating the number of full-time equivalent (FTE) staff working on each program;
- the number of full-time employees (FTEs) in each program, identifying the specific programs on which they work and the individuals to whom they report, specifically including:
  - individuals who spend 100 percent of their time working on the rehabilitation work of TDRS;

- individuals who work on rehabilitation work of the TDRS and one or more additional programs/cost objectives (e.g., one-stop career centers); and
- individuals under TDRS that do not work on rehabilitation projects of the DSU.
- sample memoranda of understanding (MOUs) and/or cost allocation plans with one-stop career centers; and
- documents describing Tennessee procurement requirements and processes.

## **Overview**

TDRS is housed under DHS and is one of the major units of the Department, which also includes Human Resources, Adult and Family Services, Child Support, and Appeals and Hearings. The Assistant Commissioner of TDRS, along with those of the other major components, reports directly to the Deputy Commissioner of DHS, who in turn is located in the office of the Department Commissioner.

TDRS is comprised of six program divisions, including Vocational Rehabilitation Services, Blind and Deaf Services, Program Evaluation and Improvement, Disability Determination Services, the Tennessee Technology Access Program, and the Tennessee Rehabilitation Center in Smyrna, along with 17 additional local community rehabilitation centers known as CTRCs. The heads of these program divisions report directly to the Assistant Commissioner. Of the total 1,264 full-time equivalent positions assigned to TDRS as of July 2011, 627 are assigned to the DDS program, with the remaining 637 assigned across the other program units. Of the 627 FTEs assigned to DDS, 474 are filled and of the 637 remaining FTEs, 567 are filled.

RSA's review of the organizational structure of TDRS did not result in the identification of observations and recommendations.

## **B. Transition Services and Employment Outcomes for Youth with Disabilities**

The purpose of this focus area was to assess TDRS performance related to the provision of transition services to, and the employment outcomes achieved by, youth with disabilities and to determine compliance with pertinent federal statutory and regulatory requirements.

Section 7(37) of the *Rehabilitation Act* defines "transition services" as a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.

In the course of implementing this focus area, RSA identified and assessed the variety of transition services provided in the state, including community-based work experiences and other in-school activities, and post-secondary education and training, as well as the strategies used to provide these services. RSA utilized five-year trend data to assess the degree to which youth with disabilities achieved quality employment with competitive wages. In addition, RSA gathered information related to the coordination of state and local resources through required agreements developed pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and the *Rehabilitation Act*, and communities of practice. RSA also gathered information regarding emerging practices initiated by the VR agency in the area of services to youth with disabilities, as well as TA and continuing education needs of VR agency staff.

To implement this focus area, RSA reviewed:

- formal interagency agreements between the VR agency and the state educational agency (SEA);
- transition service policies and procedures;
- VR agency resources and collaborative efforts with other federal, state and local entities; and
- third-party cooperative arrangements and other cooperative agreements.

In support of its monitoring activities, RSA reviewed the following documents:

- the agreement between the VR agency and the state education agency (SEA);
- sample agreements between the VR agency and local education agencies (LEA);
- samples of signed and implemented third-party cooperative agreements;
- samples of other cooperative agreements; and
- VR policies and procedures for the provision of transition services.

To assess the performance related to the provision of transition services and the outcomes achieved by youth with disabilities, RSA reviewed TDRS's relevant data from FY 2006 through FY 2010, describing:

- the number and percentage of transition-age youth who exited the VR program at various stages of the process;
- the amount of time these individuals were engaged in the various stages of the VR process, including eligibility determination, development of the individualized plan for employment (IPE) and the provision of services;
- the number and percentage of transition-age youth receiving services, including assessment, university and vocational training, rehabilitation technology and job placement; and
- the quantity, quality and types of employment outcomes achieved by transition-age youth.

RSA also compared the performance of TDRS with peer agencies during the same period, as well as with national averages for other combined VR agencies.

As part of its review activities, RSA met with the following DSA and DSU staff and stakeholders to discuss the provision of services to youth with disabilities:

- TDRS Assistant Commissioner;
- TDRS VR counselors and transition staff;
- TDRS transition coordinator serving as liaisons with the SEA and other agencies;
- state and local school personnel, including special education teachers; and
- parents and guardians of youth with disabilities receiving, or applying for VR services.

RSA's review of transition services and employment outcomes achieved by youth with disabilities resulted in the identification of the following observations and recommendations. The TA requested by TDRS to enable it to carry out these recommendations is contained in Appendix A of this report titled "Agency Response." In addition, the implementation of this focus area did not result in the identification of compliance findings.

## **Observations and Recommendations**

### **5.B.1: Order of Selection, Education-Related Policies and Training of VR counselors and the Impact on Services and Outcomes for Youth with Disabilities**

**Observation:** During the period under review, TDRS experienced a significant decline in the total number of youth with disabilities who received transition services and who achieved an employment outcome. TDRS attributed this trend, in part, to the continuing implementation of an order of selection (OOS). In addition, some transition counselors reported that new staff would benefit from more focused training on transition issues and by the establishment of a communications network for all transition staff to assist them to better serve this population.

- As shown in Table 5.B.1 below, the total number of youth with disabilities served by TDRS declined 32.4 percent from FY 2006 through FY 2010, from 2,353 to 1,591 individuals, a total decrease of 762 individuals served.
- Also, as shown in the table, the total number of youth with disabilities who achieved employment during the period declined 54 percent, from 1,734 to 797, a total decrease of 937 fewer outcomes. The percentage of youth with disabilities who achieved employment in comparison to the total number of all employment outcomes similarly decreased from 60 percent to 48 percent over the five year period. Nevertheless, as noted in Section 2 of this report, while this represents a substantial decline for the agency, this is still higher than the national average of 35 percent among combined agencies in FY 2010.
- The total number of youth with disabilities who exited the VR program without employment after receiving services rose from 619 to 794 individuals, an increase of 175, or 28.3 percent. The overall percentage of youth with disabilities served who exited the VR program without employment after receiving services increased during this period from 11.7 percent to 15.0 percent, which is still nearly half the national average of 29 percent for this measure for combined agencies. It should be noted that as the table shows, in FY 2008 the numbers and percent for this measure increased to 2,490, or 33.7 percent respectively. A similar spike was seen for all individuals served by the agency in that fiscal year due to TDRS's efforts to close cases that were no longer viable. See Table 2.1 in Section 2 of this report for data showing this phenomenon.

- The above performance trends contributed to a significant decline in the rehabilitation rate for youth with disabilities, from 73.6 percent to 50.0 percent over the five year period, compared to the national average for all combined agencies of 55.8 percent in FY 2010.

**Table 5.B.1**

**Types of Closure for Transition Youth for Service Records Closed by TDRS for FY 2006 through FY 2010**

Tennessee Division of Rehabilitation Services		Transition age (2006)	Transition age (2007)	Transition age (2008)	Transition age (2009)	Transition age (2010)	Change from FY 2006 to FY 2010	Agency Type Transition age (2010)
<b>TOTAL TRANSITION AGE YOUTH CASES CLOSED</b>	<b>Number</b>	<b>5,271</b>	<b>4,809</b>	<b>7,436</b>	<b>4,069</b>	<b>5,280</b>	<b>9</b>	<b>100,116</b>
	<b>Percent</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>0.2%</b>	<b>100.0%</b>
Exited as an applicant	<b>Number</b>	1,476	841	879	824	952	-524	15,291
	<b>Percent</b>	28.0%	17.5%	11.8%	20.3%	18.0%	-35.5%	15.3%
Exited during or after trial work experience/extended employment	<b>Number</b>	8	22	39	33	37	29	513
	<b>Percent</b>	0.2%	0.5%	0.5%	0.8%	0.7%	362.5%	0.5%
<b>TOTAL NOT DETERMINED ELIGIBLE</b>	<b>Number</b>	<b>1,484</b>	<b>863</b>	<b>918</b>	<b>857</b>	<b>989</b>	<b>-495</b>	<b>15,804</b>
	<b>Percent</b>	<b>28.2%</b>	<b>17.9%</b>	<b>12.3%</b>	<b>21.1%</b>	<b>18.7%</b>	<b>-33.4%</b>	<b>15.8%</b>
Exited without employment outcome after signed IPE	<b>Number</b>	128	99	194	94	155	27	2,503
	<b>Percent</b>	2.4%	2.1%	2.6%	2.3%	2.9%	21.1%	2.5%
Exited from order of selection waiting list	<b>Number</b>	620	984	877	166	99	-521	378
	<b>Percent</b>	11.8%	20.5%	11.8%	4.1%	1.9%	-84.0%	0.4%
Exited without employment after eligibility	<b>Number</b>	686	557	1,596	1,278	2,446	1,760	24,476
	<b>Percent</b>	13.0%	11.6%	21.5%	31.4%	46.3%	256.6%	24.4%
<b>TOTAL EXITED AFTER ELIGIBILITY, BUT PRIOR TO RECEIVING SERVICES</b>	<b>Number</b>	<b>1,434</b>	<b>1,640</b>	<b>2,667</b>	<b>1,538</b>	<b>2,700</b>	<b>1,266</b>	<b>27,357</b>
	<b>Percent</b>	<b>27.2%</b>	<b>34.1%</b>	<b>35.9%</b>	<b>37.8%</b>	<b>51.1%</b>	<b>88.3%</b>	<b>27.3%</b>
Exited with employment	<b>Number</b>	1,734	1,588	1,361	977	797	-937	27,745
	<b>Percent</b>	32.9%	33.0%	18.3%	24.0%	15.1%	-54.0%	27.7%
Exited without employment	<b>Number</b>	619	718	2,490	697	794	175	29,210
	<b>Percent</b>	11.7%	14.9%	33.5%	17.1%	15.0%	28.3%	29.2%
<b>TOTAL RECEIVING SERVICES</b>	<b>Number</b>	<b>2,353</b>	<b>2,306</b>	<b>3,851</b>	<b>1,674</b>	<b>1,591</b>	<b>-762</b>	<b>56,955</b>
	<b>Percent</b>	<b>44.6%</b>	<b>48.0%</b>	<b>51.8%</b>	<b>41.1%</b>	<b>30.1%</b>	<b>-32.4%</b>	<b>56.9%</b>
<b>EMPLOYMENT RATE</b>		<b>73.69%</b>	<b>68.86%</b>	<b>35.34%</b>	<b>58.36%</b>	<b>50.09%</b>		<b>48.71%</b>

- Much of the decline in TDRS's performance related to services and outcomes for transition-age youth mirrors that of the overall program. This is primarily due to the impact of the implementation of the order of selection beginning in 2001, and continuing through FY 2011, resulting in the agency's inability to serve all eligible individuals. TDRS expects that since it opened Category 1 in FY 2008, and recently partially opened Category 2, it will begin to

reverse the downward trends that are seen in the table above. TDRS will need to rebuild its relationships with school districts that are wary of referring individuals to the agency as a result of the OOS.

- The OOS has had a significant impact on the transition from school-to-work program. Since 2006, the number of TSWs declined from 46 to 22. When the program began in 1994, there were as many as 52 TSW contracts. The performance of TDRS and its ability to provide transition services to youth with disabilities may potentially jeopardize the TSW program, resulting in a reduction in the enhanced services provided to youth under these contracts, and causing even further decline in the performance trends described above. Losing more of the TSW contracts would also potentially jeopardize the non-federal match provided under these arrangements, which are expected to generate approximately \$764,000 in match for the agency in FY 2011.
- At the time of this review, TDRS did not track the performance of outcomes achieved by youth with disabilities who are served under the TSW contracts and those who are served by VR counselors with mixed caseloads in districts where TSW contracts do not exist. TDRS assumes individuals served under the TSWs are more likely to achieve an employment outcome. If TDRS tracks this data and could substantiate these outcomes, this would strengthen the agency's ability to negotiate new TSWs contracts.

### **College Training Services**

- Another notable trend in the provision of transition services is the decline in the number of youth with disabilities who receive college training. Between FY 2006 and FY 2010, the percentage of individuals who received college training services declined 53.8 percent from 1,046 to 485, for a total decline of 562 individuals. This represents a decline from 44.5 to 30.4 percent of transition age youth who received this service during this five year period. This is, however, still higher than the national average of 19.4 percent for combined and general agencies.
- TDRS introduced a financial means test related to tuition and fees for post-secondary education in order to increase the rate of financial participation of individuals in the costs of tuition and fees and increase the number of individuals who could be served by the VR program overall by diminishing the agency's expenditures on this service. TDRS indicated during the review the relatively high percentage of individuals receiving college training in prior years contributed to the agency's overall inability to serve all eligible individuals, as this particular service commanded a significant amount of the agency's fiscal resources.
- It is unclear if there is a connection between the provision of college training and implementation of the order, but the financial means testing and the new tuition and fees policies have had their intended effect. An unintended consequence, however, may be the decline in the success of youth with disabilities in terms of both the quantity and the quality of employment outcomes for this population.
- Some VR counselors and community stakeholders indicated to RSA that the financial needs testing is onerous, i.e., that the income level at which individuals and families are expected to financially participate in this service is set too low. RSA recognizes that exceptions can be made to this requirement, but feedback from the field indicated that referrals from the schools to TDRS have declined as a result of the new policies on college training.
- Similarly, the TDRS policy that requires students receiving college training to take 15 credit hours a semester in order to be considered full-time students and eligible for assistance

appears to be driven in part by the requirements of the “Hope” scholarship, and to encourage VR clients to expedite their progress through the educational component of their training, thereby reducing TDRS’s contribution toward the cost of this service. Although exceptions are granted to this policy, most educational institutions and the U. S. Department of Education recognize 12 credit hours as a full college workload. TDRS may wish to consider whether this policy is driven by fiscal concerns rather than the individual needs of program participants.

## **SEA Agreement**

- The State Education Agreement (SEA), under which DHS currently operates, with some nine other state agency partners, calls for the establishment of a formal work group for the purpose of coordinating services and sharing resources across state agencies. At the time of this review, the work group was an informal entity. DHS and TDRS, along with the other state agencies, would benefit greatly from the full implementation of the work group.

## **Training of TDRS Staff**

- During the on-site review, VR counselors reported that there is a need for additional training on how to better serve this population. In addition, the 26 VR counselors who work exclusively under the 22 TSW contracts, and exclusively with the transition population, noted that they would benefit greatly from regular opportunities to meet face-to-face, and hold quarterly teleconferences to discuss issues and share best practices.
- Transition counselors expressed appreciation for the work of the transition coordinator, but also stated that they would benefit by the establishment of mechanisms to expand day-to-day communications to discuss available resources as well as successful approaches to problem-solving difficult cases and share best practices.

**Recommendation:** To improve the performance of TDRS and the outcomes of youth with disabilities, RSA recommends that TDRS:

- 5.B.1.1 utilize data to monitor the performance of the agency’s transition initiatives to assess levels of performance throughout the state, particularly with respect to the use of comparative data between outcomes achieved by youth with disabilities served under the TSW contracts and those served by general VR counselors who also work with transition-age youth, and use this information to refine agency goals related to the provision of transition services, as well as implement targeted training based upon this data;
- 5.B.1.2 review the new VR service policies governing the provision of college training services, including financial needs testing, the payment of tuition and fees, and the establishment of a minimum number of required credit hours, to ensure that the policies are not negatively affecting the ability of youth with disabilities to receive college training and thereby achieve an employment outcome;
- 5.B.1.3 ensure that the SEA is fully implemented by working to establish the formal interagency work group required by the SEA for the purpose of coordinating services and improving the delivery of transition services;

- 5.B.1.4 develop mechanisms through which TDRS staff and the school districts can exchange information about effective transition practices throughout the state;
- 5.B.1.5 provide scheduled opportunities for in-service training for TDRS staff focused on the provision of transition services, particularly for those VR counselors who work exclusively with youth with disabilities, including teleconferences, workshops, and face-to-face strategy sessions as well as sharing of best practices; and
- 5.B.1.6 develop a website for transition counselors to post resources and increase communications on how to improve services to the transition population.

## **C. Fiscal Integrity of the Vocational Rehabilitation Program**

The purpose of this focus area was to assess fiscal performance related to the VR program and to determine compliance with pertinent federal statutory and regulatory requirements, including OMB circulars. For purposes of the VR program, fiscal integrity is broadly defined as the proper and effective management of VR program funds to ensure that they are spent solely on allowable expenditures and activities. Through the implementation of this focus area, RSA reviewed: VR agency resource management; the management of match and maintenance of effort (MOE); internal and external monitoring and oversight; and allowable and allocable costs.

RSA used a variety of resources and documents in the course of this monitoring, including data maintained on RSA's MIS generated from reports submitted by the VR agency, e.g., Financial Status Report (SF-269/SF-425) and the Annual VR Program/Cost Report (RSA-2). The review covered fiscal data from FY 2006 thru FY 2010, along with other fiscal reports as necessary, to identify areas for improvement and potential areas of noncompliance.

Specifically, RSA engaged in the review of the following to ensure compliance with federal requirements:

- the FY 2007 monitoring report issued pursuant to Section 107 of the *Rehabilitation Act* (see Section 4 above for a report of the agency's progress toward implementation of recommendations and resolution of findings);
- A-133 audit findings and corrective actions;
- state/agency allotment/budget documents and annual fiscal reports; and
- grant award, match, MOE, and program income documentation.

In addition RSA reviewed the following as part of the monitoring process to ensure compliance:

- third-party cooperative arrangements;
- service provider contracts;
- VR agency policies, procedures, and forms (e.g., monitoring, personnel certifications and personnel activity reports), as needed;
- internal agency fiscal reports and other fiscal supporting documentation, as needed; and
- VR agency cost benefits analysis reports.

RSA's review of the fiscal integrity of the VR program administered by TDRS resulted in the identification of the following observations and recommendations. The TA requested by TDRS

to enable it to carry out these recommendations is contained in Appendix A to this report titled “Agency Response.” In addition, the compliance findings identified by RSA through the implementation of this focus area are contained in Section 6 of this report.

## **Observations and Recommendations**

### **5.C.1: Cost Allocation Plan**

**Observation:** The DHS Cost Allocation Plan, effective July 1, 2008, has not been updated to reflect the most recent program reorganization. The Cost Allocation Plan states that “the Director of Vocational Rehabilitation is responsible for program and financial planning for the Vocational Rehabilitation Program and is the administrator of the Independent Living Parts A and B for non-blind” (p. 1206). Currently, responsibility for the IL Parts A and B programs is not assigned to the director of TDRS. Additionally, the Cost Allocation Plan includes the Prevention of Blindness Program which according to TDRS staff is no longer a program.

**Recommendation:** RSA recommends that TDRS:

5.C.1.1 update the rehabilitation services component of the DHS Cost Allocation Plan to reflect the current programs and position responsibilities.

### **5.C.2: Program Coordination**

**Observation:** TDRS fiscal and program staff were uncertain regarding accountability for shared responsibilities. For example, with regard to development and monitoring of third-party cooperative arrangements, neither program nor fiscal staff appeared to be fully aware of the program nor the fiscal requirements necessary to ensure the arrangements met regulatory requirements. The responsibility was shared between several program/fiscal employees with no clear responsibility for ensuring overall compliance. The same lack of coordination was apparent when discussing establishment projects and match requirements.

**Recommendation:** RSA recommends that TDRS:

5.C.2.1 review the requirements related to third-party cooperative arrangements, establishment projects, and match requirements and develop clear lines of responsibility to ensure that all program and fiscal requirements are met; and

5.C.2.2 consider having TDRS program and fiscal staff attend the FY 2011 RSA national financial management conference in August 2011 to gain additional information regarding fiscal and program requirements.

## **Technical Assistance**

RSA provided TA to TDRS related to this focus area during the course of its monitoring activities. Specifically, RSA made a presentation to TDRS fiscal staff regarding match requirements. RSA staff also reviewed TDRS’s SF-425 submissions in the RSA-MIS and compared the submitted data with the SF-425 reporting requirements.

## **SECTION 6: COMPLIANCE FINDINGS AND CORRECTIVE ACTIONS**

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RSA identified the following compliance findings and corrective actions that TDRS is required to undertake. The TA requested by the agency to enable it to carry out the corrective actions is contained in Appendix A to this report titled “Agency Response.” The full text of the legal requirements pertaining to each finding is contained in Appendix B.

TDRS must develop a corrective action plan for RSA’s review and approval that includes specific steps the agency will take to complete the corrective action, the timetable for completing those steps, and the methods the agency will use to evaluate whether the compliance finding has been resolved. RSA anticipates that the corrective action plan can be developed within 45 days from the issuance of this report and RSA is available to provide TA to assist TDRS to develop the plan and undertake the corrective actions.

RSA reserves the right to pursue enforcement action related to these findings as it deems appropriate, including the recovery of funds, pursuant to 34 CFR 80.43 and 34 CFR part 81 of the Education Department General Administrative Regulations (EDGAR).

### **1. Financial Reporting**

#### **Legal Requirements:**

- VR Program Regulations—34 CFR 361.12 and 361.63(c)(2)
- EDGAR—34 CFR 80.20(a)

#### **Finding:**

TDRS’s Federal Financial Reports (SF-269/SF-425) for the VR program are not being submitted in a manner consistent with federal regulations at 34 CFR 361.12 and 34 CFR 80.20(a), which require all recipients of federal funds to accurately report the financial results of all federally-assisted activities. VR grantees are required to submit accurate Federal Financial Reports (FFRs). As part of the monitoring process, RSA staff compared the financial data provided by TDRS onsite, with the SF-269/SF-425 information entered into the RSA-Management Information System (RSA-MIS). The following issues were noted:

- The SF-269/SF-425 reports submitted between FY 2006 and FY 2011 indicate that TDRS carried forward no VR program federal funds into the second year of the grant awards. On-site documentation indicated that substantial carry forward existed in each of these fiscal years. Subsequent to the on-site visit, TDRS informed RSA through an electronic message dated July 19, 2011, that the amount of carryover that should have been reported for FY 2010 was \$56,519,483. Additionally, the SRC, in Attachment 4.2(c) of TDRS’s FY State Plan, expressed concern regarding the large amount of carryover. During the review, staff indicated that federal obligations were not reported in a manner consistent with reporting requirements. This resulted in the incorrect reporting of federal funds as obligated during the first year of the award when, in fact, the funds were unobligated.

- Indirect costs incurred by TDRS are not being reported for the correct FY on the SF-269/SF-425 reports.

TDRS management and program staff indicated the FFR data is one of the resources used to track the amount of VR funds available. Inaccurate FFR reporting may result in a misleading and inaccurate understanding of the VR program fiscal status. Consequently, TDRS management and staff do not have the information and data required to make sound decisions related to the administration and operation of the program, such as those concerning implementation of the order of selection and policies affecting the delivery of services.

**Corrective Action 1:** TDRS must:

- 1.1 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that it will submit complete and accurate SF-269/SF-425 reports as required by 34 CFR 361.12 and 34 CFR 80.20; and
- 1.2 correct the amount of carry forward and indirect costs reported on the fourth quarter and final reports for FYs 2006 - FY 2011.

**2. Program Income Disbursement**

**Legal Requirement:**

- EDGAR—34 CFR 80.21(f)(2)

**Finding:**

TDRS is not in compliance with federal regulations at 34 CFR 80.21(f)(2) requiring grantees to disburse program income prior to requesting additional cash payments. This means that TDRS must disburse all program income prior to requesting a drawdown of additional federal VR funds.

TDRS receives program income for contract services provided by consumers in workshops that are a component of the 17 Community Tennessee Rehabilitation Centers (CTRCs). The total amount of program income received from the workshops for FY 2010 was \$992,842.64. The program income generated is held in an account that is used to pay VR consumers employed by the workshop, associated employee costs, and workshop supplies. This program income is not expended, prior to the subsequent drawdown of additional federal VR program funds. As a result, TDRS drew down additional federal funds to cover expenditures in the VR program while program income remained available for disbursement. Consequently, TDRS did not satisfy the requirements of 34 CFR 80.21(f)(2).

**Corrective Action 2:** TDRS must:

- 2.1 cease drawing down federal VR program funds prior to disbursing all available program income and provide a written assurance to RSA, within 10 days of the final monitoring report, that it will disburse all program income before drawing down additional federal VR funds as required by 34 CFR 80.21(f)(2);

2.2 develop and implement internal controls necessary to ensure disbursement of program income before drawing down additional federal VR funds in accordance with 34 CFR 80.21(f)(2).

### 3. Internal Controls

#### Legal Requirements:

- VR Program Regulations—34 CFR 361.3, 361.12, 361.40(a)
- EDGAR—34 CFR 80.20(a) and 80.40(a)
- OMB Circulars—2 CFR 225, Appendix A, C.1. & 3.a

#### Finding:

TDRS is not in compliance with federal regulations at 34 CFR 80.20(a), which require grantees to account for the VR funds to such a degree that it can trace the funds for each activity to ensure that the funds were expended in accordance with federal requirements, and regulations at 34 CFR 361.40(a), which require grantees to monitor and manage the day-to-day operations of all grant-supported activities. Third-party Cooperative Arrangements (TPCAs) and contracts constitute grant-supported activities and must be monitored by TDRS to ensure compliance with all federal requirements.

#### TPCAs

TPCA contracts, known in the agency as transition from school to work (TSW) contracts, include budgets that were submitted by the school districts and approved by TDRS. The budgets identify the associated costs in broad categories (e.g., salaries, fringe benefits, supplies, telephone, postage and shipping, equipment, travel, etc.) TPCA contractors submit invoices to TDRS on a monthly basis. TDRS reimburses the TPCA contractors 70 percent of the approved costs and uses the remaining 30 percent to meet TDRS non-federal share. Because there is no further breakdown of the budgeted totals, a broad cost category is the primary basis for determining reimbursement of invoiced costs. The limited information provided with the TPCA invoices does not permit TDRS to ensure that the costs are necessary, reasonable, and allowable VR program costs.

The issues below were noted when reviewing Sequatchie County Schools TSW contract and invoices.

- The contract Grant Budget (Attachment D) listed salary costs as \$43,402 for the contract period from July 1, 2010 to June 30, 2011. The Grant Budget (page 2) lists two positions, secretary and case manager assistant, as being funded. There is no indication as to the basis of the salary costs (e.g., whether the personnel are full-time or part-time, hourly or salary, working year round or on a 10 month school calendar basis). The invoices included a copy of “check stubs.” However, the employee’s work status was not stated. Without additional supporting detail, TDRS is unable to ensure that the TSW employee

costs being reimbursed are necessary, reasonable and allocable to the VR program in accordance with 2 CFR 225, Appendix A, C.1. and 3.a.

- Similarly, the budgeted costs for telephones do not permit TDRS to ensure that invoiced costs are allowable VR program costs. The contract ending June 30, 2010 included a line item budget of \$1,857 for telephone expenses. There was no documentation as to whether the budgeted costs were for mobile phones or office phones, the number of lines being reimbursed, etc.
- Mileage logs included with invoices do not provide sufficient information to permit TDRS to determine if the costs are allowable VR program costs. A mileage reimbursement form submitted for January 4, 2010 to January 29, 2010 lists Sequatchie County High School as the starting point and “local” as the destination. On four travel dates, the claimant also includes reimbursement for newspapers purchased. There is no supporting documentation that this travel was required under the TSW contract or that the reason for the travel was directly related to the provision of VR services to VR applicants or consumers.
- Invoices for the period ending March 31, 2010 include a hand-written notation on the front that states “used previous travel mileage rate. Will adjust next invoice and reduce...” Subsequent invoice adjustments indicate the mileage rate was initially overpaid and that TDRS was aware of the overpayment. However, rather than correcting the invoice prior to payment, the payment was made at an incorrect rate.
- Invoiced costs included receipts for supplies purchased with no documentation that the costs or supplies were necessary for the provision of VR services to VR applicants and consumers. The TSW supplies budget for the period ending June 30, 2010 was \$6,019. Under the TSW agreement, the school submitted a receipt for an HDTV that was purchased on March 31, 2010. The receipt was paid because total amount was available in the budget; however, there was no indication that the HDTV was to be used for VR applicants or consumers for the provision of VR services. It is unclear who the school employee was that signed the credit card receipt for the HDTV and what their relationship was to the TSW contract.
- TDRS does not have a process for ensuring that reimbursed conference and meeting costs are directly related to the provision of VR services under the TSW contract.

TSW invoices were noted to have handwritten amounts and comments written on the supporting documentation. The amounts/comments were not initialed or dated so RSA was unable to determine whether the handwritten notes were from the contractor or TDRS staff.

### Contracts

RSA reviewed TDRS’ contracts with the Tennessee Department of Education and the University of Tennessee. Like the TSW contracts, the agreements contained broad budget categories that did not provide sufficient details to ensure that cost billed under the categories were allowable VR costs. The supporting documentation submitted with the invoices consisted of a line item list of accounting/billing codes with an amount identified. The documentation was not sufficient to ensure the invoiced costs were allowable VR program costs.

Federal regulations require TDRS to implement policies and procedures to ensure the efficient and effective administration of the VR program to ensure that all functions are carried out properly and the financial accounting is accurate (34 CFR 361.12). TDRS also is required to implement fiscal controls to ensure that VR funds are expended and accounted for accurately and traceable for each activity to ensure that the funds were expended in accordance with program requirements (34 CFR 80.20).

**Corrective Action 3:** TDRS must develop and implement policies and procedures for maintaining and verifying supporting documentation for VR expenditures (both incurred by TDRS and its contractors/service providers), monitoring contractors/service providers, and tracking VR expenditures, as required by 34 CFR 361.12 and 34 CFR 80.20.

#### **4. Unallowable Source of Match: In-Kind**

##### **Legal Requirements:**

- VR Program Regulations—34 CFR 361.60(b)(1); 361.60(b)(2)
- EDGAR—34 CFR 80.24

##### **Finding:**

TDRS's use of in-kind costs to meet part or all of its non-federal share for the VR program is not in compliance with 34 CFR 361.60(b)(2). TDRS contracts with the University of Tennessee, Center on Disability and Employment to provide leadership for the DRS Corporate Connections Program. The contract Grant Budget for SFY 2011 (Attachment A) requires the University of Tennessee to provide a grantee match of \$95,382. The match is categorized as an in-kind expense. A budget footnote states that "a Grantee Match Requirement is detailed by this Grant Budget, and the maximum total amount reimbursable by the State pursuant to this Grant Contract, as detailed by the "Grant Contract" column above, shall be reduced by the amount of any Grantee failure to meet the Match Requirement."

In order to be used to meet the state's non-federal share of the VR program, the allowable expenditures from non-federal sources must be consistent with the requirements of 34 CFR 80.24 of EDGAR unless directed otherwise by federal regulations governing the VR program (34 CFR 361.60(b)(1)). In particular, the VR regulations prohibit the use of in-kind contributions for meeting the state's non-federal share of the VR program (34 CFR 361.60(b)(2)).

##### **Corrective Action 4:** TDRS must:

- 4.1 cease using in-kind contributions, regardless of the source, to meet the non-federal share of the VR program; and
- 4.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that allowable expenditures used to meet the program's non-federal share will comply with the requirements of 34 CFR 361.60(b) and 34 CFR 80.24.

## 5. Unallowable Sources of Match: Benefits to Private Donor

### Legal Requirement:

- VR Program Regulations—34 CFR 361.60(b)(3)

### Finding:

TDRS's use of contributions from private entities for matching purposes is not in compliance with 34 CFR 361.60(b)(3). TDRS has entered into several "grant contracts" with non-profit organizations. For example, TDRS contracts with Caring Inc., a non-profit 501(c)(3) agency, which assists persons with disabilities in preparing for, seeking, securing, and maintaining employment. TDRS reimburses Caring Inc. 70 percent of the approved budgeted costs and uses the remaining 30 percent to meet TDRS's non-federal share. The Caring Inc. invoice ending March 31, 2011 lists the total month's actual expenditures as \$26,774.08 and the amount due from TDRS as \$18,741.86. TDRS uses the difference, \$8,002.22, to meet its non-federal share.

Federal regulations governing the VR program permit private entities, such as Caring Inc., to contribute funds to a state VR agency to assist it in satisfying its non-federal share requirements so long as the donor does not benefit from the expenditure of those funds (34 CFR 361.60(b)(3)). In this case, Caring Inc. benefits directly from the expenditures of its donated funds because TDRS, in turn, pays Caring Inc. 70 percent of the allowable budgeted costs to provide VR services. The contracts are based upon cost reimbursement rather than a contract awarded under the state's regular competitive process. Accordingly, TDRS has not complied with the requirements of 34 CFR 361.60(b)(3) for the use of contributions from private entities for matching purposes.

### Corrective Action 5: TDRS must:

- 5.1 cease using Title I funds, including the match funds it receives from non-profit organizations for match purposes, in a manner that inappropriately benefits the donor as required by 34 CFR 361.60(b)(3);
- 5.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that it will no longer use Title I VR funds and its matching funds to benefit private donors of those matching funds; and
- 5.3 develop and implement policies and procedures to prohibit reversion of funds to benefit private donors.

## 6. Unallowable Costs

### Legal Requirements:

- *Rehabilitation Act*—Section 111(a)(1)
- VR Program Regulations—34 CFR 361.3, 361.5(b)(2)

## **Finding:**

### Indirect Costs

TDRS is not in compliance with section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3 because the indirect costs associated with the Independent Living (IL) and Older Individuals who are Blind (OIB) Programs have been charged to the VR program award for FYs 2006—2010. Only allowable costs can be assigned to a federal award and the indirect costs associated with the IL and OIB programs are not allowable VR program costs. Additionally, the costs of administering the Tennessee Council for Deaf and Hard of Hearing (TCDHH) are charged directly to VR funds, which include the salary and expenses of the Director of the TCDHH. This allocation is specified in the Tennessee Department of Human Services Cost Allocation effective July 1, 2008 (page 1207). As indicated in Finding 12 below, not all of the activities of the TCDHH are allowable VR costs. In order to be an authorized activity under Title I of the *Rehabilitation Act*, and thus an allowable program cost, an expenditure must cover the cost of providing a VR service or administering the VR program (section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3).

### Caring Inc.

TDRS is not in compliance with section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3 because TDRS reimburses Caring Inc. for unallowable VR costs. Only allowable costs can be assigned to a federal award. In order to be an authorized activity under Title I of the *Rehabilitation Act*, and thus an allowable program cost, an expenditure must cover the cost of providing a VR service or administering the VR program (section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3).

TDRS contracts with Caring Inc., a private non-profit CRP. TDRS and a local government provided the initial funding for staff, equipment, purchase of a building, and operating expenses through an establishment project and service contract. Caring Inc. provides VR services including vocational assessment, vocational evaluation, work adjustment training, job development, job coaching, job placement, etc.

The Caring Inc. contract uses the same broad budget categories as the TPCA agreements mentioned above. Invoices include budget items for occupancy, building maintenance, utilities, insurance, equipment maintenance, equipment purchase, phone, supplies, etc. TDRS reimburses Caring Inc. 70 percent of the approved budgeted costs and uses the remaining 30 percent to meet TDRS's non-federal share. Given that TDRS assisted in the purchase of the building, equipment and funding for staff through an establishment project, it is unclear why TDRS continues to reimburse Caring Inc. 70 percent of staffing, equipment purchase, utility costs, etc., through a cost reimbursement contract, instead of a fee-for-service arrangement.

Under the contract, TDRS used VR funds to reimburse 70 percent of the costs for the following expenditures:

- membership dues to the Dayton Chamber of Commerce;
- fees for submission of Tennessee Corporation Annual Report form;

- income tax return preparation for the year ended June 30, 2010;
- supplies and food for a customer service party in Dayton, TN and various job clubs;
- refreshments and expenses for board meetings; and
- plumbing supplies and repairs.

The costs listed above, representing only a sample of the items reviewed, are not allowable VR expenditures in accordance with 34 CFR 361.5(b)(2). In addition, TDRS reimbursed Caring Inc. for costs submitted with no receipt. The only documentation was a handwritten note that stated “Automatic Debit—No Receipt.”

**Corrective Action 6:** TDRS must:

- 6.1 cease paying IL and OIB indirect costs with federal VR funds and using federal VR funds to reimburse Caring Inc. for unallowable expenditures under the VR program in accordance with section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3; and
- 6.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that VR funds will not be used to reimburse unallowable expenditures in accordance with section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3.

## 7. Incentive payments for Individuals Participating in VR Training

**Legal Requirements:**

- VR Program Regulations—34 CFR 361.5(b)(58) and 34 CFR 361.48(t)

**Finding:**

The provision of cash and gift incentives to individuals participating in training pursuant to TDRS contracts with community rehabilitation programs (CRP) are not allowable services under the VR program as set forth at regulations at 34 CFR 361.5(b)(58) and 34 CFR 361.48(s). The allowance for the provision of incentives for VR clients receiving training appears in contracts between TDRS community training and rehabilitation centers (CTRCs). Additionally, the use of incentives as part of proposed training programs appears in the applications submitted for the establishment projects currently implemented under contracts with TDRS under the establishment authority of the VR program regulations.

In the case of the CTRCs, an administrative budget is developed for each CTRC for the state fiscal year (SFY). The administrative budget is divided into two categories, payroll and other. The other category contains an “awards” line item budgeted at \$400.00 per CTRC. The award funds are used for client appreciation and incentives. Although the applications for the Memphis Goodwill Industries and the Lions Volunteer Blind Industries establishment projects contain language proposing the use of cash or gift incentives for VR clients who would receive training at the work adjustment centers, the provision of incentives does not appear in the scope of work descriptions or budgets for the contracts implementing either of these projects.

In order for Title I grant funds to be utilized for the purposes of providing incentives to VR clients, the incentives must be considered a necessary VR service for the purpose of assisting eligible individuals to achieve an vocational goal as specified on the individualized plan for employment (IPE), and be a service identified on the IPE (34 CFR 361.48). VR program regulations found at 34 CFR 361.5(b)(58) state that vocational rehabilitation services means, when provided to an individual, those services listed in 361.48, or if provided for the benefit of groups of individuals, also means those services listed in 361.49.

The designated state unit must ensure that VR services are provided as appropriate to the vocational rehabilitation needs of each individual and consistent with the individual's informed choice in order to assist the individual in preparing for, securing, retaining, or regaining an employment outcome. VR program regulations found at 34 CFR 361.48(t), state that VR services include "other goods and services determined necessary for the individual with a disability to achieve an employment outcome."

RSA has determined that incentives in the form of cash or gifts with a cash value, awarded to eligible individuals receiving VR training do not constitute goods or services necessary for the achievement of a vocational goal in accordance with VR program regulations, and as such are not an allowable VR expense.

**Corrective action 7:** TDRS must:

- 7.1 cease using Title I grant funds for the provision of incentives to VR consumers receiving training from a contracted VR service provider;
- 7.2 submit an assurance within 10 days of the issuance of the final monitoring report that it will comply with VR program regulations describing allowable VR services pursuant to 34 CFR 361.5(b)(58) and 34 CFR 361.48(t);
- 7.3 revise and/or amend as necessary all contracts to remove language allowing for the provision of incentive payments to VR consumers; and
- 7.4 ensure that requests for proposals for the contracting of VR training do not support the use of incentives as part of a VR training program.

## **8. Transition from School to Work (TSW) Contracts**

**Legal Requirements:**

- VR program regulations: 34 CFR 361.28 (a) and (b); 34 CFR 361.25 and 361.26

**Finding:**

TDRS enters into third-party cooperative arrangements with 22 local school districts for the provision of transition from school to work (TSW) services in 28 of the districts throughout Tennessee. The written agreements used to implement these arrangements do not sufficiently describe the manner in which TDRS is complying with the requirements governing such arrangements found at 34 CFR 361.28.

To determine if the TSWs with local school districts were in compliance with pertinent federal regulations, both with respect to their conduct and the content of the written agreements, RSA reviewed a representative sample of the 23 written agreements implementing the TSW program. In addition, RSA met with TDRS's transition coordinator, VR counselors assigned to the school districts covered by the TSWs, and representatives from a school district in Robertson County, the closest district to Nashville with a TSW contract to discuss the manner in which the terms of the written agreements are put into practice.

Based on the above described review activities, RSA finds that the TSW arrangements comply with the program requirements of 34 CFR 361.28 with respect to their conduct and the content of the written agreements except as follows:

1. The TSW written agreements do not set forth the portion of TSW expenditures that are supported by non-federal funds contributed by the local school districts and by VR program funds contributed by TDRS pursuant to 34 CFR 361.28(a). Although discussions with TDRS personnel, including the transition coordinator, and a review of supporting documentation related to the TSWs clearly indicate that the local school districts are required to contribute non-federal funds representing 30 percent of the TSW expenditures and that TDRS contributes VR program funds equal to the remaining 70 percent of the costs, the written agreements do not describe this apportionment. Instead, the agreements include a projected budget comprised of broad categories of expenditures, including those related to personnel, supplies and travel (see also Finding 3 concerning internal controls), but do not indicate the portion of these expenditures that will be supported by non-federal matching funds from the school districts and VR program funds contributed by TDRS. Therefore, the TSW written agreements must be amended to include a description of the amount of non-federal funds and VR program funds used to support the costs of the arrangements.
2. The TSW contracts do not clearly identify the services that are provided by the cooperating school districts. Consequently, RSA could not determine solely based on the language of the written agreements, whether the services provided by the cooperating school districts are new services with a VR focus, or are existing services that have been expanded or modified to include a VR focus, in accordance with 34 CFR 361.28(a)(1). The contracts do contain a short scope of work statement, but the description of the services to be provided is generic and does not clearly indicate how the arrangement will result in the provision of new or enhanced VR services by the school districts. For example, the scope of work language from the contract between the Department of Human Services and the Robertson County School District, describes the services below to be provided under the contract.
  - Grantee shall provide appropriate staff (case manager assistant/job coach/secretary) under the supervision of local education agency's special education director or transition coordinator to assist and support the operations of the state vocational rehabilitation counselor.
  - The grantee shall provide office space for VR staff to provide VR services.

- the Grantee shall upon request of DRS provide a CAP to address any problems identified by DRS concerning the performance of staff outlined in the scope of services. and
- The state will provide VR counselor service to: a. complete and submit applications for individuals in the county local education agency so that they can be evaluated for eligibility for VR services by the DRS; b. develop contracts with appropriate agencies and potential employers that may be utilized for VR service referrals; c. make referrals and arrange employment placements and vocational services for eligible individuals as identified in the VR service plans for eligible individuals.

The above services are all allowable VR services, but it is unclear from the written description of the scope of work how the arrangement complies with the requirements of 34 CFR 361.28 that the services be “new or enhanced” in order to allow the non-federal share provided under the contract to be counted toward match for the federal grant. The contract with Robertson County is indicative of all the 23 TSW contracts, as the agency uses a standard template provided by the Department of Human Services.

During on-site discussions, TDRS staff and representatives of the Robertson school district indicated that the services provided by school district staff through the TSW program are not typical of those mandated to be provided by the schools under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), or the regular services available to all individuals applying for or receiving services from the VR program. Among the services provided under the TSW are the development of community-based work opportunities, job coaching, and the availability of extra support staff and equipment provided under the contract. Therefore, while the operation of the TSW program is consistent with federal requirements, the written agreements must be revised or amended to clearly specify the services provided by the cooperating school districts that have been expanded or modified to have a VR focus.

3. The written contracts do not clearly indicate that services may be provided to applicants for VR services and eligible individuals as required by 34 CFR 361.28(a)(2), which states that only individuals who have applied for or are receiving VR services can be served. While the scope of work references the processing of applicants as one of the duties of the VR counselor assigned to the TSW, the contracts do not indicate that appropriate services may be provided to applicants and eligible individuals, for example, trial work experience, vocational assessments, or other assessments necessary for the purpose of determining eligibility.

TDRS staff and school representatives again indicated that the program is administered in accordance with this federal requirement because only transition-age youths who are applicants or eligible for VR services are served through the TSW program.

4. The written agreements do not contain terms to ensure that TDRS is responsible for the administration of expenditures under the TSWs and the personnel providing the services as required by 34 CFR 361.28(a)(3). As noted above, the written contracts contain language specifying that the personnel hired under the cooperative arrangement will be

supervised by the local special education director or coordinator. The contracts include no terms related to the supervision that TDRS will exercise over these individuals. However, discussions with both TDRS staff and those from the Robertson County school system during the on-site visit indicate that TDRS staff provide input into the hiring of personnel hired under the arrangement and the performance of these individuals in the conduct of their duties under the TSW program.

In addition, the written contracts do not include terms describing the processes by which TDRS will exercise over the TSW expenditures. The lack of such terms may have contributed to the inability of the agency to engage in sufficient internal controls to ensure that TSW expenditures were properly made (see Finding 3 above).

5. The written contracts do not state that the TSW program will be administered in accordance with all terms of the TDRS approved VR State Plan, including the Order of Selection (OOS), as required by 34 CFR 361.28(a)(4). Although the VR agency staff and representatives of the schools indicate that all State Plan requirements, including those for the implementation of the priority categories of service under TDRS's OOS, are being applied in the TSW program, the written contracts must clearly indicate the governing authority of the VR State Plan. To be consistent with the federal requirement, the TSW contracts should specify the manner in which individuals served under the transition program are assigned to priority categories for the provision of VR services under the VR agency's OOS.

**Corrective action 8:** TDRS must:

- 8.1 revise its TSW written agreements to include a description of the non-federal share contributed by the local school districts to support program expenditures as required by 34 CFR 361.28(a);
- 8.2 revise and/or amend its TSW contracts such that the scope or work language sufficiently captures the range and scope of the new or enhanced transition services provided under the contracts in accordance with the requirements of 34 CFR 361.28(a)(1);
- 8.3 ensure that all TSW contracts allow for the provision of services to VR applicants as well as individuals determined eligible for the VR program pursuant to 34 CFR 361.28(a)(2);
- 8.4 revise and/or amend all TSW contracts to include provisions that ensure that TDRS will exercise administrative supervision over the program expenditures and the personnel providing the services; and
- 8.5 revise and/or amend all TSW contracts to ensure that the services provided under the contracts comply with all portions of the TDRS VR State Plan, including the order of selection as required by 34 CFR 361.28(a)(4).

## **9. Tennessee Council of the Deaf and Hard of Hearing**

### **Legal Requirements:**

- *Rehabilitation Act*—Sections 103(a) and (b), and 111(a)(1)
- VR Program Regulations—34 CFR 361.3, 361.5(b)(58)(i) and (ii), 361.48, and 361.49
- OMB Circulars—2 CFR Part 225, A-87, Attachment A, C.1

## Background

TDRS uses VR program funds to pay for 78.7 percent of the costs incurred in the administration and operation of the Tennessee Council for the Deaf and Hard of Hearing (TCDHH or the Council) and the six service centers located throughout the state. The remainder is paid for out of state appropriated funds, plus a \$20,000 contract award from state appropriations to each of the centers.

The TCDHH was created in 1978 by the Tennessee General Assembly, and is codified by Tennessee Code Annotated 74-4-2102. According to the TCDHH By-laws, Article I, “The Tennessee Council for the Deaf and Hard of Hearing exists to serve as an advocate for culturally appropriate services affecting deaf, hard of hearing, and deaf/blind people through coordination, public awareness, consultation, and education in areas of public service, health care, and education and employment.”

In its FY 2010 annual report, the Council describes its primary responsibilities as follows:

- advocate for services affecting the deaf and hard of hearing in the areas of public services, health care, education, vocational rehabilitation, and employment;
- act as a bureau of information for state agencies and public institutions providing health care, educational, vocational, and/or employment related services to persons who are deaf or hard of hearing, and to local agencies and programs;
- collect facts and statistics and special studies of conditions affecting the health and welfare of the deaf and hard of hearing in this state;
- provide for a mutual exchange of ideas and information on the national, state, and local levels;
- encourage and assist local governments in the development of programs for the deaf and hard of hearing;
- cooperate with public and private agencies and units of local, state, and federal governments in promoting coordination in programs for the deaf and hard of hearing;
- authorize the executive director to prepare an annual report to the Council which reviews the status of state services for the deaf and hard of hearing. The Council will submit the approved report to the General Assembly and make this report available to organizations serving the deaf and hard of hearing; and
- make recommendations for needed improvements and to serve as an advisory body in regard to new legislation affecting the deaf and hard of hearing.

The annual report also included the following list of 13 major activities of the Council:

- meeting with key groups regarding requirements for educational interpreters;
- conducting town hall meetings in Chattanooga, Nashville, Johnson City and Memphis to report activities and to listen to concerns;
- promoting hearing aid insurance legislation;
- promoting mental health services for the deaf, hard of hearing, and deaf-blind;
- promoting suicide prevention for the deaf, hard of hearing, and deaf-blind;
- promoting awareness of this population’s special needs to sub-committees of the Tennessee Emergency Management Agency;

- providing information regarding financial assistance for hearing aids;
- providing information regarding telecommunication equipment;
- providing information regarding interpreting services in Tennessee;
- providing information regarding legal rights of the deaf, hard of hearing, and deaf-blind;
- supporting deaf awareness activities across Tennessee;
- providing technical support and resource information to Vocational Rehabilitation Counselors serving the deaf and hard of hearing; and
- assisting in the creation of an emergency awareness association benefitting the deaf, hard of hearing, deaf-blind, and late-deafened population.

In addition, TDRS provides funding for community centers for the deaf and hard of hearing across Tennessee. These community centers report to the Council during quarterly meetings and submit their statistical data to the executive director of TCDHH, who compiles it for TDRS. In FY 2010, TDRS provided \$900,000 in federal VR dollars, and \$120,000 in non-federal state dollars through performance-based contracts with the six regional centers to provide a variety of services. These contracts are generic in nature and the services provided under each are similar. A review of the current contract with the League for the Deaf and Hard of Hearing indicates that the services, identified in units of activity or contacts, included:

- employer training/consultation: 125 units during contract period;
- pre-employment training: 80 contacts annually;
- vocational rehabilitation in-service training: 5 units annually;
- technology training: 40 contacts annually;
- independent living training: 10 contacts annually;
- sign language and/or speech reading training: 45 contacts annually;
- interpreter training: 10 units annually;
- coordination of interpreting services: 2,500 units;
- providing unpaid interpreting services: 1,800 hours annually;
- in-service training: 12 units annually;
- information and referral: 2,000 units annually; and
- deaf awareness activities: 20 units annually.

The contract does not further describe the nature of these services and does not indicate that services are provided to individuals who are applicants or eligible for VR services.

In FY 2010, TDRS served 178 individuals with communicative disorders, a majority of whom were individuals who are deaf or hard of hearing. This figure only includes those who exited the VR program after receiving services under and IPE. This number is fewer than the number of individuals reported to have been served through the regional centers.

**Finding:**

Pursuant to Section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3, the use of VR program funds to support the TCDHH and the services provided by the six regional centers is not allowable to the degree that the work of the TCDHH and the services provided by the centers are

not within the scope of Section 103 of the Act and implementing regulations at 34 CFR 361.48 and 361.49.

Title I VR funds must be used solely for the provision of VR services or for the administration of the VR program in accordance with Section 111(a)(1) of the *Rehabilitation Act*, and 34 CFR 361.3. VR services to an individual are those that are listed on the IPE as being necessary for the achievement of an employment outcome, as required by Section 103(a) of the *Rehabilitation Act*, and 34 CFR 361.5(b)(58)(i), and 361.48. TDRS is also permitted to provide VR services that are intended to contribute substantially to the vocational rehabilitation of groups of individuals but are not related to any one individual's IPE, in accordance with Section 103(b) of the *Rehabilitation Act*, and 34 CFR 361.5(b)(58)(ii), and 361.49 of the VR program regulations. Furthermore, the federal cost principles require that expenditures must be reasonable, necessary, and allocable in order to be allowable under a federal program in accordance with OMB Circular A-87, Attachment A, C.1.

Based on a review of the by-laws and the annual report of the Council, the TCDHH activities are not limited to individuals served in the TDRS VR program, i.e., those individuals who are seeking to obtain, regain, or maintain employment. However, to the extent that CDHH services are provided to TDRS consumers in accordance with their approved IPEs or to assist substantially in the vocational rehabilitation of groups of individuals, the services now provided by the TCDHH would be allowable under the VR program statutes and regulations.

Based on the descriptions contained in the Council's annual report in light of the federal requirements, the following responsibilities of TCDHH could constitute VR services that benefit a group, namely individuals who are deaf or hard of hearing, so long as the activities used to carry out these mandates are narrowly tailored to improve the rehabilitation of the group in terms of achieving employment outcomes:

- advocate for services affecting the deaf and hard of hearing in the area of vocational rehabilitation and employment; and
- act as a bureau of information for state agencies and public institutions providing vocational, and/or employment related services to persons who are deaf or hard of hearing, and to local agencies and programs.

Consequently, the Council's provision of technical assistance to VR counselors, one of the activities engaged in during FY 2010, could be supported with VR program funds. The remaining responsibilities and activities of the Council, as described in the by-laws and annual reports of the Council, are broader than would be allowable under the VR program, since their scope is more general and the activities are not designed to assist eligible individuals to obtain employment or to improve the vocational rehabilitation of a group of individuals with disabilities.

The determination of which services provided by the six regional centers, as described in the TCDHH annual report, are allowable VR program services depends on the specific service and to whom it is provided. Based on a review of the information, the provision of in-service training to VR staff employed by TDRS is permissible and can be supported with VR program funds. However, the conduct of deaf awareness activities and the provision of interpreter training are

not within the scope of either Section 103(a) or (b), and the implementing regulations at 34 CFR 361.48 and 361.49. Therefore, VR program funds cannot be used to support these activities pursuant to Section 111(a)(1) and 34 CFR 361.3. The remaining activities generally engaged in by the six regional centers are allowable under Section 103(a) and 34 CFR 361.48 if they are provided to VR program applicants or eligible individuals under an approved IPE.

In summary, VR funds may only be used to cover the costs incurred in the limited activities that constitute VR services. All other activities, currently performed by the TCDHH and six regional centers may not be funded by the Title I VR program grant. Lastly, TDRS must ensure that TCDHH bears its share of any administrative costs that TDRS incurs in the administration of the TCDHH program. The cost allocation should be made in accordance with the federal cost principles of OMB Circular A-87, and all staff time charged to the VR grant be in proportion to the benefit to the VR program. (See finding 6, “Indirect Costs,” above.)

**Corrective Action 9:** TDRS must:

- 9.1 cease using Title I VR grant funds for unallowable expenditures under the VR program to pay for the operations and provision of services by the Tennessee Council for the Deaf and Hard of Hearing in accordance with Section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3; and
- 9.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that VR funds will not be used to pay for activities of the TCDHH and its six regional centers, unless such services are allowable under Section 103 of the *Rehabilitation Act* and 34 CFR 361.48 and 361.49.

## **10. Establishment Project—Memphis Goodwill Industries**

**Legal Requirements:**

- *Rehabilitation Act*—Sections 103(b)(2)(A) and 111(a)(1)
- VR Program Regulations—34 CFR 361.3, 361.5(b)(17)(ii); 361.49(a)(1); and 361.60(b)(1)
- EDGAR—34 CFR 80.24(a)

**Finding:**

TDRS did not follow the appropriate procedures for the establishment of a CRP under the authority provided in the *Rehabilitation Act* and VR program regulations. Specifically, TDRS did not properly calculate the allowable federal share of the staffing costs associated with the expansion of the services provided by Memphis Goodwill Industries as described below, in accordance with regulations at 34 CFR 361.5(b)(17)(ii).

Background

Section 103(b)(2)(A) of the *Rehabilitation Act* and 34 CFR 361.5(b)(17) and 361.49(a)(1) authorize TDRS to establish, develop, or improve CRPs for the purpose of providing VR

services to individuals receiving or applying for services from TDRS. Under this authority, TDRS initiated an establishment project with Memphis Goodwill Industries for the purpose of expanding the capacity of community rehabilitation program services provided in the Memphis urban area to eligible individuals. To establish this project a contract was implemented between the Department of Human Services and Memphis Goodwill Industries in November of 2009, beginning December 1, 2009, and ending November 30, 2013. The total cost of the project over the course of the contract, including federal and state contributions, is \$1,037,782.00, with the federal portion totaling \$816,735. The non-federal share of the project, totaling \$221,047.00 will be used by TDRS to meet in part the matching requirements for the VR program.

The purpose of the project is to establish a facility over the four year term to provide adjustment services, job coaching, and job placement for VR clients in the Memphis area. Renovations will result in the conversion of a stand-alone rehabilitation services unit to provide VR services to TDRS consumers. Section A.5 of the scope of work for this project also allows for funds to be used to hire staff and purchase equipment for the provision of work adjustment services.

### Building Staff Capacity of a CRP

VR funds may be used to build the staff capacity of a CRP to provide VR services to applicants and eligible individuals only in the manner prescribed in 34 CFR 361.5(b)(17)(ii). According to this regulatory provision, VR program funds can be used in the establishment, development or improvement of a CRP, “for a maximum period of 4 years, with federal financial participation available at the applicable matching rate...” The regulation then specifies the rate of federal participation in these costs, ranging from 100 percent in the first year to 45 percent in the fourth and final year.

Based on a review of the contract between TDRS and Memphis Goodwill Industries, the contract contains a clause that allows the contract to be extended for a total term of no more than five years, not four years as specified in the federal regulation. Furthermore, the contract agreement contains incorrect match calculations for staffing in years two through four. According to the provisions of 34 CFR 361.5(b)(17)(ii), the federal share to support staffing costs is as follows:

- 100 percent of staffing costs for the first year;
- 75 percent of staffing costs for the second year;
- 60 percent of staffing costs for the third year; and
- 45 percent of staffing costs for the fourth year.

The contract between TDRS and Memphis Goodwill Industries does not follow the above required rates for the use of federal VR funds for staffing costs over the course of the four year project. Instead, the TDRS share of these costs, while collectively equivalent to four years, is divided into five budget periods as follows:

- 100 percent of staffing costs, December 1, 2009—June 30, 2010 (seven month period);
- 90 percent of staffing costs, July 1, 2010—June 30, 2011;
- 69 percent of staffing costs, July 1, 2011—June 30, 2012;
- 54 percent of staffing costs, July 1, 2012—June 30, 2013; and

- 48 percent of staffing costs, July 1, 2013—November 30, 2013 (four month period).

**Corrective Action 10:** TDRS must:

- 10.1 cease using federal VR funds to pay for staffing costs of the Memphis Goodwill project in a manner that is not allowable under the VR program; and
- 10.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that VR funds will not be used to reimburse Memphis Goodwill Industries for any staffing costs of the project, unless it first complies with all requirements governing the establishment, development or improvement of a CRP as set forth in Section 103(b)(2)(A) of the *Rehabilitation Act*, and regulations at 34 CFR 361.49(a)(1) and 361.5(b)(17)(ii).

## 11. Establishment Project—Lions Volunteer Blind Industries

**Legal Requirements:**

- *Rehabilitation Act*—Section 101(a)(15)(A), (C) and (D); 103(b)(2)(A); and 111(a)(1)
- VR Program Regulations—34 CFR 361.3; 361.5(b)(9), (11), (16), (17), (18) and (33); 361.29(a), (c) and(d); 361.49(a)(1); and 361.60(b)(1) and (3)(i)
- EDGAR—34 CFR 80.24(a)

**Finding:**

TDRS improperly used the establishment authority under Section 103(b)(2)(A) of the *Rehabilitation Act* and 34 CFR 361.49(a)(1) to assist Lions Volunteer Blind Industries (Lions) in the development of a call center for the employment of individuals who are blind and visually impaired because:

- The project’s primary function is not to “provide vocational rehabilitation services that promote integrated and competitive employment...”as required by Section 103(b)(2)(A) of the *Rehabilitation Act* and 34 CFR 361.49(a)(1);
- TDRS did not engage in the necessary planning activities prior to engaging in the project with Lions, in accordance with Section 101(a)(15) of the *Rehabilitation Act* and 34 CFR 361.29;
- TDRS incurred expenditures not allowed under Section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3, by using VR program funds to develop the entire call center, rather than only that portion of the costs that were proportional to the section of the call center that was to be used for the training of individuals with disabilities; and
- TDRS did not properly calculate the allowable federal share of the staffing costs associated with the Lions project, in accordance with regulations at 34 CFR 361.5(b)(17)(ii).

For these reasons and as described in more detail below, the expenditure of VR program funds in support of the Lions project was not allowable and, therefore, any non-federal funds contributed

to the project by Lions cannot be used by TDRS to satisfy the VR program matching requirement at 34 CFR 361.60(b)(1) and 34 CFR 80.24(a).

### Background

In January 2011, the Tennessee Department of Human Services, the DSA for the VR program, on behalf of TDRS, entered into a contract with Lions for the purpose of developing a contact center and training facility for individuals who are legally blind. The contact center project was initiated by the state agency under the establishment authority of the VR program contained in Section 103(b)(2)(A) of the *Rehabilitation Act* and 34 CFR 361.49(a)(1). According to the terms of the contract, the project began February 1, 2011, and will terminate on January 31, 2015. The total contract cost of the project is \$1,117,312, of which the contract specified that the federal share is \$879,325. According to the contract, the non-federal share of the project, totaling \$237,987, to be paid by Lions is to be used by TDRS to meet the non-federal share requirement for the VR program.

The scope of work in the contract between DHS and Lions includes the following sections.

- Section A-2: The grantee shall develop a contact center (also referred to as a call center) training and employment program designed to provide specific skill training to enable clients of the DRS to become employed in the contact center or at a contact center in the community. The grantee's current building in Johnson City will be expanded to 45 call stations, 5 of which will be dedicated to training, with the remaining 40 reserved for permanent jobs. An additional five training stations will be establish at the grantees facility in Morristown.
- Section A-3: Training services will be provided to up to 60 clients per year. Services provided shall result in at least 48 status 26 [competitive employment] closures during the grant term.
- Section A-4: Services to be provided shall be: prerequisite skill assessment; contact center training; training bay (job shadow/simulation); contact center employment at the grantee's facility. The purpose of these services is to provide a client with the proper skills to achieve a successful employment outcome.
- Section A-5: For candidates being considered for placement in integrated employment opportunities, expanded services in job readiness and placement will be made available under a letter of understanding.

The majority of the project's costs were incurred in the first year, beginning February 1, 2011, and ending June 30, 2011, in accordance with the state fiscal year, with expenditures totaling \$909,437, of which \$807,020 were budgeted for expansion costs and capital purchases.

## Establishment Project Purpose

The establishment authority must be used to “provide vocational rehabilitation services that promote integration and competitive employment...” (Section 103(b)(2)(A) of the *Rehabilitation Act* and 34 CFR 361.49(a)(1)). Regulations found at 34 CFR 361.5(b)(11) define “competitive employment” to mean work:

- (i) in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and
- (ii) for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

As defined at 34 CFR 361.5(b)(33), the term “integrated setting,” a key component of the definition of “competitive employment,” means:

With respect to an employment outcome ...a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

Additionally, all employment outcomes achieved through the VR program must be in integrated settings, as required by the definition of that term found at 34 CFR 361.5(b)(16). The definition of the establishment authority at 34 CFR 361.5(b)(17) makes it clear that services provided in connection with the establishment, development or improvement of a CRP must be delivered only to applicants or eligible consumers of the VR program. To be eligible for the VR program, the individual must intend to achieve an employment outcome under the VR program, which again must be in an integrated setting. Finally, the regulations at 34 CFR 361.5(b)(17) require that only VR services be provided through the establishment authority.

The language of the Lions contract cited above indicates that VR services will be provided to TDRS consumers at the call center, namely skills training to enable individuals to work at a call center. Nonetheless, the provision of such training services represents only a relatively small portion of the activities for which VR program funds were or are to be expended under the contract. Instead, according to the contract and as further explained below, the majority of VR program funds involved in the project were allocated to the development of the entire call center, comprised of a total of 45 stations. Forty of these stations were to be used by blind and visually impaired individuals permanently employed at the call center and not for the training of TDRS consumers. Only 5 were dedicated to the training of TDRS consumers.

Furthermore, the primary purpose of the Lions project, according to contract Section A-3, is to “develop a contact center (also referred to as a call center) training and employment program designed to provide specific skill training to enable clients of the DRS to become employed in the contact center or at a contact center in the community.” While the scope of work calls for the

successful placement of 48 individuals into competitive positions in call centers over the course of the five years of the contract, there is no mention in this section of the contract or in any other that the employment would be in an integrated setting. Also, the language of the contract implies that individuals will be first considered for employment in the Lions call center in Johnson City. This implication is consistent with the terms of Section A-5 of the scope of work, which states, “For candidates being considered for placement in integrated employment opportunities, expanded services in job readiness and placement will be made available under a letter of understanding.” The use of the term “expanded” services in this context further implies that the regular course of services to be provided would lead to non-integrated employment, and that in order to be on a track toward employment in an integrated setting, one must obtain additional documentation in the form of a “letter of understanding,” prior to receiving the services that would lead to such employment.

As a result of the review of the Lions contract and information gathered during the review process, RSA concludes that the call center developed through the contract, for the purpose of hiring individuals who are blind and visually impaired, appears not to be an integrated setting due to the lack of interaction these employees will experience with other non-disabled employees (other than persons providing services to them) within the call center itself and elsewhere in the Lions Johnson City work site (see 34 CFR 361.5(b)(33) and TAC-06-01, dated November 21, 2005). Thus, it appears that employment at the Lions call center would not satisfy the definitions of competitive employment and an employment outcome for purposes of the VR program, both of which contain as a critical element the requirement that the work be performed in an integrated setting.

Although services provided through the establishment authority may be provided in non-integrated settings, they must be designed to promote competitive and integrated employment. Despite language in the contract indicating that the services provided will result in 48 competitive employment outcomes, the contract terms otherwise emphasize the placement of the individuals served through the project at the Lions call center, not in other integrated settings located in the community. Section A-2 of the contract makes it clear that the purpose of the project is “to provide specific skill training to enable clients of the DRS to become employed in the contact center.” Section A-4 of the contract describes the specific services that will be provided to TDRS consumers, all of which are specifically geared to eventual employment at the call center. Finally, section A-5 of the contract specifically requires that additional services, not described in section A-4, would be needed if the consumer wanted to pursue employment in an integrated setting. All of these contractual provisions demonstrate that the primary purpose of the project does not promote the integration of individuals with disabilities in the community or the achievement of an employment outcome in competitive employment. For purposes of the VR program

As stated above, TDRS can provide VR services—including those provided under the establishment authority — only to VR applicants and eligible individuals, which requires that they intend to achieve an employment outcome within the meaning of 34 CFR 361.5(b)(16), i.e., employment in an integrated setting. Consequently, given that it appears, based on the facts presented to RSA, that the Lions call center is not an integrated setting, TDRS cannot provide training or any other VR service through the project to any individuals who intend to obtain employment at this particular call center.

For all of the foregoing reasons, the purpose of the Lions project is not consistent with the requirements of Section 103(b)(2)(A) of the *Rehabilitation Act* and 34 CFR 361.49(a)(1). Therefore, TDRS may not use the establishment authority to expend funds for this project, as it has done pursuant to a contract that took effect on February 1, 2011.

### Planning

In addition to the concerns expressed above regarding the appropriateness of this establishment project, TDRS did not engage in the necessary planning activities prior to the implementation of this effort. Section 101(a)(15) of the *Rehabilitation Act* and 34 CFR 361.29 require that the DSU engage in substantial planning prior to starting establishment activities pursuant to section 103(b)(2)(A) of the *Rehabilitation Act* and 34 CFR 361.49(a)(1). TDRS, together with its SRC, must conduct a comprehensive statewide needs assessment in the state every three years and include the results of that needs assessment in its State Plan. The assessment must describe whether there is a need for TDRS to establish, develop, or improve a CRP. TDRS must use the results from its needs assessment to develop goals and priorities for carrying out its VR program. Also TDRS must develop strategies identifying how it will achieve its goals and priorities, including the establishment, development, or improvement of a CRP.

RSA reviewed the approved TDRS VR State Plan for FY 2011, which covers the period of time in which the contract with Lions was signed and the fiscal year in which the project began. Based on this review, RSA found that Attachment 4.11(a) did not contain information sufficient to describe the need to expand, develop or improve CRP services for the benefit of individuals who are blind and visually impaired, the group of individuals to be served through the Lions project. In addition, RSA found the agency's goals and priorities set forth in Attachment 4.11(c)(1), specifically Goals 1-F and 4-e, do not relate to the need to expand, develop or improve CRP services for the benefit of individuals who are blind and visually impaired. Finally, Attachment 4.11(d) includes Strategy 6, which states:

Continue improvement in the service delivery of the Division's 17 community rehabilitation centers and the comprehensive rehabilitation center at Smyrna geared directly toward providing services leading to successful employment of individuals with the most significant disabilities. Pursue the development of additional service delivery entities in metropolitan markets for services including vocational evaluation, personal and work adjustment, job development, job placement, and job coaching.

This strategy does not provide an adequate description of the range and scope of the establishment project with Lions, or the manner in which the call center would be developed under the establishment authority of the VR program regulations, as would be required by the State Plan planning requirement at section 101(a)(15)(D) of the *Rehabilitation Act*. For these reasons, TDRS was not in compliance with Sections 101(a)(15) of the *Rehabilitation Act* and 34 CFR 361.29 prior to engaging in the establishment project with Lions.

## Call Center Expenditures

However, even if the development of the Lions call center could be considered to promote competitive and integrated employment and the planning requirements had been satisfied, VR program funds were not properly expended for this project.

Section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3 state that VR funds must be used only for the provision of VR services and the administration of the program under the State Plan. Regulations at 34 CFR 361.5(b)(17)(i) permit the use of VR program funds for the establishment, development or improvement of a CRP facility, as defined at 34 CFR 361.5(b)(18), to include the renovation or remodeling of a facility, and the purchase and installation of fixed or movable equipment to be used in the provision of VR services to applicants or eligible individuals.

Under the Lions project contract, the current building in Johnson City was expanded to 45 call stations, five of which were to be dedicated to training, with the remaining 40 reserved for permanent jobs. An additional five training stations also were to be established at the Lions facility in Morristown. The contract specifies, as noted above, that only five of the 45 call center stations will be for the purpose of providing training to eligible VR clients, up to 60 of whom are to receive training annually at the facilities in Johnson City and Morristown. Although there is a training component to the project, the call center facility—in its entirety—operated by Lions cannot be considered a “community rehabilitation program,” within the meaning of that term found at 34 CFR 361.5(b)(9), which defines a CRP as “an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.”

Instead, according to the scope of work, the major function of the facility is to employ individuals who are blind or disabled in the 40 call stations established under the expansion paid for in part with VR funds. In other words, only one of every nine call center stations (5 of 45) will be utilized for the purpose of delivering VR services and training. It is only that portion of the call center—e.g., one-ninth — that can be considered to come within the definition of a CRP for which VR program funds could be expended under 34 CFR 361.5(b)(17)(i) and (18).

Nevertheless, TDRS paid for the majority of the costs incurred for the renovations of the Johnson City facility despite the fact that only a small portion of the facility will be used to provide VR training to TDRS consumers. The federal share of the first year of the contract was \$807,020, which was used to cover the costs of the expansion project and the equipment needed to establish the call center. The table below, taken directly from the contract between DHS and Lions Volunteer Blind industries, provides a breakdown of the capital purchases for the first five months of the project.

**Table 6.1**  
**Capital Purchase for Lions Volunteer Call Center—February 1–June 30, 2011**

<b>Capital Purchase</b>	<b>Units</b>	<b>Individual Cost</b>	<b>Amount</b>
Expansion of Existing Facility			\$396,600
Contact Center Servers			\$131,500
Telephone Server-PBX			\$20,000
Computers	51	\$900	\$45,900
Network Switches	3	\$3000	\$9000
Fortigate (firewall)			\$1,2000
Braille Display	8	\$3600	\$28,800
CSR Headset	50	\$250	\$12,500
Amp, Ceiling Speakers, & XM Radio			\$3000
Boardroom Projector w/ audio			\$3000
Video magnifier	8	\$2500	\$20,000
Network Cabinet			\$1200
Session Initiation Protocol (SIP) Phones	55	\$156	\$8580
Cubicles	45	\$1333.34	\$60,000
CSR Chairs	45	\$140	\$6300
Office Chairs	4	\$300	\$1200
Conference room chairs	10	\$294	\$2940
Conference room table			\$1300
Desk	4	\$1000	\$4000
Automobiles for transporting clients	2	\$25,000	\$50,000
<b>Total</b>			<b>\$807,020</b>

This table shows that capital purchases included equipment for not just the five call center stations intended for training purposes, but all 45 stations, along with equipment and supplies associated with the on-going enterprise apart from any VR training component.

TDRS may remodel or expand a CRP facility, or purchase and install equipment such as a call center training station, to improve services to eligible TDRS consumers receiving VR services from that CRP (34 CFR 361.49(a)(1), 34 CFR 361.5(b)(17)(i) and (iii), and 34 CFR 361.5(b)(18)(ii), (iii) and (v)). However, as the table above demonstrates, TDRS was paying to expand a facility and install equipment the majority of which will not be used for training, but for permanent employment in what appears to be a non-integrated setting. Given the primary purpose of the project and the fact that the expenditures for the call center supported the entire cost of an employment, rather than a training site, the costs associated with the expansion of the Lions facility and the equipment purchased cannot be charged to the VR program in accordance with Section 111(a)(1) and 34 CFR 361.3 to the extent that the expenditures exceed the costs associated with the development of the five call center stations dedicated to the provision of VR training services.

## Building Staff Capacity

VR funds may be used to build the staff capacity of a CRP to provide VR services to applicants and eligible individuals only in the manner prescribed in 34 CFR 361.5(b)(17)(ii). According to this regulatory provision, VR program funds can be used in the establishment, development or improvement of a CRP, “for a maximum period of four years, with federal financial participation available at the applicable matching rate...” The regulation then specifies the rate of federal participation in these costs, ranging from 100 percent in the first year to 45 percent in the fourth and final year.

Although the application submitted by Lions specified staff-related costs in a manner consistent with this requirement, the contract provides for the support of staff-related costs across five budget periods, not four. Two of the budget periods were for less than 12 month timeframes. Per the contract, during the budget period from February 1, 2011 until June 30, 2011 (5 months) salaries were paid at 100 percent. The next budget period from July 1, 2011 until June 30, 2012 states the salary costs are \$63,970 with VR responsible for \$58,630 (92 percent) and the contractor \$5,340 (8 percent). There is nothing in the contract that restricted the percentage reimbursement of salary costs to those allowed under establishment projects. Thus, the terms of the contract are not consistent with the provisions of 34 CFR 361.5(b)(17)(ii).

In summary, the Lions project does not appear to promote as its primary function the integrated and competitive employment of individuals with disabilities; TDRS did not engage in the necessary planning activities prior to initiating the project; expenditures for the expansion of the call center exceeded allowed levels; and the staffing costs specified in the contract were not properly calculated. For these reasons, TDRS lacked the authority to use VR program funds to establish, develop or improve a CRP, namely the Lions call center, and the above-referenced expenditures were not allowable under Section 103(b)(2)(A) of the *Rehabilitation Act* and 34 CFR 361.49(a)(1).

## Unallowable Source of Match

Non-federal expenditures used for satisfying VR match requirements must be for allowable expenditures under the VR program, which include expenditures for the cost of providing VR services and the cost for administering the VR program (34 CFR 361.3 and 361.60(b)(1); 34 CFR 80.24(a)). Specifically, the non-federal expenditures incurred through an establishment project can be used to satisfy the VR program matching requirement to the degree that the VR agency has complied with the provisions of the Act and regulations governing such projects and the expenditures are allowable (34 CFR 361.60(b)(3)(i)). As described throughout this finding, the costs associated with the Lions call center described above, were not allowable expenditures under the VR program and consequently cannot be used as a source of non-federal match.

### **Corrective Action 11: TDRS must:**

- 11.1 cease using federal VR funds to pay for Lions project costs that are not allowable under the VR program and using related non-federal expenditures to meet the agency’s non-federal share; and

11.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that VR funds will not be used to support the costs of the Lions project unless it first complies with all requirements governing the establishment, development or improvement of a CRP as set forth in Section 103(b)(2)(A) and 34 CFR 361.49(a)(1) and will not use the costs incurred by Lions in connection with the project to satisfy its non-federal share.

## 12. Smyrna Building Expenditures

### Legal Requirements:

- VR Program Regulations—34 CFR 361.3, 361.5(b)(2)(viii), 361.29, 361.49(b), 361.60(a)(2), 361.61
- OMB Circulars—2 CFR 225, Appendix B, paragraphs 15 and 25

### Finding:

The Tennessee Rehabilitation Center (TRC) in Smyrna, TN is a state operated CRP. The Smyrna facility and all buildings are owned by the State of Tennessee and operated by the Division of Rehabilitation Services, Department of Human Services.

For FYs 2006—2011, TDRS expended federal VR funds for TRC capital improvement projects. The state refers to these expenditures as capital improvement projects and, in order to be consistent, the same name will be used in this finding. The table below lists the capital improvement projects for FY 2006–FY 2011.

**Table 6.2**  
**TRC Capital Improvement Project Expenses**

State Fiscal Year	Project Description	Federal Amount	State Amount	Federal Percentage Paid
2006-2007	TRC Elevator/Connector Wall	\$483,800	\$146,200	76.7
2006-2007	TRC Exterior Lighting Upgrade	\$138,000	\$40,000	77.5
2009-2010	TRC Fire Alarm Upgrade	\$323,000	\$87,300	78.7
2009-2010	TRC Reroof and Repairs	\$362,000	\$98,000	78.7
2010-2011	TRC Campus Upgrade–Phase 2	\$1,695,000	\$465,000	78.5
<b>TOTAL</b>		<b>\$3,001,800</b>	<b>\$836,500</b>	<b>78.2</b>

### Administrative Costs

Section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3 require that VR funds be used solely for the provision of VR services or for the administration of the VR program. Administrative costs, for purposes of the VR program, include operating and maintaining TDRS facilities, equipment, and grounds (section 7(1)(H)) of the *Rehabilitation Act* and 34 CFR 361.5(b)(2)(viii)). Furthermore, the federal cost principles governing state agencies, such as TDRS, permit the expenditure of federal funds for necessary maintenance and normal repairs and

alterations (2 CFR 225, Attachment B, paragraph 25). These costs are allowable to the extent they, in pertinent part: (1) keep property in an efficient operating condition; and (2) do not add to the permanent value of property or appreciably prolong its intended life (2 CFR 225, Appendix B, paragraph 25). Costs which add to the permanent value of property or appreciably prolong its intended life should be treated as capital expenditures in accordance with the federal cost principles at 2 CFR 225, Appendix B, paragraph 15. Some of the projects included in the Table 6.2 above are not routine maintenance and repairs, but rather capital expenditures, as defined in 2 CFR 225, Appendix B, paragraph 15 a(1). For example, one project component involved installing new heating and cooling equipment—not simply repairing them. Therefore, these expenditures would not constitute an administrative cost under the VR program. Other projects involved installation of new thermal insulating and environmental windows in dormitory rooms and breezeway connector, new flooring, doors, and lockers in dormitory rooms.

### Establishment Projects

In serving groups of individuals with disabilities, TDRS is authorized to establish, develop, or improve a public or private CRP, pursuant to section 103(b)(2)(A) of the *Rehabilitation Act* and 34 CFR 361.49(a)(1). In this case, the TRC is a public CRP, as defined at section 7(5) of the *Rehabilitation Act* and 34 CFR 361.5(b)(9). As such, TDRS is permitted under the VR program to alter or remodel the TRC and install fixed or movable equipment, as necessary, to establish, develop, or improve the facility for a CRP (34 CFR 361.5)(b)(18)(ii) and (v)).

In order for a state VR agency to engage in activities to establish, develop, or improve a public or non-profit CRP and use non-federal expenditures incurred by those activities to satisfy its match requirement under the VR program, the agency must first satisfy specific pre-planning requirements as described below.

- a. 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 CFR 361.49(b)(1)). and
- b. Establishment activities must have been identified as a need in the state agency's triennial needs assessment and the state VR agency must have included in its State Plan a discussion of the strategies it would use to meet that need (34 CFR 361.29).

As part of this analysis, RSA reviewed TDRS's approved VR State Plans for FYs 2006 - 2011 to determine whether TDRS had complied with the pre-planning requirements for purposes of engaging in activities to establish, develop, or improve a CRP. RSA found only general references to continued "improvement in the service delivery of the Division's 17 community rehabilitation centers and the comprehensive rehabilitation center at Smyrna geared directly toward providing services leading to successful employment of individuals with the most significant disabilities" (FY 2010 State Plan). The State Plans did not demonstrate that the pre-planning requirements, as described above, had been met. TDRS does maintain a written policy related to establishment projects.

## Establish, Develop, or Improve a CRP

Even if TDRS had satisfied the pre-planning requirements, RSA has concerns about whether these activities satisfy the definition of “establishment, development, or improvement of a public or non-profit CRP” at 34 CFR 361.5(b)(17). As such, the activity must be one that: 1) establishes a facility for a public or non-profit CRP to provide VR services to TDRS applicants and consumers; 2) provides staffing, if necessary, to establish, develop, or improve a CRP for the provision of VR services; or 3) makes a CRP functional or increases its effectiveness in providing VR services to TDRS applicants and consumers (34 CFR 361.5(b)(17)).

For purposes of this analysis, the relevant provision of this definition pertains to the establishment of a facility for a CRP, which, in pertinent part, means:

- acquisition of an existing building, provided the building was completed in all respects at least one year prior to the date of acquisition and the federal share of the cost of acquisition does not exceed \$300,000;
- remodeling or alteration of an existing building, provided the estimated cost of the renovation or alteration does not exceed the appraised value of the existing building; and
- expansion of an existing building, provided that:
  - the existing building is complete in all respects;
  - the total size in square footage of the expanded building is no more than twice the size of the existing building;
  - the expansion is joined structurally to the existing building and does not constitute a separate building; and
  - the cost of the expansion does not exceed the appraised value of the existing building;
- the acquisition of fixed or movable equipment, including the costs of installation of the equipment. If necessary, to establish, develop, or improve a CRP (34 CFR 361.5(b)(18)).

TDRS did not use federal VR funds to acquire any TRC buildings during FYs 2006 - 2011. Therefore, the age of the building or the \$300,000 federal limit is not applicable to this analysis. One project involved the total renovation and expansion of the Student Health Clinic and Medical Dormitory.

In the event that TDRS had satisfied the pre-planning requirements to engage in activities to establish, develop, or improve a CRP, information regarding the appraised value of the buildings, is critical for determining whether the projects met the definition of “establishment of a facility for a CRP” at 34 CFR 361.5(b)(18). To ensure the costs associated with the expansion of the Student Health Clinic and Medical Dormitory and other project renovation costs did not exceed the appraised value of the buildings; TDRS would need to have obtained an appraisal of the existing building(s). TDRS did not have an appraisal of the building(s) prior to the start of the capital improvement projects. Some of the renovations might qualify as fixed equipment under the definition of 34 CFR 361.5(b)(18)(v). However, to be allowable, the pre-planning requirements must have been met.

## Construction of a CRP

To the extent that the building renovation activities do not satisfy the requirements already described, RSA analyzed this issue to determine whether TDRS satisfied the requirements for construction of a CRP. As stated earlier, in the event that the building renovation projects constituted “construction of a facility for a public or non-profit CRP,” as defined at 34 CFR 361.5(b)(12), TDRS would have been required to satisfy all relevant federal requirements. In particular, the federal share for that expenditure must not exceed 50 percent of the cost (34 CFR 361.60(a)(2)) and TDRS must not use more than 10 percent of the State’s allotment for that year on this cost (34 CFR 361.61). A review of the grant awards issued to TDRS from FY 2006—2011, indicated that the agency satisfied the 10 percent requirement set forth at 34 CFR 361.61.

With regard to the non-federal share requirement of 34 CFR 361.60(a)(2), as demonstrated in the above table, TDRS used non-federal funds to pay no more than 25 percent of any renovation project. The table also demonstrates that TDRS used federal funds to pay substantially more of the costs than the allowed 50 percent maximum. Therefore, to the extent that the expenditures were incurred for the construction of a CRP, as defined at 34 CFR 361.5(b)(12), TDRS did not satisfy the non-federal share requirement for construction of a CRP, as set forth at 34 CFR 361.60(a)(2).

## Conclusion

To be considered allowable VR expenditures, the capital improvement projects must fall within one of categories detailed above: Administrative Cost, Establishment Project, Development or Improvement of a CRP; or Construction of a CRP. To the extent that the capital improvement projects or similar expenditures do not meet these requirements, TDRS is not in compliance with federal regulations regarding Administrative Costs, Establishment Projects, Development or Improvement of a CRP or Construction of a CRP.

### **Corrective Action 12:** TDRS must:

- 12.1 to the extent applicable, cease engaging in activities to establish, develop, or improve a CRP without first fulfilling all pre-planning requirements, as set forth at 34 CFR 361.29 and 34 CFR 361.49(b); and
- 12.2 submit a written assurance within 10 days of receipt of the final monitoring report that TDRS will use VR funds only for allowable expenditures, as required by 34 CFR 361.3, and will provide sufficient non-federal expenditures to satisfy the match requirement for those activities, as required by 34 CFR 361.60. In particular, TDRS must assure that, to the extent that it engages in construction activities, it will provide at least 50 percent of the total costs for construction with non-federal funds.
- 12.3 provide additional details related to construction and renovation expenditures mentioned above as may be required in the Corrective Action Plan.

**Corrective Action 12: TDRS must:**

- 12.1 to the extent applicable, cease engaging in activities to establish, develop, or improve a CRP without first fulfilling all pre-planning requirements, as set forth at 34 CFR 361.29 and 34 CFR 361.49(b); and
- 12.2 submit a written assurance within 10 days of receipt of the final monitoring report that TDRS will use VR funds only for allowable expenditures, as required by 34 CFR 361.3, and will provide sufficient non-federal expenditures to satisfy the match requirement for those activities, as required by 34 CFR 361.60. In particular, TDRS must assure that, to the extent that it engages in construction activities, it will provide at least 50 percent of the total costs for construction with non-federal funds.
- 12.3 provide additional details related to construction and renovation expenditures mentioned above as may be required in the Corrective Action Plan.

# **APPENDIX A: TENNESSEE DIVISION OF REHABILITATION SERVICES RESPONSE**

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## **Section 4: Results of Prior Monitoring Activities**

TDRS requests the additional technical assistance described below to enable it to carry out the following recommendation and compliance finding identified in the FY 2007 monitoring report.

### **Recommendations**

1. CRP Performance;
2. Supported Employment;
3. Order of Selection; and
4. Improve accuracy of the RSA-2 report

Additional TA Requested: None

### **Compliance Finding**

1. Compliance with Federal CSPD Requirements

Additional TA Requested: None

## **Section 5: Focus Areas**

### **B. Transition Services for Youth with Disabilities**

#### **5.B.1: Order of Selection, Education-Related Policies and Training of VR counselors and the Impact on Services and Outcomes for Youth with Disabilities**

**Recommendation:** RSA recommends that TDRS:

- 5.B.1.1 utilize data to monitor the performance of the agency's transition initiatives to assess levels of performance throughout the state, particularly with respect to the use of comparative data between outcomes achieved by youth with disabilities served under the TSW contracts and those served by general VR counselors who also work with transition youth, and use this information to refine agency goals related to the provision of transition services, as well as implement targeted training based upon this data;
- 5.B.1.2 review the new VR service policies governing the provision of college training services, including financial needs testing, the payment of tuition and fees, and the establishment of 15 credit hours as full-time for college cases to ensure that the policies are not resulting in the unintended consequence of negatively affecting the ability of youth with disabilities to receive college training and thereby achieve an employment outcome;

- 5.B.1.3 ensure that the SEA is fully implemented by working to establish the formal interagency work group required by the SEA for the purpose of coordinating services and improving the delivery of transition services;
- 5.B.1.4 develop mechanisms through which TDRS staff and the school districts can exchange information about effective transition practices throughout the state;
- 5.B.1.5 provide scheduled opportunities for in-service training for TDRS staff focused on the provision of transition services, particularly for those VR counselors who work exclusively with youth with disabilities, including teleconferences, workshops, and face-to-face strategy sessions as well as sharing of best practices; and
- 5.B.1.6 develop a website for transition counselors to post resources and increase communications on how to improve services to the transition population.

**Agency Response:** TDRS concurs with this recommendation.

- 5.B.1.1 TDRS agrees with the importance of utilizing data to monitor the performance of the agency's transition initiatives to assess levels of performance throughout the state, particularly with respect to the use of comparative data between outcomes achieved by youth with disabilities served under the TSW contracts and those served by general VR counselors who also work with transition youth, and use this information to refine agency goals related to the provision of transition services, as well as implement targeted training based upon this data. TDRS will work with the Organizational Performance Management Division to generate reports that can be used for comparative tracking purposes.
- 5.B.1.2 TDRS concurs with the recommendation to review current policies governing the provision of college training services, including financial needs testing, the payment of tuition and fees, and the establishment of 15 credit hours as full-time for college cases to ensure that the policies are not resulting in the unintended consequence of negatively affecting the ability of youth with disabilities to receive college training and thereby achieve an employment outcome. TDRS will conduct this review with input and advice of the State Rehabilitation Council.
- 5.B.1.3 TDRS agrees with the importance of a fully implemented SEA work group. The transition program coordinator will continue efforts to establish the formal interagency work group required by the SEA for the purpose of coordinating services and improving the delivery of transition services.
- 5.B.1.4 TDRS agrees with the importance of developing mechanisms through which TDRS staff and the school districts can exchange information about effective transition practices throughout the state.
- 5.B.1.5 TDRS agrees with the importance of providing scheduled opportunities for in-service training for TDRS staff focused on the provision of transition services, particularly for

those VR counselors who work exclusively with youth with disabilities, including teleconferences, workshops, and face-to-face strategy sessions as well as sharing of best practices. TDRS staff participates in transition-related webinars through TACE.

- 5.B.1.6 TDRS participates in the TACE website available to transition counselors allowing access to a counselor portal to post resources and increase communications on how to improve services to the transition population. TDRS transition counselors have the opportunity to receive the electronic newsletter, TACE Talks Transition.

**Technical Assistance:** TDRS does not request TA.

## **C. Fiscal Integrity of the VR Program**

### **C.1: Cost Allocation Plan**

**Recommendation:** RSA recommends that TDRS:

- 5.C.1.1 update the Rehabilitation Services component of the Tennessee Department of Human Services Cost Allocation Plan to reflect the current programs and position responsibilities.

**Agency Response:** TDRS concurs with this recommendation.

- 5.C.1.1 The cost allocation plan will be updated to reflect the current programs and position responsibilities. In addition, the reference to the Prevention of Blindness Program will be removed.

**Technical Assistance:** TDRS does not request TA.

### **5.C.2: Program Coordination**

**Recommendation:** RSA recommends that TDRS:

- 5.C.2.1 review the requirements related to third-party cooperative arrangements, establishment projects, and match requirements and develop clear lines of responsibility to ensure that all program and fiscal requirements are met; and
- 5.C.2.2 consider having TDRS program and fiscal staff attend the FY 2011 RSA Fiscal Conference to gain additional information regarding fiscal and program requirements.

**Agency Response:** TDRS concurs with this recommendation.

- 5.C.2.1 TDRS Program and Fiscal staff will work together in contract administration, paying of invoices, and other fiscal related matters.
- 5.C.2.2 Both Program and Fiscal staff recently attended the RSA Fiscal Conference and received valuable information and network resources to help improve the coordination

of shared responsibilities to ensure all program and fiscal requirements are met. TDRS Fiscal and Program staff plan to meet periodically to ensure ongoing coordination.

**Technical Assistance:** TDRS does not request TA.

## **Section 6: Compliance Findings and Corrective Actions**

### **1. Financial Reporting**

**Corrective Action 1:** TDRS must:

- 1.1 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that it will submit complete and accurate SF-269/SF-425 reports as required by 34 CFR 361.12 and 34 CFR 80.20; and
- 1.2 correct the amount of carry forward and indirect costs reported on the fourth quarter and final reports for FYs 2006 - FY 2011.

**Agency Response:** TDRS concurs in part with this finding.

- 1.1 Written assurance will be submitted to RSA within 10 days of receipt of the final monitoring report that it will submit complete and accurate SF-269/SF-425 reports as required by 34 CFR 361.12 and 34 CFR 80.20.
- 1.2 TDRS had no carry forward for FY2006 and FY2007. TDRS will revise the FY2008—FY2010 reports to accurately reflect carry forward amounts. Indirect costs are reported against current year grants in order to simplify tracking through the cost allocation process. TDRS is not aware of any regulation that would prohibit this type of reporting of indirect costs. Since FY2011 is the current year, carry forward for FY2011 cannot be determined at this time.

**RSA Response:** RSA corrected the FYs listed in the finding for which TDRS did not accurately reflect carry forward amounts. The amount of indirect costs charged toward an award must be recorded correctly on the SF-425. For years in which TDRS had a carry forward, the amount of indirect costs charged, as reported on the SF-425, did not change after the 4<sup>th</sup> quarter of year one of the award. However, TDRS continued to charge indirect costs toward the award and paid the costs using the subsequent year's award. As a result, the SF-425s may show indirect cost charges across for more than one grant award period. TDRS must confirm that the application of indirect costs in this manner is acceptable to its' cognizant agency and does not distort the appropriate allocation of these indirect costs. The finding stands as written pending confirmation from the cognizant agency that this practice is allowable.

**Technical Assistance:** TDRS does not request TA.

## 2. Program Income Disbursement

**Corrective Action 2:** TDRS must:

- 2.1 cease drawing down federal VR program funds prior to disbursing all available program income and provide a written assurance to RSA, within 10 days of the final monitoring report, that it will disburse all program income before drawing down additional federal VR funds as required by 34 CFR 80.21(f)(2);
- 2.2 develop and implement internal controls necessary to ensure disbursement of program income before drawing down additional federal VR funds in accordance with 34 CFR 80.21(f)(2).

**Agency Response:** TDRS concurs with this finding.

- 2.1 TDRS will review and make changes to our policies and procedures regarding program income to ensure compliance with federal regulations.
- 2.2 With technical assistance from RSA, TDRS will develop and implement internal controls regarding program income.

**RSA Response:** TDRS' response regarding factual inaccuracies in the draft report stated that this finding is contradictory to 34 CFR 361.64(a) which states "any program income received during a fiscal year that is not obligated by the State by the beginning of the succeeding fiscal year remain available for obligation by the State during the succeeding fiscal year." TDRS incorrectly concluded that 34 CFR 361.64 was inconsistent with 34 CFR 80.21(f)(2). If the TDRS receives program income at the end of 4<sup>th</sup> quarter of the first year of the grant award (September 30) and is unable to expend those funds until after September 30, the program income funds may be carried over to the second year of the award. However, in accordance with 34 CFR 80.21(f)(2), TDRS must disburse all program income prior to requesting a drawdown of additional federal VR funds. The requirement at 34 CFR 361.64(a) allows for program income to be carried forward but all program income must still be disbursed before additional funds are drawn down. This finding remains as written and TDRS must comply with the corrective actions.

**Technical Assistance:** TDRS requests TA on the interpretation of the federal regulations regarding program income and how it can implement this interpretation in the State's accounting system.

## 3. Internal Controls

**Corrective Action 3:** TDRS must develop and implement policies and procedures for maintaining and verifying supporting documentation for VR expenditures (both incurred by TDRS and its contractors/service providers), monitoring contractors/service providers, and tracking VR expenditures, as required by 34 CFR 361.12 and 34 CFR 80.20.

**Agency Response:** TDRS concurs with this finding.

TDRS agrees and will work with program staff and contract staff to develop and implement policies and procedures for maintaining and verifying supporting documentation for VR expenditures (both incurred by TDRS and its contractors/service providers) as required by 34 CFR 361.12 and 34 CFR 80.20. TDRS has already begun to revise its monitoring functions and is committed to the fiscal integrity of the program.

**RSA Response:** No response required.

**Technical Assistance:** TDRS requests TA to include monitoring instruments and sample contracts.

#### **4. Unallowable Source of Match: In-Kind**

**Corrective Action 4:** TDRS must:

- 4.1 cease using in-kind contributions, regardless of the source, to meet the non-federal share of the VR program; and
- 4.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that allowable expenditures used to meet the program's non-federal share will comply with the requirements of 34 CFR 361.60(b) and 34 CFR 80.24.

**Agency Response:** TDRS does not concur with this finding.

- 4.1 TDRS does not use in-kind funds for match. The grantee match amount of \$95,382 was entered on the in-kind expenses line of the budget incorrectly. The amount should have been entered on the indirect costs line of the budget. These were actual expenditures made by the University of Tennessee on behalf of the VR program in accordance with their approved indirect cost rate.
- 4.2 Written assurance will be submitted to RSA within 10 days of receipt of the final monitoring report that allowable expenditures used to meet the program's non-federal share will comply with the requirements of 34 CFR 361.60(b) and 34 CFR 80.24.

**RSA Response:** TDRS' response regarding factual inaccuracies indicated that the match being categorized as an in-kind expense "was an error on the contract budget. The \$95,382 match amount mentioned should have been on the Indirect Cost line of the contract budget." RSA reviewed the supporting documentation again based upon the agency's response and has determined that the documentation does not support the agency's claim. The indirect costs included in the contract grant budget were \$58,696 for the period beginning July 1, 2010 and ending June 30, 2011. The invoices for the contract period confirm an indirect cost amount of \$58,696. The grantee indirect cost amounts charged were consistent in the contract and invoice documents. Therefore, it is unclear how the agency can assert that the \$95,382 listed as in-kind expense should have been an indirect cost. The contract clearly shows that the agency was expected to provide \$95,382 in in-kind expenses as part of the total project costs. Therefore,

RSA maintains this finding as written and TDRS must comply with the required corrective actions.

**Technical Assistance:** TDRS does not request TA.

## **5. Unallowable Sources of Match: Benefits to Private Donor**

**Corrective Action 5:** TDRS must:

- 5.1 cease using Title I funds, including the match funds it receives from non-profit organizations for match purposes, in a manner that inappropriately benefits the donor as required by 34 CFR 361.60(b)(3);
- 5.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that it will no longer use Title I VR funds and its matching funds to benefit private donors of those matching funds; and
- 5.3 develop and implement policies and procedures to prohibit reversion of funds to benefit private donors.

**Agency Response:** TDRS concurs with this finding.

- 5.1 TDRS understands that match funds cannot inappropriately benefit the donor. The match funds in question in this finding are appropriated dollars from the Marion County Government. TDRS will either require the County to send these dollars directly to TDRS or terminate the contract.
- 5.2 Written assurance will be submitted to RSA within 10 days of the final report that Title I VR funds and its matching funds will no longer be used to benefit private donors.
- 5.3 Policies and procedures will be developed and implemented to prohibit the reversion of funds to benefit private donors.

**RSA Response:** No response required.

**Technical Assistance:** TDRS does not request TA.

## **6. Unallowable Costs**

**Corrective Action 6:** TDRS must:

- 6.1 cease paying IL and OIB indirect costs with federal VR funds and using federal VR funds to reimburse Caring Inc. for unallowable expenditures under the VR program in accordance with section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3; and
- 6.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that VR funds will not be used to reimburse unallowable expenditures in accordance with section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3.

**Agency Response:** TDRS concurs with this finding.

- 6.1 TDRS revised our cost allocation plan to start charging indirect costs to the Independent Living grants in FY2011. TDRS will revise the cost allocation plan to reflect current program and position responsibilities. This will include revisions to properly allocate TCDHH costs.

TDRS will revise our contract with Caring, Inc., to comply with federal regulations concerning third party cooperative arrangements.

Again, information received at the RSA Fiscal Conference will be valuable in revising our contract monitoring and payment procedures to increase internal controls over our third party cooperative arrangements.

- 6.2 Written assurance will be submitted to RSA within 10 days of receipt of the final monitoring report that VR funds will not be used to reimburse unallowable expenditures in accordance with section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3.

**RSA Response:** No response required.

**Technical Assistance:** TDRS does not request TA.

## **7. Incentive payments for Individuals Participating in VR Training**

**Corrective Action 7:** TDRS must:

- 7.1 cease using Title I grant funds for the provision of incentives to VR consumers receiving training from a contracted VR service provider;
- 7.2 submit an assurance within 10 days of the issuance of the final monitoring report that it will comply with VR program regulations describing allowable VR services pursuant to 34 CFR 361.5(b)(58) and 34 CFR 361.48(t);
- 7.3 revise and/or amend as necessary all contracts to remove language allowing for the provision of incentive payments to VR consumers; and
- 7.4 ensure that requests for proposals for the contracting of VR training do not support the use of incentives as part of a VR training program.

**Agency Response:** TDRS does not concur with this finding.

- 7.1 TDRS understands that cash and gifts cannot be used as incentives for people to participate in the VR Program. However, the awards in question do not rise to the level of a cash or gift incentive. They are simply items used to adjust behavior to prepare VR clients for work. These items generally consist of beverages and snacks or other non-monetary items

which motivate positive adjustments behavior required to be successful on the job. This approach is consistent with behavior modification practices. (See 34 CFR 361.48(f)).

The use of these items as a training motivational tool is not listed in the client's VR Individualized Plan for Employment (IPE) because: (1) there is no way to know to what extent the client will receive such behavioral items, and (2) the items are part of the training rather than a separate service and the training itself is listed on the IPE. Further, it appears based on 34 CFR 361.5 (b)(35) these items could potentially qualify as "enrichment activities related to the individual training program. (See Example 4).

Providing such non-monetary behavioral items such as cokes and popcorn do not rise to the level of cash or gift incentives, but are necessary behavioral and educational tools used to provide positive reinforcements to clients who require reinforcements to develop appropriate work behaviors.

7.2 Not applicable

7.3. Not applicable

7.4 Not applicable

**RSA Response:** While RSA understands the intended use for which these items were being provided to consumers, the fact remains that VR funds cannot be used to purchase such items. Based on the characterization of these items in the documentation provided during the course of the review, RSA considers the items in question to represent incentives to consumers for their participation in training and other services and as such are not necessary for the achievement of an employment outcome in accordance with 34 CFR 361.48(s). TDRS did not provide any additional supporting documentation identifying how these funds were used and RSA was unable to further assess these expenditures. Consequently, the finding stands as written. TDRS must comply with the identified corrective actions.

**Technical Assistance:** TDRS does not request TA.

## **8. Transition from School to Work (TSW) Contracts**

**Corrective action 8:** TDRS must:

- 8.1 revise its TSW written agreements to include a description of the non-federal share contributed by the local school districts to support program expenditures as required by 34 CFR 361.28(a);
- 8.2 revise and/or amend its TSW contracts such that the scope or work language sufficiently captures the range and scope of the new or enhanced transition services provided under the contracts in accordance with the requirements of 34 CFR 361.28(a)(1);
- 8.3 ensure that all TSW contracts allow for the provision of services to VR applicants as well as individuals determined eligible for the VR program pursuant to 34 CFR 361.28(a)(2);

- 8.4 revise and/or amend all TSW contracts to include provisions that ensure that TDRS will exercise administrative supervision over the program expenditures and the personnel providing the services; and
- 8.5 revise and/or amend all TSW contracts to ensure that the services provided under the contracts comply with all portions of the TDRS VR State Plan, including the order of selection as required by 34 CFR 361.28(a)(4).

**Agency Response: TDRS concurs with this finding.**

- 8.1 TDRS will work with program staff and contract staff to revise its TSW written agreements to include a description of the non-federal share contributed by the local school districts to support program expenditures as required by 34 CFR 361.28(a).
- 8.2 TDRS will work with program staff and contract staff to revise and/or amend its TSW contracts such that the scope or work language sufficiently captures the range and scope of the new or enhanced transition services provided under the contracts in accordance with the requirements of 34 CFR 361.28(a)(1).
- 8.3 TDRS will work with program staff and contract staff to ensure that all TSW contracts allow for the provision of services to VR applicants as well as individuals determined eligible for the VR program pursuant to 34 CFR 361.28(a)(2).
- 8.4 TDRS will work with program staff and contract staff to revise and/or amend all TSW contracts to include provisions that ensure that TDRS will exercise administrative supervision over the program expenditures and the personnel providing the services.
- 8.5 TDRS will work with program staff and contract staff revise and/or amend all TSW contracts to ensure that the services provided under the contracts comply with all portions of the TDRS VR State Plan, including the order of selection as required by 34 CFR 361.28(a)(4).

**RSA Response:**

**Technical Assistance:** TDRS requests TA, particularly with specific contracts and monitoring instruments.

**9. Tennessee Council of the Deaf and Hard of Hearing**

**Corrective action 9:** TDRS must:

- 9.1 cease using Title I VR grant funds for unallowable expenditures under the VR program to pay for the operations and provision of services by the Tennessee Council for the Deaf and Hard of Hearing in accordance with Section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3; and

- 9.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that VR funds will not be used to pay for activities of the TCDHH and its six regional centers, unless such services are allowable under Section 103 of the *Rehabilitation Act* and 34 CFR 361.48 and 361.49.

**Agency Response:** TDRS concurs with this finding.

- 9.1 We concur that at least some of the services being provided by the community centers do not meet the requirements under VR regulations.

In order to ensure compliance, TDRS will either modify the contracts to ensure that only VR clients are served; modify them to ensure that all Services to Groups requirements are met; or terminate the agreements altogether.

- 9.2 Written assurance will be submitted within 10 days of the receipt of the final monitoring report that VR funds will not be used to pay for activities of the TCDHH and its six regional centers, unless such services are allowable under Section 103 of the *Rehabilitation Act* and 34 CFR 361.48 and 361.49.

**RSA Response:** No response required.

**Technical Assistance:** TDRS requests TA to ensure full compliance with this finding.

## **10. Establishment Project—Memphis Goodwill Industries**

**Corrective Action 10:** TDRS must:

- 10.1 cease using federal VR funds to pay for staffing costs of the Memphis Goodwill project in a manner that is not allowable under the VR program; and
- 10.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that VR funds will not be used to reimburse Memphis Goodwill Industries for any staffing costs of the project, unless it first complies with all requirements governing the establishment, development or improvement of a CRP as set forth in Section 103(b)(2)(A) of the *Rehabilitation Act*, and regulations at 34 CFR 361.49(a)(1) and 361.5(b)(17)(ii).

**Agency Response:** TDRS does not concur with this finding.

- 10.1 This contract began on December 1, 2009 and ends on November 30, 2013, not on June 30, 2013 as stated in the monitoring report. Attached as Exhibit 1 is a spreadsheet used to determine the staffing cost on the budget pages of the contract.

The staffing cost was calculated at 100%, 75%, 60% and 45% for a four year period. TDRS determined the percentage of federal participation based upon when the position was filled and is the date used for 100% federal participation. The next 12 months it is calculated at 75%, etc. 34 C.F.R. 361.5(b)(17) does not limit the federal financial participation to the

beginning of the contract period, the regulations states: beginning at 34 C.F.R. 361.5(b)(17)(ii)(A), “staffing costs of the salary the first year.” (Emphasis Supplied).

TDRS interpretation of the regulation is logical because to fully fund staff on a building not yet outfitted would run contrary to RSA law and generally accepted prudent fiscal practices. Furthermore, had TDRS used two separate contracts this would not be an issue, but could have caused problems for the Agency.

- 10.2 Written assurance will be submitted to RSA within 10 days of receipt of the final monitoring report that VR funds will not be used to reimburse Memphis Goodwill Industries for any staffing costs of the project, unless it first complies with all requirements governing the establishment, development or improvement of a CRP as set forth in Section 103(b)(2)(A) of the *Rehabilitation Act*, and regulations at 34 CFR 361.49(a)(1) and 361.5(b)(17)(ii).

**RSA Response:** The information provided in Exhibit 1, titled Tennessee Rehabilitation Center at Camden Proposed Administrative Budget July 1, 2011—June 30, 2012 did not contain any additional information relevant to this finding.

Per the contract with Memphis Goodwill Industries, Inc., during the period from December 1, 2009 until June 30, 2010 (7 months) salaries were paid at 100%. The next budget period from July 1, 2010 until June 30, 2011, states the salary costs are \$248,983 with TDRS responsible for \$223,837 and the contractor \$25,146 (11%). There is nothing in the contract that restricted the percentage reimbursement of salary costs to those allowed under establishment projects. Staffing costs are not based upon when the individual staff begin their employment. Such an interpretation would permit the agency to exceed the four year limitation for establishment project staffing costs. Additionally, TDRS’ response appears to contradict its’ internal policies related to establishment projects. TDRS did not provide any additional supporting documentation relevant to this finding; therefore, the finding stands as written and TDRS must comply with the corrective actions.

**Technical Assistance:** TDRS requests TA.

## **11. Establishment Project—Lions Volunteer Blind Industries**

**Corrective Action 11:** TDRS must:

- 11.1 cease using federal VR funds to pay for Lions project costs that are not allowable under the VR program and using these costs to meet the agency’s non-federal share; and
- 11.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that VR funds will not be used to support the costs of the Lions project unless it first complies with all requirements governing the establishment, development or improvement of a CRP as set forth in Section 103(b)(2)(A) and 34 CFR 361.49(a)(1) and will not use the costs incurred by Lions in connection with the project to satisfy its non-federal share.

**Agency Response:** TDRS concurs in part with this finding.

11.1 We concur that pre-planning did not occur at the level being prescribed by RSA. We do not concur that the program being funded is not a training program. We do not concur that the jobs being created are not in an integrated setting.

With respect to the pre-planning, it should be noted pre-planning did take place. The needs assessment completed in 2010 does identify vocational training as a critical service. Additionally, the State Rehabilitation Council in its comments on the state plan made the suggestion that TDRS use its establishment authority to develop more services.

TDRS concedes the specificity of the establishment grant being contemplated was not included in the state plan. With technical assistance from RSA, TDRS will ensure that future proposed establishment projects will be based upon the needs assessment and clearly delineated in the state plan.

TDRS does not concur that the VBI program is not a training program. In fact the only two positions funded are trainers.

TDRS made it clear that the first priority was to place VR clients into jobs in existing call centers. There are 9 major call centers in the Tri-Cities area and they have approximately 9,000 seats available. Our goal was to train VR clients to take some of those jobs. The second priority was home-based employment. Since transportation is a major obstacle to employment for individuals who are blind, it was felt that this training program offered an opportunity for some individuals to work at home. Some of the work stations being established at VBI could easily be moved to an individual's home. The third option was the call center being created at VBI but the training is not provided with the singular intent of clients working at VBI as the report suggests.

TDRS acknowledges that a significant portion of the call center stations will result in permanent employment at VBI. However, these stations are also available for OJT and transitional employment to better prepare clients for employment elsewhere.

The jobs at the VBI call center are in an integrated setting. RSA Technical Assistance Circular TAC 06-01 makes it clear that jobs in a National Industries for the Blind affiliate can constitute an integrated setting and it is the state agency's responsibility to assess the degree of integration including with customers and vendors.

RSA regulations define an integrated setting as:

“A setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals . . . to the same extent non-disabled individuals in comparable positions interact with other persons.”

Call center positions are “typically found in the community” as evidenced by the fact there are 9,000 such jobs in the area. The issue becomes on the degree of interaction with individuals who do not have a disability. Call center representative jobs are unique in that a person sits with a

headphone and the only people with whom they interact are persons on the telephone. It is presumed that most of the people with whom they interact over the telephone are people without disabilities. The amount of interaction a call center representative at VBI has with non-disabled individuals is exactly the same as the interaction of call center representatives employed by one of the 9 call centers in the area.

With respect to the integrated setting, until the center is fully operational, it is possible that the majority of employees in the call center are not persons with disabilities.

Finally, with respect to the method used to calculate federal participation in the cost of salaries, please refer to the Agency's Response to Finding #10.

TDRS intends to amend the scope of service of its contract to make clear that the primary focus of the project is training (including OJT and transitional employment) leading to competitive employment in an integrated setting.

11.2 Written assurance will be submitted to RSA within 10 days of receipt of the final monitoring report that VR funds will not be used to support the costs of the Lions project unless it first complies with all requirements governing the establishment, development or improvement of a CRP as set forth in Section 103(b)(2)(A) and 34 CFR 361.49(a)(1).

**RSA Response:** RSA supports TDRS's commitment to determine that any facility operated under the National Industries for the Blind (NIB) is an integrated work setting in accordance with RSA's Technical Assistance Circular (TAC) 06-01. The TAC provides guidance to state VR agencies making the determination as to the integrated nature of a work site. As such the TAC offers the following:

We recommend that the state VR agency consider the following factors when making its determination about a particular employment position at a particular CRP:

1. Level of interaction of the individual with disabilities with non-disabled persons within that individual's entire work-site.<sup>v</sup>
2. Level of interaction of the individual with disabilities with non-disabled persons within that individual's work-unit.
3. Level of interaction of the individual with disabilities with other non-disabled persons, such as customers or vendors.

TDRS, in its response to this finding, asserts the integrated nature of the Lions call center project based on the guidance in element three above by noting that most of the interactions between employees and customers would be with non-disabled individuals, and thus, the work site could be considered an integrated setting. However, TDRS should also consider elements one and two when making this assessment in order to fully follow the guidance provided by RSA in TAC-06-01. The analysis should include a determination of the level of interaction of the blind and visually impaired individuals working in the call center with non-disabled employees working across the entire Lions site, as well as those non-disabled persons employed in the call center itself.

In addition to the three elements noted above that should be considered when a state VR agency makes a determination as to whether or not a work site is integrated, footnote V from TAC-06-01 states:

V. We [RSA] want to point out that entities that are set up specifically for the purpose of providing employment to individuals with disabilities will likely not satisfy the definition of “integrated setting.” The high percentage of individuals with disabilities employed with these entities most likely would result in little to no opportunities for interaction between individuals with disabilities and non-disabled individuals. These entities, therefore, would be considered sheltered or non-integrated employment sites. (Final Regulations State VR Services Program, 62 Fed. Reg. 6307, 6311 ((Feb. 11, 1997))).

TDRS should consider carefully all of the above as it makes its assessment of the Lions call center project in order to complete the analysis necessary for the determination of a CRP work site as an integrated setting using the guidance set forth in TAC-06-01, including the three factors and Footnote V. TDRS must apply this analysis to the Lions call center job site itself, rather than in comparison to other call centers in the community.

RSA based its analysis on the information provided by TDRS during the course of the monitoring and obtained through a review of the contract and documents describing the call center project. As explained in the text of the finding, the primary purpose of the contract between TDRS and Lions as described in the contract language is the development of a call center and the provision of skills training that will enable TDRS consumers to become employed at the call center. Further, RSA reiterates that the language in the contract requiring that individuals seeking integrated employment obtain a letter of understanding from their VR counselors underscores the fact that the primary purpose of the contract is to assist TDRS consumers to obtain non-integrated employment at the call center and that the call center is not considered to be an integrated setting by the parties to the contract. The emphasis that TDRS now places through its response to the finding on the employment of its consumers in community-based call centers in the Johnson City area is not found in the language of the contract, nor was it described by TDRS management during on-site discussions on this matter. While RSA supports the intent of TDRS to amend the contract to make clear that the primary focus of the project is training leading to competitive employment in an integrated setting, this does not change the facts that existed at the time of the monitoring review—that the primary purpose of the services provided were to assist individuals to become employed at the Lions call center.

For the foregoing reasons, RSA maintains its position that it is concerned that the Lions call center may not be an integrated setting. Given that the contract, as it existed at the time of the review, specified that a primary purpose of the training program was to assist individuals to become employed at the Lions call center, RSA maintains its finding that the project did not satisfy the basic requirement for the use of the establishment authority—namely that the project provide VR services that promote integrated and competitive employment for individuals with

disabilities, as required by Section 103(b)(2)(A) of the *Rehabilitation Act* and 34 CFR 361.49(a)(1).

However, irrespective of whether or not the Lions call center in Johnson City is an integrated setting, TDRS did not comply with other federal requirements governing establishment projects. First, it cannot sufficiently connect the development of the Lions call center to any information in the most recent comprehensive statewide needs assessment concerning the need to establish, develop or improve a CRP for the purpose of providing VR services to blind and visually impaired individuals. In addition, the call center was not described in its FY 2011 or prior State Plan goals and strategies. Consequently, TDRS did not engage in the appropriate level of planning as required by Section 101(a)(15) of the *Rehabilitation Act* and 34 CFR 361.29.

Even if TDRS had engaged in the necessary level of planning prior to contracting with Lions, TDRS expended VR funds inappropriately on the development of the entire call center site, rather than only on that portion of the site used for the training of TDRS consumers. As explained in detail in the text of the finding, the Title I VR program funds contributed by TDRS for the development of the call center were used to subsidize the construct of all 45 work stations at the call center, not just those 5 identified in the contract as dedicated to the training of TDRS consumers. The assertion of TDRS in its response to the finding that some of the 40 stations beyond the 5 training stations could also be used for the provision of on-the-job training or actually moved to an individual's residence for the purpose of home-based employment is not consistent with the language in the ratified contract. The contract was very clear that only 5 seats were dedicated to training TDRS consumers and the remaining 40 were for permanent employment. In addition, TDRS' statement in its response does not negate the fact that VR program funds were used to support the development of the entire work site, not just that portion to be used for the provision of training. For the foregoing reasons, RSA maintains its finding that the expenditure of VR program funds for the development of the entire costs of the Lions call center was not in accordance with the requirements of Section 111(a)(1) of the *Rehabilitation Act* and 34 CFR 361.3, which require that VR program funds be expended only for the provision of VR services and the administration of the program under the State Plan, to the extent that the funds supported the 40 stations beyond those dedicated for the provision of training to TDRS consumers.

Finally, TDRS' response to this finding referenced the agency's comments to Finding 10 regarding the method used to calculate federal participation in the cost of salaries paid to Lions employees providing VR services to TDRS consumers under the contract. In its response to Finding 10, the agency asserts that "the staffing cost was calculated at 100 percent, 75 percent, 60 percent and 45 percent for a four year period. TDRS determined the percentage of federal participation based upon when the position was filled and it's the date use for 100 percent participation..." In reviewing the application and the contract for the Lions establishment project, RSA was unable to find any statements that support the agency's assertion that TDRS determined the percentage of federal participation in staffing costs based upon the date the position was filled. The Lions contract specified a beginning date of February 1, 2011, and an ending date of January 31, 2015. The contract budget for the period beginning February 1, 2011, contained salaries and benefits. RSA's analysis of this issue was made more difficult because the agency did not ensure that the pertinent information contained in the project application was consistent with that found in the contract entered into by TDRS and Lions implementing the

same project. According to the project application, staffing costs were to be incurred starting on October 1, 2010. Additionally, the staffing costs described in the application were different from those specified in the contract and neither document contained a schedule for the payment of these costs by TDRS equivalent to the rates required in federal regulations. In response to this finding, TDRS provided no additional supporting documentation demonstrating exactly when the staffing costs began to be incurred and that the amounts paid were consistent with the schedule provided for in the provisions of 34 CFR 361.5(b)(17)(ii). Therefore, RSA maintains this portion of the finding as written.

In summary, because 1) the purpose of the Lions call center project was not consistent with the requirements for the establishment authority; 2) TDRS did not engage in the necessary planning activities prior to entering into the contract with Lions for the development of the call center; 3) TDRS expended VR program funds for the development of the entire call center employment site, not just that portion used for the training of its consumers; and 4) TDRS did not substantiate that it paid the staffing costs associated with the training provided under the Lions contract in a manner consistent with the required schedule of federal participation, RSA maintains its finding that the agency's use of VR program funds for the development of the Lions call center was not allowable. Thus, TDRS could not properly use the non-federal expenditures associated with the development of the call center to meet the matching requirement for the VR program in accordance with 34 CFR 361.60(b)(1) and 34 CFR 80.24(a).

RSA appreciates TDRS's desire to expand employment opportunities for blind and visually impaired VR consumers in Tennessee. Nevertheless, RSA has determined for the reasons explained in the text of the finding and this response to maintain the finding as written. TDRS must take the steps necessary to carry out Corrective Actions 11.1 and 11.2 in order to resolve the finding.

**Technical Assistance:** TDRS requests TA to the same extent as with finding #10.

## **12. Smyrna Building Expenditures**

**Corrective Action 12:** TDRS must:

- 12.1 to the extent applicable, cease engaging in activities to establish, develop, or improve a CRP without first fulfilling all pre-planning requirements, as set forth at 34 CFR 361.29 and 34 CFR 361.49(b);
- 12.2 submit a written assurance within 10 days of receipt of the final monitoring report that TDRS will use VR funds only for allowable expenditures, as required by 34 CFR 361.3, and will provide sufficient non-federal expenditures to satisfy the match requirement for those activities, as required by 34 CFR 361.60. In particular, TDRS must assure that, to the extent that it engages in construction activities, it will provide at least 50 percent of the total costs for construction with non-federal funds; and
- 12.3 provide additional details related to construction and renovation expenditures mentioned above as may be required in the Corrective Action Plan.

**Agency Response:** TDRS does not concur with this finding.

12.1 TDRS does not concur with this finding as it relates to maintenance at the Tennessee Rehabilitation Center in Smyrna. Contrary to the finding, TDRS owns the buildings in question at Smyrna. As the building's owner, TDRS has an obligation and the authority to maintain its buildings so that services can be provided to VR recipients in a safe and effective environment. The finding also appears to contradict itself.

TDRS relies on C.F.R. 34.361.5(b)(2)(viii) which states:

“(2) Administrative cost under the State plan means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program carried out under this part, including expenses related to program planning, development, monitoring, and evaluation, including, but not limited to, expenses for —

(viii) Operating and maintaining designated State unit facilities, equipment, and grounds.”

TDRS maintains that TRC is a facility and therefore federal dollars can be used to maintain those buildings. The projects identified are maintenance in nature and fall within the scope of this regulation. As a TDRS owned and operated facility, it is imperative to make necessary repairs and alterations to buildings and equipment that are not functioning properly in order to maintain services to clients. TDRS has assured that the replacing of equipment in disrepair as well as needed building alterations and repairs has been initiated to prevent unnecessary expenditures to attempt to repair equipment that cannot be repaired cost effectively as well as to prevent further disrepair.

TDRS also has relied on guidance from RSA in the past. During its 2007 monitoring visit, two members of RSA's Fiscal Unit toured TRC. The projects that were in the works at that time were reviewed with the RSA staff and the funding sources were fully disclosed. There was no finding related to these activities in the 2007 monitoring report. RSA staff members have frequently visited TRC over the years yet the 2011 monitoring report is the first expression of any concern about how TDRS funds activities at that center.

12.2 Written assurance will be submitted within 10 days of receipt of the final monitoring report that TDRS will use VR funds only for allowable expenditures, as required by 34 CFR 361.3, and will provide sufficient non-federal expenditures to satisfy the match requirement for those activities, as required by 34 CFR 361.60. In particular, TDRS must assure that, to the extent that it engages in construction activities, it will provide at least 50 percent of the total costs for construction with non-federal funds.

12.3 The following maintenance projects were identified in the finding:

Elevator/Connector Wall—project refurbished an existing elevator cub and updated pulley cables, safety devices and controls were installed to maintain the safe operation of the elevator. The elevator had been repaired numerous times and was no longer cost effective to continue repairs when replacement items were needed to continue operations. This was considered an administrative cost in order to keep the elevator in an efficient operating condition which did not

add to the permanent value of the property or appreciably prolong the intended life of the project. The Connector Wall portion of this project replaced the glass windows in the connector that were failing and was also considered an administrative cost in order to maintain and keep property in an efficient operating condition. Replacing these windows did not add to the permanent value of the property nor in TDRS opinion appreciably prolong the intended life of the property. The Elevator/Connector Wall project is deemed by TDRS as necessary maintenance to keep the property in an efficient operating condition.

**Exterior Lighting Upgrade**—This project was considered by TDRS as an administrative maintenance cost to keep the property in an efficient operating condition. The existing exterior lighting on the property was not efficient for the security and safety of clients served on the property. Therefore, replacement lamps/bulbs were installed to provide more efficient operations of lighting exterior areas of campus grounds for safety and security purposes. Original wiring, electrical controls, light pole bases, and most of the light poles were re-used and not replaced. This Exterior Lighting Upgrade was initiated in order to maintain appropriate safety security of the property and was considered a maintenance operation which did not add to the permanent value of the property or appreciably prolong the intended life of the property. The original layout, infrastructure, and overall design of the existing exterior lighting system was utilized in implementing this needed maintenance activity.

**Fire Alarm Upgrade**—This project was considered by TDRS as an administrative maintenance cost to keep the property (buildings) in an efficient operating condition as to the safety and welfare of the individuals receiving services in these buildings. This project replaced only the smoke detection units that no longer met fire codes. Some fire alarm panels, smoke detection units not meeting fire codes and sprinkler heads were replaced. The original and existing fiber optics, data and telecommunication lines and most fire alarm panels are re-used. The layout of the existing fire alarm system is unchanged. Replacing failing smoke detector units, five alarm panels, and sprinkler heads are considered by TDRS as maintenance and alterations and the like that do not add to the permanent value of the property or appreciably prolong its intended life. These are necessary and normal repairs and alterations in order to ensure that the fire alarm system operates effectively and efficiently.

**M-Building Roof Replacement**—This project replaced a roof on a building that was experiencing numerous leaks and the roof had met or exceeded its normal life expectancy. In order to ensure necessary maintenance of the building (property) and to keep the building in an efficient operating condition, a new roof was installed with repairs to the front and rear building canopy exits. It is the opinion of TDRS that the installation of the new roof and repairs to the canopy do not add to the permanent value of the property. Whether the roof replacement appreciably prolonged the intended life of the building in the opinion of TDRS may be an arguable point but at the time of design was considered a normal maintenance repair, i.e., put back into good condition or renew after damage or decay. Continuing to repair the roof which was failing would not be cost effective and the replacement of the roof is clearly a maintenance activity which repaired the deficiency.

**Campus Upgrade Phase 2**—This project replaces plumbing fixtures in six buildings that are inefficient and problematic to include shower heads, sinks, faucets, and commodes. This project

also replaces failing interior lighting bulbs and lamps, air handlers, hot water heaters and pumps, as well as electrical transformers in order to keep these buildings in efficient operating condition. TDRS considered the Campus Upgrade Phase 2 project as a maintenance operation and an administrative cost. Again, replacing equipment that is not functioning properly and is in disrepair is a normal maintenance operation to correct the deficiencies. In addition, TDRS does not consider this project as being one that appreciably prolongs the intended life of the buildings (property) or that add permanent value to the property.

TDRS maintains that these are all maintenance in nature. None of these projects exceeded the value of the property (buildings) for which these maintenance projects are intended. All of these maintenance projects are considered by TDRS as administrative expenditures for operating and maintaining the State owned designated facilities, equipment, and grounds at the Tennessee Rehabilitation Center.

With respect to the requirement that these projects be included in the agency's needs assessment, TDRS concedes that the maintenance projects were not part of the formal needs assessment. TDRS does not believe that such maintenance projects are required to be part of a needs assessment that is targeted at identifying the needs for services. However, it must be noted that pre-planning did occur. In fact, TRC has a five year plan that includes all maintenance projects to be performed. With that being said, TDRS can include any future capital maintenance projects for improvements that meet the definition of construction under section 34 CFR 361.5b (12) and "Capital Expenditures" under section 2 CFR part 225, Appendix B paragraph 15 (1) for the Tennessee Rehabilitation Center (TRC) in Smyrna in the State Plan. If this finding stands, TDRS will satisfy specific pre-planning requirements concerning services that will be provided to groups of individuals with identification as a need in the DSU's statewide needs assessment prior to proceeding with any future capital maintenance projects meeting the definitions previously referenced. If it is ultimately determined by RSA that the finding stands as written, TDRS does request technical assistance on how to best design a needs assessment that will capture such maintenance projects.

**RSA Response:** RSA appreciates the additional information provided by TDRS in response to this finding. The first paragraph of the finding was revised to indicate that Smyrna is a state owned facility and Table 6.2 was updated to reflect the revised figures provided by TDRS.

As stated in the finding's Administrative Cost analysis, Section 111(a)(1) of the *Rehabilitation Act* of 1973, as amended (*Rehabilitation Act*), and 34 CFR 361.3 require that VR funds be used solely for the provision of VR services or for the administration of the VR program. Administrative costs, for purposes of the VR program, include operating and maintaining TDRS facilities, equipment, and grounds (section 7(1)(H) of the *Rehabilitation Act* and 34 CFR 361.5(b)(2)(viii)). Furthermore, the Federal cost principles governing state agencies, such as TDRS, permit the expenditure of Federal funds for necessary maintenance and normal repairs and alterations (2 CFR 225, Attachment B, item 25). Costs that add to the permanent value of the property or appreciably extend the life of the property are considered capital expenditures and are treated differently than maintenance and repairs (Id). RSA has determined that some of the Smyrna building expenses mentioned in the finding are not routine maintenance and repairs, but rather capital expenditures, as defined in 2 CFR 225, Appendix B, item 15.a(1), because TDRS

was upgrading systems—not simply repairing them. Therefore, these expenditures would not constitute an administrative cost under the VR program.

The project descriptions included in Table 6.2 are the general titles listed on the Approved Capital Maintenance Appropriations from Bonds, Current Funds, and Other Revenues documents provided by TDRS. These projects were comprised of multiple components. For example, the Campus System Upgrade Phase 2, included “replacing the outdated state own[ed] electrical distribution system with High Voltage Electric service.” The project also included upgrading the TRC’s Energy Management System and controls to include variable frequency drives and removing an exterior sprinkler system. Additionally, the TRC ReRoof and Repairs included exterior upgrades.

TDRS documentation referred to Phases I and II as the “Dormitory Renovation Capital Maintenance Project” that included new heating and cooling units, to include computer controlled thermostat temperature adjustments, new thermal insulating and environmental windows in dormitory rooms and breezeway connector, new flooring, doors, and lockers in dormitory rooms, widening of doorways, expanding bathroom accessibility and replacement of all bathroom fixtures and total renovation and expansion of the Student Health Clinic and Medical Dormitory. Phases III and IV included “total renovations to Building D dormitories and renovations and expansion of the Physical Rehabilitation Services Clinic.” It is clear that these renovation projects involved more than just routine maintenance and repair and likely prolonged the useful life of the building.

TDRS’ response indicated that planning for these expenses had occurred; however, no additional documentation was submitted in support of this statement. RSA has determined that the corrective actions for this finding will remain unchanged. TDRS requested RSA technical assistance in the event that this finding stands as written. RSA will work with TDRS through the Corrective Action Plan process to assist the agency in meeting the necessary requirements.

**Technical Assistance:** TDRS requests TA if RSA determines that the above expenditures are not considered maintenance.

## APPENDIX B: LEGAL REQUIREMENTS

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This Appendix contains the full text of each legal requirement cited in Section 6 of this report.

### **The *Rehabilitation Act of 1973*, as amended**

#### Section 101(a)(15)

Annual state goals and reports of progress

##### (A) Assessments and estimates

The State plan shall—

- (i) include the results of a comprehensive, statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the State has such a Council) every 3 years, describing the rehabilitation needs of individuals with disabilities residing within the State, particularly the vocational rehabilitation services needs of—
  - (I) individuals with the most significant disabilities, including their need for supported employment services
- (ii) include an assessment of the need to establish, develop, or improve community rehabilitation programs within the State; and
- (iii) provide that the State shall submit to the Commissioner a report containing information regarding updates to the assessments, for any year in which the State updates the assessments...

##### (C) Goals and priorities

###### (i) In general

The State plan shall identify the goals and priorities of the State in carrying out the program. The goals and priorities shall be jointly developed, agreed to, and reviewed annually by the designated State unit and the State Rehabilitation Council, if the State has such a Council. Any revisions to the goals and priorities shall be jointly agreed to by the designated State unit and the State Rehabilitation Council, if the State has such a Council. The State plan shall provide that the State shall submit to the Commissioner a report containing information regarding revisions in the goals and priorities, for any year in which the State revises the goals and priorities.

###### (ii) Basis

The State goals and priorities shall be based on an analysis of—

- (I) the comprehensive assessment described in subparagraph (A), including any updates to the assessment;
- (II) the performance of the State on the standards and indicators established under section 106; and
- (III) other available information on the operation and the effectiveness of the vocational rehabilitation program carried out in the State, including any reports received from the State Rehabilitation Council, under section 105(c) and the findings and recommendations from monitoring activities conducted under section 107...

##### (D) Strategies

The State plan shall contain a description of the strategies the State will use to address the needs identified in the assessment conducted under subparagraph (A) and achieve the goals and priorities identified in subparagraph (C), including...

- (iii) where necessary, the plan of the State for establishing, developing, or improving community rehabilitation programs;

### Section 103

- (a) Vocational Rehabilitation Services for Individuals

Vocational rehabilitation services provided under this title are any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual...

- (b) Vocational rehabilitation services provided for the benefit of groups of individuals with disabilities may also include the following...

(2)(A) The establishment, development, or improvement of community rehabilitation programs, including, under special circumstances, the construction of a facility. Such programs shall be used to provide services that promote integration and competitive employment.

### Sec. 111(a)(1)

Except as provided in paragraph (2), from each State's allotment under this part for any fiscal year, the Commissioner shall pay to a State an amount equal to the Federal share of the cost of vocational rehabilitation services under the plan for that State approved under section 101, including expenditures for the administration of the State plan.

## **Vocational Rehabilitation Program Regulations**

### 34 CFR 361.3

The Secretary makes payments to a State to assist in—

- (a) The costs of providing vocational rehabilitation services under the State plan; and
- (b) Administrative costs under the State plan.

### 34 CFR 361.5(b)(2)

Administrative costs under the State plan means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program carried out under this part...

This section defines administrative costs for purposes of the VR program as those incurred in the performance of administrative functions under the program. The definition gives many examples of administrative costs, including those expenditures incurred in the operation and maintenance of VR facilities, equipment and grounds, and administrative salaries (including for those personnel who support these administrative functions).

34 CFR 361.5(b)(9)

- (i) Community rehabilitation program means a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement...
- (ii) For the purposes of this definition, the word program means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.

34 CFR 361.5(b)(11)

Competitive employment means work—

- (i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and
- (ii) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

34 CFR 361.5(b)(16)

*Employment outcome* means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment, as defined in §361.5(b)(11), in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

34 CFR 361.5(b)(17)

Establishment, development, or improvement of a public or nonprofit community rehabilitation program means—

- (i) The establishment of a facility for a public or nonprofit community rehabilitation program as defined in paragraph (b)(18) of this section to provide vocational rehabilitation services to applicants or eligible individuals;
- (ii) Staffing, if necessary to establish, develop, or improve a community rehabilitation program for the purpose of providing vocational rehabilitation services to applicants or eligible individuals, for a maximum period of 4 years, with Federal financial participation available at the applicable matching rate for the following levels of staffing costs:
  - (A) 100 percent of staffing costs for the first year.
  - (B) 75 percent of staffing costs for the second year.
  - (C) 60 percent of staffing costs for the third year.
  - (D) 45 percent of staffing costs for the fourth year; and

- (iii) Other expenditures related to the establishment, development, or improvement of a community rehabilitation program that are necessary to make the program functional or increase its effectiveness in providing vocational rehabilitation services to applicants or eligible individuals, but are not ongoing operating expenses of the program.

34 CFR 361.5(b)(18)

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 respects for at least 1 year prior to the date of acquisition and the Federal share of the cost of acquisition is not more than \$300,000;
- (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;
- (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;
- (iv) Architect's fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building; and
- (v) The acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

34 CFR 361.5(b)(33)

Integrated setting—

- (i) With respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals;
- (ii) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

#### 34 CFR 361.5(b)(58)

Vocational rehabilitation services—

- (i) If provided to an individual, means those services listed in §361.48; and
- (ii) If provided for the benefit of groups of individuals, also means those services listed in §361.49.

#### 34 CFR 361.12

The State plan must assure that the State agency, and the designated State unit if applicable, employs methods of administration found necessary by the Secretary for the proper and efficient administration of the plan and for carrying out all functions for which the State is responsible under [the VR program]. These methods must include procedures to ensure accurate data collection and financial accountability.

#### 34 CFR 361.25

The State plan must assure that services provided under the State plan will be available in all political subdivisions of the State, unless a waiver of statewideness is requested and approved in accordance with §361.26.

#### 34 CFR 361.26

- (a) **Availability.** The State unit may provide services in one or more political subdivisions of the State that increase services or expand the scope of services that are available statewide under the State plan if—
  - (1) The non-Federal share of the cost of these services is met from funds provided by a local public agency, including funds contributed to a local public agency by a private agency, organization, or individual;
  - (2) The services are likely to promote the vocational rehabilitation of substantially larger numbers of individuals with disabilities or of individuals with disabilities with particular types of impairments; and
  - (3) For purposes other than those specified in §361.60(b)(3)(i) and consistent with the requirements in §361.60(b)(3)(ii), the State includes in its State plan, and the Secretary approves, a waiver of the statewideness requirement, in accordance with the requirements of paragraph (b) of this section.
- (b) **Request for waiver.** The request for a waiver of statewideness must—
  - (1) Identify the types of services to be provided;
  - (2) Contain a written assurance from the local public agency that it will make available to the State unit the non-Federal share of funds;
  - (3) Contain a written assurance that State unit approval will be obtained for each proposed service before it is put into effect; and
  - (4) Contain a written assurance that all other State plan requirements, including a State's order of selection requirements, will apply to all services approved under the waiver.

34 CFR 361.28

Third-party cooperative arrangements involving funds from other public agencies.

- (a) The designated State unit may enter into a third-party cooperative arrangement for providing or administering vocational rehabilitation services with another State agency or a local public agency that is furnishing part or all of the non-Federal share, if the designated State unit ensures that—
  - (1) The services provided by the cooperating agency are not the customary or typical services provided by that agency but are new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a vocational rehabilitation focus;
  - (2) The services provided by the cooperating agency are only available to applicants for, or recipients of, services from the designated State unit;
  - (3) Program expenditures and staff providing services under the cooperative arrangement are under the administrative supervision of the designated State unit; and
  - (4) All State plan requirements, including a State's order of selection, will apply to all services provided under the cooperative program.
- (b) If a third-party cooperative agreement does not comply with the statewideness requirement in §361.25, the State unit must obtain a waiver of statewideness, in accordance with §361.26.

34 CFR 361.29

- (a) Comprehensive statewide assessment. (1) The State plan must include—
  - (i) The results of a comprehensive, statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the State unit has a Council) every 3 years describing the rehabilitation needs of individuals with disabilities residing within the State, particularly the vocational rehabilitation services needs of—
    - (A) Individuals with the most significant disabilities, including their need for supported employment services;...
  - (ii) An assessment of the need to establish, develop, or improve community rehabilitation programs within the State.
- (2) The State plan must assure that the State will submit to the Secretary a report containing information regarding updates to the assessments under paragraph (a) of this section for any year in which the State updates the assessments.

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- (c) Goals and priorities.
  - (1) In general. The State plan must identify the goals and priorities of the State in carrying out the program.
  - (2) Council. The goals and priorities must be jointly developed, agreed to, reviewed annually, and, as necessary, revised by the designated State unit and the State Rehabilitation Council, if the State unit has a Council.

- (3) Submission. The State plan must assure that the State will submit to the Secretary a report containing information regarding revisions in the goals and priorities for any year in which the State revises the goals and priorities.
- (4) Basis for goals and priorities. The State goals and priorities must be based on an analysis of—
  - (i) The comprehensive statewide assessment described in paragraph (a) of this section, including any updates to the assessment;
  - (ii) The performance of the State on the standards and indicators established under section 106 of the Act; and
  - (iii) Other available information on the operation and the effectiveness of the vocational rehabilitation program carried out in the State, including any reports received from the State Rehabilitation Council under §361.17(h) and the findings and recommendations from monitoring activities conducted under section 107 of the Act...
- (d) Strategies.  
The State plan must describe the strategies the State will use to address the needs identified in the assessment conducted under paragraph (a) of this section and achieve the goals and priorities identified in paragraph (c) of this section, including—
  - (3) As applicable, the plan of the State for establishing, developing, or improving community rehabilitation programs.

34 CFR 361.40

- (a) The State plan must assure that the designated State agency will submit reports, including reports required under sections 13, 14, and 101(a)(10) of the Act—
  - (1) In the form and level of detail and at the time required by the Secretary regarding applicants for and eligible individuals receiving services under this part; and
  - (2) In a manner that provides a complete count (other than the information obtained through sampling consistent with section 101(a)(10)(E) of the Act) of the applicants and eligible individuals to—
    - (i) Permit the greatest possible cross-classification of data; and
    - (ii) Protect the confidentiality of the identity of each individual.

34 CFR 361.48 Scope of vocational rehabilitation services for individuals with disabilities

- (t) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

34 CFR 361.49

Scope of vocational rehabilitation services for groups of individuals with disabilities

- (a) The designated State unit may also provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:
  - (1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide vocational rehabilitation

services that promote integration and competitive employment, including, under special circumstances, the construction of a facility for a public or nonprofit community rehabilitation program. Examples of "special circumstances" include the destruction by natural disaster of the only available center serving an area or a State determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

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- (b) If the designated State unit provides for vocational rehabilitation services for groups of individuals, it must—
  - (1) Develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services it provides and the criteria under which each service is provided; and
  - (2) Maintain information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and, to the extent feasible, estimates of the numbers of individuals benefiting from those services.

34 CFR 361.60(a) and (b):

Matching requirements.

- (a) Federal share.
- (2) Construction projects. The Federal share for expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project.
- (b) Non-Federal share.
  - (1) General. Except as provided in paragraph (b)(2) and (3) of this section, expenditures made under the State plan to meet the non-Federal share under this section must be consistent with the provisions of 34 CFR 80.24...
  - (2) Third-party in-kind contributions. Third-party in-kind contributions specified in 34 CFR 80.24(a)(2) may not be used to meet the non-Federal share under this section.
  - (3) 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—
    - (i) 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;
    - (ii) Particular geographic areas within the State for any purpose under the State plan, other than those described in paragraph (b)(3)(i) of this section, in accordance with the following criteria:
      - (A) Before funds that are earmarked for a particular geographic area may be used as part of the non-Federal share, the State must notify the Secretary that the State cannot provide the full non-Federal share without using these funds.

- (B) Funds that are earmarked for a particular geographic area may be used as part of the non-Federal share without requesting a waiver of statewideness under §361.26.
- (C) Except as provided in paragraph (b)(3)(i) of this section, all Federal funds must be used on a statewide basis consistent with §361.25, unless a waiver of statewideness is obtained under §361.26; and
- (iii) Any other purpose under the State plan, provided the expenditures do not benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest. The Secretary does not consider a donor's receipt from the State unit of a grant, subgrant, or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the grant, subgrant, or contract is awarded under the State's regular competitive procedures.

34 CFR 361.61

Limitation on use of funds for construction expenditures.

No more than 10 percent of a State's allotment for any fiscal year under section 110 of the Act may be spent on the construction of facilities for community rehabilitation program purposes.

34 CFR 361.63(c)(2)

- (c) Use of program income. (1) Except as provided in paragraph (c)(2) of this section, program income, whenever earned, must be used for the provision of vocational rehabilitation services and the administration of the State plan. Program income is considered earned when it is received.
- (2) Payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes may also be used to carry out programs under part B of Title I of the Act (client assistance), part B of Title VI of the Act (supported employment), and Title VII of the Act (independent living).

## **Education Department General Administrative Regulations**

34 CFR 80.20(a)

- (a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to:
  - (1) Permit preparation of reports required by this part and the statutes authorizing the grant, and
  - (2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

34 CFR 80.21(f)(2)

- (f) Effect of program income, refunds, and audit recoveries on payment. Shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.
- (2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

34 CFR 80.24(a)

- (a) Basic rule: Cost and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:
  - (1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties...

34 CFR 80.40(a)

Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

## OMB Circulars

2 CFR part 225, Appendix A, C.1. & 3.a.

- C.1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:
  - a. Be necessary and reasonable for proper and efficient performance and administration of Federal Awards...
  - b. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
- ...
- 3.a. A cost is allocable to a particular cost objective if the goods and services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

2 CFR part 225, Appendix B, paragraphs 15 and 25

*1. Equipment and other capital expenditures.*

- a. For purposes of this subsection 15, the following definitions apply:
  - (1) “Capital Expenditures” means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that

materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the governmental unit's regular accounting practices.

25. *Maintenance, operations, and repairs.* Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, do not add to the permanent value of property or appreciably prolong its intended life, and are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 11 and 15 of this appendix).