

**FISCAL YEAR 2012  
MONITORING REPORT  
ON THE  
AMERICAN SAMOA  
OFFICE OF VOCATIONAL  
REHABILITATION**



**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 American Samoa Office of Vocational Rehabilitation (OVR) in fiscal year (FY) 2012, RSA:

- reviewed the VR agency's progress toward implementing recommendations and resolving findings identified during the prior monitoring cycle (FY 2007 through FY 2010);
- 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:
  - 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 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 review activities from May 29 through June 7, 2012, is described in detail in the FY 2012 Monitoring and Technical Assistance Guide for the Vocational Rehabilitation Program.

## Emerging Practices

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

## **Improvement of Employment Outcomes**

- **Entrepreneurship Program Initiative:** OVR continues to implement its entrepreneurship initiative designed to foster participation and ownership of business enterprises by individuals with disabilities.

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

## **Summary of Observations**

RSA's review of OVR did not result in the identification of observations and recommendations.

## **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 OVR must undertake to bring itself into compliance with pertinent legal requirements are contained in Section 6 of this report.

- OVR does not have a current memorandum of understanding with the local workforce investment board (LWIB) in American Samoa.
- In FY 2008, OVR entered into an agreement with the American Samoa Department of Education, Division of Special Education that is not in compliance with the minimum requirements of a formal interagency agreement with a state educational agency.
- OVR is not in compliance with pertinent statutory and regulatory provisions governing the provision of VR services to transition-age youth, from the determination of eligibility to the closure of cases. Specifically, OVR does not:
  - determine eligibility within 60 days from the date of application;
  - properly define priority categories under its order of selection;
  - provide trial work experiences and extended evaluations appropriately;
  - have a written standard, including timelines, for the development of the IPE;
  - ensure that IPEs are properly signed and contain all mandatory components;
  - adhere to the requirement that an individual maintain employment for a minimum of 90 days prior to case closure; and
  - properly use post-employment services following case closure.
- OVR does not adhere to guidelines for determining the individual's appropriateness for supported employment, and OVR does not provide these services consistent with federal requirements.
- OVR does not submit timely and accurate financial reports.
- OVR does not maintain periodic certifications for employees working solely on one grant, maintain personnel activity reports for employees working on more than one grant program, and may improperly charge salary expenses for staff working on the VR and other programs solely to the VR award.
- OVR did not contribute the required amount of non-federal share to the VR program in FY 2008.

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

RSA will collaborate closely with OVR and the Pacific Technical Assistance and Continuing Education Center for Region IX (TACE IX) to develop a plan to address the technical assistance needs identified by OVR in Appendix A of this report. RSA, OVR and TACE IX will conduct a teleconference within 60 days following the publication of this report to discuss the details of the technical assistance needs, identify and assign specific responsibilities for implementing technical assistance and establish initial timeframes for the provision of the assistance. RSA, OVR and TACE IX 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 Terry Martin, RSA State Liaison to American Samoa (Technical Assistance Unit); Adrienne Grierson (Fiscal Unit); Christopher Pope, Tonya Stellar and Jim Doyle (Vocational Rehabilitation Program Unit); and Joe Pepin (Data Collection and Analysis Unit). Although not all team members participated in the teleconference monitoring sessions, each contributed to the gathering and analysis of information, and the development of this report.

## **Acknowledgement**

RSA wishes to express appreciation to the representatives of OVR 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 and fiscal data contained in Tables 2.1 and 2.2 below and is intended to serve as a broad overview of the VR program administered by OVR. 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 or fiscal trends. In addition, the data in Table 2.1 measure performance-based outcomes for individuals who exited the VR program during FY 2006 through FY 2010. Consequently, the table and accompanying analysis do not provide information derived from OVR open service records including that related to current applicants, individuals who have been determined eligible and those who are receiving services. OVR 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  
OVR Program Performance Data for FY 2006 through FY 2010**

All Individual Cases Closed	Number, Percent, or Average	2006	2007	2008	2009	2010	Change from 2006 to 2010	Agency Type 2010
TOTALCASES CLOSED	Number	58	66	45	50	35	-23	281,286
	Percent	100.0%	100.0%	100.0%	100.0%	100.0%	-39.7%	100.0%
Exited as an applicant	Number	22	12	14	6	5	-17	47,487
	Percent	37.9%	18.2%	31.1%	12.0%	14.3%	-77.3%	16.9%
Exited during or after trial work experience/extended evaluation	Number	0	4	1	0	2	2	1,708
	Percent	0.0%	6.1%	2.2%	0.0%	5.7%		0.6%
TOTAL NOT DETERMINED ELIGIBLE	Number	22	16	15	6	7	-15	49,195
	Percent	37.9%	24.2%	33.3%	12.0%	20.0%	-68.2%	17.5%
Exited without employment after IPE, before services	Number	1	4	0	1	0	-1	5,824
	Percent	1.7%	6.1%	0.0%	2.0%	0.0%	100.0%	2.1%
Exited from order of selection waiting list	Number	0	0	0	0	0	0	1,390
	Percent	0.0%	0.0%	0.0%	0.0%	0.0%		0.5%
Exited without employment after eligibility, before IPE	Number	12	7	5	2	3	-9	68,696
	Percent	20.7%	10.6%	11.1%	4.0%	8.6%	-75.0%	24.4%
TOTAL EXITED AFTER ELIBIBILITY, BUT PRIOR TO RECEIVING SERVICES	Number	13	11	5	3	3	-10	75,910
	Percent	22.4%	16.7%	11.1%	6.0%	8.6%	-76.9%	27.0%
Exited with employment	Number	18	32	21	39	25	7	78,860
	Percent	31.0%	48.5%	46.7%	78.0%	71.4%	38.9%	28.0%
Exited without employment	Number	5	7	4	2	0	-5	77,321
	Percent	8.6%	10.6%	8.9%	4.0%	0.0%	100.0%	27.5%
TOTAL RECEIVED SERVICES	Number	23	39	25	41	25	2	156,181
	Percent	39.7%	59.1%	55.6%	82.0%	71.4%	8.7%	55.5%

All Individual Cases Closed	Number, Percent, or Average	2006	2007	2008	2009	2010	Change from 2006 to 2010	Agency Type 2010
EMPLOYMENT RATE	Percent	78.26%	82.05%	84.00%	95.12%	100.0%	27.78%	50.49%
Transition age youth	Number	3	7	4	1	4	1	100,116
	Percent	5.2%	10.6%	8.9%	2.0%	11.4%	33.3%	35.6%
Transition aged youth employment outcomes	Number	1	2	3	1	4	3	27,745
	Percent	5.6%	6.3%	14.3%	2.6%	16.0%	300.0%	35.2%
Competitive employment outcomes	Number	10	21	21	39	9	-1	73,995
	Percent	55.6%	65.6%	100.0%	100.0%	36.0%	-10.0%	93.8%
Supported employment outcomes	Number	0	1	0	0	1	1	7,004
	Percent	0.0%	3.1%	0.0%	0.0%	4.0%		8.9%
Average hourly wage for competitive employment outcomes	Average	\$12.68	\$9.46	\$8.25	\$9.65	\$12.82	\$0.15	\$11.33
Average hours worked for competitive employment outcomes	Average	36.0	31.8	35.0	32.2	31.1	-4.9	31.4
Competitive employment outcomes at 35 or more hours per week	Number	8	10	13	15	5	-3	38,784
	Percent	44.4%	31.3%	61.9%	38.5%	20.0%	-37.5%	49.2%
Employment outcomes meeting SGA	Number	10	13	16	29	11	1	48,900
	Percent	55.6%	40.6%	76.2%	74.4%	44.0%	10.0%	62.0%
Employment outcomes with employer-provided medical insurance	Number	0	0	0	0	0	0	18,791
	Percent	0.0%	0.0%	0.0%	0.0%	0.0%		23.8%

### Positive Trends

The number of individuals who exited the VR program as an applicant decreased from 22 individuals in FY 2006, to five in FY 2010. The percentage of individuals who exited from applicant status of all those whose cases were closed was 14.3 percent, which was lower than the percentage for all combined agencies of 16.9 percent. The number of individuals who exited the VR program prior to eligibility determination decreased from 22 in FY 2006, to seven in FY 2010, a decrease of 68.2 percent.

In FY 2010, three individuals exited the VR program after eligibility determination, but prior to receiving services, considerably fewer than the 12 who exited at this stage of the process in FY 2006. The percentage of individuals who exited at this stage of the process also declined, from 22.4 percent in FY 2006, to 8.6 percent in FY 2010, significantly less than the 27.0 percent for all combined agencies. Of the 58 individuals whose cases were closed during FY 2006, 23 or 39.7 percent, received services, while in FY 2010, of the 35 individuals whose cases were closed, 25, or 71.4 percent, received services, an increase of 31.7 percent.

From FY 2006 through FY 2010, the number of employment outcomes increased almost 40 percent, from 18 in FY 2006, to 25 in FY 2010. In that year, the percentage of individuals who achieved an employment outcome of all those whose cases were closed was 71.4 percent, which

was 43.4 percentage points higher than the 28.0 percent reported for all combined agencies. In FY 2006, 18 of 23 individuals whose cases were closed after receiving services, 78.26 percent, achieved an employment outcome. In FY 2010, this figure improved significantly, when all individuals who received services achieved an employment outcome, resulting in an employment rate of 100 percent, well above that for all combined agencies of 50.49 percent.

In addition, the number of transition-age youth who achieved employment outcomes increased between FY 2006 and FY 2010. In FY 2006, only one of the three youth whose cases were closed after receiving services achieved employment, while in FY 2010, all four youth served obtained employment outcomes.

The quality of the outcomes achieved during the period under review also improved as measured by the wages earned by individuals who participated in the VR program. The average hourly wage for individuals who achieved competitive employment outcomes increased from \$12.68 per hour in FY 2006, to \$12.82 per hour in FY 2010, which was \$1.49 higher than the average for combined agencies that year.

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

From FY 2006 to FY 2010, the total number of individuals who exited the VR program from any status of the service delivery process decreased substantially by 23, from 58 to 35. Of the 58 individuals whose cases were closed in FY 2006, three, or 5.2 percent, were of transition age. In FY 2010, this number and percentage increased only slightly, to four transition-age youth, or 11.4 percent of the total 35 individuals whose cases were closed, compared to the percentage for all combined agencies of 35.6 percent.

Except for the average hourly wages earned by individuals served by OVR (see above), the quality of the employment outcomes achieved was below that of all combined agencies in all other respects. In FY 2010, only 36 percent of the individuals who obtained employment outcomes achieved competitive employment, compared to 93.8 percent for all combined agencies. The average number of hours worked per week by individuals who obtained competitive employment outcomes decreased from 36 in FY 2006, to 31.1 in FY 2010. In FY 2006, 44.4 percent of all individuals who obtained competitive employment outcomes worked 35 or more hours per week. In FY 2010, that percentage decreased to 20 percent, while the percentage for all combined agencies was 49.2 percent. No individuals who achieved employment received employer-provided medical insurance.

OVR attributed the decline in performance over the review period described above to the depressed economy and the reduction in employment opportunities offered by the territory's largest employer, a tuna packing plant. In addition, the territory's minimum wage is computed at \$3.91 per hour, inhibiting OVR's ability to perform at a level equivalent to other combined agencies on measures that are calculated using the federal minimum wage of \$7.25.

Despite the challenges stemming from the economic and social conditions that currently exist in America Samoa, OVR 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, both with respect to the number of individuals served and the quantity and quality of employment outcomes.

## Fiscal Analysis

**Table 2.2  
OVR Fiscal Performance Data for FY 2006 through FY 2010**

<b>VR Fiscal Profile</b>	<b>Quarter</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>Grant amount per MIS</b>	4 <sup>th</sup>	738,967	--	738,967	1,081,888	1,084,072
	Latest/ Final*	771,262	928,801	738,967	--	--
<b>Total outlays</b>	4 <sup>th</sup>	520,686	--	446,907	738,967	491,996
	Latest/ Final*	806,110	738,967	596,194	--	--
<b>Total unliquidated obligations</b>	4 <sup>th</sup>	253,129	--	292,060	342,921	246,971
	Latest/ Final*	-	189,834	142,773	--	--
<b>Federal Share of Total Outlays</b>	4 <sup>th</sup>	485,838	--	446,907	738,967	491,996
	Latest/ Final*	771,262	738,967	596,194	--	--
<b>Federal share of unliquidated obligations</b>	4 <sup>th</sup>	253,129	--	292,060	342,921	246,971
	Latest/ Final*	-	189,834	142,773	--	--
<b>Total federal share</b>	4 <sup>th</sup>	738,967	--	738,967	1,081,888	738,967
	Latest/ Final*	771,262	928,801	738,967	--	--
<b>Recipient funds</b>	4 <sup>th</sup>	34,848	--	--	--	--
	Latest/ Final*	34,848	-	--	--	--
<b>Recipient share of unliquidated obligations</b>	4 <sup>th</sup>	-	--	--	--	--
	Latest/ Final*	-	-	-	--	--
<b>Agency actual match (total recipient share)</b>	4 <sup>th</sup>	34,848	--	--	--	--
	Latest/ Final*	34,848	-	-	--	-
<b>Agency required match</b>	4 <sup>th</sup>	131,491	--	120,954	200,000	133,158
	Latest/ Final*	208,741	251,378	161,359	--	--
<b>(Over)/under match</b>	4 <sup>th</sup>	96,643	--	120,954	200,000	133,158
	Latest/ Final*	173,893	251,378	161,359	--	--
<b>MOE **</b>	4 <sup>th</sup>					
	Latest/ Final*					-
<b>Unobligated funds qualifying for carryover</b>	4 <sup>th</sup>	-	--	-	-	345,105
	Latest/ Final*	-	-	-	--	--
<b>Total program income realized</b>	4 <sup>th</sup>	-	--	-	-	-
	Latest/ Final*	-	-	-	--	-
<b>Total indirect costs</b>	4 <sup>th</sup>	67,425	--	-	14,833	696
	Latest/ Final*	67,425	17,994		--	

\*Denotes Final or Latest SF-269 or SF-425 Submitted.

\*\*Based upon Final or Latest SF-269 or SF-425 Submitted

For FY2010, OVR's 4<sup>th</sup> quarter report was also its final report.

RSA reviewed fiscal performance data from federal FY 2007 through federal FY 2011, including that contained in FY 2007 and FY 2009 revised reports submitted on June 11 and 27, 2012, respectively. The U.S. Department of the Interior is the cognizant agency for OVR's approved indirect cost rate. Based on the data in Table 2.2, OVR did not meet its required level of match in FY 2008, despite a federally-authorized match exemption of \$200,000. In that year, the total federal share was \$928,801. The required non-federal share, equal to 21.3 percent, was \$251,378, though OVR does not contribute non-federal funds to the VR program. After accounting for the match exemption in FY 2008, OVR experienced a deficit in the VR program of \$51,378. In addition, by not expending any non-federal funds on the VR program, the agency met its maintenance of effort requirement for all years under review. However, because the agency does not contribute non-federal funds and cannot match all allotted federal funds, RSA routinely de-obligates unused funds after the end of each grant period. According to Table 2.2, OVR obligates all VR program funds (less those that it cannot match) within the fiscal year in which they are allotted and does not carry-over any of these funds. Finally, the agency does not receive any program income.

All these data describe an agency that is in a precarious fiscal position. Consequently, OVR may find it difficult to make needed improvements in the delivery of VR services to individuals with disabilities without taking action to stabilize its fiscal administration of the program.

## SECTION 3: EMERGING PRACTICES

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While conducting the monitoring of the VR program, the review team collaborated with the OVR, 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 practice below.

### **Improvement of Employment Outcomes**

- **Entrepreneurship Initiative:** First initiated in 1995, OVR maintains an Entrepreneurship program designed to promote and foster participation and ownership of business enterprises. OVR developed a manual describing the program, including detailed information about planning and development of self-employment opportunities, descriptions of the process and procedures established by OVR for developing self-employment opportunities, instruments to evaluate markets and entrepreneurial capacity, the essentials of business planning, business plan preparation, and sample business plans.

A complete description of the practice described above can be found on the RSA website.

## **SECTION 4: RESULTS OF PRIOR MONITORING ACTIVITIES**

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During its review of the VR and SE programs in FY 2012, RSA assessed progress toward the achievement of goals through the implementation of strategies agreed to by OVR resulting from the prior monitoring in FY 2007. The additional technical assistance requested by the agency to enable it to implement these prior strategies is contained in Appendix A of this report titled “Agency Response.”

### **Goals and Strategies**

In response to RSA’s monitoring report dated September 7, 2007, OVR and RSA agreed to the goals and strategies listed below. Included is a brief summary of the agency’s implementation of each strategy and its progress toward the achievement of the goals.

**Goal 1:** Expand job training and placement opportunities in the territory.

**Strategy 1:** Develop employer networks through community outreach efforts.

**Status:** OVR conducted training for the American Samoa business community focused on the employment of people with disabilities, employer responsibilities under the Americans with Disabilities Act, OVR resources to assist with placement and reasonable accommodation and incentives available to employers for hiring people with disabilities. OVR is in the process of developing a database of employers and service organizations in American Samoa.

**Strategy 2:** Work more closely with the American Samoa Community College (ASCC) to establish job training opportunities that are linked to vocational education programs.

**Status:** OVR is collaborating closely with ASCC on a long-term training grant to increase vocational education programming.

**Strategy 3:** Work with the legislature to establish incentives for employers to hire VR consumers.

**Status:** OVR is continuing to work closely with the legislature on developing incentive programs for employers.

**Strategy 4:** Identify solutions for transportation problems -- for example, contract Aiga buses to take consumers to and from work sites.

**Status:** OVR is coordinating with other American Samoa service providers and organizations, as well as the government and legislature, to develop transportation solutions to assist individuals with disabilities who do not meet the criteria of the agencies already providing transportation services.

**Goal 2:** Strengthen the role of the state rehabilitation council (SRC) to ensure it carries out its assigned roles and responsibilities.

**Strategy 1:** The council must meet at least quarterly.

**Status:** Since October 2011, the SRC has met quarterly. The council last met on May 24, 2012.

**Strategy 2:** Ensure there is a quorum of voting members at such meetings.

**Status:** The three council meetings held since October 2011, were conducted with a quorum.

**Strategy 3:** Keep accurate minutes of all meetings.

**Status:** OVR purchased a tape recorder to record council meetings and is using the recordings to ensure that accurate minutes are kept of council meetings.

**Strategy 4:** Produce an annual report.

**Status:** The Chairperson has been current in submitting the annual report to RSA.

**Strategy 5:** Provide substantive input to the VR program, including the joint development of goals and priorities, and the conduct of a triennial comprehensive needs assessment.

**Status:** The SRC has reviewed drafts of the State Plan and provided input; participated in the conduct of the comprehensive statewide needs assessment; and provided input on OVR policy changes.

**Strategy 6:** Conduct annually a consumer satisfaction survey.

**Status:** OVR requires counselors to use the annual consumer satisfaction survey. The survey is in each client case file upon closure. The counselor supervisor is responsible for ensuring that the survey is completed for each closure.

**Goal 3:** Establish procedures and practices to ensure that VR services are provided to consumers in a timely manner, and according to the timelines established in the IPE, in accordance with 34 CFR 361.45(a)(2).

**Strategy 1:** Establish a yearly budget for the VR program so that VR counselors are fully aware of the resources available for service provision.

**Status:** Each counselor is provided an annual budget for direct client services.

**Strategy 2:** Clearly identify all available grant funds to facilitate the development of a realistic budget.

**Status:** Supervisors are given a copy of their grant award and requested to provide reasonable input for budgets before OVR finalizes and submits the budget to the Treasury.

**Strategy 3:** Streamline the procurement process as much as possible under current territorial law.

**Status:** OVR continues to work with its Procurement Office to expedite the purchase of goods and services for its consumers.

**Strategy 4:** Explore the option of giving VR counselors more freedom to make direct purchases for clients -- through the use of a purchase/debit card, for example. Any such options would have to include sufficient safeguards, and any purchases would need to be linked directly with the services identified on the IPE.

**Status:** VR counselors are enabled to make purchases, and OVR continues to work closely with the Treasury to expedite payment to vendors.

**Goal 4:** The American Samoa Division of Vocational Rehabilitation (DVR) will be moved from the Department of Human and Social Services (DHSS) and the governor will become the designated state agency before the end of FY 2008.

**Strategy 1:** DVR, along with the DHSS director, and the governor of the territory shall draft and implement a plan of transference of the VR agency.

**Strategy 2:** The governor shall establish the VR agency under his or her office, and ensure that DVR has equivalent status as other agencies under the governor.

**Strategy 3:** Identify resources of the governor's office that DVR may utilize, such as budget and procurement processing services, and other administrative supports in accordance with the requirements of 34 CFR 361.13.

**Status:** This process was completed in FY 2008 and DVR is now known as OVR.

**Goal 5:** To obtain full match for each federal fiscal year.

**Strategy 1:** Continue to explore options/strategies to obtain sufficient match for each fiscal year. As a beginning step, obtain documentation to support charging a use allowance for space occupied by VR staff in two buildings on Pago Pago.

**Strategy 2:** Determine the actions to be taken (including timetables) to obtain matching funds from the government of American Samoa.

**Status:** OVR continues to explore options to obtain match funds.

**Goal 6:** Ensure the accuracy and timely submission of SF-269 and RSA-2 reports.

**Strategy 1:** Assign responsibilities for the preparation, review and approval of all required SF-269's and the RSA-2 report.

**Strategy 2:** In coordination with RSA, complete a listing of all outstanding reports.

**Strategy 3:** Identify and remove impediments to the timely and accurate submission of required reports.

**Strategy 4:** Submit missing reports, along with any supporting documentation requested by RSA necessary to review the accuracy of reported information.

**Strategy 5:** Establish internal policies and procedures to ensure the accurate and timely submission of required reports.

**Status:** OVR has not been able to accomplish the strategies related to this goal.

**Goal 7:** (a) OVR must reconstruct all program expenditures for FYs 2003, 2004, 2005, 2006 and 2007, and revised Financial Status Reports submitted to RSA within 90 days. These reports must reflect the correct (accurate) charges against the VR program for each fiscal year. In addition, documentation must be provided to RSA to support the charges claimed for each fiscal year. Upon review and acceptance, RSA will determine the extent to which VR program funds have been misspent and the harm, if any, to the federal government.

(b) Develop policies, procedures and appropriate internal controls to ensure that grant funds are expended only in accordance with federal requirements and reports are submitted within the timeframes prescribed by RSA.

**Strategy 1:** Devise a methodology to reconstruct expenditures for FYs 2003, 2004, 2005, 2006 and 2007.

**Strategy 2:** Meet with RSA to obtain approval of the reconstruction methodology and determine the supporting documentation that must be submitted to obtain approval of revised Financial Status Reports.

**Strategy 3:** Submit revised Financial Status Reports and supporting documentation in accordance with established timetables.

**Status:** OVR has not been able to accomplish the strategies related to this goal.

## 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 OVR with the federal requirements related to its organization within the Governor's Office of American Samoa and the ability of the OVR 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:

- the progress of OVR toward the implementation of recommendations and the resolution of findings related to these requirements identified in prior monitoring reports (see Section 4 above);
- compliance with statutory and regulatory provisions governing the methods of administration under 34 CFR 361.13(a)(2);
- processes and practices related to the promulgation of VR program policies and procedures;
- the manner in which OVR 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 OVR 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:

- the OVR director and managers;
- OVR staff members responsible for the fiscal management of the VR program; and
- TACE center representatives.

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

- a diagram identifying all programs from all funding sources that fall under the administrative purview of OVR, 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 OVR;
  - individuals who work on rehabilitation work of the OVR and one or more additional programs/cost objectives (e.g., one-stop career centers); and
  - individuals under OVR 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 American Samoa’s procurement requirements and processes.

## **Overview**

Since FY 2008, OVR has been appropriately situated within the Office of the Governor of American Samoa and the administrator of OVR reports directly to the Governor (see Section 4). OVR consists of five units including: VR Program, Independent Living, Supported Employment, Assistive Technology, and Developmental Disabilities. At the time of the review, OVR reported a total of 25 employees, of which 15 were in the VR Program; six in Independent Living; two in Supported Employment; one in Assistive Technology; and one in Developmental Disabilities.

RSA’s review of the organizational structure of OVR did not result in the identification of observations and recommendations. The compliance findings identified by RSA through the implementation of this focus area is contained in Section 6 of this report.

## **Technical Assistance**

During the course of the review, the RSA review team provided technical assistance to OVR regarding the development of a MOU with the LWIB, providing OVR with RSA-IM-00-09, “A Guide for Developing Memoranda of Understanding with Local Workforce Investment Boards as Required by the Workforce Investment Act.”

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

The purpose of this focus area was to assess OVR’s 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 territory, 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 territory 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 technical assistance and continuing education needs of VR agency staff.

To implement this focus area, RSA reviewed:

- OVR's progress toward the implementation of recommendations and the resolution of findings related to the provision of transition services identified in the prior monitoring report from FY 2007, if applicable (see Section 4 above);
- formal interagency agreements between the VR agency and the state educational agency (SEA);
- transition service policies and procedures; and
- VR agency resources and collaborative efforts with other federal, state and local entities.

To assess the agency's performance related to the provision of transition services and the outcomes achieved by youth with disabilities, RSA reviewed OVR 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 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.

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

- the OVR director;
- VR counselors and transition staff; and
- the OVR transition coordinator serving as liaison with the SEA and other agencies.

RSA's review of transition services and employment outcomes achieved by youth with disabilities did not result in the identification of observations and recommendations. However, the compliance findings identified by RSA through the implementation of this focus area are contained in Section 6 of this report.

## **Technical Assistance**

During the course of the review, the RSA review team provided technical assistance to OVR in the area of transition services and employment outcomes for youth with disabilities.

Specifically, RSA provided guidance on a wide variety of topics, including:

- federal requirements related to the use of trial work experiences and extended evaluations;
- timely determination of eligibility within 60 days from the date of application;
- process for identifying and classifying individuals as those with the most significant disabilities or significant disabilities;
- requirement for the establishment of a standard for the prompt development of IPEs;
- provision of services through plans that contain all mandatory components of an IPE;
- provision of supported employment services;
- process of successfully closing a record of service after an employment outcome has been maintained for no less than 90 days;
- use of plans to increase the wages of individuals who achieve supported employment with earnings that are not competitive;
- the provision of post-employment services; and
- information required to be included in the formal interagency agreement with the SEA.

Section 6 of this report contains a detailed description of the statutory and regulatory requirements related to each of these topics. In addition, the RSA team assisted OVR to make corrections to its existing VR policy manual.

## **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 the federal cost principles. 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 2007 thru FY 2011, 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 the resolution of findings);

- A-133 audit findings and corrective actions;
- territory/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:

- 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 benefit analysis reports.

RSA's review of the fiscal integrity of the VR program administered by OVR did not result in the identification of observations and recommendations. The compliance findings identified by RSA through the implementation of this focus area are contained in Section 6 of this report.

### Technical Assistance

The RSA review team provided technical assistance to OVR concerning its fiscal management of the VR program. This technical assistance is described below.

- **Contract Monitoring:** OVR is in the process of negotiating a contract with a vendor to provide training and supported employment services to VR clients. RSA discussed with the agency the pertinent requirements contained in the Education Department General Administrative Regulations (EDGAR), specifically those related to the accountability and monitoring of program funds (see 34 CFR 80.20(a), 34 CFR 80.36, and 34 CFR 80.40(a)). RSA encouraged OVR to list specific performance measures in its contracts, and to require documentation from the vendor sufficient to determine whether those performance measures had been met.
- **Federal Financial Reporting:** RSA discussed with OVR due dates for specific financial reports. RSA also provided OVR with information from the Department's G5 system to assist the agency in properly preparing and submitting past due reports. RSA informed the agency that matching requirements and MOE determinations were made based on SF-269s and the SF-425s. Absent these reports, an accurate determination of match and MOE could not be made.
- **VR Resources:** OVR's annual VR award is approximately \$1 million. For the past several years, OVR has received no non-federal appropriation toward the VR program. Because the territory of American Samoa has an exemption for \$200,000 of its matching requirement, the agency expends approximately \$739,000 for the VR program. (The match exemption of \$200,000 allows for \$738,967 in federal expenditures.) The agency has typically allowed RSA to deobligate the \$250,000 remaining in its grant award.

During the review, RSA assisted ASDVR to calculate the amount of non-federal matching funds that would be required to match the agency's FY2012 award of \$958,889. For FY 2012, the 21.3 percent non-federal share would be \$259,521. After

the match exemption is applied, the agency would need non-federal VR expenditures of \$59,521 to enable it to utilize the full amount of its VR award. Agency staff stated that they would use this information when submitting budget requests to the governor's office.

- **Program Income:** RSA noted that the agency does not receive reimbursements from Social Security to be used as program income. RSA informed OVR staff that program income can be used to supplement the VR program and the provision of VR services.
- **Reallotment of Program Funds:** RSA suggested that the agency consider relinquishing, during the reallotment process, any monies that it could not match. Relinquishing funds would enable other VR agencies to request those monies to provide VR services to their consumers.

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

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RSA identified the following compliance findings and corrective actions that OVR is required to undertake. The technical assistance 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.

OVR 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 technical assistance to assist OVR 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 EDGAR.

### **1. MOU with the Local Workforce Investment Board**

#### **Legal Requirements:**

- Rehabilitation Act—Section 101(a)(11)(B)
- VR Program Regulations—34 CFR 361.23(a)(3)
- Workforce Investment Act—Sections 121(c)
- WIA Regulations—20 CFR 662.230(c)

#### **Finding:**

OVR is not in compliance with Section 101(a)(11)(B) of the Rehabilitation Act, 34 CFR 361.23(a)(3), Section 121(c) of the Workforce Investment Act of 1998 (WIA), and 20 CFR 662.230(c) of the WIA regulations, because it does not have a current MOU with the LWIB in American Samoa.

As a required workforce partner, OVR must carry out specific functions in a manner that is consistent with the requirements of the VR program and Title 1 of WIA, including the provision of its core services to all participants of the One-Stop system (34 CFR 361.23(a)(1)). In order to carry out these functions, OVR must enter into a MOU with the LWIB that describes its role (34 CFR 361.23(a)(3)). The MOU must describe the manner in which the cost of the services and operating costs will be funded, how referrals between the One-Stop operator and its partners will be processed, the duration of the MOU, and procedures by which the MOU can be amended when necessary (34 CFR 361.23(a)(3) and 20 CFR 662.230(c)). OVR has not established a current MOU with the LWIB and therefore, is not in compliance with Section 101(a)(11)(B) of the Rehabilitation Act, 34 CFR 361.23(a)(3); Section 121(c) of WIA, and 20 CFR 662.230(c).

**Corrective Action 1: OVR must:**

- 1.1 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that it will comply with 34 CFR 361.23(a)(3); Sections 121(c) of WIA and WIA Regulations at 20 CFR 662.230(c), by entering into an MOU with the LWIB in American Samoa; and
- 1.2 submit a draft MOU developed by OVR and the LWIB to RSA for its review.

**2. Agreement with the State Educational Agency**

**Legal Requirements:**

- Rehabilitation Act—Section 101(a)(11)(D)(i)–(iv)
- VR Program Regulations—34 CFR 361.22(b)(1)–(4)

**Finding:**

OVR entered into an agreement with the Division of Special Education of the American Samoa Department of Education in 2008 that is not in compliance with the minimum requirements of a formal interagency agreement with the SEA pursuant to Section 101(a)(11)(D) of the Rehabilitation Act and 34 CFR 361.22(b). At a minimum, the SEA agreement must provide for:

- (1) consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;
- (2) transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of their individualized education programs (IEPs) under section 614(d) of the Individuals with Disabilities Education Act;
- (3) the roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and
- (4) procedures for outreach to and identification of students with disabilities who are in need of transition services. Outreach to these students should occur as early as possible during the transition planning process and must include, at a minimum, a description of the purpose of the vocational rehabilitation program, eligibility requirements, application procedures, and scope of services that may be provided to eligible individuals.

OVR entered into a formal interagency agreement with the Division of Special Education on May 19, 2008, when OVR was organized as the Division of Vocational Rehabilitation within the Department of Human and Social Services. Subsequent to this agreement, the Division of Vocational Rehabilitation relocated to the Office of the Governor and changed its name to OVR. For the purpose of this finding and analysis of the formal interagency agreement, RSA will reference OVR and the Division of Special Education as the entities named in the SEA agreement.

Specifically, the SEA agreement does not include the financial responsibilities of each agency related to the provision of services as required by Section 101(a)(11)(D)(iii) and 34 CFR 361.22(b)(3). Currently, the responsibilities listed for each agency discuss only the development

of the student's IEP, the referral process, and the development of the student's IPE. During the review, OVR staff indicated that the Division of Special Education generally funds vocational rehabilitation services while the student is in school and that OVR assumes funding when the student leaves school. However, this reported arrangement is not formally delineated in the agreement.

Furthermore, the SEA agreement does not include procedures for outreach to, and identification of, students with disabilities in need of transition services pursuant to Section 101(a)(11)(D)(iv) and 34 CFR 361.22(b)(4). The outreach provided should include a description of the purpose of the VR program, application procedures, eligibility requirements, and the scope of services that can be provided to eligible individuals.

During the review, OVR management reported that it is willing to begin discussions with the Division of Special Education to revise the current SEA agreement in an effort to strengthen this relationship and ensure the coordinated facilitation and transition of students with disabilities from the receipt of educational services in schools to the receipt of vocational rehabilitation and adult services in the community.

**Corrective Action 2:** OVR must:

- 2.1 submit a written assurance to RSA within ten days of the issuance of the final monitoring report that it will ensure that the SEA agreement with the Division of Special Education is updated and revised to reflect the appropriate entities involved in the formal interagency agreement and to comply with the requirements at Section 101(a)(11)(D) of the Rehabilitation Act and its implementing regulations at 34 CFR 361.22 (b); and
- 2.2 submit the revised agreement between OVR and the Division of Special Education to RSA for its review as part of OVR's corrective actions needed to address this finding.

**3. Vocational Rehabilitation Service Delivery**

During the course of this monitoring, RSA found that OVR is not in compliance with pertinent statutory and regulatory provisions governing the provision of VR services to transition-age youth, from the determination of eligibility to the closure of cases. Specifically, OVR does not:

- determine eligibility within 60 days from the date of application;
- properly define priority categories under its order of selection;
- provide trial work experiences and extended evaluations appropriately;
- have a written standard, including timelines, for the development of the IPE;
- ensure that IPEs are properly signed and contain all mandatory components;
- adhere to the requirement that an individual maintain employment for a minimum of 90 days prior to case closure; and
- properly use post-employment services following case closure.

Although these findings resulted from the implementation of the focus area on the provision of transition services, it was apparent from discussions with OVR staff that they are also applicable to the delivery of VR services to all individuals served by OVR.

## **A. Untimely Eligibility Determinations**

### **Legal Requirements:**

- Rehabilitation Act—Section 102(a)(6)(A)
- VR Program Regulations—34 CFR 361.41(b)(1)

### **Finding:**

OVR is not in compliance with Section 102(a)(6) and VR program regulations at 34 CFR 361.41(b)(1) because it does not determine the eligibility of transition-age youth for VR services within 60 days. Pursuant to these statutory and regulatory provisions, OVR must determine whether an individual is eligible for VR services within 60 days from the date on which the application is submitted to the agency, unless exceptional and unforeseen circumstances beyond the control of OVR prevent the completion of this process, and OVR and the individual agree to a specific extension of time or identify the need for a trial work experience or an extended evaluation.

As part of the monitoring process, RSA analyzed data covering FYs 2007 through 2011 provided through the RSA-911 indicating the length of time it took OVR to make eligibility determinations for transition-age youth whose cases were closed after they had applied for services. Data submitted by OVR demonstrate that:

- in FY 2008, only two of the three transition-age youth whose cases were closed that year were determined eligible for VR services within 60 days from the date of application. The eligibility of the remaining youth was determined between 61 and 90 days from the date of application;
- in FY 2010, only two of the four transition-age youth whose cases were closed were determined eligible within the required 60-day period. During the same year, two of the four transition-age youth whose cases were closed were determined eligible between 61 and 90 days from application; and
- in FY 2011, only two of the three transition-age youth whose cases were closed were determined eligible within the required 60-day period. During the same year, the remaining one youth was determined eligible between 61 and 90 days from application.

As the data demonstrate, OVR did not determine the eligibility of transition-age youth within the required 60-day period from the date of application for VR services in three of the five years under review. Therefore, OVR is not in compliance with Section 102(a)(6) of the Rehabilitation Act and 34 CFR 361.41(b)(1).

### **Corrective Action 3.A: OVR must:**

- 3.A.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with Section 102(a)(6) of the Rehabilitation Act and 34 CFR 361.41(b)(1) by making eligibility determinations within the required 60-day period, unless exceptional and unforeseen circumstances require it and the applicants to agree to

an extension of this period, or the individuals are participating in trial work experiences or extended evaluations; and

3.A.2 include in its corrective action plan the steps, including timelines, that OVR will take to ensure that the determination of eligibility for each individual is made in accordance with the requirements of Section 102(a)(6) and 34 CFR 361.41(b)(1).

## **B. Order of Selection and Significance of Disability**

### **Legal Requirements:**

- Rehabilitation Act—Sections 7(21)(A) and 101(a)(5)(C)
- VR Program Regulations—34 CFR 361.5(b)(30) and (31); 34 CFR 361.36(a)(3)(iv)(A); and 34 CFR 361.36(d)

### **Finding:**

OVR is not in compliance with Section 101(a)(5)(C) of the Rehabilitation Act and regulations at 34 CFR 361.36(d) because it imposes an additional factor in creating priority categories of eligible individuals in an order of selection. In addition, OVR is not in compliance with Section 7(21)(A) of the Rehabilitation Act and 34 CFR 361.5(b)(31) because OVR's written policies define an "individual with a significant disability" in a manner inconsistent with federal requirements.

### Additional Factor

Section 101(a)(5)(C) and regulations at 34 CFR 361.36(a)(3)(iv)(A) require that a VR agency implementing an order of selection provide services to individuals with the most significant disabilities prior to all other eligible individuals with disabilities. While the VR agency must define the criteria used to determine that an individual has a most significant disability (34 CFR 361.5(b)(30)), regulations at 34 CFR 361.36(d)(1) and (2) state that the priority for services must be based only on a refinement of those criteria used to define an "individual with a significant disability" found at Section 7(21)(A) of the Rehabilitation Act and 34 CFR 361.5(b)(31), including the number of functional limitations experienced by the individual, the number of VR services to be provided and the duration of the period over which the services are to be provided.

At the time of this review, OVR was currently operating under an order of selection with all categories open. In creating priority categories for an order of selection, OVR's VR policy manual in Chapter 5 section 105.2 establishes an additional factor which gives preference to the following population: "Eligible individuals with the most severe disabilities whose impediments resulted from impairments sustained in the line of duty while performing as a public safety officer and the immediate cause of such impairments was a criminal act, an apparent criminal act, or a hazardous condition, resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities."

During the monitoring process, OVR staff reported that this written policy is in effect in practice wherein police officers and veterans, for example, are assigned to a priority category giving them preference in the provision of VR services over all other individuals with the most significant

disabilities. By establishing a priority category for law enforcement personnel who otherwise meet the criteria of an individual with the most significant disability as defined by the agency, OVR has, in effect, created a fourth factor to be used in determining significance of disability. As a result, the fourth factor becomes the primary factor used to determine significance of disability and to assign individuals to priority categories in the order of selection. The consideration of this factor can prevent some individuals with disabilities from receiving priority for services, even though they may demonstrate equal substantial functional limitations and have an equal need for multiple services over an extended period of time.

Therefore, OVR's priority category for law enforcement personnel with the most significant disabilities is not in compliance with Section 101(a)(5)(C) of the Rehabilitation Act and regulations at 34 CFR 361.36(d)(1) and (2). The agency must either eliminate this priority category from its order of selection, or amend it so that it is based on a refinement only of those criteria used to define an individual with a significant disability.

#### Individual with a Significant Disability

An "individual with a significant disability," as defined in Section 7(21)(A) of the Rehabilitation Act and at 34 CFR 361.5(b)(31), is an individual:

- who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- who has one or more physical or mental disabilities listed in Section 7(21)(A)(iii) of the Rehabilitation Act or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

The OVR policy manual, in Chapter 4 section 104.5: Severity of Disability, defines an "individual with a most severe disability (part B)" and an "individual with a severe disability (part C)" in an identical manner. These definitions mirror the federal definition of an individual with a significant disability, except that the OVR definitions require the individual to experience at least three functional limitations.

A VR agency must adhere to the definition of an individual with a significant disability contained in the Rehabilitation Act and implementing regulations, which require that an individual be limited in only one functional capacity. Because OVR requires an individual with a significant disability to have three or more limited functional capacities, its definition is not in compliance with Section 7(21)(A) of the Rehabilitation Act and 34 CFR 361.5(b)(31). Moreover, because OVR's definition of "an individual with a most significant disability" is identical to the agency's definition of "an individual with a significant disability," the agency has not established an order of selection that allows individuals with the most significant disabilities to receive priority in the provision of VR services, as required by Section 101(a)(5)(C) of the Rehabilitation Act and 34 CFR 361.36(a)(3)(iv)(A). The agency must amend its definition of an "individual with a significant disability" to mirror in all respects the federal definition, requiring

the individual to be limited in only one or more functional capacities and thereby distinguishing it from its definition of an “individual with a most significant disability.”

**Corrective Action 3.B:** OVR must:

- 3.B.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with Section 101(a)(5)C of the Rehabilitation Act and 34 CFR 361.36(d) by not imposing additional factors in determining an order of selection of eligible individuals that prevents those individuals with the most significant disabilities from being selected first to receive services;
- 3.B.2 submit the steps, including timelines, that OVR will take to ensure that individuals with the most significant disabilities are selected first to receive services in accordance with Section 101(a)(5)C of the Rehabilitation Act and that additional factors are not used in determining an order of selection of eligible individuals;
- 3.B.3 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with Sections 7(21)(A) and 101(a)(5)C of the Rehabilitation Act and 34 CFR 361.5(b)(30) and 361.5(b)(31) by ensuring that individuals are properly identified as “individuals with most significant disabilities” and “individuals with significant disabilities” per the Rehabilitation Act and its implementing regulations; and
- 3.B.4 submit the steps, including timelines, that OVR will take to ensure that the VR agency has separately defined in policy and through practice “most significant disability” in accordance with Section 101(a)(5)C of the Rehabilitation Act and 34 CFR 361.5(b)(30) and the definition of “significant disability” complies with 34 CFR 361.5(b)(31).

**C. Lack of Trial Work Experiences and Improper Use of Extended Evaluations**

**Legal Requirements:**

- Rehabilitation Act—Section 102(a)(2)(B)
- VR Program Regulations—34 CFR 361.42(a)(1) and (2); 34 CFR 361.42(e)(1) and (2); and 34 CFR 361.42 (f)(1)—(4)

**Finding:**

OVR is not in compliance with requirements at Section 102(a)(2)(B) of the Rehabilitation Act and regulations at 34 CFR 361.42(e) and 34 CFR 361.42 (f)(1) because it does not provide multiple trial work experiences prior to utilizing extended evaluations if it should be necessary to determine through clear and convincing evidence that an individual may be too significantly disabled to benefit from VR services in terms of the achievement of an employment outcome. Furthermore, OVR is not in compliance with 34 CFR 361.42(f) because the agency inappropriately places transition-age youth into extended evaluations pending the resolution of immigration-related issues.

An individual is presumed to benefit from VR services, unless the agency can demonstrate through clear and convincing evidence that the applicant is incapable of benefiting from VR services in terms of an employment outcome (Section 102(a)(2); 34 CFR 361.42(a)(1) and (2)). In accordance with federal requirements, the agency is to use trial work experiences and, in

limited circumstances, extended evaluations to obtain the necessary evidence that an individual may be too significantly disabled to benefit from participation in the VR program (Section 102(a)(2)(B); 34 CFR 361.42(e)(1) and (f)(1)).

During the review, OVR staff reported that trial work experiences are not used prior to implementing extended evaluation plans nor are extended evaluation plans used prior to determining that an individual is too significantly disabled to benefit from participation in the VR program. Regulations at 34 CFR 361.42 (f)(1) make it clear that extended evaluations shall be implemented, under limited circumstances, only if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the agency is able to make the determination that the individual is too significantly disabled to benefit from participation in the VR program.

OVR staff confirmed that the agency does not make use of trial work experiences; thus, the provision of trial work experiences is not a requirement prior to utilizing extended evaluation. Furthermore, OVR staff indicated that there is no formal process for determining that an individual is too significantly disabled to benefit from VR services. OVR staff reported that they generally review disability documentation and meet with the applicant in person once all application materials are in place. Based upon the review of paperwork and the staff's assessment following applicant interviews, staff are then permitted to deem the applicant ineligible based upon the severity of disability and ability to benefit from VR services. Staff do not provide an extended evaluation as part of this process.

However, OVR staff reported extended evaluations are used when it is necessary to extend the period of eligibility determination beyond 60 days pending the resolution of immigration-related issues for transition-age youth. This is done rather than requesting a written agreement for an extension of the 60-day period from the individual as permitted by Section 102(a)(6)(A) of the Rehabilitation Act and 34 CFR 361.41(b)(1)(i), which states such extensions can only be obtained if "exceptional and unforeseen circumstances beyond the control of the designated State unit" prevent the determination of eligibility within the required 60-day period.

Based on the foregoing, OVR's policies and practices are not consistent with requirements at Section 102(a)(2) of the Rehabilitation Act and its implementing regulations at 34 CFR 361.42(e) and (f) because the agency does not use trial work experiences prior to implementing an extended evaluation plan nor do they provide an extended evaluation prior to determining that an individual is too significantly disabled to benefit from participation in the VR program. Finally, OVR's utilization of extended evaluation for transition-age youth pending the resolution of immigration-related issues is not in compliance with regulations at 34 CFR 361.42(f).

**Corrective Action 3.C: OVR must:**

- 3.C.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with statutes at Section 102(a)(1) and (2) of the Rehabilitation Act and regulations at 34 CFR 361.42(a)(1) and (2), 34 CFR 361.42(e) and 34 CFR 361.42(f);
- 3.C.2 amend its policy on the definition and provision of extended evaluation and trial work experiences, develop and implement procedures pertaining to the implementation of trial

work experiences and extended evaluations including trial work experience and extended evaluation plans consistent with federal requirements; and  
3.C.3 provide agency-wide training on the effective use and requirements for trial work experiences and extended evaluations.

#### **D. Lack of Established IPE Standard**

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

- Rehabilitation Act—Section 101(a)(9)
- VR Program Regulations—34 CFR 361.45(a)(1) and 34 CFR 361.45(e)

##### **Finding:**

OVR is not in compliance with requirements at Section 101(a)(9) of the Rehabilitation Act and its implementing regulations at 34 CFR 361.45(a)(1) and 34 CFR 361.45(e) because the agency does not have an established standard for the prompt development of an eligible individual's Individualized Plan for Employment (IPE).

Section 101(a)(9) of the Rehabilitation Act and regulations at 34 CFR 361.45(a)(1) mandate that the IPE “is developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services.” Further, 34 CFR 361.45(e) requires that the agency “establish and implement standards for the prompt development of IPEs for the individuals identified under paragraph (a) of this section, including timelines that take into consideration the needs of the individuals.”

OVR's vocational rehabilitation policy manual, in Chapter 6: Individualized Plan for Employment, does not establish a standard for timely IPE development. During the review, OVR staff, including VR counselors responsible for the development of the IPE, reported that the agency does not have a formal requirement for timely IPE development for transition-age youth or the general population.

In reviewing the data for FY 2010 and FY 2011, 100 percent of transition-age youth had an IPE in place within 90 days of being determined eligible for VR services in both years. While it is evident that IPEs are being developed in a timely manner, the agency is not exempt from the requirement of having an established standard, including timelines, in written policy.

Therefore, as a result of not having an established standard that ensures IPEs are developed in a prompt manner following eligibility determination, including timelines that take into account the individual's needs, OVR is not in compliance with Section 101(a)(9) of the Rehabilitation Act and 34 CFR 361.45(a)(1) and 34 CFR 361.45(e).

##### **Corrective Action 3.D:** OVR must:

- 3.D.1 amend its policy to include an established standard for the prompt development of IPEs, which includes timelines that take into account the needs of the individuals it serves; and
- 3.D.2 provide agency-wide training on the established standard.

## **E. IPE Documentation**

### **Legal Requirements:**

- VR Program Regulations—34 CFR 361.45(d)(3)(i) and (ii); and 34 CFR 361.46(a)

### **Finding:**

OVR is not in compliance with program regulations at 34 CFR 361.45(d) and 34 CFR 361.46(a) because OVR does not ensure that all required signatures appear on the IPE and does not properly document the mandatory components of the IPE in the eligible individual's record of service.

Federal regulations require that the IPE be signed both by the eligible individual, or his/her representative, and a qualified VR counselor employed by the agency (34 CFR 361.45(d)(3)(i) and (ii)). In addition, the mandatory components for the content of the IPE listed at 34 CFR 361.46(a) include: a description of the specific employment outcome; a description of the specific rehabilitation services that will be provided; timelines for the achievement of the employment outcome and for the initiation of services; a description of the entity or entities chosen by the eligible individual, or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services; a description of the criteria that will be used to evaluate progress toward achievement of the employment outcome; and the terms and conditions of the IPE including the responsibilities of the DSU and the eligible individual.

During the review, OVR provided RSA with four IPEs for transition-age youth whose records of services were closed in FY 2010. In reviewing these IPEs, RSA found that some of the required components were missing. Two of these records of services included IPEs that did not include signatures from the eligible individuals, or their representatives, and the VR counselor. Also, the four IPEs did not include timelines for the achievement of the employment outcome and for the initiation of services. Finally, the four IPEs lacked a description of the criteria used by OVR to evaluate the progress of the individual toward the achievement of the employment outcome.

Furthermore, OVR staff reported that IPEs do not always include all provided services by OVR staff or by other entities. For example, OVR may refer a transition-age youth to the LWIB for participation in a summer internship program, but this service is not documented on the IPE. Similarly, OVR may contract with a private entity for the provision of job-related services (e.g., on-the-job training program). However, the IPE does not specify that this service is being provided or identify the contractor.

By not obtaining the signatures of the eligible individuals and their VR counselors on the IPEs, and by not including all the mandatory components detailed at 34 CFR 361.46(a) for the content of the IPE, OVR's practices for the development and documentation of the IPE are not in compliance with VR program regulations.

**Corrective Action 3.E:** OVR must:

- 3.E.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with federal regulations at 34 CFR 361.45(d)(3) and 34 CFR 361.46 to include all required signatures and the mandatory components for the content of the IPE; and
- 3.E.2 provide agency-wide training on the requirements of developing the IPE and documenting services on the IPE that meet these federal regulations.

**F. Successful Case Closures**

**Legal Requirements:**

- VR Program Regulations—34 CFR 361.56(b)

**Finding:**

OVR is not in compliance with regulations at 34 CFR 361.56(b) because the agency’s written policy and practice permits the closure of a record of service if the individual has maintained the employment outcome for a minimum of 60 days.

Federal regulations found at 34 CFR 361.56, “Requirements for closing the record of services of an individual who has achieved an employment outcome,” state that a record of service may be closed only when all of the following requirements are met:

- (a) Employment outcome achieved. The individual has achieved the employment outcome that is described in the individual’s IPE in accordance with 34 CFR 361.46(a)(1) and is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- (b) Employment outcome maintained. The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.
- (c) Satisfactory outcome. At the end of the appropriate period under paragraph (b) of this section, the individual and the qualified rehabilitation counselor employed by the designated State unit consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.
- (d) Post-employment services. The individual is informed through appropriate modes of communication of the availability of post-employment services.

OVR’s VR policy manual states an “individual determined to be rehabilitated must, at a minimum, have been determined to have achieved and maintained suitable employment for at least 60 days (Chapter 9: Case Closure Section 109.2: Successful Rehabilitation Closure).” During the review, OVR staff, including VR counselors who are responsible for case closure, confirmed that cases are successfully closed when an individual has maintained employment for 60 days.

Therefore, OVR is not in compliance with federal regulations at 34 CFR 361.56(b) which mandates, among other requirements, that individuals maintain employment outcomes for no less than 90 days before the record of services is successfully closed.

**Corrective Action 3.F:** OVR must:

3.F.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with 34 CFR 361.56(b) by successfully closing cases after a consumer has maintained an employment outcome for no less than 90 days;

3.F.2 amend its written policy on successful case closures to be in compliance with federal regulations; and

3.F.3 provide agency-wide training on the process of successfully closing a record of services per 34 CFR 361.56.

**G. Post-employment Services**

**Legal Requirements:**

- Rehabilitation Act—Section 103(a)(18)
- VR Program Regulations—34 CFR 361.5(b)(42) and 34 CFR 361.46(c)

**Finding:**

OVR is not in compliance with Section 103(a)(18) of the Rehabilitation Act and regulations at 34 CFR 361.46(c) because the agency provides individualized VR services, described at 34 CFR 361.48, to individuals after the record of services has been closed and not under the auspices of Post-employment services as defined at 34 CFR 361.5(b)(42).

“Post-employment services” means one or more of the services identified at 34 CFR 361.48 (e.g., job-related services and transition services) that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice (34 CFR 361.5(b)(42)). A note to this definition further explains that post-employment services are intended to resolve non-complex issues and to be limited in scope and duration. If more comprehensive services are required by the individual, then a new record of services should commence. Post-employment services should be provided through an amendment to the IPE and the services provided are to be administered with the same requirements as normal circumstances.

Examples of situations where post-employment services are appropriate include the provision of counseling so that the individual can maintain employment, the provision of new placement services if an individual’s job is eliminated or it is no longer consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Job-related services and supported employment services, as described at 34 CFR 361.48, are considered appropriate as post-employment services so long as they meet the criteria above.

Chapter 7: Section 107.2: Part O briefly outlines OVR’s policy related to post-employment services. This policy states that post-employment services “are limited to those that address or

relate to vocational impediment(s) identified prior to the original case.” This clause is not consistent with the VR program’s definition or application of post-employment services. It is, however, not relevant considering OVR does not use post-employment services in practice. During the review, OVR staff reported that it is common practice to provide individualized VR services, such as job retention services, job coaching, and follow-up services, to individuals after their cases have been closed—successfully or otherwise. OVR staff indicated that VR counselors and job coaches often remain in contact with individuals to ensure they are adjusting well to their jobs and to assist them in negotiating any obstacles they may face related to employment. OVR staff explained that they do not provide these services under an IPE amendment as post-employment services and these services are not documented in the individual’s closed record of services. Rather they do so in an informal manner.

Therefore, by providing individualized VR services to individuals whose cases have been closed without initiating the provision of post-employment services as defined at 34 CFR 361.5(b)(42), OVR is not in compliance with Section 103(a)(18) of the Rehabilitation Act and program requirements for the provision of post-employment services outlined at 34 CFR 361.46(c).

**Corrective Action 3.G:** OVR must:

- 3.G.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with federal regulations at 34 CFR 361.46(c) by providing individualized VR services as post-employment services, as defined at 34 CFR 361.5(b)(42), through an amendment to the IPE;
- 3.G.2 provide agency-wide training on post-employment service provision; and
- 3.G.3 cease providing individualized services after case closure that are not delivered under an IPE amendment in post-employment services.

#### **4. Supported Employment**

**Legal Requirements:**

- Rehabilitation Act—Sections 7(35) and (36)
- VR Program Regulations—34 CFR 361.5(b)(53) and (54); and 34 CFR 361.46(b)

**Finding:**

OVR is not in compliance with Section 7(35) of the Rehabilitation Act and program regulations at 34 CFR 361.5(b)(53)(i) because OVR does not adhere to guidelines for determining individual’s appropriateness for supported employment and OVR does not provide these services consistent with requirements at 34 CFR 361.46(b).

Supported employment is defined as “competitive employment in an integrated setting, or employment in an integrated setting in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities (Section 7(35) of the Rehabilitation Act; 34 CFR 361.5(b)(53)). Supported employment is intended for those individuals whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of a

significant disability. In addition, it is intended for those individuals, who, because a nature and severity of their disabilities, need intensive supported employment services from the DSU and extended services after transition in order to work (34 CFR 361.5(b)(53)(i)(A-B). Supported employment services may also be appropriate in coordinating transitional employment for individuals with most significant disabilities due to mental illness (34 CFR 361.5(b)(53)(ii)). These services are not to exceed 18 months in duration unless under special circumstances with concurrence from the eligible individual and VR counselor to achieve an employment outcome (34 CFR 361.5(b)(54)(i)) and can be provided if post-employment services are not available from an extended services provider following transition for job-related reasons (ii)).

Program regulations outline the following requirements for an IPE which includes supported employment services: specify the supported employment services to be provided by the DSU; specify the expected extended services needed, which may include natural supports; identify the extended services source or an explanation that extended services will become available if the exact source cannot be identified at IPE development; provide for periodic monitoring to ensure progress is being made with IPE goals by time of transition to extended services; provide for coordination of IPE services with any other Federal or State programs; coordinate any necessary job skills training and identify the training will be provided on-site; and include placement in an integrated setting for the maximum number of hours possible (34 CFR 361.46(b)(1-7)).

During the course of the review, OVR staff explained that all transition-age youth are provided supported employment services for assistance with job development and job placement, as well as job coaching and job retention services once the individual begins working. OVR staff also reported that it is not a requirement that these transition-age youth have a most significant disability to be referred for supported employment services; therefore, some individuals receiving this service may have significant or less significant disabilities. Furthermore, OVR does not justify, upon referral, that transition-age youth meet the criteria at 34 CFR 361.5(b)(53)(i).

Supported employment services are provided within OVR's supported employment program (SEP) and by its one supervisor and two job coaches upon referral from the VR counselor. The SEP staff develop an Individualized Supported Employment Plan for each individual. In addition, the program provides the VR counselor with monthly progress reports and interfaces with the VR counselor as necessary in coordinating services.

During the review, OVR staff reported no clear process for assessing when an individual no longer requires job coaching. Further, OVR's policy manual does not specify, and OVR staff were not able to articulate, the process for determining when an individual has stabilized in the job. Because OVR does not have a separate extended services provider (e.g., State mental health or State developmental disabilities agency), SEP staff continue with providing extended services that do not differ from the original job coaching and other supported employment services.

By not ensuring that individuals are appropriate for supported employment services per regulations at 34 CFR 361.5(b)(53)(i) and by not providing these services in accordance with the IPE requirements at 34 CFR 361.46(b), OVR provides this service to all eligible individuals, rather than to those with the most significant disabilities for whom such services are necessary for the achievement of an employment outcome.

**Corrective Action 4:** OVR must:

- 4.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with federal regulations at 34 CFR 361.5(b)(53) and (54), and 34 CFR 361.46(b) by ensuring individual appropriateness for supported employment services and ensuring that all the requirements for the IPE are fulfilled and that supported employment services are provided to individuals with the most significant disabilities; and
- 4.2 provide agency-wide training to staff on the proper implementation and provision of supported employment services.

**5. Federal Financial Reporting**

**Legal Requirements:**

- VR Program Regulations: 34 CFR 361.12
- EDGAR: 34 CFR 80.20(a); 34 CFR 80.41; and, 34 CFR 80.50

**Finding:**

OVR is not in compliance with 34 CFR 361.12 and 34 CFR 80.20(a), because it does not submit timely and accurate financial reports to RSA. These regulations require the recipients of federal funds to accurately report the financial results of all federally-assisted activities. VR grantees are required to submit accurate SF-269/SF-425 Federal Financial Reports (FFRs). Federal regulations require that recipients of federal funds accurately report the results of all federally-assisted activities (34 CFR 80.20(a)). Financial reporting requirements are set forth at 34 CFR 80.41(b).

As part of the monitoring process, RSA staff reviewed the financial data entered into the RSA-MIS by OVR staff for federal FY 2007 through FY 2011. The below issues were noted.

**A. Late and/or Missing Reports:** When reviewing FFR data, RSA found that several SF-269 and SF-425 reports were consistently late or missing. At the time of the review, OVR had not submitted a fourth quarter report for FY 2008 and FY 2009, nor had it submitted final reports for FY 2007 and FY 2009. After the close of the review, OVR submitted the missing reports for FY 2007 and FY 2009. However, the fourth quarter report for FY 2008 had not yet been submitted.

**B. Unliquidated Obligations:** According to 34 CFR 80.50, the grantee must submit a final financial report within 90 days after the expiration or termination of the grant. A financial report is not considered final until all obligations have been liquidated. Therefore, the final FFR must indicate there are no funds remaining for liquidation. OVR's final SF-269 for FY 2008 included \$189,834 in unliquidated obligations; the agency's final SF-269 for FY2009 included \$142,773 in unliquidated obligations; and, the agency's final SF-425 for FY 2010 included a total of \$342,921 in unliquidated obligations.

By submitting inaccurate and untimely reports, OVR is not in compliance with the requirements of 34 CFR 361.12 and 34 CFR 80.20(a).

**Corrective Action 5:** OVR must:

- 5.1 cease submitting inaccurate or late SF-425 reports;
- 5.2 submit a written assurance to RSA within 10 days after the final monitoring report is issued that OVR will submit timely, complete, and accurate SF-425 reports to RSA; and
- 5.3 develop and implement internal processes necessary to ensure the accurate and timely submission of federal financial reports to RSA.

**6. Allocation of Personnel Costs**

Federal regulations require OVR to assure in its State Plan that it will implement policies and procedures for the efficient and effective administration of the VR program to ensure that all functions are carried out properly and financial accounting is accurate (34 CFR 361.12). OVR also is required to implement fiscal controls to ensure that VR funds are expended and accounted for accurately and that expenditures are traceable to a level sufficient to determine that such expenditures were made in accordance with applicable federal requirements (34 CFR 80.20(a)). As explained below, OVR is not in compliance with these regulations and those specific to the allocation of personnel costs because it:

- does not maintain periodic certifications for employees working solely on one grant;
- does not maintain personnel activity reports for employees working on more than one grant program; and
- may improperly charge salary expenses for staff working on the VR and other programs solely to the VR award.

**A. Semi-Annual Certifications**

**Legal Requirements:**

- Federal Cost Principles: 2 CFR 225, Appendix B, paragraph 8.h.3

**Finding:**

OVR is not in compliance with the Federal Cost Principles, at 2 CFR 225, Appendix B, paragraph 8.h.3, because it does not maintain periodic certifications for staff working solely on a single award or grant objective. These regulations state:

Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

As part of the monitoring process, RSA requested that OVR provide examples of semi-annual certifications. All staff, including those working for Disability Determination, State Independent Living Services, Independent Living Services for Older Individuals Who are Blind, and Supported Employment, submitted semi-annual certifications indicating that each worked 100

percent on the Title I, VR award. OVR staff stated that employees misunderstood and used the example template provided by management without changing the award from Title I VR to the appropriate award. As these certifications are improperly and inaccurately completed, the agency is not in compliance with the requirements of 2 CFR 225, Appendix B, paragraph 8.h.3.

**Corrective Action 6.A:** OVR must:

- 6.A.1 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that it will ensure employees who work solely on a single cost objective prepare certifications at least semi-annually, in accordance with Federal Cost Principles at 2 CFR 225, Appendix B, paragraphs 8.h.3; and
- 6.A.2 develop and implement processes necessary to ensure that OVR employees who work solely on a single cost objective or single federal award prepare semi-annual certifications, which identify the award or cost objective, and are signed by the employee or a supervisory official having first-hand knowledge of the work performed by the employee.

**B. Personnel Activity Reports**

**Legal Requirements:**

- Federal Cost Principles - 2 CFR 225, Appendix B, paragraphs 8.h.4 and 8.h.5

**Finding:**

OVR is not in compliance with regulations at 2 CFR 225 Appendix B, paragraphs 8.h.4 and 8.h.5 because it does not ensure that staff prepare personnel activity reports, or equivalent documentation, allocating their time across multiple programs. These regulations require employees working on multiple cost objectives to maintain personnel activity reports (PARs) or equivalent documentation that reflect an after-the-fact distribution of the actual activity of each employee, in order to determine the amount of expenses to be allocated to the VR award. Personnel activity reports must be signed by the employee, prepared at least monthly, coincide with one or more pay periods, and must account for the total activity for which each employee is compensated.

RSA requested examples of completed Personnel Activity Reports, or equivalent documentation, for staff working on more than one cost award. OVR did not provide examples of PARs or equivalent documentation. OVR stated that two of their employees work on multiple awards and therefore should have completed personnel activity reports. However, the agency does not currently have copies of those forms or copies of equivalent documentation. Without the required documentation, OVR has not complied with 2 CFR 225 Appendix B, paragraphs 8.h.4 and 8.h.5.

**Corrective Action 6.B:** OVR must:

- 6.B.1 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that it will ensure that personnel activity reports, or equivalent documentation, are prepared and maintained to support the allocation of an equitable portion of personnel

costs for individuals who work on more than one federal grant program or cost objective in accordance with Federal Cost Principles at 2 CFR 225, Appendix B, paragraphs 8.h.4 and 8.h.5; and

- 6.B.2 develop and implement processes necessary to ensure individuals who work on more than one federal award or cost objective maintain personnel activity reports or equivalent documentation that reflect an after-the-fact distribution of the actual activity of each employee; account for the total activity for which each employee is compensated; are prepared at least monthly and coincide with one or more pay periods; and, are signed by the employee.

### **C. Unallowable VR Expenditures**

#### **Legal Requirements:**

- Rehabilitation Act—Section 111(a)(1)
- VR Program Regulations—34 CFR 361.3
- EDGAR—34 CFR 80.24(a)(1)
- Federal Cost Principles—2 CFR 225, Appendix A, paragraphs C.1.b, C.3.a, and C.3.c

#### **Finding:**

OVR is not in compliance with Section 111(a) (1) of the Rehabilitation Act, and regulations at 34 CFR 361.3 and 2 CFR 225 Appendix A, paragraph C, to the degree that it may have expended VR program funds on personnel costs associated with staff working on other programs.

OVR must ensure that VR funds are spent solely on the provision of VR services and the administration of the VR program (Section 111(a)(1) of the Rehabilitation Act; 34 CFR 361.3). The Federal Cost Principles require that federal funds be spent solely on allowable costs. To be allowable, costs must be allocable to the federal award. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received. (2 CFR 225, Appendix A, C.3.a).

OVR administers multiple programs, including Vocational Rehabilitation, State Independent Living Services, Independent Living Services for Older Individuals who are Blind, Supported Employment Extended Services, and Centers for Independent Living services. As described in Finding 4.B. above, OVR does not require staff to prepare personnel activity reports or equivalent documentation. Allocation of personnel costs for staff working across the several programs that OVR administers is not documented.

Because of the lack of documented personnel costs, OVR may have used funds allotted under Titles I and VI Part B, to pay for staff who were not engaged in the administration of, or provision of services under, these programs. OVR is not allowed to charge salary expenses for staff working on programs other than VR and SE to the Title I and VI, Part B, awards. The expenditure of VR and SE program funds to support other programs administered by OVR is not allowable as the costs are not traceable to the provision of VR and SE services. To the extent that these funds were used to support personnel costs attributable to the State Independent Living Services, Independent Living Services for-Older Individuals who are Blind, Centers for

Independent Living, and other programs, such as Supported Employment Extended Services, the expenditures would not have been allowable under the VR program and would not have been spent in compliance with federal regulations.

**Corrective Action 6.C:** OVR must:

- 6.C.1 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that OVR will ensure, beginning immediately, that all VR and SE funds are expended only for allocable costs and that supporting documentation will be maintained for personnel expenditures; and
- 6.C.2 cease using VR funds to pay unallowable costs or costs that lack the supporting documentation necessary to ensure that such costs are allowable, specifically those personnel costs related to non-VR and SE programs administered by OVR, in accordance with Section 111(a)(1) of the Rehabilitation Act; 34 CFR 361.3, 34 CFR 361.12; 34 CFR 80.20(a) and 34 CFR 80.24(a)(1); and Federal Cost Principles at 2 CFR 225, Appendix A, paragraphs C.1.b, C.3.a and C.3.c.

**7. Matching Requirements**

**Legal Requirements:**

- VR Program Regulations: 34 CFR 361.60

**Finding:**

OVR is not in compliance with 34 CFR 361.60(a)(1) which states that the federal share for expenditures made by the state under the State plan, including expenditures for the provision of vocational rehabilitation services and the administration of the State plan, is 78.7 percent. The non-federal share is therefore computed at 21.3 percent of program outlays.

Based on financial data submitted by OVR in the FY 2008 final SF-269, and RSA verification in the Department's G5 Grants Management System, OVR had \$928,801 in federal VR program expenditures for FY 2008. The non-federal share, calculated at 21.3 percent of total VR program outlays for FY 2008 VR equals \$251,378. OVR reported zero as its non-federal share for FY 2008. In accordance with a Department Memorandum, dated October 29, 1985, American Samoa is exempt from local matching requirements under \$200,000. Deducting \$200,000 from the required match amount reveals that OVR fell short of its matching requirement for FY 2008 by \$51,378.

**Corrective Action 7:** OVR must

- 7.1 cease expending federal funds in excess of 78.7 percent of total program outlays, after allowing for the \$200,000 match exemption;
- 7.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that it will comply with 34 CFR 361.60; and
- 7.3 develop and implement processes necessary to ensure that OVR does not drawdown federal funds in excess of its ability to meet the required non-federal share.

# APPENDIX A: OFFICE OF VOCATIONAL REHABILITATION RESPONSE

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## Section 4: Results of Prior Monitoring Activities

OVR requests the additional technical assistance described below to enable it to carry out the following goals identified in the FY 2007 monitoring report.

### Goals

**Goal 1:** Expand job training and placement opportunities in the territory.

**Additional Technical Assistance Requested:** OVR does not request technical assistance.

**Goal 2:** Strengthen the role of the state rehabilitation council (SRC) to ensure it carries out its assigned roles and responsibilities.

**Additional Technical Assistance Requested:** OVR does not request technical assistance.

**Goal 3:** Establish procedures and practices to ensure that VR services are provided to consumers in a timely manner, and according to the timelines established in the individualized plan for employment (IPE), in accordance with 34 CFR 361.45(a)(2).

**Additional Technical Assistance Requested:** OVR does not request technical assistance.

**Goal 4:** ASDVR will be moved from the Department of Human and Social Services and the governor will become the designated state agency before the end of FY 2008.

**Additional Technical Assistance Requested:** OVR does not request technical assistance.

**Goal 5:** To obtain full match for each federal fiscal year.

**Additional Technical Assistance Requested:** OVR does not request technical assistance.

**Goal 6:** Ensure the accuracy and timely submission of SF-269 and RSA-2 reports.

**Additional Technical Assistance Requested:** OVR does not request technical assistance.

**Goal 7:** (a) ASDVR must reconstruct all program expenditures for FYs 2003, 2004, 2005, 2006 and 2007, and revised Financial Status Reports submitted to RSA within 90 days. These reports must reflect the correct (accurate) charges against the VR program for each fiscal year. In addition, documentation must be provided to RSA to support the charges claimed for each fiscal year. Upon review and acceptance, RSA will determine the extent to which VR program funds have been misspent and the harm, if any, to the federal government.

(b) Develop policies, procedures and appropriate internal controls to ensure that grant funds are expended only in accordance with federal requirements and reports are submitted within the timeframes prescribed by RSA.

**Additional Technical Assistance Requested:** OVR does not request technical assistance.

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

### **1. MOU with the Local Workforce Investment Board**

**Corrective Action:** OVR must:

- 1.1 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that it will comply with 34 CFR 361.23(a)(3); Sections 121(c) of WIA and WIA Regulations at 20 CFR 662.230(c), by entering into an MOU with the LWIB in American Samoa;
- 1.2 submit a plan, including timelines, describing the corrective actions that will be taken, to ensure OVR develops an MOU with the LWIB in American Samoa; and
- 1.3 submit a draft plan to RSA for review.

**Agency Response:** OVR will submit documents as stated to RSA for review and approval.

**Technical Assistance:** OVR does not request technical assistance.

### **2. Agreement with the State Educational Agency**

**Corrective Action 2:** OVR must:

- 2.1 submit a written assurance to RSA within ten days of the issuance of the final monitoring report that OVR will ensure that the SEA agreement with the Division of Special Education is updated and revised to reflect the appropriate entities involved in the formal interagency agreement and to comply with the requirements at Section 101(a)(11)(D) of the Rehabilitation Act and its implementing regulations at 34 CFR 361.22 (b); and
- 2.2 submit the revised SEA formal interagency agreement between OVR and the Division of Special Education for RSA's review as part of OVR's corrective actions associated with the FY 2012 Section 107 monitoring review.

**Agency Response:** OVR will submit documents as stated to RSA for review and approval.

**Technical Assistance:** OVR does not request technical assistance.

### **3. Vocational Rehabilitation Service Delivery**

#### **A. Untimely Eligibility Determinations**

**Corrective Action 3.A:** OVR must:

- 3.A.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with Section 102(a)(6) of the Rehabilitation Act and 34 CFR

361.41(b)(1) by making eligibility determinations within the required 60-day period, unless exceptional and unforeseen circumstances require it and the applicants to agree to an extension of this period, or the individuals are participating in trial work experiences or extended evaluations; and

- 3.A.2 submit the steps, including timelines, that OVR will take to ensure that the determination of eligibility for each individual is made in accordance with the requirements of Section 102(a)(6) and 34 CFR 361.41(b)(1).

**Agency Response:** OVR will submit revised policy with the above mentioned inclusion to RSA for review and approval.

**Technical Assistance:** OVR does not request technical assistance.

## **B. Order of Selection and Significance of Disability**

**Corrective Action 3.B:** OVR must:

- 3.B.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with Section 101(a)(5)C of the Act by not imposing an additional factors in determining an order of selection of eligible individuals that prevents those individuals with the most significant disabilities from being selected first to receive services;
- 3.B.2 submit the steps, including timelines, that OVR will take to ensure that individuals with the most significant disabilities are selected first to receive services in accordance with Section 101(a)(5)C of the Act and that additional factors are not used in determining an order of selection of eligible individuals;
- 3.B.3 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with Sections 7(21)(A) and 101(a)(5)C of the Rehabilitation Act and 34 CFR 361.5(b)(30) and 361.5(b)(31) by ensuring that individuals are properly identified as “individuals with most significant disabilities” and “individuals with significant disabilities” per the Act and its implementing regulations; and
- 3.B.4 submit the steps, including timelines, that OVR will take to ensure that the VR agency has separately defined in policy and through practice “most significant disability” in accordance with Section 101(a)(5)C of the Act and 34 CFR 361.5(b)(30) and the definition of “significant disability” complies with 34 CFR 361.5(b)(31).

**Agency Response:** OVR will submit revised policy with the above mentioned inclusion and copy of new form being used to determine significance of disability to RSA for review and approval.

**Technical Assistance:** OVR does not request technical assistance.

## **C. Lack of Trial Work Experiences and Improper Use of Extended Evaluations**

**Corrective Action 3.C:** OVR must:

- 3.C.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with statutes at Section 102(a)(1) and (2) of the Rehabilitation Act and regulations at 34 CFR 361.42(a)(1) and (2), 34 CFR 361.42(e) and 34 CFR 361.42(f);

- 3.C.2 amend its policy on the definition and provision of extended evaluation and trial work experiences, develop and implement procedures pertaining to the implementation of trial work experiences and extended evaluations including trial work experience and extended evaluation plans consistent with these federal requirements; and
- 3.C.3 provide agency-wide training on the effective use and requirements for trial work experiences and extended evaluations.

**Agency Response:** OVR will submit revised policy with the above mentioned inclusion to RSA for review and approval.

**Technical Assistance:** OVR does not request technical assistance.

#### **D. Lack of Established IPE Standard**

**Corrective Action 3.D:** OVR must:

- 3.D.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with Section 101(a)(9) of the Act and regulations at 34 CFR 361.45(a)(1) and 34 CFR 361.45(e); and
- 3.D.2 amend its policy to include a state-established standard for the prompt development of IPEs which includes timelines that take into account the needs of the individuals the agency services; and
- 3.D.3 provide agency-wide training on the state-established standard.

**Agency Response:** OVR will amend its policy and submit to RSA for review and approval.

**Technical Assistance:** OVR does not request technical assistance.

#### **E. IPE Documentation**

**Corrective Action 3.E:** OVR must:

- 3.E.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with federal regulations at 34 CFR 361.46 and 34 CFR 361.47(a)(6) to include the mandatory components for the content of the IPE and ensure that the IPE is adequately maintained in the eligible individual's record of service; and
- 3.E.2 provide agency-wide training on the requirements of developing the IPE and documenting services on the IPE that meet these federal regulations.

**Agency Response:** OVR will amend its policy and new IPE form, and will submit to RSA for review and approval.

**Technical Assistance:** OVR does not request technical assistance.

#### **F. Successful Case Closures**

**Corrective Action 3.F:** OVR must:

- 3.F.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with 34 CFR 361.56(b) by successfully closing cases after a consumer has maintained an employment outcome for no less than 90 days; and
- 3.F.2 amend its written policy on successful case closures to be in compliance with federal regulations; and
- 3.F.3 provide agency-wide training on the process of successfully closing a record of services per 34 CFR 361.56.

**Agency Response:** OVR will amend its policy and submit to RSA for review and approval.

**Technical Assistance:** OVR does not request technical assistance.

## **G. Post-employment Services**

**Corrective Action 3.G:** OVR must:

- 3.G.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with federal regulations at 34 CFR 361.46(c) by providing individualized VR services on an amendment to the IPE in post-employment services as defined at 34 CFR 361.5(b)(42);
- 3.G.2 provide agency-wide training on post-employment service provision; and
- 3.G.3 cease providing individualized services after case closure that are not delivered under an IPE amendment in post-employment services.

**Agency Response:** OVR will amend its policy and submit to RSA for review and approval.

**Technical Assistance:** OVR does not request technical assistance.

## **4. Supported Employment**

**Corrective Action 4:** OVR must:

- 4.1 submit a written assurance within 10 days of the receipt of the final monitoring report that OVR will comply with federal regulations at 34 CFR 361.5(b)(53) and (54) and 34 CFR 361.46(b) by ensuring individual appropriateness for supported employment services and ensuring that all the requirements for the IPE are fulfilled and provided to individuals with only the most significant disabilities; and
- 4.2 provide agency-wide training to staff on the proper implementation and provision of supported employment services.

**Agency Response:** Training was provided by TACE to SES and VR staff during the month of March 2012.

**Technical Assistance:** OVR does not request technical assistance.

## **5. Federal Financial Reporting**

**Corrective Action 5:** OVR must:

- 5.1 cease submitting inaccurate or late SF-425 reports;
- 5.2 submit a written assurance to RSA within 10 days after the final monitoring report is issued that OVR will submit timely, complete, and accurate SF-425 reports to RSA; and
- 5.3 develop and implement internal processes necessary to ensure the accurate and timely submission of federal financial reports to RSA.

**Agency Response:** OVR has been working on correcting and finalizing the financial reports within the MIS and, by the target date March 2013, financial reports will be updated or closed.

**Technical Assistance:** OVR does not request technical assistance.

## **6. Allocation of Personnel Costs**

### **A. Semi-Annual Certifications**

**Corrective Action 6.A:** OVR must:

- 6.A.1 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that it will ensure employees who work solely on a single cost objective prepare certifications at least semi-annually, in accordance with Federal Cost Principles at 2 CFR 225, Appendix B, paragraphs 8.h.3; and
- 6.A.2 develop and implement processes necessary to ensure that OVR employees who work solely on a single cost objective or single federal award prepare semi-annual certifications, which identify the award or cost objective, and are signed by the employee or a supervisory official having first-hand knowledge of the work performed by the employee.

**Agency Response:** OVR will submit samples of staff semi-annual certifications for RSA's review and approval or recommendations. Training will also be provided to staff in October 2012.

**Technical Assistance:** OVR does not request technical assistance.

### **B. Personnel Activity Reports**

**Corrective Action 6.B:** OVR must:

- 6.B.1 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that it will ensure that personnel activity reports, or equivalent documentation, are prepared and maintained to support the allocation of an equitable portion of personnel costs for individuals who work on more than one federal grant program or cost objective in accordance with Federal Cost Principles at 2 CFR 225, Appendix B, paragraphs 8.h.4 and 8.h.5; and
- 6.B.2 develop and implement processes necessary to ensure individuals who work on more than one federal award or cost objective maintain personnel activity reports or equivalent documentation that reflect an after-the-fact distribution of the actual activity of each employee; account for the total activity for which each employee is compensated; are

prepared at least monthly and coincide with one or more pay periods; and, are signed by the employee.

**Agency Response:** OVR will submit samples of staff PAR for RSA’s review and approval or recommendations.

**Technical Assistance:** OVR does not request technical assistance.

### **C. Unallowable VR Expenditures**

**Corrective Action 6.C:** OVR must:

- 6.C.1 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that OVR will ensure, beginning immediately, that all VR funds are expended only for allocable costs and that supporting documentation will be maintained for personnel expenditures; and
- 6.C.2 cease using VR funds to pay unallowable costs or costs that lack the supporting documentation necessary to ensure that such costs are allowable, specifically those personnel costs related to non-VR programs administered by OVR, in accordance with Section 111(a)(1) of the Rehabilitation Act; 34 CFR 361.3, 34 CFR 361.12; 34 CFR 80.20(a) and 34 CFR 80.24(a)(1); and Federal Cost Principles at 2 CFR 225, Appendix A, paragraphs C.1.b, C.3.a and C.3.c.

**Agency Response:** OVR concurs and will comply.

**Technical Assistance:** OVR does not request technical assistance.

### **7. Matching Requirements**

**Corrective Action 7:** OVR must:

- 7.1 cease expending federal funds in excess of 78.7 percent of total program outlays, after allowing for the \$200,000 match exemption;
- 7.2 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that it will comply with 34 CFR 361.60; and
- 7.3 develop and implement processes necessary to ensure that OVR does not drawdown federal funds in excess of its ability to meet the required non-federal share.

**Agency Response:** OVR will work closely with local Treasury to ensure OVR remains within allotted federal funds and does not exceed spending.

**Technical Assistance:** OVR does not request technical assistance.

## 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.

### Rehabilitation Act of 1973, as amended

Section 7 For the purposes of this Act:

(21) Individual with a significant disability

(A) In general

Except as provided in subparagraph (B) or (C), the term "individual with a significant disability" means an individual with a disability—

(i) who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs described in subparagraphs (A) and (B) of paragraph (2) to cause comparable substantial functional limitation.

\*\*\*

(35) Supported employment

(A) In general

The term "supported employment" means competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities--

(i)(I) for whom competitive employment has not traditionally occurred; or

(II) for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(ii) who, because of the nature and severity of their disability, need intensive supported employment services for the period, and any extension, described in paragraph (36)(C) and extended services after the transition described in paragraph (13)(C) in order to perform such work.

(B) Certain transitional employment

Such term includes transitional employment for persons who are individuals with the most significant disabilities due to mental illness.

(36) Supported employment services

The term "supported employment services" means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment, that--

(A) are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual to achieve competitive employment;

(B) are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; and

(C) are provided by the designated State unit for a period of time not to extend beyond 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator involved jointly agree to extend the time in order to achieve the employment outcome identified in the individualized plan for employment.

## Section 101—State Plans

(a) Plan Requirements

(5) Order of selection for vocational rehabilitation services

(C) include an assurance that, in accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services;

\*\*\*

(9) Individualized plan for employment

(A) Development and implementation

The State plan shall include an assurance that an individualized plan for employment meeting the requirements of section 102(b) will be developed and implemented in a timely manner for an individual subsequent to the determination of the eligibility of the individual for services under this title, except that in a State operating under an order of selection described in paragraph (5), the plan will be developed and implemented only for individuals meeting the order of selection criteria of the State.

(B) Provision of services

The State plan shall include an assurance that such services will be provided in accordance with the provisions of the individualized plan for employment.

\*\*\*

(11) Cooperation, collaboration, and coordination

(B) Replication of cooperative agreements

The State plan shall provide for the replication of such cooperative agreements at the local level between individual offices of the designated State unit and local entities carrying out activities through the statewide workforce investment system.

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(11) Cooperation, collaboration, and coordination

(D) Coordination with education officials

The State plan shall contain plans, policies, and procedures for coordination between the designated State agency and education officials responsible for the public education of students with disabilities, that are designed to facilitate the transition of the students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitation services under this title, including information on a formal interagency agreement with the State educational agency that, at a minimum, provides for--

(i) consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;

(ii) transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of their individualized education programs under section 614(d) of the Individuals with Disabilities Education Act;

(iii) the roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and

(iv) procedures for outreach to and identification of students with disabilities who need the transition services.

#### Section 102 Eligibility and Individualized Plan for Employment

(a) Eligibility

(2) Presumption of benefit

(B) Methods

In making the demonstration required under subparagraph (A), the designated State unit shall explore the individual's abilities, capabilities, and capacity to perform in work situations, through the use of trial work experiences, as described in section 7(2)(D), with appropriate supports provided through the designated State unit, except under limited circumstances when an individual can not take advantage of such experiences. Such experiences shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual or to determine the existence of clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual.

\*\*\*

(6) Timeframe for making an eligibility determination

The designated State unit shall determine whether an individual is eligible for vocational rehabilitation services under this title within a reasonable period of time, not to exceed 60 days, after the individual has submitted an application for the services unless—

(A) exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and the individual agree to a specific extension of time; or

## Section 103 Vocational Rehabilitation Services

### (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, including—

(18) specific post-employment services necessary to assist an individual with a disability to, retain, regain, or advance in employment.

## Section 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.

## VR Program Regulations

### 34 CFR 361.3 Authorized activities.

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 Applicable definitions.

(b) Other definitions. The following definitions also apply to this part:

(30) Individual with a most significant disability means an individual with a significant disability who meets the designated State unit's criteria for an individual with a most significant disability. These criteria must be consistent with the requirements in 361.36(d)(1) and (2).

(31) Individual with a significant disability means an individual with a disability—

- (i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- (ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- (iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the

basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

\*\*\*

(42) Post-employment services means one or more of the services identified in §361.48 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

\*\*\*

(53) Supported employment means—

(i) Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities—

(A) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services from the designated State unit and extended services after transition as described in paragraph (b)(20) of this section to perform this work; or

(ii) Transitional employment, as defined in paragraph (b)(54) of this section, for individuals with the most significant disabilities due to mental illness.

(Authority: Section 7(35) of the Act; 29 U.S.C. 705(35))

(54) Supported employment services means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the designated State unit—

(i) For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(ii) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

#### 34 CFR 361.12 Methods of administration.

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 plan and this part. These methods must include procedures to ensure accurate data collection and financial accountability.

34 CFR 361.22—Coordination with education officials.

- (b) Formal interagency agreement. The State plan must include information on a formal interagency agreement with the State educational agency that, at a minimum, provides for—
- (1) Consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;
  - (2) Transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of their individualized education programs (IEPs) under section 614(d) of the Individuals with Disabilities Education Act;
  - (3) The roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and
  - (4) Procedures for outreach to and identification of students with disabilities who are in need of transition services. Outreach to these students should occur as early as possible during the transition planning process and must include, at a minimum, a description of the purpose of the vocational rehabilitation program, eligibility requirements, application procedures, and scope of services that may be provided to eligible individuals.

34 CFR 361.23—Requirements related to the statewide workforce investment system.

- (a) Responsibilities as a partner of the One-Stop service delivery system. As a required partner in the One-Stop service delivery system (which is part of the statewide workforce investment system under Title I of the Workforce Investment Act of 1998), the designated State unit must carry out the following functions consistent with the Act, this part, Title I of the Workforce Investment Act of 1998, and the regulations in 20 CFR part 662:
- (3) Enter into a memorandum of understanding (MOU) with the Local Workforce Investment Board under section 117 of the Workforce Investment Act of 1998 relating to the operation of the One-Stop service delivery system that meets the requirements of section 121(c) of the Workforce Investment Act and 20 CFR 662.300, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals.

34 CFR 361.36 Ability to serve all eligible individuals; order of selection for services.

- (a) General provisions.
- (3) If the designated State unit is unable to provide the full range vocational rehabilitation services to all eligible individuals in the State who apply for the services, the State plan must—
    - (i) Show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;
    - (ii) Provide a justification for the order of selection;
    - (iii) Identify service and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order, as required under §361.29(c)(5);and

(iv) Assure that—

(A) In accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services.

#### 34 CFR 361.41 Processing referrals and applications.

(b) Applications.

(1) Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in One-Stop centers established under section 121 of the Workforce Investment Act of 1998, an eligibility determination must be made within 60 days, unless—

(i) Exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and the individual agree to a specific extension of time; or

(ii) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with §361.42(e) or, if appropriate, an extended evaluation is carried out in accordance with §361.42(f).

#### 34 CFR 361.42 Assessment for determining eligibility and priority for services.

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the State is operating under an order of selection), the designated State unit must conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

(a) Eligibility requirements —(1) Basic requirements. The designated State unit's determination of an applicant's eligibility for vocational rehabilitation services must be based only on the following requirements:

(i) A determination by qualified personnel that the applicant has a physical or mental impairment.

(ii) A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.

(iii) A determination by a qualified vocational rehabilitation counselor employed by the designated State unit that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(iv) A presumption, in accordance with paragraph (a)(2) of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(2) Presumption of benefit. The designated State unit must presume that an applicant who meets the eligibility requirements in paragraphs (a)(1)(i) and (ii) of this section can benefit in terms of an employment outcome unless it demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the applicant's disability.

\*\*\*

(e) Trial work experiences for individuals with significant disabilities. (1) Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, the designated State unit must conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations to determine whether or not there is clear and convincing evidence to support such a determination.

(2)(i) The designated State unit must develop a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences, which must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

(ii) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic work settings.

(iii) Trial work experiences must be of sufficient variety and over a sufficient period of time for the designated State unit to determine that—

(A) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(B) There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.

(iv) The designated State unit must provide appropriate supports, including assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

(f) Extended evaluation for certain individuals with significant disabilities. (1) Under limited circumstances if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the State unit is able to make the determinations described in paragraph (e)(2)(iii) of this section, the designated State unit must conduct an extended evaluation to make these determinations.

(2) During the extended evaluation period, vocational rehabilitation services must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

(3) During the extended evaluation period, the designated State unit must develop a written plan for providing services necessary to make a determination under paragraph (e)(2)(iii) of this section.

(4) During the extended evaluation period, the designated State unit provides only those services that are necessary to make the determinations described in paragraph (e)(2)(iii) of this section and terminates extended evaluation services when the State unit is able to make the determinations.

#### 34 CFR 361.45 Development of the individualized plan for employment.

361.45 Development of the individualized plan for employment.

(d) Mandatory procedures. The designated State unit must ensure that—

(3) The IPE is—

- (i) Agreed to and signed by the eligible individual or, as appropriate, the individual's representative; and
- (ii) Approved and signed by a qualified vocational rehabilitation counselor employed by the designated State unit.

\*\*\*

e) Standards for developing the IPE. The designated State unit must establish and implement standards for the prompt development of IPEs for the individuals identified under paragraph (a) of this section, including timelines that take into consideration the needs of the individuals.

#### 34 CFR 361.46 Content of the individualized plan for employment.

- (a) Mandatory components. Regardless of the approach in §361.45(c)(1) that an eligible individual selects for purposes of developing the IPE, each IPE must include—
- (1) A description of the specific employment outcome, as defined in §361.5(b)(16), that is chosen by the eligible individual and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice.
  - (2) A description of the specific rehabilitation services under §361.48 that are—
    - (i) Needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal assistance services, including training in the management of those services; and
    - (ii) Provided in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual;
  - (3) Timelines for the achievement of the employment outcome and for the initiation of services;
  - (4) A description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services;
  - (5) A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome; and
  - (6) The terms and conditions of the IPE, including, as appropriate, information describing—
    - (i) The responsibilities of the designated State unit;
    - (ii) The responsibilities of the eligible individual, including—
      - (A) The responsibilities the individual will assume in relation to achieving the employment outcome;
      - (B) If applicable, the extent of the individual's participation in paying for the cost of services; and
      - (C) The responsibility of the individual with regard to applying for and securing comparable services and benefits as described in §361.53; and
    - (iii) The responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in §361.53.
- (b) Supported employment requirements. An IPE for an individual with a most significant disability for whom an employment outcome in a supported employment setting has been determined to be appropriate must—
- (1) Specify the supported employment services to be provided by the designated State unit;

- (2) Specify the expected extended services needed, which may include natural supports;
  - (3) Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the IPE is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;
  - (4) Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the IPE by the time of transition to extended services;
  - (5) Provide for the coordination of services provided under an IPE with services provided under other individualized plans established under other Federal or State programs;
  - (6) To the extent that job skills training is provided, identify that the training will be provided on site; and
  - (7) Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.
- (c) Post-employment services. The IPE for each individual must contain, as determined to be necessary, statements concerning—
- (1) The expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;
  - (2) A description of the terms and conditions for the provision of any post-employment services; and
  - (3) If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in §361.53.

34 CFR 361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.

The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:

- (b) Employment outcome maintained. The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.

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.

## **Education Department General Administrative Regulations (EDGAR)**

34 CFR 80.20 Standards for financial management systems.

- (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 80.24 Matching or cost sharing.

(a) Basic rule: Costs 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 80.41 Financial reporting.

(a) General. (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

- (i) Submitting financial reports to Federal agencies, or
  - (ii) Requesting advances or reimbursements when letters of credit are not used.
- (2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.
- (3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.
- (4) Grantees will not be required to submit more than the original and two copies of forms required under this part.
- (5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.
- (6) Federal agencies may waive any report required by this section if not needed.
- (7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) Financial Status Report —(1) Form. Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with §80.41(e)(2)(iii).

(2) Accounting basis. Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual

basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) Frequency. The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) Due date. When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) Federal Cash Transactions Report —(1) Form. (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement. (ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) Forecasts of Federal cash requirements. Forecasts of Federal cash requirements may be required in the “Remarks” section of the report.

(3) Cash in hands of subgrantees. When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) Frequency and due date. Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) Request for advance or reimbursement —(1) Advance payments. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) Reimbursements. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in §80.41(b)(3).

(e) Outlay report and request for reimbursement for construction programs —(1) Grants that support construction activities paid by reimbursement method. (i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in §80.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in §80.41(b)(3).

- (2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance. (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by §80.41(b) (3) and (4). (ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in §80.41(d). (iii) The Federal agency may substitute the Financial Status Report specified in §80.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs. (3) Accounting basis. The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by §80.41(b)(2).

#### 34 CFR 80.50 Closeout.

- (a) General. The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.
- (b) Reports. Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:
- (1) Final performance or progress report.
  - (2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).
  - (3) Final request for payment (SF-270) (if applicable).
  - (4) Invention disclosure (if applicable).
  - (5) Federally-owned property report. In accordance with §80.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.
- (c) Cost adjustment. The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.
- (d) Cash adjustments. (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs. (2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

## **OMB Circulars as Cited in the CFR**

### 2 CFR 225—Appendix A

#### C. Basic Guidelines

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:
  - b. Be allocable to Federal awards under the provisions of 2 CFR part 225.

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3. Allocable costs.

- a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.
- c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in 2 CFR part 225 may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons.

2 CFR 225—Appendix B

8. Compensation for personal services.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection 8.h.(5) of this appendix unless a statistical sampling system (see subsection 8.h.(6) of this appendix) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

- (a) More than one Federal award,
- (b) A Federal award and a non-Federal award,
- (c) An indirect cost activity and a direct cost activity,
- (d) Two or more indirect activities which are allocated using different allocation bases, or
- (e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

- (a) They must reflect an after-the-fact distribution of the actual activity of each employee,
- (b) They must account for the total activity for which each employee is compensated,
- (c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:

- (i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;
- (ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

## **Workforce Investment Act**

### Section 121—Establishment of One-Stop Delivery Systems

(c) Memorandum of Understanding.--

(1) Development.--The local board, with the agreement of the chief elected official, shall develop and enter into a memorandum of understanding (between the local board and the one-stop partners), consistent with paragraph (2), concerning the operation of the one-stop delivery system in the local area.

(2) Contents.--Each memorandum of understanding shall contain—

(A) provisions describing--

(i) the services to be provided through the one-stop delivery system;

(ii) how the costs of such services and the operating costs of the system will be funded;

(iii) methods for referral of individuals between the one-stop operator and the one-stop partners, for the appropriate services and activities; and

(iv) the duration of the memorandum and the procedures for amending the memorandum during the term of the memorandum; and

(B) such other provisions, consistent with the requirements of this title, as the parties to the agreement determine to be appropriate.

## **Workforce Investment Act Regulations**

20 CFR 662.230—(What are the responsibilities of the required One-Stop partners)

All required partners must:

(c) Enter into a memorandum of understanding (MOU) with the Local Board relating to the operation of the One-Stop system that meets the requirements of ? 662.300, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals (WIA sec. 121(c)).