

**FISCAL YEAR 2013  
MONITORING REPORT  
ON THE  
LOUISIANA REHABILITATION SERVICES  
VOCATIONAL REHABILITATION  
PROGRAM**



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

**SEPTEMBER 24, 2013**

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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 Louisiana Rehabilitation Services (LRS) in federal fiscal year (FY) 2013, RSA:

- reviewed the VR agency's progress toward implementing recommendations and resolving findings identified during the prior monitoring cycle (FY 2007 through FY 2010), and in the FY 2011 Summary Report;
- 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 an emerging practice related to transition services and employment outcomes for youth with disabilities; and
- provided technical assistance (TA) to the VR agency to enable it to enhance its performance and to resolve findings of noncompliance.

The nature and scope of this review and the process by which RSA carried out its monitoring activities, including the conduct of an on-site visit from October 23-26, 2012, is described in detail in the [FY 2013 Monitoring and Technical Assistance Guide for the Vocational Rehabilitation Program](#) or as a [PDF](#).

## Emerging Practices

Through the course of its review, RSA collaborated with LRS, 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.

## Transition

- **Bridging the Gap (BtG):** LRS initiated the BtG program in 2005, in conjunction with the Lafouche Parish School System and the community rehabilitation program Options for Independence. BtG provides LRS transition students with work readiness skills training, followed-up during their school exit year by job development, job placement and follow-along services.

## Summary of Compliance Findings

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

- LRS improperly used the establishment authority under Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1) to assist the Lighthouse in the relocation of its cup manufacturing facility and equipment to Baton Rouge.
- LRS improperly used the establishment authority to enter into a contract with UpLIFTD by not satisfying all of the pre-planning requirements prior to implementing an "establishment" project with the entity.
- Services provided under LRS' third party cooperative arrangements (TPCAs) were not solely to applicants and eligible individuals; LRS was unable to demonstrate that the non-federal expenditures contributed by cooperating agencies through indirect costs benefited the VR program; and LRS has not monitored the TPCAs to determine whether the federal and non-federal expenditures are allowable based on the actual time spent on the programs by staff of the cooperating agencies.
- LRS has not disbursed available program income prior to drawing down federal VR funds.
- LRS has not tracked personnel costs according to federal cost principles, and is unable to ensure that those costs are provided in the provision of VR services, or the administration of the VR program.
- LRS has not established and maintained written policies of how LRS will set fees for purchased VR services.
- LRS has not verified whether vendors with whom it does business are suspended or debarred, as identified on the Excluded Parties List System.

## Development of the Technical Assistance Plan

RSA will collaborate closely with LRS and the Region 6 TACE center to develop a plan to address the TA needs identified by LRS in Appendix A of this report. RSA, LRS and Region 6 TACE will conduct a teleconference within 60 calendar days following the publication of this report to discuss the details of the TA needs, identify and assign specific responsibilities for implementing TA and establish initial timeframes for the provision of the assistance. RSA, LRS and Region 6 TACE will participate in teleconferences at least semi-annually to gauge progress and revise the plan as necessary.

## **Review Team Participants**

Members of the RSA review team included Charles Sadler (TA Unit); Craig McManus (Fiscal Unit); Christyne Cavataio and David Jones (VR Unit); Julya Doyle (Data Collection and Analysis Unit); Timothy Beatty (Independent Living Unit); and Mary Williams (State Monitoring and Program Improvement Division). Although not all team members participated in the on-site visit, each contributed to the gathering and analysis of information, along with the development of this report.

## **Acknowledgements**

RSA wishes to express appreciation to the representatives of LRS, Office of Workforce Development (OWD), and Louisiana Workforce Commission (LWC) 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 VR program.

## 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 LRS. 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 on individuals who exited the VR program during federal FYs 2007 through 2011. Consequently, the table and accompanying analysis do not provide information derived from LRS' open service records, including data related to current applicants, individuals who have been determined eligible and those who are receiving services. LRS 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**  
**LRS Program Performance Data for FY 2007 through FY 2011**

	Number, Percent, or Average	2007	2008	2009	2010	2011	Change from 2007 to 2011	Agency Type 2011
<b>All Individual Cases Closed</b>								
TOTAL CASES CLOSED	Number	7,560	10,006	9,874	8,717	7,920	360	273,950
	Percent	100.0%	100.0%	100.0%	100.0%	100.0%	4.8%	100.0%
Exited as an applicant	Number	1,153	1,527	1,265	1,497	1,349	196	45,694
	Percent	15.3%	15.3%	12.8%	17.2%	17.0%	17.0%	16.7%
Exited during or after trial work experience/extended evaluation	Number	51	31	19	20	21	-30	1,910
	Percent	0.7%	0.3%	0.2%	0.2%	0.3%	-58.8%	0.7%
TOTAL NOT DETERMINED ELIGIBLE	Number	1,204	1,558	1,284	1,517	1,370	166	47,604
	Percent	15.9%	15.6%	13.0%	17.4%	17.3%	13.8%	17.4%
Exited without employment after IPE, before services	Number	0	0	0	0	0	0	8,173
	Percent	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	3.0%
Exited from order of selection waiting list	Number	0	0	181	80	282	282	2,978
	Percent	0.0%	0.0%	1.8%	0.9%	3.6%	0.0%	1.1%
Exited without employment after eligibility, before IPE	Number	2,326	3,378	3,472	2,318	1,488	-838	62,559
	Percent	30.8%	33.8%	35.2%	26.6%	18.8%	-36.0%	22.8%
TOTAL EXITED AFTER ELIGIBILITY, BUT PRIOR TO RECEIVING SERVICES	Number	2,326	3,378	3,653	2,398	1,770	-556	73,710
	Percent	30.8%	33.8%	37.0%	27.5%	22.3%	-23.9%	26.9%
Exited with employment	Number	2,375	2,715	2,353	2,362	2,313	-62	80,711
	Percent	31.4%	27.1%	23.8%	27.1%	29.2%	-2.6%	29.5%
Exited without employment	Number	1,655	2,355	2,584	2,440	2,467	812	71,925
	Percent	21.9%	23.5%	26.2%	28.0%	31.1%	49.1%	26.3%
TOTAL RECEIVED SERVICES	Number	4,030	5,070	4,937	4,802	4,780	750	152,636
	Percent	53.3%	50.7%	50.0%	55.1%	60.4%	18.6%	55.7%

All Individual Cases Closed	Number, Percent, or Average	2007	2008	2009	2010	2011	Change from 2007 to 2011	Agency Type 2011
EMPLOYMENT RATE	Percent	58.93%	53.55%	47.66%	49.19%	48.39%	-10.54%	52.88%
Transition age youth	Number	2,835	3,187	3,348	3,017	2,838	3	97,282
	Percent	37.5%	31.9%	33.9%	34.6%	35.8%	0.1%	35.5%
Transition aged youth employment outcomes	Number	647	487	498	638	776	129	29,062
	Percent	27.2%	17.9%	21.2%	27.0%	33.5%	19.9%	36.0%
Competitive employment outcomes	Number	2,350	2,674	2,316	2,350	2,308	-42	76,087
	Percent	98.9%	98.5%	98.4%	99.5%	99.8%	-1.8%	94.3%
Supported employment outcomes	Number	83	344	361	353	396	313	10,480
	Percent	3.5%	12.7%	15.3%	14.9%	17.1%	377.1%	13.0%
Average hourly wage for competitive employment outcomes	Average	\$13.35	\$15.83	\$13.78	\$12.73	\$12.17	-\$1.19	\$11.22
Average hours worked for competitive employment outcomes	Average	36.5	35.9	34.2	33.9	33.1	-3.3	31.4
Competitive employment outcomes at 35 or more hours per week	Number	1,732	1,920	1,517	1,492	1,384	-348	39,622
	Percent	72.9%	70.7%	64.5%	63.2%	59.8%	-20.1%	49.1%
Employment outcomes meeting SGA	Number	1,831	2,115	1,711	1,724	1,601	-230	48,900
	Percent	77.1%	77.9%	72.7%	73.0%	69.2%	-12.6%	60.6%
Employment outcomes with employer-provided medical insurance	Number	1,080	1,295	942	804	673	-407	19,640
	Percent	45.5%	47.7%	40.0%	34.0%	29.1%	-37.7%	24.3%

## Positive Trends

As shown in Table 2.1, LRS demonstrated several positive trends during the five-year period between FYs 2007 and 2011, particularly with regard to transition-age youth exiting the program with employment outcomes. During this period of time, the number of transition-age youths achieving employment outcomes increased from 647 (27.2 percent) to 776 (33.5 percent), just below the 36.0 percent national average for combined agencies. Although the overall percentage of transition-age youths being served by LRS dipped slightly over the five-year period from 37.5 percent to 35.8 percent, it was still higher than the 35.5 percent national combined agency average.

In FY 2011, the percentage of individuals who achieved competitive employment outcomes was 99.8 percent, higher than the national combined agency average of 94.3 percent. Similarly, 17.1 percent of employment outcomes were in supported employment, comparing favorably to the 13 percent national average for combined agencies. RSA refers to the following characteristics of an employment outcome from the above table as indicators of the quality of that employment outcome: average hourly wage for competitive employment outcomes, competitive employment outcomes at 35 or more hours per week, employment outcomes meeting substantial gainful activity (SGA), and employment outcomes with employer-provided medical insurance. While LRS' performance relative to these quality indicators has decreased over the past five years, the percentage is still higher in FY 2011 than the national average for combined agencies. For example, the average hourly wage for competitive employment outcomes for LRS was \$12.17 in FY 2011, compared to the national combined average of \$11.22. The average hours worked for

these outcomes was 33.1 hours for LRS in FY 2011, compared to the national combined average of 31.4 hours. The percent of LRS' total employment outcomes who achieved competitive employment outcomes working 35 hours or more per week was 59.8 percent in FY 2011, compared to the national combined agency average of 49.1. Additionally, the percentage of employment outcomes that met SGA was 69.2 percent in FY 2011, compared to the national combined agency average of 60.6 percent. Finally, while the percentage of employment outcomes with employer-provided medical insurance decreased from 45.5 percent in FY 2007 to 29.1 percent in FY 2011, this is still higher than the 24.3 percent national combined agency average.

In FY 2011, 29.2 percent of total cases closed by LRS were for individuals who achieved employment outcomes, nearly equal to the national average for combined agencies at 29.5 percent. While this percentage decreased 4.3 percent from FY 2007 (31.4 percent) to FY 2008 (27.1 percent), it has steadily increased over the past three years from 23.8 percent in FY 2009 to 29.2 percent in FY 2011. Similarly, the percent of individuals who exited after eligibility, but prior to receiving services has decreased over the past five years, from 30.8 percent in FY 2007 to 22.3 percent in FY 2011. In FY 2011, the percentage of individuals who exited in this category was lower than the 26.9 percent national average for combined agencies.

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

The largest percentage of individuals who exited the VR process in FY 2011 was individuals without employment outcomes at 31.1 percent. This percentage was higher than the national average of 26.3 percent for combined agencies. Additionally, this percentage increased every year over the past five years from 21.9 percent in FY 2007 to 31.1 percent in FY 2011. This trend is reflected in LRS' decreasing employment rate, which has ranged from 58.93 in FY 2007 to 47.66 percent in FY 2009. In FY 2011, LRS' 48.39 percent employment rate was lower than the 52.88 percent national average for combined agencies.

While the quality of the employment outcomes achieved by individuals served by LRS over the past five years has been higher than the national average for combined agencies, as stated above, LRS' overall performance on the indicators of a quality employment outcome have been on a downward trend since FY 2008. In FY 2008, the average hourly wage for individuals with competitive employment outcomes was \$15.83, and this decreased to \$12.17 in FY 2011. The average hours worked has also decreased every year over the past five years from 36.5 hours in FY 2007 to 33.1 hours in FY 2011. Additionally, the percentage of individuals who exited the program with employer-provided medical insurance decreased from 45.5 percent in FY 2007 to 29.1 percent in FY 2011.

## Fiscal Analysis

**Table 2.2**  
**LRS Fiscal Performance Data for FY 2007 through FY 2011**

<b>VR Fiscal Profile</b>	<b>Quarter</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Grant amount	4th	43,077,993	43,077,993	33,085,896	31,482,174	33,432,451
	Latest/ Final*	43,077,993	43,077,993	33,085,896	31,482,174	33,432,451
Total outlays	4th	15,650,915	20,829,563	23,844,206	26,320,828	28,389,347
	Latest/ Final*	54,738,564	54,750,143	42,052,749	40,008,962	42,480,878
Total unliquidated obligations	4th	21,851,727	16,514,567	17,903,071	13,683,903	11,656,686
	Latest/ Final*	0	0	0	0	0
Federal share of expenditures	4th	8,009,045	9,164,041	14,881,551	17,798,271	19,340,920
	Latest/ Final*	43,077,993	43,044,770	33,085,030	31,482,174	33,432,451
Federal share of unliquidated obligations	4th	17,834,623	16,514,567	17,903,071	13,683,903	11,656,686
	Latest/ Final*	0	0	0	0	0
Total federal share	4th	25,843,668	25,678,608	32,784,622	31,482,174	30,997,606
	Latest/ Final*	43,077,993	43,044,770	33,085,030	31,482,174	33,432,451
Recipient share of expenditures	4th	7,641,870	11,665,522	8,962,655	8,522,557	9,048,427
	Latest/ Final*	11,660,571	11,663,053	8,967,719	8,526,788	9,048,427
Recipient share of unliquidated obligations	4th	4,017,104	0	0	0	0
	Latest/ Final*	0	0	0	0	0
Agency actual match (total recipient share)	4th	11,658,974	11,665,522	8,962,655	8,522,557	9,048,427
	Latest/ Final*	11,660,571	11,663,053	8,967,719	8,526,788	9,048,427
Agency required match (total recipient share required)	4th	2,167,632	2,480,230	4,027,662	4,817,067	5,234,582
	Latest/ Final*	11,658,974	11,649,982	8,954,398	8,520,588	9,048,427
Over/under match (remaining recipient share)	4th	(9,491,342)	(9,185,292)	(4,934,993)	(3,705,490)	(3,813,845)
	Latest/ Final*	(1,597)	(13,071)	(13,321)	(6,200)	0
MOE **	4th					
	Latest/ Final*			8,967,719	8,526,788	9,048,427
Unobligated funds qualifying for carryover	4th	17,234,325	17,399,385	301,274	0	2,434,845
	Latest/ Final*	0	33,223	866	0	0
Total federal program income earned	4th	1,650,835	1,738,114	1,739,082	1,200,287	1,550,658
	Latest/ Final*	1,650,835	1,738,114	1,738,158	1,200,287	1,550,658
Total indirect costs	4th	817,346	1,598,499	590,499	1,058,517	2,658,591

VR Fiscal Profile	Quarter	2007	2008	2009	2010	2011
	Latest/ Final*	2,555,449	4,331,304	2,454,917	1,963,443	3,330,881

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

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

RSA reviewed LRS' fiscal performance data from federal FYs 2007 through 2011. While state appropriated funds comprised between 80.7 to 95.6 percent of the agency's total non-federal share of expenditures over the five-year span, when considering funds relinquished through reallocation, the state appropriation comprised only 44.4 to 73 percent of the non-federal share needed to fully match the federal VR award. From FYs 2007 through 2011, LRS fiscal data demonstrated a significant amount of federal unliquidated obligations, ranging from 27.4 percent in FY 2011 to 42.6 percent in FY 2009. Carryover funds have ranged from a low of \$0 in FY 2010 to a high of \$17,399,385 (31.8 percent of federal award) in FY 2008. Program income earned, comprised of Social Security reimbursements, has been fairly stable over the five-year span. However, indirect costs have ranged over the time period from a low of \$1,963,143 in FY 2010 to a high of \$4,331,304 in FY 2008. In FYs 2008 and 2009, the final SF-269 reports demonstrated unobligated balances of federal funds in the amounts of \$33,223 and \$866, respectively, despite the fact that the agency reports matching these funds. A review of G5 Award History Reports confirmed that the \$33,223 was deobligated on 9/22/2011 and the \$866 was deobligated on 7/23/2012. Only in FY 2007 did LRS have recipient share of unliquidated obligations. Based upon the total amount of non-federal funds provided during each grant period, LRS incurred maintenance of effort (MOE) penalties in FYs 2009 and 2010.

## SECTION 3: EMERGING PRACTICES

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

- strategic planning;
- program evaluation and quality assurance practices;
- financial management;
- 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.

### **Transition: Bridging the Gap (BtG)**

LRS initiated the BtG program in 2005, in conjunction with the Lafouche Parish School System and the community rehabilitation program (CRP) named Options for Independence. BtG provides LRS transition students with work readiness skills training, followed-up during their school exit year by job development, job placement and follow-along services. Customized work adjustment training is based on the student's skill development need and consumer choice, consistent with the goals listed in the school's individualized education plan and LRS' individualized plan for employment. The anticipated length of time for completing this training can be up to two school academic years, and it may be extended, if necessary. Areas of instruction offered during the school year include: work maturity, social and functional skills, general career exploration, pre-employment skills, on-the-job skills, and job retention. After being determined job ready in the students' exit year, they are placed in an appropriate job match and provided at least bi-weekly follow-along services until they exit school or until they have exited school and maintained 90 days of successful employment, whichever comes first. Most students seek employment by the time they exit school using the skills they have learned through BtG. However, some students choose to continue with training/education in a postsecondary setting. During the past two years, 54 transition-age youths successfully achieved employment outcomes while participating in the BtG program. A complete description of the practices 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 federal FY 2013, RSA assessed progress toward the implementation of recommendations accepted by LRS resulting from the prior monitoring review in FY 2008, and the resolution of compliance findings from that review, as well as the recommendations stemming from the technical assistance (TA) visit that occurred during FY 2011.

### **Recommendations**

RSA's last monitoring review of LRS took place in FY 2008 during the FY 2007-2010 monitoring cycle and resulted in a monitoring report issued on September 12, 2008, that contained recommendations in nine programmatic and four fiscal areas of agency operations, and one fiscal compliance finding. Shortly after the completion of this review, Louisiana initiated discussions to move LRS from the Department of Social Services (DSS), now named the Department of Children and Family Services, to the Louisiana Workforce Commission (LWC). During the first eight months of FY 2010, RSA engaged in discussions with LRS and LWC management in order to provide TA on the organizational requirements that needed to be maintained if this transfer was to be implemented. This included reviews of the legislation that was ultimately signed by the Governor and formally concluded the transfer effective July 1, 2010. Subsequently, RSA conducted an on-site TA visit to LRS on November 15-18, 2010 in order to provide assistance to LRS and LWC management as they implemented the transfer, and which resulted in a summary report containing six recommendations, dated March 18, 2011.

Since moving to LWC, LRS has conducted planning sessions with field and administrative staff that resulted in the decision to implement an Employment Model Initiative to focus agency efforts on increasing employment outcomes for individuals with disabilities. LRS organized the following three working committees to change agency culture to focus on employment, and not the provision of services: Intake-Applications-Eligibility; IPE-Planning-Service Provision; and Employment Outcomes. Each workgroup is composed of a cross-section of staff, including a state office member, VR Counselor, Rehabilitation Counselor Assistant (RCA), and a district supervisor. To ensure field staff/SRC involvement and successful communications regarding all activities conducted while transitioning to the new model, an Employment Steering Committee was created. The steering committee is comprised of the assistant director, two bureau administrators, the SRC chairperson (at the time of the RSA review, the program manager of the Louisiana Developmental Disabilities Council), and two regional managers. Monthly meetings are held with the workgroups and the steering committee to review recommended changes to agency structure, processes and policies in order to successfully transition to the new model.

Described below is LRS' progress on implementing activities related to the recommendations and compliance finding contained in the two RSA reports, separated into two categories, VR Program Administration and Financial Management. The recommendations and compliance finding contained in the RSA reports may be reviewed in detail at the [RSA website](#). In order to avoid duplication, similar recommendations have been grouped together.

## **VR Program Administration**

### **Designated State Unit (DSU) Administrative Requirements**

- RSA's primary concern regarding LRS' move from DSS to LWC related to agency compliance with the DSU requirements. The LRS director stated that he is responsible for the allocation and expenditure of VR funds, and that this responsibility is not delegated to any other agency or individual. All staff members are employed full time on the rehabilitation work of the DSU. Subsequent to the transfer, fiscal, human resource, and public relations functions have been consolidated at LWC and are no longer a part of the DSU. Personnel working on multiple cost objectives are tracking their time in accordance with applicable cost principles.

### **Cross-Training Business and Career Solutions Center (BCSC) Partners**

- RSA recommended that LRS partner with the SRC to develop and conduct cross-training activities with LWC staff on the mission, purpose and responsibilities of the various BCSC partners to clarify each partner's role in the BCSC. This training was conducted with representatives from OWD, Workforce Investment Council, LRS state and regional offices, SRC, and the Statewide Independent Living Council. LRS also developed training to provide additional information regarding LRS' roles and responsibilities within the BCSCs, and is working with LWC's training director to conduct this training statewide.

### **Accessibility**

- A partnership between LRS and OWD was established over the past three years to provide the BCSCs with TA on Section 504/Americans with Disabilities Act (ADA) issues (potential physical and structural barriers and solutions), and the more recent ADA/Architectural Barriers Act (ABA) guidelines, established in 2010 to include Section 508 telecommunications accessibility and software utilization for customers who require screen-reading technology. This partnership extended to providing TA and grant proposal writing assistance to LWC on the last two proposals submitted to the U.S. Department of Labor, Office of Disability Employment Policy, to secure funding under the Disability Employment Initiative, formerly called the Disability Program Navigator program. The proposal included joint trainings between LRS and its BCSC partners to increase the availability, reliability, and utility of specialized software in the BCSCs. LRS' program coordinator for rehabilitation technology provided TA to OWD staff members and reviewed the accessibility features (lift and workstation access) and software availability onboard the mobile BCSC vehicles used to provide statewide job search and job placement services. Prior to the transition from DSS, LRS conducted a thorough review of the ADA accessibility needs of the new LRS headquarters. As a result of these recommendations, an architect was able to repurpose the building to meet ADA/ABA standards.

### **Confidentiality**

- LRS employs the same confidentiality restrictions and guidelines at the BCSCs as they do at the LRS regional offices. This includes access to private meeting rooms and locked

file cabinets. Since LRS provides most services to the BCSCs on an itinerant basis, VR Counselors bring their files and computer equipment to the BCSCs.

### **Impact of Past/Potential Budget Cuts on the VR Program**

- RSA recommended that LRS: partner with the LWC and the SRC to provide information to the Governor on the role of the VR program in assisting individuals with disabilities to achieve employment outcomes; re-evaluate any future plans for reducing staff in light of the importance of the role of the VR Counselor and other staff members providing direct services and, instead focus on staff members providing ancillary services; consider reducing the number of LRS staff performing assessments and evaluations that may not be necessary in determining eligibility or evaluating vocational potential; and collaborate with LWC in improving internal and external communication regarding the budget cuts and the impact on service delivery. LRS partners with the LWC and the SRC to develop and provide information to the Governor and Louisiana legislature on the role of the VR program in assisting individuals with disabilities to achieve employment outcomes. The SRC legislative committee drafted and submitted a fact sheet to the legislature during the 2012 session which contained general information about the VR program, VR budget facts, and cost-benefit analysis of the LRS VR program.
- LRS developed the following strategies, some of which have already been implemented, to protect VR Counselor positions: realigning supervisory units in order to use supervisor vacancies to hire VR Counselors (New Orleans and Lafayette); increase the VR Counselor to RCA ratio; thereby reducing the number of RCA positions needed (vacancies created through RCA attrition will be used to hire VR Counselors); LRS did not fill an administrative staff position in order to hire a VR Counselor; and the current vacancy rate is a reflection of the priority the agency is giving to hiring VR Counselors - 44 percent for Rehabilitation Employment Development Specialists (REDS), 40 percent for evaluators, and only 18 percent for VR Counselors.
- On a monthly basis, the LRS director attends LWC senior management meetings and LRS executive staff participates in budget meetings with LWC fiscal/budget staff, in order to improve internal and external communications regarding budget cuts and the impact on service delivery.

### **Supported Employment (SE)**

- LRS consumers receiving SE services have Natural Supports Plans developed by the CRP to identify extended services. SE milestones have been revised to include monthly verification that job coaching was provided by the vendor on the job site. Each milestone requires the counselor to review the documentation submitted by the CRP and to verify the information with the consumer. Staffings are scheduled as needed. In FY 2011-2012, LRS conducted a workgroup on SE. Some funding sources for extended follow along include the New Opportunities Waiver, offered through the Office for Citizens with Developmental Disabilities (OCDD), and the Social Security Work Incentive Plan and Ticket To Work. In addition, there are ongoing meetings with the OCDD and the Office of Behavioral Health to partner in providing services to concurrent consumers and to provide extended follow along services. Fees for subsequent placements are not applicable, since when a consumer loses a job and is placed on another one, the CRP will

only be eligible for payments resulting from the milestones the consumer has not yet achieved.

- The case management system has been updated to verify whether or not an individual receiving SE services at closure will require ongoing supports. The closure cannot be approved without this field being addressed. Based on the date of birth entered at application, a case cannot be processed by the case management system unless the individual is at least 10 years of age. All staff have access to the fully accessible system as needed to perform their job functions.

### **Transition-Age Youth**

- The LRS transition coordinator attends state office executive management team meetings, when appropriate, in order to discuss transition services. LRS collects data on the total number of transition cases, and the number of successful and unsuccessful closures, to identify trends in service delivery that have the potential to improve the achievement of employment outcomes for this population. The transition coordinator meets monthly with the TACE Transition Learning Collaborative to gather and distribute information which is shared with the Transition VR Counselors in the eight regional offices. Conference calls are held to discuss outreach and referral processes and what works best in achieving employment outcomes. Data is collected on Bridging the Gap and similar programs to determine the potential for statewide implementation. In response to RSA's recommendation, LRS reclassified Bridging the Gap under the innovation and expansion authority.
- One of LRS' Employment Model Initiative workgroups is tasked with increasing the number and quality of employment outcomes. The workgroup is considering RSA's recommendation to revise its current financial needs test to provide a sliding schedule, and removing tuition from the services that are subject to the financial needs test.

### **Quality Assurance (QA)**

- LRS' QA unit conducted a statewide comprehensive review of 60 cases closed without an employment outcome after receiving services to evaluate and identify those trends and characteristics that were leading to unsuccessful closures. A random sample of 60 cases was selected, which included cases from all eight regional offices. This random sample included a specific emphasis on transition students (33.3 percent = 20 cases) with the remaining cases reflecting a representation of all other types of services (66.6 percent = 40 cases). In addition to the QA unit's review of the above noted 60 cases, a survey form was sent to each of the 60 consumers included in this review to assist in identifying closure trends. On April 29, 2011, the QA unit submitted a formal report on the information gathered from this review to the LRS assistant director and bureau administrators for their use in developing strategies to reduce the number of unsuccessful outcomes.
- Two-day training in two vocational evaluation systems was presented in September, 2010, to all the LRS evaluators throughout the state. Rehabilitation Employment Assessment Program (REAP) staff continue to be monitored annually to ensure consistency and timeliness.

### **Rehabilitation Technology (RT)**

- Following RSA's monitoring review, CRP program bureau administrator and the RT program coordinator, worked with the Louisiana Tech University Center for Rehabilitation Engineering Science and Technology (CREST) to improve the provision of RT. LRS contracted with CREST to revise the Technical Assistance and Guidance Manual 412 Series pertaining to RT to include clarification of the roles and responsibilities of the VR Counselor, RT consultant, consumer, and contractor (vendor or provider). This clarification was also addressed in the VR Counselor training. The guidance and training stipulated that follow-up inspections of RT devices and equipment are available upon request. Statewide training was conducted in each of the eight regional offices in FY 2011. LRS and University of New Orleans staff presented training on new devices, standards, agency policies, comparable benefits, and procedures and guidelines.

### **Individuals' Participation in the Cost of Services**

- As a part of LRS' fiscal planning process for FY 2009, the agency considered applying a financial needs test to RT services. An informal survey of consumers receiving RT services indicated that the vast majority were either supplemental security income or social security disability insurance recipients. Since this population is exempt from participating in the cost of services, any savings realized by applying a financial needs test would have been negligible.
- LRS published revised agency procedures on December 19, 2009 to increase an individual's participation in the cost of services by stipulating that to purchase a computer, the VR Counselor must obtain a director's exception, and to provide a home modification, the maximum fee, without the director's exception, for exterior modifications was set at \$4,500, and interior modifications at \$7,500. The cumulative result of these measures has been a reduction in VR program expenditures.

### **Order of Selection (OOS)**

- LRS is currently receiving TA from Region 6 TACE and the Institute on Community Inclusion on these recommendations. In addition, the Employment Model Initiative workgroups are continuing to review LRS' OOS policy and guidance, and will be making recommendations. LRS anticipates that the changes to the service delivery model will increase the number of consumers served and reduce service delivery costs, while concurrently reducing the number of OOS priority categories and possibly opening up closed OOS priority categories.

### **Job Placement Specialists and Job Readiness Training**

- The Rehabilitation Employment Development Specialists (REDS) continue to conduct Job Opportunity Workshops in the various regions, as needed. At these workshops, resume writing, completing applications, job interviewing, and job search issues are discussed. Due to budget constraints, LRS' REDS have been reduced. However, LRS has fee-for-service agreements for the provision of job readiness training with various CRPs throughout the state, and this training is available to all consumers. A vacant REDS position in the Lafayette region has been filled, and all REDS now have access to the MIS to access information concerning the individuals with whom they are working.

REDS are included in marketing at the regional level, work with LWC business service representatives to market the program, and participate in the conduct of annual statewide job fairs.

### **Strategic Planning and Communication**

- LWC developed a unified strategic plan with goals to improve the business climate, drive employment, and provide excellent customer service. The goals were developed with input from LRS. LRS conducts internal strategic planning annually to update and revise unit strategies and activities. Since moving to LWC, LRS has conducted planning sessions with field and administrative staff resulting in the decision to implement the Employment Model Initiative.
- To coordinate and improve communications and information dissemination activities, a combined marketing/communication plan has been developed. In addition, since LRS' move to LWC, the agency has accessed LWC's communications section to improve marketing efforts.

### **Financial Management**

#### **Allocable Costs (Administrative Costs)**

- LRS was required to allocate an equitable portion of administrative costs to each program administered by LRS in accordance with federal cost principles at 2 CFR 225. In response to this finding, LRS started charging administrative costs to applicable programs at the end of State FY 2008 and developed an agency cost allocation plan for administrative/indirect costs that are non-VR related. LWC allocates administrative services and technology and other allocable costs according to the cost allocation plan approved by the U.S. Department of Labor. LRS successfully completed its corrective action plan and resolved this finding.

#### **Sources of Match and Maintenance of Effort**

- LRS plans to develop a five-year financial plan to ensure appropriate financial management, but deferred the development of this plan since state general funds, used as match, have been reduced significantly every year since the FY 2008 monitoring review. The agency returned a larger percentage of funds than at the time of the initial report in 2008. The percentage of match expended in the final quarter of the fiscal year decreased to 40 percent in FY 2011 and will be between 35 to 40 percent for FY 2012. The agency will continue to pursue strategies for obtaining additional non-federal funds, such as the Second Injury Fund. In addition, LRS staff members continue to attend the RSA-sponsored conferences to obtain current information concerning potential match sources.
- LWC advocated for the VR program, especially with regard to legislative efforts to secure state general funds used as match, and in exploring alternative sources of match. LWC executive director has consistently testified before legislative committees about the value of the VR program, the match requirements, the amounts of the VR grant relinquished, and the consequences of MOE penalties. LWC also provided the opportunity for the LRS director to testify before the Senate Finance Committee in the 2011 legislative session regarding the VR cost sharing requirements and the amount/percentage of the federal award that was not matched.

- In state FY 2011, LWC and LRS sponsored and advocated for the passage of legislation that allowed the Second Injury Fund Board to set aside one percent of its annual budget and allocate the money to LRS to use as match to provide direct services to clients. For the state FY, this amounted to \$467,914 in state funds and \$1,728,865 in federal funds, for a total of \$2,196,779.
- LWC/LRS is continuously exploring and pursuing alternative sources of match to support the VR program. LRS is engaged in ongoing discussions with the State Department of Education, local school districts, the Louisiana Community and Technical College System (LCTCS), and the Louisiana Department of Corrections (LDOC). LWC, LRS, LCTCS, and the LDOC convened a summit on September 17-18, 2012, to explore opportunities for improving services to individuals re-entering the community, and for securing additional matching funds.
- LRS provided funding information to the Louisiana Developmental Disabilities Council that was used to publish a newsletter that focused on the VR program and its challenges with funding. The newsletter is widely disseminated to stakeholders and legislators.

### **Contract Approval Process**

- LRS continues to adhere to its internal contract process to ensure contract approval by the Department of Administration before the effective date of the contract. This ensures that services are not rendered to VR participants before contracts are executed. Invoices for services rendered are paid without delays. Program staff are encouraged to submit new contracts, and renew existing contracts, approximately three months prior to the effective date to allow sufficient time for the approval process. LRS' contract liaison coordinates with LWC's Contract Unit and follows all state statutes related to the contracting process. The tentative implementation date for the new Contract Management System is spring, 2013.

### **Financial and Statistical Reports**

- LRS sent program and financial staff members to the RSA national financial and data conference in August, 2008, and the financial management conference in August, 2013, and now have a broader understanding of the financial requirements of the state VR program and the specific requirements related to reporting program expenditures and statistical data on the RSA-2 report.

### **Technical Assistance**

During the course of FY 2013 monitoring activities, RSA provided TA to enable LRS to implement accepted recommendations and resolve the compliance finding identified through the FY 2008 review and FY 2011 on-site visit.

### **Order of Selection**

- RSA provided TA regarding the importance of developing simpler and more effective OOS procedures consistent with the OOS recommendations made in its FY 2008 monitoring report.
- Relatedly, RSA provided TA on the federal requirement at 34 CFR 361.36(c)(2)(ii)(C) that requires LRS to apply the eligibility requirements without regard to the source of

referral. In spite of LRS' vested interest in serving individuals linked to the Second Injury Fund, and obtaining the state matching funds that are associated with these individuals, LRS must provide equal access to the VR program regardless of referral source.

### **Quality Assurance**

- LRS focuses QA activities on casework documentation compliance to the federal requirements. RSA provided TA on developing a more expansive QA system that links the results of the service record reviews to the information obtained through other agency monitoring and review activities in order to provide agency leadership with the information that it needs to effectively manage the agency. Information necessary to develop a comprehensive QA system includes: readily accessible data on agency fiscal and human resources; real-time data on the flow of consumers through the VR process, particularly related to opening and closing OOS priority categories; results of CRP and vendor monitoring; agency performance on the RSA Standards and Indicators and other measures of performance; results of consumer satisfaction surveys; RSA monitoring reports and state audits; and other evaluations of agency operations and performance.

## 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 LRS with the federal requirements related to its organization within Office of Workforce Development (OWD) and the ability of the LRS 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 LRS 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 organization of the OWD and LRS under 34 CFR 361.13(b);
- processes and practices related to the promulgation of VR program policies and procedures;
- the manner in which LRS 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 LRS 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:

- OWD and LRS directors and senior managers;
- Louisiana Workforce Commission (LWC) staff members responsible for the fiscal management of the VR program;
- SRC Chairperson;
- Client Assistance Program director; and
- TACE 6 center representatives.

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

- diagrams, organizational charts and other supporting documentation illustrating the DSU's position in relation to the DSA, its relationship and position to other agencies that fall under the DSA, and the direction of supervisory reporting between agencies;
- diagrams, tables, charts and supporting documentation identifying all programs from all funding sources that fall under the administrative purview of the DSU, illustrating the number of full-time equivalent (FTE) staff working on each program;

- the number of 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 LRS;
  - individuals who work on rehabilitation work of the LRS and one or more additional programs/cost objectives (e.g., One-Stop Career Centers); and
  - individuals under LRS that do not work on VR or other rehabilitation within the DSU.
- sample memoranda of understanding (MOUs) and/or cost allocation plans with One-Stop Career Centers; and
- documents describing Louisiana’s procurement requirements and processes.

## **Overview**

LRS is a program component located within OWD, along with the Workforce Development Field Operations that contains the state’s One-Stop Career Centers. The VR agency director reports to the OWD director, who in turn reports to the executive director of LWC. In addition to OWD, LWC includes the following seven offices: Workers Compensation, Unemployment Insurance, Management and Finance, Public Relations, Internal Audit, Executive Counsel, and Information Services.

At the time of the on-site review, there were a total of 307 FTEs under the direction of the LRS director, with 262 of the positions filled, all of who are engaged in the rehabilitation work of the DSU. There are a total of 502 positions in the OWD and 1,155 in the LWC. The DSU consists of a number of programs that report to the LRS director, including: VR Program; Randolph-Sheppard Program; Independent Living, Part B Program; and Independent Living Services for Individuals Who Are Blind Program. In addition, LRS has eight regional offices located around the state, each led by a regional manager who reports to the LRS assistant director.

RSA’s current review of the organizational structure of the LRS did not result in the identification of observations and recommendations. In addition, the implementation of this focus area did not result in the identification of compliance findings.

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

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

Section 7(37) of the Rehabilitation Act defines “transition services” as a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community

participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.

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

To implement this focus area, RSA reviewed:

- the progress toward the implementation of recommendations accepted by LRS and the resolution of findings related to the provision of transition services identified in the prior monitoring report from FY 2008 (see Section 4 above);
- formal interagency agreements between the VR agency and the state educational agency (SEA);
- transition-related VR service policies and procedures;
- VR agency resources and collaborative efforts with other federal, state and local entities;
- sample agreements between the VR agency and local education agencies (LEAs); and
- samples of other cooperative agreements.

To assess the performance related to the provision of transition services and the outcomes achieved by youth with disabilities, RSA reviewed LRS relevant data from FYs 2007 through 2011, describing:

- the number and percentage of youth with disabilities who exited the VR program at various stages of the process;
- the amount of time spent in key phases of the VR process, including eligibility determination, development of the IPE and the achievement of a vocational goal;
- the number and percentage of youth with disabilities receiving various VR services, including, among others, assessment, university and vocational training, transportation, RT, and job placement; and
- the quantity, quality and types of employment outcomes achieved by youth with disabilities.

To provide context for the agency's performance in the area of transition, RSA also compared the performance of LRS with the national average of all combined state agencies.

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

- the LRS director;
- LRS VR counselors and transition staff;
- the LRS Transition Coordinator serving as liaison to the SEA and other agencies; and
- state educational personnel.

RSA's review of transition services and employment outcomes achieved by youth with disabilities did not result in the identification of observations and recommendations. In addition, the implementation of this focus area did not result in the identification of compliance findings.

### **Technical Assistance**

RSA provided TA to LRS related to transition services while on-site in Louisiana regarding the following issue:

#### **Purchase of Computers**

- In response to its economic challenges, LRS has implemented various procedures to attempt to conserve fiscal resources, one of which is requiring the LRS Director's approval for the purchase of a computer. RSA is concerned that VR Counselors may cease to include computers on IPEs, even when the computer is critical to achieving an individual's vocational goal. RSA encouraged LRS management to constantly reassess the efficacy of this procedure to ensure that it does not preclude the purchase of computers in appropriate cases.

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

For purposes of the VR program, fiscal integrity is broadly defined as the proper and legal management of VR program funds to ensure that VR agencies effectively and efficiently manage funds to maximize employment outcomes for individuals with disabilities. Through the implementation of this focus area, RSA assessed the fiscal performance of the VR and SE programs and compliance with pertinent federal statutory and regulatory requirements, including cost principles, governing three components of review: financial resources, match and MOE, and internal controls.

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 FYs 2007 thru FY 2011, along with other fiscal reports as necessary, to identify areas for improvement and potential areas of noncompliance.

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

- the FY 2011 summary report and FY 2008 monitoring report issued pursuant to Section 107 of the Rehabilitation Act (see Section 4 above for a summary of the agency’s progress toward implementation of recommendations and resolution of the finding);
- A-133 audit findings and corrective actions;
- state/agency allotment/budget documents and annual federal fiscal reports;
- grant award, match, MOE, and program income documentation;
- agency policies, procedures, and forms (e.g., monitoring, personnel certifications, procurement and personnel activity reports), as needed;
- documentation of expenditures including contracts, purchase orders and invoices;
- if appropriate, third-party cooperative arrangements;
- 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 LRS did not result in the identification of observations and recommendations. In addition, the compliance findings identified by RSA through the implementation of this focus area are contained in Section 6 of this report.

### **Technical Assistance**

RSA provided TA to LRS related to the fiscal integrity of the VR program while on-site in Louisiana regarding the following issues:

### **Requirements on Establishment Projects**

- RSA provided TA on the requirements of establishment projects, including pre-planning activities.

### **UpLIFTD**

- RSA reviewed LRS’ UpLIFTD agreement and provided specific TA related to the agreement as a fee-for-service agreement versus an agreement to pay for other costs pertaining to the establishment of UpLIFTD as a CRP. LRS entered into the UpLIFTD establishment project and paid costs related to administrative personnel and related costs, and other operating costs. It appears that this additional agreement was implemented under the “establishment” authority under the VR program because both the primary contract and this additional agreement are titled “Establishment Grant Application.”<sup>1</sup> In the event that this additional agreement was implemented under the “establishment authority” of the VR program, it appears that the administrative personnel and related costs would be permissible in accordance with 34 CFR 361.5(b)(17)(ii) and, therefore, would be allowable costs under the VR program.

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<sup>1</sup> Federal regulations at 34 CFR 76.50(b)(2) make it clear that the authorizing statute determines whether a grantee has the authority to subgrant federal funds. Neither Title I of the Rehabilitation Act nor its implementing regulations at 34 CFR part 361 authorizes VR grantees to subgrant VR funds. Therefore, LRS may not enter into a “grant” with UpLIFTD for purposes of establishing, developing, or improving a CRP, but rather may enter into a contract for this purpose. While we are not making a finding specific to the issue of subgranting, LRS needs to discontinue referencing agreements with providers as “grants.”

RSA's concern with this additional agreement pertains to the operating costs. According to Exhibit B.II, these costs were used to pay for gas, cell phones, insurance, background checks, vehicle maintenance, IT licenses and support, supplies, and other operating costs. As stated above, LRS may use VR funds to pay for other costs necessary to make the CRP functional or increase its effectiveness in providing VR services to applicants or eligible individuals, so long as they are not ongoing operating expenses of the program (34 CFR 361.5(b)(17)(iii)). Most, if not all, of the "other" costs specified in the additional agreement would constitute on-going expenses related to the operation of UpLIFTD and, therefore, would not be permissible under the definition of establishment, development, or improvement of a CRP at 34 CFR 361.5(b)(17)(iii). As such, these costs would not be allowable under the VR program.

However, in looking at this additional agreement further, and in talking with LRS staff while on-site, it appears that this agreement may actually have been intended to be a separate fee-for-service agreement for the actual provision of VR services to the eligible individuals under the UpLIFTD establishment project. While the heading of this additional agreement mirrors the heading on the primary contract and it details each line item that comprises the total, there is also language in the heading and the body of this agreement that seems to indicate this is actually a separate fee-for-service agreement. There is a separate heading on the document, entitled "fee-for-service." In the body of the agreement, there is language that says that UpLIFTD intends to serve 40 individuals during the course of the one-year contract, at a rate of \$1,028 per person, which equals \$41,120 (\$31.05 less than the actual agreement total of \$41,151.05). The agreement specifies that LRS will pay UpLIFTD at this rate per person after the individual has been determined eligible for LRS, had a vocational assessment performed by UpLIFTD, and had an IPE developed. When questioned about this particular agreement further during the RSA on-site monitoring, LRS staff confirmed that this was the agency's attempt to develop a fee-for-service agreement to cover the costs of the VR services, which were above and beyond the cost of establishing, developing, or improving UpLIFTD as a CRP. LRS staff informed RSA that it wrote the agreement in this manner to demonstrate that there were actual costs being used to determine a rate for each consumer served and to show that those costs would be reasonable in accordance with federal cost principles. In this event, these expenditures incurred for the provision of VR services under a fee-for-service agreement would be allowable. To avoid future confusion, RSA encourages LRS to revise this agreement to make it clear that this is indeed a fee-for-service agreement and not an agreement to pay for other costs pertaining to the establishment of UpLIFTD as a CRP pursuant to 34 CFR 361.5(b)(17)(iii). (See Finding 2 in Section 6 below regarding additional aspects of the UpLIFTD agreement related to the pre-planning requirements of establishment projects.)

### **Supplementing Personnel Funds**

- LRS and RSA discussed the need to supplement the IL Part B and OIB funds charged to personnel costs for administering the program. RSA indicated that VR Social Security Reimbursement program income may be transferred to the IL Part B, OIB, SE, or Client Assistance Programs, per VR regulations at 34 CFR 361.63(c)(2).

### **Use of Grant Funds for Conferences and Meetings**

- RSA reviewed the Memorandum to Education Grantees Regarding The Use Of Grant Funds For Conferences And Meetings, released by the US Department of Education's Office of the Chief Financial Officer in June, 2012. RSA indicated federal grant funds may be used to pay for conference fees and travel expenses of grantee employees, consultants, or experts to attend a conference or meeting if those expenses, and number of attendees, are reasonable and necessary to achieve the purposes of the grant. Additionally, grantees hosting a meeting or conference may not use grant funds to pay for food for conference attendees unless doing so is necessary to accomplish legitimate meeting or conference business.

### **Use of Grant Funds for the Purchase of Food in Third-Party Cooperative Arrangements**

- RSA discussed the purchase of food within third-party cooperative arrangements, and offered the use of maintenance as an alternative to catering costs when providing meals to LRS consumers who attend overnight workshops and trainings.

### **Maintaining Personnel Activity Reports**

- RSA provided information regarding the need for staff working on multiple cost objectives to develop and maintain personnel activity reports to ensure charges to DSU programs are proportionate to the benefit the programs received, based upon actual time staff spent working on the programs.

## SECTION 6: COMPLIANCE FINDINGS AND CORRECTIVE ACTIONS

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RSA identified the following compliance findings and corrective actions that LRS is required to undertake. Appendix A of this report indicates whether or not the agency requests TA to enable it to carry out the corrective actions. The full text of the legal requirements pertaining to each finding is contained in Appendix B.

LRS 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 and submitted online using the [RSA website](#) within 45 days from the issuance of this report and RSA is available to provide TA to enable LRS to develop the plan and undertake the corrective actions.

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

### 1. Establishment Project - Lighthouse for the Blind

#### Legal Requirements:

- Rehabilitation Act – Sections 101(a)(15)(A), (C) and(D); 103(b)(2)(A); and 111(a)(1)
- VR Program Regulations – 34 CFR 361.3; 361.5(b)(9), (17) and (18); 361.29(a), (c) and (d); 361.49(a)(1); and 361.60(b)(1) and (b)(3)(i)
- EDGAR – 34 CFR 80.22(a)(1) and 80.24(a)
- Federal Cost Principles – 2 CFR 225, Appendix A, paragraph C

#### Background:

In FY 2005, the impact of Hurricane Katrina caused the Lighthouse for the Blind (Lighthouse) in New Orleans, a private non-profit entity providing services as a CRP as defined for purposes of the VR program (34 CFR 361.5(b)(9)), to relocate its cup manufacturing equipment to Crystal Springs, Mississippi. The Lighthouse Board of Directors felt strongly that the operation should be moved back to Louisiana when economically feasible. During FY 2010, the Lighthouse began preparations to relocate its facilities to the Baton Rouge area. LRS implemented a four-year project, for a total amount of \$5,829,021, to facilitate the establishment of the Lighthouse CRP component in Baton Rouge in accordance with Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1), as well as the relocation of the cup manufacturing component, which is separate and distinct from the component of the Lighthouse that would be considered a CRP for VR purposes. Under the establishment project, the Lighthouse provides VR services, training, and employment opportunities for individuals with disabilities, particularly individuals who are blind and visually impaired.

Specifically, at the time of the review LRS had executed a \$5,489,409 contract, covering the period from January 1, 2011 through June 30, 2013, to establish a CRP component of the Lighthouse for the provision of VR services to LRS applicants and consumers. This CRP component is separate and distinct from the cup manufacturing component of the Lighthouse facility because a CRP, as defined at 34 CFR 361.5(b)(9) is an entity that provides VR services, whereas the cup manufacturing component is a business for the production of cups for sale. The contract establishing the CRP component was to be used for expenses related to renovating the building, hiring staff to provide VR services, relocating three cup manufacturing machines from the Mississippi location, and purchasing three additional cup machines, as well as equipment and supplies for both the CRP (VR services) and production components of the Lighthouse. The budget categories under which federal and non-federal VR funds have been expended include Personnel Services, Capitalized Furniture/Equipment, and Acquisition and/or Renovation costs, with the majority of the funding under the contract devoted to activities that support the Lighthouse's cup manufacturing component – not the CRP component of the Lighthouse, as will be demonstrated throughout this finding. Louisiana contracting requirements prevented the execution of a contract covering the entire four years of the project, and the intent of LRS and the Lighthouse was to execute a second contract for the fourth and final year of the project for the remaining amount of \$339,612 of the original total projected cost.

**Finding:**

LRS improperly used the establishment authority under Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1) to assist the Lighthouse in the relocation of its cup manufacturing facility and equipment to Baton Rouge, because LRS:

- did not engage in the necessary planning activities prior to engaging in the project with the Lighthouse, in accordance with Section 101(a)(15) of the Rehabilitation Act and 34 CFR 361.29;
- incurred VR expenditures not allowed under Section 111(a)(1) of the Rehabilitation Act and 34 CFR 361.3, by using VR program funds to cover the entire costs of renovating the Lighthouse production facility and low vision store, as well as the purchase of equipment for the production component, rather than expending VR funds solely for costs associated with the CRP component of the Lighthouse, which is responsible for the provision of VR services; and
- did not properly calculate the allowable federal share of the staffing costs associated with the CRP component of the Lighthouse project, in accordance with regulations at 34 CFR 361.5(b)(17)(ii).

For these reasons, and as described in more detail below, the expenditure of VR program funds in support of the entire production component and low vision store of the Lighthouse project was not allowable under the VR program; therefore, any non-federal funds contributed by the Lighthouse and associated with those same unallowable expenditures cannot be used by LRS to satisfy FY the VR program matching requirement at 34 CFR 361.60(b)(1) and 34 CFR 80.24(a). Only expenditures associated with the establishment of the CRP component, if made in accordance with federal requirements, would be allowable under the VR program.

## **A. Establishment, Development, or Improvement of a CRP**

Pursuant to Section 103(b) of the Rehabilitation Act and 34 CFR 361.49, VR agencies may expend VR program funds on services that promise to contribute substantially to the rehabilitation of groups of individuals with disabilities and are not those individualized services listed on any one individual's approved individualized plan for employment (IPE). In pertinent part, these statutory and regulatory provisions permit VR agencies to use federal VR funds for the establishment, development, or improvement of a public or other non-profit CRP that is used to provide VR services for the purpose of promoting integration and competitive employment (Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1)), if the requirements discussed below are met.

### **Planning Requirements:**

Section 101(a)(15) of the Rehabilitation Act and 34 CFR 361.29 require that the DSU engage in substantial planning prior to initiating "establishment" activities pursuant to Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1). The DSU, together with its SRC, must conduct an assessment of VR needs in the state every three years and include the results of that needs assessment in its State Plan (Section 101(a)(15)(A) of the Rehabilitation Act and 34 CFR 361.29(a)). The assessment must identify the VR needs of individuals with the most significant disabilities and those from unserved or underserved populations, and include a description of the need to establish, develop, or improve CRPs in the state (Section 101(a)(15)(A) of the Rehabilitation Act and 34 CFR 361.29(a)(1)). The DSU must use the results from its triennial needs assessment to develop goals and priorities for carrying out its VR program (Section 101(a)(15)(C) of the Rehabilitation Act and 34 CFR 361.29(c)). The DSU also must develop strategies to address the identified VR needs within the state and achieve its goals and priorities, including those related to the establishment, development, or improvement of a CRP (Section 101(a)(15)(D) of the Rehabilitation Act and 34 CFR 361.29(d)).

LRS' State Plan for FY 2011, the year in which the Lighthouse project was implemented, contains information describing the results of the FY 2010 triennial needs assessment in Attachment 4.11(a). The attachment includes a general reference to establishing, improving, or expanding CRPs. Specifically, an LRS employee survey indicates that "62.4% of respondents felt that new CRPs needed to be established to adequately serve LRS consumers and 66.2% felt that current CRPs should be improved or expanded." This statement does not reference the need to establish, develop, or improve CRPs in the state for the purpose of providing VR services to individuals who are blind and visually impaired. Although this general statement may be considered minimally sufficient to demonstrate the need in Louisiana to establish, develop or improve CRPs through the triennial needs assessment, the goals, priorities, and strategies found in the FY 2011 State Plan make no reference to the provision of services by CRPs generally, or the Lighthouse project specifically, as required by Section 101(a)(15)(C) and (D) of the Rehabilitation Act and 34 CFR 361.29(c) and (d).

Because LRS did not satisfy all of the pre-planning requirements, it was not authorized to use VR funds under Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1) to establish, develop, or improve a CRP, including the CRP component of the Lighthouse.

However, even if LRS had satisfied the pre-planning requirements for the Lighthouse project, RSA still has concerns with the project, as described more fully below.

### **The “Establishment” Authority under the VR Program:**

VR regulations at 34 CFR 361.5(b)(17) define the “establishment, development or improvement of a public or nonprofit [CRP]” as:

- the establishment of a facility for a public or non-profit CRP to provide VR services to VR consumers and applicants;
- staffing, if necessary, to establish, develop, or improve a CRP for the purpose of providing VR services to VR applicants and consumers for a maximum period of four years; and
- other expenditures related to the establishment, development, or improvement of a CRP that are necessary to make the program functional or increase its effectiveness in providing VR services to applicants or eligible individuals, but are not ongoing operating expenses of the program.

### **LRS’ Use of VR Funds for the Renovation of the Lighthouse Facility:**

As stated above, 34 CFR 361.5(b)(17)(i) defines the establishment, development, or improvement of a CRP as including the establishment of a facility for a CRP. Federal regulations further define the “establishment of a facility for a public or nonprofit CRP” to include, among other activities, “the remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building” (34 CFR 361.5(b)(18)(ii)).

The Lighthouse used the VR program funds contributed by LRS to the project to renovate three components of the facility in Baton Rouge, namely those portions of the building used for the provision of training and other VR services to individuals with disabilities (i.e., the CRP component), the store for the sale of low vision aids, and the cup manufacturing facility (i.e., the production component). However, the establishment authority under the VR program may be used only for the purpose of establishing, developing, or improving a CRP for the provision of VR services to VR applicants and consumers (Section 103(b)(2)(A) of the Rehabilitation Act, 34 CFR 361.5(b)(17) and (18), and 34 CFR 361.49(a)(1)). There is no authority under the Rehabilitation Act or its implementing regulations to use VR funds for the renovation of buildings that are not considered a CRP, as defined at 34 CFR 361.5(b)(9).

While the total costs of the renovations to the Baton Rouge facility (\$963,685) did not exceed the appraised value of the building (\$1,775,000 according to a market survey conducted in 2010), as required by 34 CFR 361.5(b)(18)(ii), not all portions of the facility renovated under the LRS contract would constitute a CRP, as defined at 34 CFR 361.5(b)(9), because they are not used for the provision of VR services to VR applicants or individuals receiving services from LRS as required by the definition of “establishment, development or improvement of a CRP” at 34 CFR 361.5(b)(17)(i).

According to information provided by LRS and Lighthouse staff, only one component of the Lighthouse is used exclusively for the provision of VR services. In that component, LRS applicants and consumers receive the following VR services: orientation and adjustment to blindness services, work adjustment/job readiness training, rehabilitation technology assessment and training, and job placement services. As such, this particular component of the Lighthouse project clearly satisfies the definition of a CRP at 34 CFR 361.5(b)(9), and renovations to that component would satisfy the definition of establishment of a facility for a CRP at 34 CFR 361.5(b)(18). For these reasons, VR funds incurred for the renovation of this particular component would be an allowable activity under the VR program using the authority to establish, develop, or improve a CRP (Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1)).

RSA does not question the expenditure of VR funds for the renovation of the CRP component, the portion of the facility used for the provision of VR services to LRS applicants and consumers. However, the use of VR funds to renovate the store, which sells aids and devices to blind and visually-disabled individuals, and the cup manufacturing component, used for the production of cups for sale on the open market, raises significant questions as to the allowability of those costs under the VR program, especially given LRS' use of the establishment authority as the basis for those expenditures. Given the questions raised by the use of VR funds for the renovation of the store and cup manufacturing components of the Lighthouse, RSA examined this issue closely throughout the monitoring process in order to have a complete and accurate understanding of the activities performed in these two components.

First, RSA reviewed the cup manufacturing component to determine whether that component would constitute a CRP, as defined at 34 CFR 361.5(b)(9), and thus, whether the renovation of that component would constitute the establishment, development, or improvement of a CRP, as defined at 34 CFR 361.5(b)(17)(i). RSA reviewed the extent to which LRS applicants and consumers used the cup manufacturing machines during their participation in VR program services, including VR training services, at the Lighthouse. In reviewing this issue, RSA relied on information provided by LRS during the course of the monitoring process, review of the Lighthouse facility and discussion with Lighthouse staff onsite, as well as information provided by LRS following issuance of the draft report. After review of LRS' response to this finding, contained in the draft report, RSA requested additional information from LRS clarifying the extent to which active LRS applicants and consumers were receiving VR services around the time of the monitoring review. On April 4, 2013, RSA requested that LRS provide information related to the amount of time LRS applicants and consumers were receiving VR services in the manufacturing component and retail store at the Lighthouse. On April 18, 2013, LRS responded to RSA with documentation that indicated the number of hours the cup machines were in operation in the manufacturing component, and the number of hours the store was operational for a three-month period (September 1, 2012 through November 30, 2012) that included the week of the on-site review. LRS broke this down into training hours and assessment hours. As supporting documentation, LRS provided Monthly Job Retention Progress Reports, monthly LRS employment satisfaction certifications, vocational assessments, and timesheets of individuals who were active LRS consumers during the three-month period, as well as individuals who were former LRS consumers with closed cases who worked at the Lighthouse. RSA further reviewed this information and determined that it needed a clarification of the

number of person hours that the cup machines were running during the three-month period, as the machines are often operated by more than one person performing different tasks related to manufacturing cups. On May 6, 2013 LRS provided additional information via email clarifying the number of person hours the cup manufacturing machines were operational during the three-month period, and provided timesheet information for all individuals working on the cup machines during that time.

RSA reviewed all the information provided and learned that, based upon the payroll summary, 13 individuals operated the cup manufacturing machines for 5,766.80 person-hours during the three-month period, all of whom were employed by the Lighthouse. Seven of these individuals had not been affiliated with LRS at any time; two individuals were former LRS consumers; and four of the 13 individuals (30.8 percent) were active LRS consumers receiving supported employment services in the cup manufacturing component of the Lighthouse during the three-month period, working a total of 1,881.66 person hours, which represents 32.6 percent of the hours the cup machines were operational for payroll purposes during this timeframe. In addition, the information provided by LRS indicated that another LRS consumer received assessment services using the cup manufacturing equipment machines for a total of seven hours during this same period. To the extent that the Lighthouse provided VR services identified in Section 103(a) of the Rehabilitation Act and 34 CFR 361.48, including vocational assessments, to these five individuals or other LRS applicants and consumers in the cup manufacturing component, and these services assisted the individuals to achieve competitive and integrated employment (as required by Section 103(b)(2)(A) and 34 CFR 361.49(a)(1)), the services would constitute the provision of VR services, as defined at 34 CFR 361.5(b)(58). As such, expenditures incurred while providing these services would be allowable under the VR program, pursuant to Section 111(a)(1) of the Rehabilitation Act and 34 CFR 361.3.

Once RSA determined, from the information provided by LRS and described in detail above, that VR services were indeed provided to some LRS applicants and consumers in the cup manufacturing component at the Lighthouse, RSA then examined the issue in terms of whether the costs incurred for the renovation of that particular component would meet the definition of “establishment, development, or improvement of a CRP” at 34 CFR 361.5(b)(17)(i), and, thus, would be allowable activities under the authority to establish a CRP at Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1). The information obtained by RSA during the course of the review, particularly that provided by LRS at the request of RSA following its response to the draft report, demonstrates that the cup manufacturing component of the Lighthouse operates primarily as a production facility and that it is used only to a limited extent for the provision of VR services to LRS consumers. As stated above, only 30.8 percent of the individuals working on the cup manufacturing machines were active LRS consumers receiving VR services during the time period reviewed, and those particular individuals used the machines 32.6 percent of the operational hours during that same time period. In addition, one other individual received assessment services on those machines for a total of seven hours during that same time period. Throughout this finding, RSA has made it clear that funds used for the establishment, development, or improvement of a CRP, including the establishment of a facility for a CRP, must be used solely to enable the provision of VR services to VR applicants and consumers. In this case, the cup manufacturing component is only used approximately one-third of the time for the provision of VR services to LRS applicants and consumers; the remaining

approximately two-thirds of the time is spent solely for the cup manufacturing business component of the Lighthouse. Pursuant to federal cost principles at 2 CFR 225, Appendix A, paragraph C.3, federal funds may be spent only to the extent that they are allowable under, and allocable to, the federal program. In this case, only a little less than one-third of the costs incurred for the renovation of the cup manufacturing component of the Lighthouse would be allocable to the VR program because that is the amount that is proportional to the benefit that the VR program received from those expenditures. As such, only this amount would be allowable under the VR program using the authority to establish a CRP. Consequently, the majority of VR program funds expended for renovations to the production component of the Lighthouse was not in compliance with the requirements for the establishment of a CRP facility, as defined at 34 CFR 361.5(b)(17)(i) and 34 CFR 361.5(b)(18).

Next, RSA reviewed the low vision store component of the Lighthouse, also created through the renovations of the Baton Rouge facility performed under the Lighthouse contract. As with the cup manufacturing component described above, the store component is not used entirely for the provision of VR services to LRS applicants and consumers. Generally, the low vision store provides an opportunity for individuals who are blind or visually impaired to purchase low vision aides during their training program, not to provide VR services to consumers. Nevertheless, the information provided by LRS on April 18 and May 6, 2013, indicated that the store was operational for a total of 520 hours during the three-month period at issue in this review. However, according to the information provided by LRS, the Lighthouse provided VR services to only two LRS consumers for a total of 1.75 hours of the total 520 hours that the store was in operation. These two individuals received low vision assessments related to the use of rehabilitation technology (defined at 34 CFR 361.5(b)(45)), an allowable VR service under the VR regulations at 34 CFR 361.48(q). As with the cup manufacturing component described in more detail above, federal cost principles require that federal funds be spent only to the extent that they are allocable to the VR program. With regard to the low vision store at the Lighthouse, only a negligible percentage, 0.3 percent, was used for the benefit of VR consumers receiving VR services in that component. For that reason, VR funds may be used only for 0.3 percent of the renovation of that component of the Lighthouse under the authority to establish, develop, or improve a CRP. Based on this information, the majority of VR program funds expended for renovations to the low vision store were not spent in compliance with the requirements for the establishment of a CRP facility, as defined at 34 CFR 361.5(b)(17)(i) and 34 CFR 361.5(b)(18).

In summary, with regard to the expenditure of VR funds for the renovations to the Lighthouse facility, only the funds used to renovate the CRP component of the Lighthouse, and those associated with that portion of the cup manufacturing component and low vision store from which LRS consumers benefited through the receipt of VR services, would be allowable under the VR program as a service to groups, pursuant to Section's 103(b)(2)(A) and 111(a)(1) of the Rehabilitation Act, 34 CFR 361.3 and 34 CFR 361.49(a)(1). Only these allowable expenditures incurred in connection with the renovations of the Lighthouse facility would satisfy the federal cost principles at 2 CFR 225, Appendix A, paragraph C, which require that federal funds be used for costs that are allocable, necessary, and reasonable for the federal program.

### **LRS' Use of VR Funds to Purchase Equipment for the Lighthouse Facility:**

As stated above, the definition of the “establishment, development or improvement of a CRP” includes the purchase of equipment if the expenditures are necessary to make the CRP more functional or increase its effectiveness in providing VR services to VR applicants or eligible individuals, and are not ongoing operating expenses of the program (34 CFR 361.5(b)(17)(iii)). Additionally, the definition of the “establishment of a facility for a public or non-profit CRP” also includes the acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary, to establish, develop, or improve a CRP (34 CFR 361.5(b)(18)(v)). Under the LRS contract using VR funds, equipment costs for the cup manufacturing component, not the CRP component, of the Lighthouse totaled \$3,791,773, the majority of which were used to purchase the three new cup manufacturing machines, totaling \$3,108,502. The remaining \$683,271 in VR program funds were spent on equipment used to support some facet of the cup manufacturing operation. As described more fully above, only four of the individuals (30.8 percent) employed in the use of the cup manufacturing equipment during the three-month period for which LRS provided information received allowable VR training services on those machines, for 32.6 percent of the hours the machines were operational. In addition, one other LRS consumer received assessment services on those machines for a total of seven hours. As with the renovation costs associated with the production component of the Lighthouse, VR funds spent for the purchase of the cup manufacturing machines are only allowable under the VR program (especially given that LRS is using the authority to establish a CRP as the basis for the expenditure of those funds), to the extent that they are allocable to the VR program. As with the renovation costs, only approximately one-third of the purchase and installation of the equipment would be allocable to the VR program in accordance with the federal cost principles. For this reason, only that amount would be allowable under the VR program pursuant to Section 111(a)(1) of the Rehabilitation Act and 34 CFR 361.3. Therefore, the majority of VR program funds expended for the purchase of the cup manufacturing equipment were not in compliance with the requirements for the establishment of a CRP facility, as defined at 34 CFR 361.5(b)(17)(i) and 34 CFR 361.5(b)(18), because LRS applicants or VR program participants only benefited from these expenditures to a limited degree through the receipt of VR services.

### **LRS' Use of VR Funds for Personnel Costs at the Lighthouse Facility:**

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

During the monitoring process, LRS provided information that demonstrated that the personnel costs identified as part of the Lighthouse project were related solely to the CRP component of the project and were used primarily for providing VR services to LRS applicants and consumers. However, while onsite, Lighthouse staff informed RSA that at least two of the 24 individuals

(8.3 percent) served by these same staff were not LRS VR applicants or consumers. As stated above, the definition of establishment, development, or improvement of a CRP requires that the staffing costs incurred must be for the provision of VR services to VR applicants and consumers (34 CFR 361.5(b)(17)(ii)). Therefore, the portion of the personnel costs associated with the provision of services to individuals who are not LRS consumers are not allowable under the VR program, pursuant to 34 CFR 361.3, because these personnel were not providing VR services, as defined at 34 CFR 361.5(b)(58). As such, the personnel costs associated with serving non-LRS applicants or consumers would not be an allowable activity under the authority to establish, develop, or improve a CRP at Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1). Moreover, as stated many times herein, federal cost principles require that federal funds be spent only to the extent that they are allocable to the federal program. In this case, the amount of personnel costs incurred for the provision of services to non-LRS applicants or consumers would not be allocable to the VR program because the VR program did not benefit from those expenditures (2 CFR 225, Appendix A, paragraph C.3).

RSA also reviewed the contract to determine if the allowable rates of federal participation were correctly applied, but the contract generally combined all personnel costs into one line item without an annual breakout to demonstrate how the appropriate federal participation rate, as set forth at 34 CFR 361.5(b)(17)(ii), was applied each year. Additional documentation provided during the on-site visit revealed a breakout of annual personnel costs for the first three years; however, LRS only adhered to the prescribed levels of federal participation in the personnel costs specified therein for the first year. In year two, the Lighthouse charged 75 percent of personnel costs, and is scheduled to charge 60 percent of personnel costs in year three – in other words, the full face value specified at 34 CFR 361.5(b)(17)(ii). In applying the personnel costs at the full rates specified, LRS failed to take into account the non-federal share that is required for all costs incurred, namely 21.3 percent (34 CFR 361.60). To illustrate, in year two, since only 75 percent of personnel costs are subject to federal participation, the salary figure representing 75 percent of personnel costs must be multiplied by the federal participation rate of 78.7 percent to determine the amount of funds that may be charged to the federal VR award, or approximately 59 percent of total personnel costs that year. In this example, year two's budgeted personnel costs (\$202,100) represent 75 percent of that year's total staffing costs (\$269,467); however, the entire amount was inappropriately charged to the federal VR award, with no non-federal share provided for those costs. If LRS had correctly applied the 78.7 percent federal participation rate to the \$202,100, the amount of personnel costs allowable for federal participation in year two of the establishment project was \$159,052.70. Since LRS did not apply the federal participation rate of 78.7 percent of costs per the VR regulations, the VR award was overcharged by \$43,047.30 that year. The third year of this contract, which ended June 30, 2013, projected budgeted personnel costs of \$296,369 to represent 60 percent of that year's total staffing costs (\$493,948), and again, the entire \$296,369 is slated to be inappropriately charged to the federal VR award with no non-federal share provided for those costs. Correctly applying the 78.7 percent federal participation rate toward the \$296,369 in personnel costs would result in \$233,242 allowable for federal participation; however, the methodology currently described for year three's personnel costs would result in an overcharge of \$63,127 to the VR award. Given that LRS failed to comply with the non-federal share requirements for the staffing requirements outlined at 34 CFR 361.5(b)(17)(ii), the costs above the 78.7 percent federal participation rate, as

required by 34 CFR 361.60(a)(1), were not allowable under the VR program for purposes of establishing, developing, or improving a CRP.

In summary, LRS did not engage in all of the necessary planning activities associated with the establishment, development or improvement of the Lighthouse, or a component of the Lighthouse, as a CRP. In addition, VR funds were used to pay the entire costs of the Lighthouse project, while only one of the three components of the facility clearly met the definition of a CRP for the provision of VR services. With regard to the other two components, namely the store and the cup manufacturing component, only a few LRS VR program consumers received allowable VR services for a limited number of hours in those components. Therefore, the use of VR program funds to cover the majority of remodeling costs and those used for the purchase of the cup manufacturing equipment was not used in proportion to the benefit accrued to the VR program and would not be permitted under the authority to establish, develop, or improve a CRP at 34 CFR 361.49(a)(1), as well as the federal cost principles at 2 CFR 225, Appendix A, paragraph C. Finally, LRS did not pay for the costs of the VR services component of the Lighthouse in a manner consistent with federal requirements for building the staff capacity of a CRP, as outlined at 34 CFR 361.5(b)(17)(ii). Specifically, LRS failed to apply the federal share to the permitted amounts, as required by 34 CFR 361.60(a)(1). For these reasons, LRS lacked the authority to use VR program funds to establish, develop or improve a CRP at the Lighthouse, and the above-referenced expenditures paid for with VR funds were not allowable under Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1).

## **B. Unallowable Source of Match**

LRS may use non-federal expenditures to satisfy its match requirement under the VR program, so long as those expenditures are for allowable costs, namely, expenditures for the provision of VR services and the administration of the VR program (Section 111(a)(1) of the Rehabilitation Act; 34 CFR 361.3 and 361.60(b)(1); and 34 CFR 80.24(a)). More specifically, LRS may use non-federal expenditures incurred by a CRP, including the CRP component of the Lighthouse, as well as other allowable expenditures incurred under the VR program at the Lighthouse, for the establishment, development, or improvement of a CRP, to satisfy its match requirement under the VR program, if those expenditures are for allowable costs under the VR program (34 CFR 361.60(b)(3)(i)). During FYs 2011 and 2012, LRS reimbursed the Lighthouse for a variety of expenses in the amount of 78.7 percent and used the remaining 21.3 percent of the total expenses to satisfy its non-federal share requirement under the VR program. For the reasons provided throughout this finding, to the degree that these costs were neither allowable under, nor allocable to, the VR program, the non-federal share of those same expenditures was not an allowable source of match under the VR program. Consequently, LRS did not have a legal basis to count the non-federal share of those costs that have been identified as unallowable under the VR program toward its VR match requirement (34 CFR 361.60(b)).

### **Corrective Action 1: LRS must:**

- 1.1 cease using federal VR funds to pay for the Lighthouse project costs that are not allowable under the VR program, and only allocate costs to the VR program in proportion to the benefit that LRS applicants and eligible recipients benefit from the provision of VR

services in accordance with Section 103(b)(2)(A) of the Rehabilitation Act, 34 CFR 361.49(a)(1), 34 CFR 361.5(b)(17), 34 CFR 361.5(b)(18) and 2 CFR 225, Appendix A, paragraph C;

- 1.2 cease using non-federal funds contributed by the Baton Rouge Lighthouse to satisfy LRS' non-federal share requirement to the extent that they are not expended for allowable establishment project purposes, in accordance with Section 111(a)(1) of the Rehabilitation Act, 34 CFR 361.3 and 34 CFR 361.60(b)(1); and
- 1.3 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that LRS will:
  - a. comply with all requirements governing the establishment, development or improvement of a CRP as set forth in Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1); and
  - b. ensure non-federal expenditures used for satisfy VR match requirements are for allowable expenditures under the VR program, which include expenditures for the cost of providing VR services and the cost for administering the VR program (34 CFR 361.3 and 361.60(b)(1); 34 CFR 80.24(a)).

## **2. Establishment Project - UpLIFTD**

### **Legal Requirements:**

- Rehabilitation Act – Sections 101(a)(2)(B), (15)(A), (C) and(D); and 103(b)(2)(A)
- VR Program Regulations – 34 CFR 361.5(b)(17); 361.29(a), (c) and (d); and 361.49(a)(1)

### **Background:**

UpLIFTD is a community-based rehabilitation program, originally established in the 1980s to provide VR services to individuals referred by LRS. On January 1, 2012, LRS entered into a one-year contract for an establishment project with UpLIFTD to provide VR services to homeless individuals who are served through the CRP, including vocational assessments, job placement services, training, and other services to prepare individuals for employment. The majority of the contract funds cover staff salaries and fringe benefits, comprising \$191,010.78 of the \$231,090.78 total. The remaining \$40,080 was used for the purchase of equipment.

### **Finding:**

LRS improperly used the establishment authority to enter into a contract with UpLIFTD by not satisfying all of the pre-planning requirements prior to implementing an “establishment” project with the entity.

Pursuant to Section 103(b) of the Rehabilitation Act and 34 CFR 361.49, VR agencies may expend VR program funds on services that promise to contribute substantially to the rehabilitation of groups of individuals with disabilities and are not those individualized services listed on any one individual's approved IPE. In pertinent part, these statutory and regulatory provisions permit VR agencies to use federal VR funds for the establishment, development, or improvement of a public or other non-profit CRP used to provide VR services that promote

integration and competitive employment (Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1)). The regulation at 34 CFR 361.5(b)(17) defines the “establishment, development or improvement of a public or nonprofit [CRP]” as:

- the establishment of a facility for a public or non-profit CRP to provide VR services to VR consumers and applicants;
- staffing, if necessary, to establish, develop, or improve a CRP for the purpose of providing VR services to VR applicants and consumers for a maximum period of four years; and
- other expenditures related to the establishment, development, or improvement of a CRP that are necessary to make the program functional or increase its effectiveness in providing VR services to applicants or eligible individuals, but are not ongoing operating expenses of the program.

During the course of its monitoring, RSA reviewed the UpLIFTD establishment contract in light of the above requirements, as well as other relevant federal requirements, as explained more fully below.

### **Planning Requirements**

Section 101(a)(15) of the Rehabilitation Act and 34 CFR 361.29 require that the DSU engage in substantial planning prior to initiating “establishment” activities pursuant to section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1). The DSU, together with its SRC, must conduct an assessment of VR needs in the state every three years and include the results of that needs assessment in its State plan (section 101(a)(15)(A) of the Rehabilitation Act and 34 CFR 361.29(a)). The assessment must identify the VR needs of individuals with the most significant disabilities and those from unserved or underserved populations, and include a description of the need to establish, develop, or improve CRPs in the state (section 101(a)(15)(A) of the Rehabilitation Act and 34 CFR 361.29(a)(1)). The DSU must use the results from its triennial needs assessment to develop goals and priorities for carrying out its VR program (section 101(a)(15)(C) of the Rehabilitation Act and 34 CFR 361.29(c)). The DSU also must develop strategies to address the identified VR needs within the state and achieve its goals and priorities, including those related to the establishment, development, or improvement of a CRP (section 101(a)(15)(D) of the Rehabilitation Act and 34 CFR 361.29(d)).

To determine if LRS satisfied these planning requirements, RSA reviewed the agency’s approved FY 2011 State Plan containing the results of its FY 2010 statewide triennial needs Assessment in Attachment 4.11(a). The attachment stated:

Workforce Partners identified the unserved and underserved with respect to the individuals with disabilities they serve as being: Individuals with mental illness (includes ex-cons and homeless).

The attachment also included a general reference to establishing, improving, or expanding CRPs, stating “62.4% of respondents felt that new CRPs needed to be established to adequately serve LRS consumers and 66.2% felt that current CRPs should be improved or expanded.” However,

the FY 2011 State plan did not specify goals and priorities, or strategies, related to the establishment, development or improvement of CRPs in general, or UpLIFTD in particular, as required by section 101(a)(15)(C) and (D) of the Rehabilitation Act and 34 CFR 361.29(c) and (d).

Because LRS did not satisfy all of the planning requirements, it was not authorized to use VR funds under section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1) to establish, develop, or improve a CRP, including UpLIFTD.

**Corrective Action 2:** LRS must ensure that it satisfies all pre-planning requirements in section 101(a)(15) of the Rehabilitation Act and 34 CFR 361.29 prior to engaging in future “establishment” projects.

### **3. Third-Party Cooperative Arrangements**

#### **Legal Requirements:**

- VR Program Regulations - 34 CFR 361.12; 361.28; and 361.60
- EDGAR - 34 CFR 80.20(a) and 80.40(a)
- Federal Cost Principles – 2 CFR 225, Appendix A, Paragraph C

#### **Background:**

Beginning in state FY 2010, LRS entered into two third-party cooperative arrangements (TPCAs), one with the University of New Orleans (UNO) and the other with Louisiana Technical University (LA Tech), for the provision of VR services as described below.

UNO: LRS developed a TPCA with UNO to provide self-employment services to LRS consumers, including training, business plan development and implementation, and three years of follow-up services. In addition, Uno provides training to LRS VR Counselors in the form of new counselor training, as well as periodic on-site visits to each LRS region to update veteran counselors and receive feedback. During the period of the review, the TPCA was supported by two written agreements, the first of which covered the period of April 1, 2010 through June 30, 2012, for a maximum three-year cost of \$1,120,614. The second contract covers the period of July 1, 2012 through June 30, 2015, for a maximum three-year cost of \$1,573,583.

LA Tech: LRS entered into a TPCA with LA Tech’s Comprehensive Center for Rehabilitation Technology (CCRT) to provide Assistive Technology assessments, reports, and inspections for LRS consumers throughout the state. This TPCA is supported by a three-year contract spanning the period beginning July 1, 2010 and ending June 30, 2013, for a maximum cost of \$3,806,999.

#### **Finding:**

LRS is not in compliance with VR regulations at 34 CFR 361.28 and 34 CFR 361.60 with respect to the TPCAs that it has entered into with UNO and LA Tech because: 1) the services are not provided solely to applicants and eligible individuals under the UNO contract; 2) LRS is

not able to demonstrate that the non-federal expenditures contributed by UNO and LA Tech through indirect costs benefited the VR program; and 3) LRS does not monitor the TPCAs to determine whether the federal and non-federal expenditures are allowable based on the actual time spent on the programs by staff of UNO and LA Tech.

VR agencies and other state and local public agencies can enhance and improve the provision of services to individuals with disabilities by entering into TPCAs. However, they must adhere to the below requirements set forth at 34 CFR 361.28.

1. The cooperating agency must provide part, or all, of the non-federal share of the costs of the arrangement (34 CFR 361.28(a)).
2. The services provided by the cooperating agency through the arrangement must be new, expanded or modified to include a VR focus. The services cannot be those typically or customarily provided by the cooperating agency (34 CFR 361.28(a)(1)).
3. The services provided through the cooperative arrangement must be provided only to individuals who are applicants for, or eligible to receive, VR services (34 CFR 361.28(a)(2)).
4. The VR agency must maintain administrative supervision over the expenditures incurred under the program and the personnel providing the services (34 CFR 361.28(a)(3)).
5. The provision of services through the cooperative arrangement must be consistent with the VR State Plan, including the implementation of an order of selection (34 CFR 361.28(a)(4)).
6. The services must be provided statewide, unless the VR agency receives a waiver of statewideness pursuant to 34 CFR 361.26 (34 CFR 361.28(b)).

RSA reviewed the TPCAs with UNO and LA Tech and determined that while LRS satisfied many of the above requirements, it did not satisfy the requirements described in more detail below.

#### **A. VR Services to Non-Applicants or Eligible Individuals**

As stated above, 34 CFR 361.28(a)(2) requires that the VR services provided through a TPCA be delivered only to applicants for, or individuals eligible to receive, VR services. Through both arrangements, UNO and LA Tech provide a variety of services directly to participants in the LRS VR program. However, UNO staff employed under the arrangements devote a portion of their time to the delivery of training and technical assistance to LRS VR Counselors who are not LRS VR applicants or consumers.

As identified in the Grant Narrative section of the state FY 2010-2012 UNO contract, UNO staff provide self-employment training, business plan development and implementation, and three years of follow-up services to LRS consumers. In addition, they provide training to LRS VR Counselors in the form of new counselor training, as well as periodic on-site visits to each LRS region to update veteran counselors and receive feedback (Exhibit A, Objective A). In addition, the Deliverables section of the state FY 2013-2015 contract states that on-site visits to each LRS region will be conducted to update veteran counselors and receive feedback. Since the training of LRS VR Counselors does not constitute allowable VR services provided to VR applicants or consumers, the portion of the costs used under the contract for training VR Counselors would not be allowable under the TPCA in accordance with 34 CFR 361.28(a)(2). However, LRS would

be permitted to contract separately with UNO to provide this training service to its VR Counselors as an administrative cost under the VR program pursuant to section 111(a)(1) of the Rehabilitation Act and 34 CFR 361.3.

Likewise, a review of the Proposal and the Program Activities sections of the LA Tech CCRT contract revealed that, in addition to the provision of AT assessments, reports, and inspections for LRS consumers throughout the state, 20 percent of the RT Specialists time is spent providing initial case consultations, AT planning, case progress reviews, and price quotation reviews to VR Counselors as a result of increased product and vendor choices, the increase in the number of new VR Counselors, and the decrease in the number of counselor training opportunities (page number 7). This provision in the contract was unclear as to whether the LA Tech activities with the counselors were specific to the actual consumers being served or whether these activities were more generalized training and technical assistance. While on-site, RSA attempted to elicit this distinction from LRS staff. However, the information RSA learned during interviews with these staff was unclear. LRS staff could not say definitively, or provide sufficient evidence to demonstrate, that these activities were limited to the provision of VR services to LRS consumers. To the extent that the LA Tech staff were providing consultation and technical assistance to the VR Counselors in connection with specific VR consumers, such activities would be considered to be part of the services actually provided to the consumer and would be allowable activities under the TPCA, in accordance with 34 CFR 361.28(a)(2). However, to the extent that these technical assistance activities were more generalized, such as providing information to the counselors about the latest AT products on the market, such activities would not constitute a VR service to VR applicants or consumers, as required by 34 CFR 361.28(a)(2), and thus would not be an allowable activity under the TPCA. In this event, costs incurred by LA Tech in providing these more generalized services to counselors, rather than consumers, would not be allowable costs under the TPCA for purposes of the VR program. However, LRS could contract separately with LA Tech to provide such technical assistance services as an administrative cost, pursuant to section 111(a)(1) of the Rehabilitation Act and 34 CFR 361.3.

## **B. Questioned costs related to match under the VR program**

LRS must maintain procedures to ensure that it administers the VR program in an efficient and effective manner and accounts for the proper expenditure of VR funds (34 CFR 361.12 and 34 CFR 80.20(a)). Through these procedures, LRS must ensure that VR funds are spent solely on the provision of VR services and the administration of the VR program (34 CFR 361.3). The federal cost principles require that federal funds be spent solely on allowable and allocable costs. To be allowable, costs must be necessary and reasonable for carrying out the federal program (2 CFR 225, Appendix A, C.1.a). To be considered reasonable, the cost must be one that would be incurred by a prudent person (2 CFR 225, Appendix A, C.2). To be allocable to the VR program, the cost must be proportional to the benefit received by the federal program (2 CFR 225, Appendix A, C.3.a).

As a recipient of VR funds, LRS also must provide a non-federal share of 21.3 percent for all expenditures incurred under the VR program (34 CFR 361.60(a)(1)). Non-federal expenditures used for match purposes under the VR program must be for allowable costs, namely expenditures for the provision of VR services and the administration of the VR program (Section

111(a)(1) of the Rehabilitation Act; 34 CFR 361.3 and 361.60(b)(1); and 34 CFR 80.24(a)). When implemented properly, TPCAs are a valid source of match under the VR program so long as the non-federal expenditures incurred are for allowable purposes. Specifically, 34 CFR 361.28(a) requires cooperating agencies under TPCAs to provide part, or all, of the non-federal share of the TPCA program (34 CFR 361.28(a)). In this case, LRS may use non-federal expenditures incurred by UNO and LA Tech (e.g., local public agencies) for the provision of VR services through TPCAs to satisfy its match requirement under the VR program if those expenditures are for allowable costs.

During the review, RSA learned that prior to July 1, 2012, in the state FY 2010-2012 contract, UNO had been providing the non-federal share of the TPCA via indirect costs charged to the program. UNO had an approved indirect cost rate of 44 percent during the three years of this contract. The budget page indicates the 44 percent indirect cost rate was applied against UNO's direct costs under the TPCA (e.g., salaries and fringes, travel, operating expenses, supplies and professional services). However, the 44 percent rate is split into both non-federal and federal components of the budget. Specifically, 27.5 percent of the 44 percent indirect cost rate was used to satisfy UNO's obligation to provide the non-federal share under the contract, and the remaining 16.5 percent of the indirect cost rate was charged and invoiced to LRS for federal reimbursement.

RSA also learned through review of the LA Tech contract and discussions with LRS staff that LA Tech is providing the non-federal share for the CCRT TPCA through indirect costs charged to the TPCA as well. During the latest year of the contract LA Tech's approved indirect cost rate was 52.23 percent. The budget indicates that the 52.23 percent rate was applied against LA Tech's direct costs under the TPCA (salary and fringes, travel, supplies, operating services, and equipment). However, this rate is split into both non-federal and federal components of the budget. Specifically, 37.23 percent of the 52.23 percent indirect cost rate was used to provide LA Tech's non-federal share under the TPCA, and the remaining 15 percent of the indirect cost rate is charged and invoiced to LRS for federal reimbursement.

To be allowable, indirect costs must be reasonable, necessary and allocable (2 CFR 225, Appendix A). Additionally the costs must be in proportion to the benefit received by the federal program and be charged against allowable VR services (2 CFR 225, Appendix A, paragraph F.1.). Responsibility for demonstrating how the university's indirect costs benefit the VR program under the TPCAs falls to LRS. Discussion with LRS staff and a review of existing documentation indicated that in both the UNO and LA Tech TCPAs, LRS has not documented the extent to which indirect costs are allocable to the provision of VR services under the TPCA.

Additionally, federal regulations require LRS to have procedures in place to account for federal funds properly and efficiently, and to a level to ensure that expenditures were not made in violation of federal requirements (34 CFR 361.12, 34 CFR 76.702, and 34 CFR 80.20(a)). This requirement also applies to expenditures incurred by cooperating agencies under TPCAs. In other words, LRS must ensure that federal and non-federal expenditures incurred by the cooperating agency must have been incurred solely in the provision of VR services to LRS applicants and consumers, as required by 34 CFR 361.28(a)(2). In this case, LRS management informed RSA, while on-site, that the agency did not review either UNO's or LA Tech's

expenditures to ensure that the amounts charged under the cooperating agency and/or used for match purposes, were indeed spent solely on allowable expenditures under the VR program. LRS' failure to verify UNO's and LA Tech's expenditures under the TPCAs, such as not obtaining supporting documentation or work papers to verify the allocability, and therefore allowability, of those expenditures and obligations, has revealed that LRS does not have the required procedures in place to properly account for its federal funds. As a result, LRS' lack of procedures to account for funds properly is not in compliance with 34 CFR 361.12, 34 CFR 76.702, 34 CFR 376.720, and 34 CFR 80.20.

### **C. Contract Monitoring**

As a recipient of federal funds, LRS is required to 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). LRS must also 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)). Grantees must monitor grant-supported activities to assure compliance with the federal requirements of 34 CFR 361.12 and 34 CFR 80.20(a) and that performance goals are being achieved (34 CFR 80.40(a)).

Pursuant to the state FY 2013-2015 UNO contract, as of July 1, 2012, UNO began providing match via certified expenditures of staff salaries working on the TPCA. The contract also indicates under the Payment Terms section of the contract that the contractor will be reimbursed monthly on a cost reimbursement basis for those costs described as "LRS Contributed" in Exhibit B, in other words, the federal share of the costs. The contract also specifies that payments will be made in response to monthly invoices, which shall describe the budget category and amount of actual costs incurred that month. Furthermore, Number 14 of the Terms of Payment section of the contract states that payments are made if progress and/or completion of services are provided to the satisfaction of the initiating office. However, the contract does not identify procedures to monitor these costs under the contract, or documentation the contractor must submit to support costs on the invoice to verify costs charged are allocable to, and are allowable under, the UNO TPCA. While on-site, RSA interviewed LRS staff and learned that LRS does not monitor the invoices submitted by UNO to verify the personnel costs were indeed allocable to the VR program. For example, LRS does not require UNO to submit documentation that verifies the actual amount of time UNO staff spend working under the TPCA, which is also used as match for the VR program. LRS also did not monitor invoices for office supplies, totaling \$15,104 for the time period of July, 2011 through June, 2012 and purchased by UNO under the FY 2010-FY 2012 contract.

Similarly, the Terms of Payment (Number 14) section of the LA Tech contract states that payments are made if progress and/or completion of services are provided to the satisfaction of the initiating office. Additionally, it states, "Contractor shall bill Agency on a monthly basis in arrears for actual expenditures (refer to Exhibit B, Budget attached)." However, the contract does not identify procedures to monitor these costs under the contract, or documentation the contractor must submit to support costs on the invoice, including personnel costs, to verify costs charged are allocable to, and are allowable under, the LA Tech TPCA. A review of the contract

documentation, and discussion with LRS staff indicated that while some CCRT staff work 100 percent of their time on the TPCA, the majority of the staff work only a portion of their time on the program. However, LRS staff confirmed during on-site interviews that the agency does not monitor those invoices to determine whether the invoices submitted by LA Tech represent actual time spent on the program. For example, LRS does not require LA Tech to submit documentation that verifies the number of hours actually spent by its staff on the TPCA.

In summary, EDGAR regulations require LRS to monitor all grant supported activities (34 CFR 80.40(a)) and ensure that accounting procedures are in place to allow for the tracking of funds to a level of expenditure that demonstrates they have not been used in violation of federal provisions (34 CFR 80.20(a)). This means LRS is required to monitor the invoices and amounts reported as non-federal share to the VR program, to ensure that certified expenditures of staff counted as match are working on the TPCA proportionate to the match reported, that any personnel costs charged to the program are allowable, and that supply costs charged to the program are allocable to the TPCA, and therefore are an allowable VR expense. There was no evidence presented to RSA during the on-site monitoring that LRS monitored the nature of these costs prior to paying them in accordance with the submitted invoices. Without monitoring or an internal controls mechanism, LRS is unable to ensure the proper expenditure of VR funds under the UNO or LA Tech TPCAs, as required by 34 CFR 361.12 and 34 CFR 80.20(a).

**Corrective Action 3: LRS must:**

- 3.1 cease providing services that are not directly related to the provision of VR services to VR applicants or consumers under the UNO and LA Tech TPCAs;
- 3.2 ensure that costs charged under the UNO and LA Tech contracts, including both direct and indirect costs, are allocable and allowable to the VR program; and
- 3.3 submit a written assurance to RSA within 10 days of the final monitoring report that LRS will comply with TPCA regulations at 34 CFR 361.28, and that it will implement monitoring procedures to ensure that funds spent pursuant to the UNO and LA Tech TPCAs are accurate and allowable under the VR program, as required by 34 CFR 361.12, 34 CFR 80.20(a) and 34 CFR 80.40(a).

**4. Program Income**

**Legal Requirements:**

- EDGAR—34 CFR 80.21(f)(2)

**Finding:**

LRS is not in compliance with federal regulations at 34 CFR 80.21(f)(2) because it has not disbursed available program income prior to drawing down federal VR funds.

LRS' Social Security reimbursement VR program income is received through LWC, the agency within which the DSA, OWD, is housed. Through the use of cash unit coding, received program income is assigned to programmatic expenditures in order to demonstrate how these funds are

disbursed. The VR program income earned is disbursed within the VR program, and is not transferred to the IL Part B or OIB programs. Discussions with LRS and LWC staff members on-site, and a review of SF-269 and SF-425 data, revealed that during FYs 2007 through 2011 program income accumulated and was not disbursed prior to requesting additional cash draws from the federal VR award. As a result, LRS was unable to ensure that program income funds are disbursed prior to requesting additional cash draws from the VR award.

Regulations at 34 CFR 80.21(f)(2) require grantees to disburse program income prior to requesting additional cash payments. This means that LRS must disburse all VR program income prior to requesting a drawdown of additional VR funds from its federal award. Disbursement of program income may include the transfer of VR Social Security reimbursement program income to the IL Part B or OIB programs. Since all program income has previously accumulated during the fiscal year during FYs 2007 through 2011, LRS was unable to ensure that the program income is disbursed prior to requesting additional cash payments, pursuant to 34 CFR 80.21(f)(2). During the on-site visit RSA determined that as of late FY 2011 and 2012, LRS has been disbursing program income as required under 34 CFR 80.21(f)(2) through journal vouchering.

**Corrective Action 4:** LRS must submit a written assurance to RSA within 10 days of the issuance of the final monitoring report to ensure that it will continue to disburse program income before requesting additional cash payments, to comply with 34 CFR 80.21(f)(2).

## **5. Assigning Personnel Costs – VR Program**

### **Legal Requirements:**

- VR Program Regulations – 34 CFR 361.3 and 34 CFR 361.12
- EDGAR Regulations – 34 CFR 80.20(a)
- Federal Cost Principles – 2 CFR part 225, Appendix B, paragraphs 8.h.4 and 8.h.5

### **Finding:**

LRS is not in compliance with federal regulations at 34 CFR 361.3, 34 CFR 361.12, and 34 CFR 80.20(a) that require VR funds to be used solely for the provision of VR services or for the administration of the VR program, that State agencies are responsible for financial accountability, and that procedures must be in place to ensure expenditures are traceable and compliant with federal statutes. Additionally, LRS has not complied with 2 CFR part 225, Appendix B, paragraphs 8.h.4 and 8.h.5 that require employees working on multiple cost objectives to maintain personnel activity reports or equivalent documentation that allocate costs to the benefitting cost objective, and reflect an after-the-fact distribution of the actual activity of each employee.

To constitute an administrative cost under the VR program, expenditures must be incurred in the performance of administrative functions of the VR program (34 CFR 361.5(b)(2)). Administrative salaries, including those for clerical and other support staff who work under the VR program, constitute a VR-related administrative cost (34 CFR 361.5(b)(2)(xi)). Non-VR-

related personnel costs do not constitute VR administrative costs because they do not arise from the performance of administrative functions for the VR program. Therefore, non-VR-related expenditures are not allowable under the VR program, pursuant to 34 CFR 361.3, and may not be paid for with VR funds.

LRS executive management staff that spend time on multiple programs, including the VR Director, a Bureau Administrator and support staff, do not track their time in accordance with time spent on the VR, IL Part B, and OIB programs. Some staff charge 100 percent of time to the VR program, and others charge time based upon budgetary estimates.

Staff working in LRS work on multiple cost objectives including the VR, IL Part B, and OIB programs. Staff working on multiple cost objectives must charge their time to the appropriate cost objective based upon the proportionate benefit received, and must utilize personnel activity reports as required in 2 CFR 225, Appendix B, Paragraphs 8.h.4 and 8.h.5. The practice of assigning personnel costs to the VR program that are allocable to other programs is not in accordance with the federal cost principles outlined in 2 CFR 225, VR implementing regulations at 34 CFR 361.3 and 34 CFR 361.12, and EDGAR 34 CFR 80.20(a).

**Corrective Action 5:** LRS must:

- 5.1 cease using Title I funds for personnel costs that are incurred in the administration of other programs, such as the IL Part B and OIB programs;
- 5.2 submit a written assurance to RSA within 10 days after the final monitoring report is issued that LRS will comply with 34 CFR 361.3, 34 CFR 361.12, 34 CFR 80.20(a), and 2 CFR 225, Appendix B, Paragraphs 8.h.4 and 8.h.5; and
- 5.3 submit a plan, including timelines, describing the corrective actions that will be taken, as required by 2 CFR 225, Appendix B, Paragraphs 8.h.4 and 8.h.5, to ensure:
  - a. personnel activity reports are maintained to support the allocation of an equitable portion of personnel costs for individuals, not charged indirectly, who work on more than one federal grant program or cost objective; and
  - b. personnel and administrative costs are allocated equitably, either directly or indirectly, to each program administered by LRS pursuant to Federal program requirements.

**6. Failure to Maintain Written Policies Governing Payment of VR Services**

**Legal Requirements:**

- VR Program Regulations - 34 CFR 361.12
- VR Program Regulation - 34 CFR 361.50(c)(1)
- Cost Principles - 2 CFR 225, Appendix A, paragraph C

**Finding:**

LRS is not in compliance with 34 CFR 361.12, 34 CFR 361.50(c)(c)(1), and 2 CFR 225, Appendix A, paragraph C because LRS has not established and maintained written policies of how LRS will set fees for purchased VR services.

Federal regulations require LRS to establish procedures that enable it to administer the VR program in an efficient manner that ensures it can carry out all functions properly (34 CFR 361.12). LRS also must establish and maintain written policies that govern the rates of payment for all purchased VR services (34 CFR 361.50(c)(1)). The federal cost principles require that allowable costs be necessary and reasonable for proper and efficient program performance and administration, as well as be allocable to the program (2 CFR 225, Appendix A, paragraph C.1). To be allocable to a program, the cost must be relative to the benefit received (*Id.* at paragraph C.3.). While LRS has an established fee schedule, and described an informal method of establishing fees, LRS has not complied with 34 CFR 361.12 and 34 CFR 361.50(c)(1) because it has not established or maintained written policies for determining rates of payments for purchased VR services. Without established written policies, LRS cannot ensure that the costs of purchased services are reasonable and necessary and, thus, allocable to the VR program. LRS, therefore, is not in compliance with the requirements set forth at 34 CFR 361.12, 34 CFR 361.50(c)(1), and the cost principles set forth in 2 CFR 225, Appendix A, paragraph C.

**Corrective Action 6:** LRS must:

- 6.1 submit a written assurance to RSA within 10 days of the issuance of the final monitoring report that LRS will develop written policies governing the payment of purchased VR services, as required by 34 CFR 361.50(c)(1), and that these policies will comply with 34 CFR 361.12 and 2 CFR 225, Appendix A, paragraph C;
- 6.2 establish and maintain written policies governing the rates of payment for all purchased VR services; and
- 6.3 submit copies of policies and procedures developed pursuant to this corrective action to RSA to ensure completion of that action.

**7. Suspension and Debarment**

**Legal Requirements:**

- VR Program Regulations – 34 CFR 361.12
- EDGAR Regulations – 34 CFR 80.20(a) and 34 CFR 85.105, 200, 140 and 300

**Finding:**

LRS is not in compliance with 34 CFR 361.12, 34 CFR 80.20(a), and 34 CFR 85 because it has not verified whether vendors with whom it does business are suspended or debarred, as identified on the Excluded Parties List System (EPLS).

Federal regulations require LRS to establish procedures that enable it to administer the VR program in an efficient manner that ensures it can carry out all functions properly (34 CFR 361.12). EDGAR regulations require fiscal control and accounting procedures of the State to permit the tracing of funds to a level of expenditure that ensures those funds have not been used in violation of the restrictions and prohibitions of applicable statutes. Additionally, EDGAR

regulations require grantees, as participants in public transactions, to verify that the person with whom it intends to do business is not excluded or disqualified. This can be done by checking the EPLS, collecting a certification from that individual, or adding a clause or condition to the covered transaction with that individual.

During the on-site visit, discussions with LRS and LWC staff indicated that the VR agency does not check the EPLS to verify whether vendors with whom it does business are excluded or disqualified. Further review of the contract terms and conditions did not indicate any certification required of vendors regarding their status on the EPLS, nor were there any clauses or conditions identified to ensure that the transaction was not established with an excluded or disqualified individual.

Since LRS staff does not conduct suspension and debarment checks, nor do LRS contracts require individual certification or contain clauses or conditions regarding suspension and debarment, LRS is unable to ensure that individuals with whom it does business, through utilization of federal funds, are suspended or debarred from doing business with LRS acting as a participant in public transactions. As a result, LRS is not in compliance with 34 CFR 361.12, 34 CFR 80.20(a), and 34 CFR 85.

**Corrective Action 7:** LRS must:

- 7.1 submit a written assurance to RSA within 10 days of the issuance of the final monitoring report that LRS will conduct suspension and debarment checks of all individuals with whom it does business, as required by 34 CFR 361.12, 34 CFR 80.20(a), and 34 CFR 85; and
- 7.2 submit a plan, including timelines and responsible parties, describing the corrective actions necessary to ensure all individuals are checked for suspension and debarment, through either manual checks of the EPLS, collecting a certification from the individual, or adding a clause or condition to the covered transaction with the individual.

## **APPENDIX A: AGENCY RESPONSE**

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

LRS did not request technical assistance (TA) related to the compliance findings and recommendations identified in the FY 2008 monitoring report, or the recommendations in the FY 2011 summary report.

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

#### **1. Establishment Project - Lighthouse for the Blind**

**Corrective Action 1:** LRS must:

- 1.1 cease using federal VR funds to pay for the Lighthouse project costs that are not allowable under the VR program, and only allocate costs to the VR program in proportion to the benefit that LRS applicants and eligible recipients benefit from the provision of VR services in accordance with Section 103(b)(2)(A) of the Rehabilitation Act, 34 CFR 361.49(a)(1), 34 CFR 361.5(b)(17), 34 CFR 361.5(b)(18) and 2 CFR 225, Appendix A, paragraph C;
- 1.2 cease using non-federal funds contributed by the Baton Rouge Lighthouse to satisfy LRS' non-federal share requirement to the extent that they are not expended for allowable establishment project purposes, in accordance with Section 111(a)(1) of the Rehabilitation Act, 34 CFR 361.3 and 34 CFR 361.60(b)(1); and
- 1.3 submit a written assurance to RSA within 10 days of receipt of the final monitoring report that LRS will:
  - a. comply with all requirements governing the establishment, development or improvement of a CRP as set forth in Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1); and
  - b. ensure non-federal expenditures used for satisfying VR match requirements are for allowable expenditures under the VR program, which include expenditures for the cost of providing VR services and the cost for administering the VR program (34 CFR 361.3 and 361.60(b)(1); 34 CFR 80.24(a)).

#### **Agency Response:**

LRS does not concur. Based on the explanation below, it should be clear that all aspects of the establishment project with the Lighthouse have been and will be utilized for individuals who are applicants or eligible for VR services.

LRS entered into an establishment project with Lighthouse for the Blind to establish a CRP in the Baton Rouge area. Prior to this project, there were no CRPs in this area with the expertise to provide services to individuals who are blind and/or visually impaired.

The project was established to provide a wide range of VR services to a broad range of individuals with all types of disabilities, not just individuals who are blind. Services include orientation and mobility, adjustment to blindness, work adjustment training, job readiness, internship, comprehensive training, supported employment, and other employment-related services.

The expenditures related to the establishment of this project are as follows:

1. renovation of a building for the establishment of the CRP;
2. moving and purchase of equipment for the cup manufacturing operations;
3. staff positions specific to the VR services provided by the CRP; and
4. other equipment and supplies.

This is a four-year establishment project which began on January 1, 2011. The project was only in its second year at the time of the RSA on-site monitoring review, and is not scheduled for completion until June, 2014. Therefore, the number of consumers served to date is not a true reflection of the number anticipated to be served once the establishment project is completed. It is projected that the number of consumers served will increase significantly as the establishment project continues for the next two years, and thereafter.

Included as part of the establishment project, is a low vision retail store. The RSA draft monitoring report under the Finding section indicated that, “neither LRS nor the Lighthouse staff provided evidence that VR consumers used the store component of the Lighthouse as part of their VR services, such as vocational training.” The low vision retail store was projected to begin training LRS consumers in June, 2014. The store has already been completed and is now offering the internship training which is one year ahead of schedule. The low vision store has already been utilized to provide supported employment community-based assessments, assistive technology assessments and low vision assessments to ten LRS consumers. LRS’ plans include the low vision store continuing to provide on-going vocational training opportunities for LRS consumers.

Also under the Finding section, RSA stated LRS incurred unallowable expenditures by “using VR program funds to renovate the production component of the Lighthouse facility and to purchase equipment for that production component, none of which is used for the benefit of training individuals with disabilities served by LRS.” RSA stated in the Renovation of the Lighthouse Facility section of the finding that “the production component of the Lighthouse would not constitute a CRP, as defined at 34 CFR 361.5(b)(9), for purposes of the VR program,” since the production component of the Lighthouse is not used for providing training or other VR services to LRS consumers. The cup manufacturing component of this project is being utilized to provide job training, job placement, vocational assessment, trial work experiences, and internships. As of this date, the Lighthouse has provided services, such as vocational assessment, job development, trial work experiences, and on-the-job training, to 33 consumers. One LRS consumer is currently in the internship program full-time. In addition, job readiness classes with up to 10 consumers per class will begin in the near future. Again, it is projected that the number of individuals served will increase significantly as the project moves forward.

The RSA report also indicated that five LRS consumers hired to operate machines in the cup manufacturing component were not receiving VR services at the time of the on-site visit, and that two of the individuals being served by the Lighthouse were not LRS consumers. LRS has verified that the five consumers were in fact receiving VR services from the Lighthouse and all had active IPEs. In discussions with Lighthouse regarding the two individuals being served that are not applicants or eligible for LRS services, Lighthouse has indicated that this statement is inaccurate and it has been verified that all consumers served by the Lighthouse are in fact LRS applicants or eligible consumers of LRS.

Overall, the Lighthouse has provided VR services to 65 consumers. These consumers have received services utilizing the cup manufacturing component, the low vision store and other components of the Lighthouse, which were all a part of the establishment project.

The following is a breakdown of the number of consumers served by service: Adjustment to Blindness – 33; Vocational Assessments – 27; Job Development – 24; Trial Work Experiences – 5; On-the-Job Training – 1; and Job Placement – 9. Of the 65 consumers served, 55 received employment services, and 33 of the 55 received employment services directly from the cup manufacturing component.

#### **RSA Response:**

RSA appreciates the additional information that LRS provided, both in response to the draft report and in subsequent communications regarding these issues. Based on that information, RSA has modified the finding accordingly to demonstrate the analysis of the activities and expenditures made under the Lighthouse contract that appear to be allowable under the VR program and those that do not appear to be allowable.

In analyzing the issues raised by the Lighthouse contract, RSA not only focused on the direct allowability of the activities and costs incurred under the VR program requirements, but also the extent to which the costs incurred were allocable to the VR program pursuant to the federal cost principles. The federal VR expenditures incurred by LRS for the Lighthouse project were allowable only to the extent that LRS VR applicants and consumers benefited from the expenditures. As stated in the finding, under the cost principles in 2 CFR 225, Appendix A, paragraph C.1, a cost is allowable if it is reasonable, necessary, *and allocable* to a federal award. Under paragraph C.3.a of the cost principles, a cost is allocable to a federal award “if the goods and services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.”

In this case, costs associated with the renovation of the LRS facility were allowable under the VR program only to the extent that LRS, and its VR applicants and consumers, benefited from the expenditures. Since it appears from the LRS response that some LRS VR applicants and consumers benefited, the amount that was allocable to the VR program was only that which was commensurate with the benefit that LRS VR applicants and consumers received from the Lighthouse facilities while receiving VR services, not their employment in these facilities.

In its response above, LRS provided figures describing the number of individuals who received VR services from the Baton Rouge Lighthouse. However, this information did not specify from which component of the Lighthouse facility (i.e., the CRP component, the low vision store or the cup manufacturing component, the individuals received services), nor did the information include the amount of time the individuals received the identified services. This information was critical to make a determination of the benefit received by LRS VR applicants and consumers from the Lighthouse project; therefore, RSA sought clarification of this information. On April 4, 2013, RSA requested that LRS provide information related to the amount of time LRS VR applicants and consumers were receiving VR services in the manufacturing component and retail store at the Lighthouse. On April 18, 2013, LRS responded to RSA with documentation that indicated the number of hours the cup machines were in operation in the manufacturing component, and the number of hours the store was operational for a three-month period (September 1, 2012 through November 30, 2012). LRS broke this down into training hours and assessment hours. As supporting documentation, LRS provided Monthly Job Retention Progress Reports, monthly LRS employment satisfaction certifications, vocational assessments, and timesheets of individuals who were active LRS consumers during the three-month period, as well as individuals who were former LRS consumers with closed cases who worked at the Lighthouse. RSA further reviewed this information and determined that it needed a clarification of the number of person hours that the cup machines were running during the three-month period, as the machines are often operated by more than one person performing different tasks related to manufacturing cups. On May 6, 2013, LRS provided additional information via email clarifying the number of person hours the cup manufacturing machines were operational during the three-month period, and provided timesheet information for all individuals working on the cup machines during that time.

RSA reviewed all the information provided and determined that, based upon the payroll summary, four of the 13 individuals who were employed by the Lighthouse in the operation of the cup manufacturing machines were LRS consumers with open supported employment cases and may have received allowable VR services when using the machines. In addition, RSA concluded that another individual received work assessment services through use of the machines, and another two individuals received assessments in the low vision store. This information, along with the amount of time these individuals were engaged in the operation of the machines or receipt of VR services in the cup manufacturing and low vision store components, is described in more detail in the finding, as revised in Section 6 of this report.

It is also necessary, when determining the portion of the costs that may be charged to the VR program, to calculate the percentage of the Lighthouse facility and cup manufacturing equipment used by LRS consumers and applicants and the Lighthouse staff who served those individuals. For example, if these LRS VR applicants and consumers benefited from only a limited amount of space in the manufacturing component, the most proportional cost distribution may be based upon the space utilized in the component by VR applicants and consumers versus other Lighthouse employees. Using the percentage of space methodology in this case, the renovation costs allocable to the VR program would be based upon utilized space (i.e., square footage). With respect to the cup manufacturing equipment purchased under the project, the percentage of time each staff person spent serving LRS VR applicants and consumers may be the most equitable way to determine the allocable cost to the VR program. Another possible methodology

for determining the appropriate proportional share for the VR program is the percentage of time used by the cup manufacturing component for the receipt of VR services, such as the approximately one-third example given in the finding, as revised.

It was the responsibility of LRS to determine, at the time the Lighthouse project was implemented, the methodology by which the costs of the renovation and the purchase of equipment were to be distributed in accordance with the benefits received by LRS VR applicants and consumers through the provision of VR services, pursuant to the federal cost principles at 2 CFR 225, Appendix A, paragraph C. Instead, LRS used VR program funds to cover the entire costs associated with the renovation of the Lighthouse facility, including the cup manufacturing component and low vision store, as well as those related to the purchase of all cup manufacturing equipment, without regard to the numbers of LRS VR applicants and consumers to be served in those other components (i.e., the store and cup manufacturing component), the amount of time they would receive VR services, and the other factors discussed in the preceding paragraph. Yet the information obtained by RSA during the course of the review, particularly that provided by LRS at the request of RSA following its response to the draft report, demonstrates that the cup manufacturing component of the Lighthouse operates primarily as a production facility – not a training facility – and that it is used only to a limited extent for the provision of VR services to LRS VR applicants and consumers. Consequently, the majority of VR program funds expended for renovations to the Lighthouse facility and the purchase of manufacturing equipment appear not to be in compliance with the requirements for the establishment of a CRP facility, as defined at 34 CFR 361.5(b)(17)(i) and 34 CFR 361.5(b)(18). RSA has modified the text of the finding in a manner consistent with this response.

Finally, RSA notes that four of the individuals determined to have received supported employment services in the cup manufacturing component are actually employed by the Lighthouse, and that the Lighthouse contract, Exhibit A, indicates that the purpose of the project is to “establish a facility in the Greater Baton Rouge area that will employ and train blind and visually impaired workers...”. The stated purpose of the Lighthouse as a facility for the employment of blind and visually-impaired individuals raises questions as to the integrated nature of the cup manufacturing component of the Lighthouse. RSA reminds LRS that the purpose of establishing, improving or developing a CRP, including the establishment of a CRP facility, must be to promote competitive and integrated employment (Section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1)). Regulations found at 34 CFR 361.5(b)(11) define “competitive employment” to mean work:

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

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

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

All employment outcomes achieved through the VR program must be in integrated settings, as required by the definition of that term found at 34 CFR 361.5(b)(16). The definition of the establishment authority at 34 CFR 361.5(b)(17) makes it clear that services provided in connection with the establishment, development or improvement of a CRP must be delivered only to applicants or eligible consumers of the VR program. Applicants or eligible consumers of the VR program must intend to achieve an employment outcome under the VR program, which again must be in an integrated setting. Although employment outcomes achieved through the VR program must be in integrated settings, services provided through the establishment authority may be provided in non-integrated settings; however, they must be designed to promote the goal of competitive and integrated employment.

RSA's Technical Assistance Circular (TAC) 06-01 provides guidance to state VR agencies making the determination as to the integrated nature of a work site. As such the TAC offers the following:

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

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

LRS should consider all three elements when making this assessment in order to fully follow the guidance provided by RSA in TAC-06-01. The analysis should include a determination of the level of interaction of the blind and visually-impaired individuals working in a CRP facility, including the Lighthouse cup manufacturing component, with non-disabled employees working across the entire Lighthouse site, as well as those non-disabled persons employed in the cup manufacturing component itself.

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

- V. We [RSA] want to point out that entities that are set up specifically for the purpose of providing employment to individuals with

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

LRS should carefully consider all of the above as it makes its assessment of the Lighthouse project in order to complete the analysis necessary for the determination of a CRP work site as an integrated setting using the guidance set forth in TAC-06-01, including the three factors and Footnote V.

As a result of the review of the Lighthouse contract and information gathered throughout the review process, especially Exhibit A of the contract that states that a purpose of the project is to “establish a facility ... that will employ ... blind and visually impaired workers ...,” RSA questions whether the cup manufacturing component would constitute an integrated setting for purposes of the achievement of an employment outcome under the VR program (34 CFR 361.5(b)(33) and TAC-06-01). It is essential that LRS make this determination in accordance with the guidance set forth herein to ensure that LRS consumers who become employed in the cup manufacturing component at the Lighthouse have indeed achieved an employment outcome for purposes of the VR program.

The determination of the integrated nature of the cup manufacturing component of the Lighthouse is also essential for another purpose, namely, determining whether the supported employment services received by the four LRS consumers employed in that component would constitute supported employment services, as defined at 34 CFR 361.5(b)(54). Such services, for purposes of the VR program, must be provided to assist an individual to achieve supported employment in an integrated setting (34 CFR 361.5(b)(53)). Because it is LRS’ – not RSA’s – responsibility to determine whether a jobsite is integrated for purposes of the VR program, RSA has not questioned the allowability of these services for purposes of the finding above. However, if LRS were to determine that the cup manufacturing component is not an integrated setting, then there would be questions as to whether the supported employment services received by the four LRS consumers employed at the Lighthouse were indeed allowable activities under the VR program. Such services would be allowable under the VR program only to the extent that these services were provided to assist the individuals to achieve integrated employment. If LRS determines that the cup manufacturing component is not an integrated setting for purposes of achieving an employment outcome under the VR program, such a determination would affect the calculation of the benefit derived by the LRS VR program from the expenditures on the Lighthouse project, particularly those for the renovation of the cup manufacturing component and the purchase of the equipment.

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

## **2. Establishment Project - UpLIFTD**

**Corrective Action:** LRS must insure that it satisfies all pre-planning requirements in section 101 (a) (15) of the Rehabilitation Act and 34 CFR 361.29 prior to engaging in future “establishment” projects.

**Agency Response:** LRS concurs. Pre-planning activities were demonstrated in the FY 2011 state plan Attachment 4.11(a) that contains the results of the FY 2010 statewide triennial needs assessment, that identifies the unserved and underserved to include individuals with mental illness, including homeless, and the need to expand or improve CRP's, including services responsive to the needs of persons with substance abuse issues and the mental health population. Also, this project supported LRS' state plan Goals and Priority Number III, Attachment 4.11 (c)(1), to maximize resources by pursuing innovative means to leverage the state's full federal VR grant allotment, as well as, achieving Strategy A.3.7: To explore project funding opportunities to serve more consumers, as stated in Attachment 4.11 (d) titled State's Strategies and Use of Title I Funds. LRS failed to include a “specific” strategy regarding this project for establishing, developing, or improving community rehabilitation programs.

**RSA Response:** RSA appreciates LRS' understanding of the Planning Requirements section of the finding, that the state plan did not specify goals and priorities, or strategies, related to the establishment, development or improvement of CRPs in general, or UpLIFTD in particular, as required by section 101(a)(15)(C) and (D) of the Rehabilitation Act and 34 CFR 361.29(c) and (d).

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

## **3. Third-Party Cooperative Arrangements**

**Corrective Action:** LRS must:

- 3.1 cease providing services to non-VR applicants or consumers under the UNO and LA Tech TPCAs;
- 3.2 cease the use of non-federal expenditures for indirect costs as match, and charging indirect costs to the federal portion of the UNO and LA Tech TPCAs, to the extent such expenditures are not proportionate to the benefit received by the VR program; and
- 3.3 submit a written assurance to RSA within 10 days of the final monitoring report that LRS will comply with TPCA regulations at 34 CFR 361.28, and that it will implement monitoring procedures to ensure that funds spent pursuant to the UNO and LA Tech TPCAs are accurate and allowable under the VR program, as required by 34 CFR 361.12, 34 CFR 80.20(a) and 34 CFR 80.40(a).

**Agency Response:** LRS concurs. Changes have already been implemented in the current UNO contract to ensure that services are provided to applicants or consumers and are not provided to any other parties, including VR counselors. The technical assistance provided to LRS counselors under this contract is to enhance service-delivery to LRS consumers.

LRS has previously requested Technical Assistance from RSA regarding the definition and allowance of indirect costs and continues to do so.

LRS monitors TPCA expenditures as follows:

1. A contract monitor is identified on each TPCA;
2. The contract monitor performs on-site reviews on at least an annual basis;
3. A Contract Monitoring Report Form is completed at the end of each State Fiscal Year that describes the performance of the TPCA;
4. The UNO invoice includes back-up documentation regarding expenditures during the billing time-frame; and
5. Documentation of expenditures related to the LA Tech contract is stored and available upon request through the fiscal office of LA Tech.

**RSA Response:** RSA received several telephone calls from UNO and LA Tech staff members related to the information contained in this draft finding. On May 30, 2013, the RSA monitoring team and the RSA Fiscal Unit Chief teleconferenced with LRS management staff in order to review the draft finding. In addition, RSA provided an email pursuant to this teleconference, that contained the pertinent federal requirements and contact information if LRS wished to speak with staff from another state VR agency who also needed to negotiate a lower indirect cost rate with a university. In the corrective action plan developed to address this finding, RSA will ask that LRS provide RSA with the results of its monitoring procedures, so that we can ensure that funds spent pursuant to the UNO and LA Tech TPCAs are accurate and allowable under the VR program, as required by 34 CFR 361.12, 34 CFR 80.20(a) and 34 CFR 80.40(a).

The TA provided under the contract to LRS VR counselors would be allowable under the VR program related to staff development activities associated with the comprehensive system of personnel development (34 CFR 361.18(d)); however, TPCA regulations at 34 CFR 361.28 are clear that services identified with the context of the TPCA must include the administration or provision of VR services to applicants for, or recipient of, services from the VR program. Therefore, technical assistance provided under the TPCA to LRS VR counselors is not an allowable service under a TPCA.

**Technical Assistance:** LRS requests technical assistance.

#### **4. Program Income**

**Corrective Action:** LRS must submit a written assurance to RSA within 10 days of the issuance of the final monitoring report to ensure that it will continue to disburse program income before requesting additional cash payments, to comply with 34 CFR 80.21(f)(2).

**Agency Response:** LRS concurs. As indicated in the monitoring report, during the on-site visit RSA determined that as of late FY 2011 and 2012, LRS has been disbursing program income as required under 34 CFR 80.21(f)(2) through journal vouchering. LRS will continue to disburse program income before requesting additional cash payments, pursuant to 34 CFR 80.21(f)(2).

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

## **5. Assigning Personnel Costs – VR Program**

**Corrective Action:** LRS must:

- 5.1 cease using Title I funds for personnel costs that are incurred in the administration of other programs, such as the IL Part B and OIB programs;
- 5.2 submit a written assurance to RSA within 10 days after the final monitoring report is issued that LRS will comply with 34 CFR 361.3, 34 CFR 361.12, 34 CFR 80.20(a), and 2 CFR 225, Appendix B, Paragraphs 8.h.4 and 8.h.5; and
- 5.3 submit a plan, including timelines, describing the corrective actions that will be taken, as required by 2 CFR 225, Appendix B, Paragraphs 8.h.4 and 8.h.5, to ensure:
  - a. personnel activity reports are maintained to support the allocation of an equitable portion of personnel costs for individuals, not charged indirectly, who work on more than one federal grant program or cost objective; and
  - b. personnel and administrative costs are allocated equitably, either directly or indirectly, to each program administered by LRS pursuant to Federal program requirements.

**Agency Response:** LRS concurs. Personnel activity reports will be maintained by staff members who work on more than one federal grant program.

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

## **6. Failure to Maintain Written Policies Governing Payment of VR Services**

**Corrective Action:** LRS must:

- 6.1 submit a written assurance to RSA within 10 days of the issuance of the final monitoring report that LRS will develop written policies governing the payment of purchased VR services, as required by 34 CFR 361.50(c)(1), and that these policies will comply with 34 CFR 361.12 and 2 CFR 225, Appendix A, paragraph C;
- 6.2 establish and maintain written policies governing the rates of payment for all purchased VR services; and
- 6.3 submit copies of policies and procedures developed pursuant to this corrective action to RSA to ensure completion of that action.

**Agency Response:** LRS concurs. LRS has provided copies of Rate Setting Procedures to RSA.

**Technical Assistance:** LRS requests technical assistance.

## **7. Suspension and Debarment**

**Corrective Action:** LRS must:

- 7.1 submit a written assurance to RSA within 10 days of the issuance of the final monitoring report that LRS will conduct suspension and debarment checks of all individuals with whom it does business, as required by 34 CFR 361.12, 34 CFR 80.20(a), and 34 CFR 85; and
- 7.2 submit a plan, including timelines and responsible parties, describing the corrective actions necessary to ensure all individuals are checked for suspension and debarment, through either manual checks of the Excluded Parties List System (EPLS), collecting a certification from the individual, or adding a clause or condition to the covered transaction with the individual.

**Agency Response:** LRS concurs.

LRS has added the following language in “Yes” or “No” check box format to its Vendor Compliance Form, found in 511.2 of the LRS vendor material, which is required of all LRS vendors to sign upon submittal of application or updating of vendor manual material. The language reads as follows: “I certify that I am not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency.”

In addition, the LRS Program Coordinator for CRP Monitoring will review CRPs in the EPLS to ensure compliance with suspension/debarment issues.

**Technical Assistance:** LRS 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 5 of this report.

### Rehabilitation Act of 1973, as amended

#### Section 101(a)(2)(B)

The State agency designated under subparagraph (A) shall be--

- (i) a State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities; or
- (ii) if not such an agency, the State agency (or each State agency if 2 are so designated) shall include a vocational rehabilitation bureau, division, or other organizational unit that--
  - (I) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities, and is responsible for the vocational rehabilitation program of the designated State agency;
  - (II) has a full-time director;
  - (III) has a staff employed on the rehabilitation work of the organizational unit all or substantially all of whom are employed full time on such work; and
  - (IV) is located at an organizational level and has an organizational status within the designated State agency comparable to that of other major organizational units of the designated State agency.

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

Annual state goals and reports of progress

(A) Assessments and estimates

The State plan shall—

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

(C) Goals and priorities

(i) In general

The State plan shall identify the goals and priorities of the State in carrying out the program. The goals and priorities shall be jointly developed, agreed to, and reviewed annually by the designated State unit and the State Rehabilitation Council, if the State has such a Council. Any revisions to the goals and priorities shall be jointly agreed to by the designated State unit and the State Rehabilitation Council, if the State has such a Council.

The State plan shall provide that the State shall submit to the Commissioner a report containing information regarding revisions in the goals and priorities, for any year in which the State revises the goals and priorities.

(ii) Basis

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

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

(D) Strategies

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

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

Section 103(b)(2)(A)

Vocational rehabilitation services provided for the benefit of groups of individuals with disabilities may also include the following:

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

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

The Secretary makes payments to a State to assist in—

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

34 CFR 361.5(b)(9)

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

34 CFR 361.5(b)(17)

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

- (i) The establishment of a facility for a public or nonprofit community rehabilitation program as defined in paragraph (b)(18) of this section to provide vocational rehabilitation services to applicants or eligible individuals;
- (ii) Staffing, if necessary to establish, develop, or improve a community rehabilitation program for the purpose of providing vocational rehabilitation services to applicants or eligible individuals, for a maximum period of 4 years, with Federal financial participation available at the applicable matching rate for the following levels of staffing costs:
  - (A) 100 percent of staffing costs for the first year.
  - (B) 75 percent of staffing costs for the second year.
  - (C) 60 percent of staffing costs for the third year.
  - (D) 45 percent of staffing costs for the fourth year; and
- (iii) Other expenditures related to the establishment, development, or improvement of a community rehabilitation program that are necessary to make the program functional or increase its effectiveness in providing vocational rehabilitation services to applicants or eligible individuals, but are not ongoing operating expenses of the program.

34 CFR 361.5(b)(18)

Establishment of a facility for a public or nonprofit community rehabilitation program means—

- (i) The acquisition of an existing building and, if necessary, the land in connection with the acquisition, if the building has been completed in all respects for at least 1 year prior to the date of acquisition and the Federal share of the cost of acquisition is not more than \$300,000;
- (ii) The remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building;
- (iii) The expansion of an existing building, provided that—
  - (A) The existing building is complete in all respects;
  - (B) The total size in square footage of the expanded building, notwithstanding the number of expansions, is not greater than twice the size of the existing building;

- (C) The expansion is joined structurally to the existing building and does not constitute a separate building; and
- (D) The costs of the expansion do not exceed the appraised value of the existing building;
- (iv) Architect's fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building; and
- (v) The acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

#### 34 CFR 361.12

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

#### 34 CFR 361.28

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

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

#### 34 CFR 361.29

- (a) Comprehensive statewide assessment.
  - (1) The State plan must include—
    - (i) The results of a comprehensive, statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the State unit has a Council) every 3 years describing the rehabilitation needs of individuals with

disabilities residing within the State, particularly the vocational rehabilitation services needs of—

- (A) Individuals with the most significant disabilities, including their need for supported employment services;...
  - (ii) An assessment of the need to establish, develop, or improve community rehabilitation programs within the State.
- (2) The State plan must assure that the State will submit to the Secretary a report containing information regarding updates to the assessments under paragraph (a) of this section for any year in which the State updates the assessments.

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(c) Goals and priorities.

- (1) In general. The State plan must identify the goals and priorities of the State in carrying out the program.
- (2) Council. The goals and priorities must be jointly developed, agreed to, reviewed annually, and, as necessary, revised by the designated State unit and the State Rehabilitation Council, if the State unit has a Council.
- (3) Submission. The State plan must assure that the State will submit to the Secretary a report containing information regarding revisions in the goals and priorities for any year in which the State revises the goals and priorities.
- (4) Basis for goals and priorities. The State goals and priorities must be based on an analysis of—
  - (i) The comprehensive statewide assessment described in paragraph (a) of this section, including any updates to the assessment;
  - (ii) The performance of the State on the standards and indicators established under section 106 of the Act; and
  - (iii) Other available information on the operation and the effectiveness of the vocational rehabilitation program carried out in the State, including any reports received from the State Rehabilitation Council under §361.17(h) and the findings and recommendations from monitoring activities conducted under section 107 of the Act...

(d) Strategies.

The State plan must describe the strategies the State will use to address the needs identified in the assessment conducted under paragraph (a) of this section and achieve the goals and priorities identified in paragraph (c) of this section, including—

- (3) As applicable, the plan of the State for establishing, developing, or improving community rehabilitation programs.

34 CFR 361.36(c)(2)(ii)(C)

(c) Prohibited factors.

- (2) In making a determination of eligibility under this section, the designated State unit also must ensure that—
  - (ii) the eligibility requirements are applied without regard to the—
    - (C) Source of referral for vocational rehabilitation services.

34 CFR 361.49(a)(1)

- (a) The designated State unit may also provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:
  - (1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide vocational rehabilitation services that promote integration and competitive employment, including, under special circumstances, the construction of a facility for a public or nonprofit community rehabilitation program. Examples of "special circumstances" include the destruction by natural disaster of the only available center serving an area or a State determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

34 CFR 361.60(a) and (b):

Matching requirements.

- (a) Federal share.
  - (2) Construction projects. The Federal share for expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project.
- (b) Non-Federal share.
  - (1) General. Except as provided in paragraph (b)(2) and (3) of this section, expenditures made under the State plan to meet the non-Federal share under this section must be consistent with the provisions of 34 CFR 80.24...
  - (2) Third-party in-kind contributions. Third-party in-kind contributions specified in 34 CFR 80.24(a)(2) may not be used to meet the non-Federal share under this section.
  - (3) Contributions by private entities. Expenditures made from contributions by private organizations, agencies, or individuals that are deposited in the account of the State agency or sole local agency in accordance with State law and that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the funds are earmarked for—
    - (i) Meeting in whole or in part the State's share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes;
    - (ii) Particular geographic areas within the State for any purpose under the State plan, other than those described in paragraph (b)(3)(i) of this section, in accordance with the following criteria:
      - (A) Before funds that are earmarked for a particular geographic area may be used as part of the non-Federal share, the State must notify the Secretary that the State cannot provide the full non-Federal share without using these funds.
      - (B) Funds that are earmarked for a particular geographic area may be used as part of the non-Federal share without requesting a waiver of statewideness under §361.26.
      - (C) Except as provided in paragraph (b)(3)(i) of this section, all Federal funds must be used on a statewide basis consistent with §361.25, unless a waiver of statewideness is obtained under §361.26; and

- (iii) Any other purpose under the State plan, provided the expenditures do not benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest. The Secretary does not consider a donor's receipt from the State unit of a grant, subgrant, or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the grant, subgrant, or contract is awarded under the State's regular competitive procedures.

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

### 34 CFR 80.20(a)

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

### 34 CFR 80.21(f)(2)

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

### 34 CFR 80.22(a)(1) Allowable costs

- (a) Limitation on use of funds. Grant funds may be used only for:
  - (1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors.

### 34 CFR 80.24(a)

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

#### 34 CFR 80.40(a)

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

#### 34 CFR 85.105 Does this part apply to me?

Portions of this part (see table at §85.25(b)) apply to you if you are a(n)—

- (a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;
- (b) Respondent (a person against whom the Department of Education has initiated a debarment or suspension action);
- (c) ED debarment or suspending official; or
- (d) ED official who is authorized to enter into covered transactions with non-Federal parties.

#### 34 CFR 85.140 How do I know if a person is excluded?

Check the *Excluded Parties List System (EPLS)* to determine whether a person is excluded. The General Services Administration (GSA) maintains the *EPLS* and makes it available, as detailed in subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS*.

#### 34 CFR 85.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

- (a) The primary tier, between a Federal agency and a person (see appendix to this part); or
- (b) A lower tier, between a participant in a covered transaction and another person.

#### 34 CFR 85.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking the *EPLS*; or
- (b) Collecting a certification from that person if allowed by this rule; or
- (c) Adding a clause or condition to the covered transaction.

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

2 CFR 225, Appendix A, paragraph C, in pertinent part, states:

- C.1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:
  - a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
  - b. Be allocable to Federal awards under the provisions of this Circular.

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- C.3. Allocable costs.
  - a. A cost is allocable to a particular cost objective if the goods and services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

2 CFR part 225, Appendix B, paragraphs 8.h.4 and 8.h.5

- 8.h.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 (5) ... Such documentary support will be required where employees work on: (a) more than one federal award; and (b) A federal award and a non-federal award.
- 8.h.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 signed by the employee; and (d) budget estimates or other distribution percentages determined before services are performed do not qualify as support for charges to federal awards but may be used for interim accounting purposes.