

**FISCAL YEAR 2013  
MONITORING REPORT  
ON THE  
OPPORTUNITIES FOR OHIOANS WITH  
DISABILITIES AGENCY  
VOCATIONAL REHABILITATION  
PROGRAM**



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

**JUNE 26, 2014**

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# SECTION 1: EXECUTIVE SUMMARY

## 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 Opportunities for Ohioans with Disabilities Agency (OOD), formerly known as the Ohio Rehabilitation Services Commission (ORSC), 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);
- 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:
  - o organizational structure requirements of the designated State agency (DSA) and the designated State unit (DSU);
  - o transition services and employment outcomes for youth with disabilities; and
  - o the fiscal integrity of the VR program;
- identified emerging practices related to the three focus areas and other aspects of the VR agency's operations; and
- provided technical assistance to the VR agency to enable it to enhance its performance and to resolve findings of noncompliance.

The nature and scope of this review and the process by which RSA carried out its monitoring activities, including the conduct of an on-site visit from February 25 through 28, 2013, is described in detail in the FY 2013 Monitoring and Technical Assistance Guide for the Vocational Rehabilitation Program located at: <http://www2.ed.gov/rschstat/eval/rehab/107-reports/2013/vr/monitoring-and-technical-assistance-guide.doc> or <http://www2.ed.gov/rschstat/eval/rehab/107-reports/2013/vr/monitoring-and-technical-assistance-guide.pdf>.

## **Emerging Practices**

Through the course of its review, RSA collaborated with OOD, its independent commission (IC), the Technical Assistance and Continuing Education (TACE) center, and other stakeholders to identify the emerging practices below implemented by the agency to improve the performance and administration of the VR program.

### **Improvement of Employment Outcomes, including Supported Employment and Self-Employment**

- **Consumer Advisory Committee:** As an independent commission, OOD has established a statewide consumer advisory committee (CAC) to enhance the delivery of VR services.

### **Outreach to Unserved and Underserved Individuals**

- **Consumer Support Advocate Program:** OOD uses individuals currently receiving VR services as Consumer Support Advocates, who provide information and referral services to individuals with disabilities in the State and connect them with agencies such as OOD.

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

## **Summary of Observations**

RSA's review of OOD resulted in the observation identified below related to the provision of transition services and employment outcomes achieved by youth with disabilities. The entire observation and the recommendations made by RSA that the agency can undertake to improve its performance are contained in Section 5 of this report.

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

- During the period under review, OOD assisted a decreasing number of transition-age youth to achieve employment and the quality of these outcomes declined as well.

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

- OOD's third-party cooperative arrangements (TPCAs) are not in compliance with federal requirements because:
  - a. the case management activities provided to OOD through the TPCAs are not allowable VR services delivered to applicants or eligible individuals;
  - b. the services provided through the TPCAs to applicants and eligible individuals are duplicative of those provided by the same cooperating agencies under other

- contracts with OOD or are those customarily provided by the cooperating agency, and, thus, are not new, expanded or modified to include a VR focus;
- c. OOD paid for other unallowable VR expenditures through the line item budgets included in the TPCA contracts;
  - d. OOD lacked the internal controls necessary to ensure that the use of VR funds for expenditures under the TPCAs were in compliance with all pertinent federal requirements; and
  - e. OOD used unallowable VR program costs incurred under the TPCAs as a source of match for the VR program which is not permitted under federal regulations.
- OOD did not ensure that VR program funds expended under a contract with the Ohio Department of Alcohol and Drug Addiction Services were used properly and efficiently and only for allowable VR expenditures.
  - OOD did not properly expend program income to the extent that SSA reimbursement was used to support unallowable VR program expenditures under contracts with community councils for the deaf and hard of hearing and the State Personal Care Assistance program.
  - OOD does not expend program income before drawing down federal funds.
  - Employees working on multiple cost objectives do not accurately account for time spent on multiple cost objectives and OOD does not accurately reconcile the total activity for which each employee is compensated.
  - OOD does not insure the accurate completion and verification of program income reported in required financial reports.

In response to the issuance of the draft FY 2013 monitoring report on OOD's VR program, dated October 18, 2013, OOD sought technical assistance regarding the findings related to its TPCAs, particularly issues concerning the provision of case management activities, new and expanded services and internal controls. RSA provided this technical assistance, both in writing and during a two-day meeting at RSA's offices, enabling OOD to resolve these findings. This technical assistance, along with the manner in which OOD resolved these findings, is described in more detail in Appendix A, page 50, of this report.

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

RSA will collaborate closely with OOD and the Southern Illinois University (SIU) Region 5 TACE to develop a plan to address the technical assistance needs identified by OOD in Appendix A of this report. RSA, OOD and the SIU Region 5 TACE will conduct a teleconference within 60 calendar days following the publication of this report to discuss the details of the technical assistance needs, identify and assign specific responsibilities for implementing technical assistance and establish initial timeframes for the provision of the assistance. RSA, OOD and the SIU Region 5 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 David Steele (Fiscal Unit); Joe Doney (Technical Assistance Unit); Joan Ward (Data Collection and Analysis Unit); and Edward West, Sandy

DeRobertis, and Zera Hoosier (Vocational Rehabilitation Unit). Although not all team members participated in the on-site visit, each contributed to the gathering and analysis of information, along with the development of this report.

## **Acknowledgements**

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

## SECTION 2: PERFORMANCE ANALYSIS

This analysis is based on a review of the programmatic and fiscal data contained in Tables 2.1 and 2.2 below and is intended to serve as a broad overview of the VR program administered by OOD. 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 fiscal years 2008 through 2012. Consequently, the table and accompanying analysis do not provide information derived from OOD open service records including that related to current applicants, individuals who have been determined eligible and those who are receiving services. OOD 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  
OOD Program Performance Data for FY 2008 through FY 2012**

All Individual Cases Closed	Number, Percent, or Average	2008	2009	2010	2011	2012	Change from 2008 to 2012	Agency Type 2012
TOTAL CASES CLOSED	Number	29,038	26,780	22,377	16,821	21,559	-7,479	270,171
	Percent	100.0%	100.0%	100.0%	100.0%	100.0%	-25.8%	100.0%
Exited as an applicant	Number	6,380	6,382	5,838	4,514	6,414	34	46,488
	Percent	22.0%	23.8%	26.1%	26.8%	29.8%	0.5%	17.2%
Exited during or after trial work experience/extended evaluation	Number	0	0	0	0	0	0	1,917
	Percent	0.0%	0.0%	0.0%	0.0%	0.0%		0.7%
TOTAL NOT DETERMINED ELIGIBLE	Number	6,380	6,382	5,838	4,514	6,414	34	48,405
	Percent	22.0%	23.8%	26.1%	26.8%	29.8%	0.5%	17.9%
Exited without employment after IPE, before services	Number	265	224	142	293	561	296	6,809
	Percent	0.9%	0.8%	0.6%	1.7%	2.6%	111.7%	2.5%
Exited from order of selection waiting list	Number	48	80	99	613	175	127	4,167
	Percent	0.2%	0.3%	0.4%	3.6%	0.8%	264.6%	1.5%

<b>All Individual Cases Closed</b>	<b>Number, Percent, or Average</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>Change from 2008 to 2012</b>	<b>Agency Type 2012</b>
Exited without employment after eligibility, before IPE	Number	6,737	6,368	5,178	4,069	7,239	502	62,145
	Percent	23.2%	23.8%	23.1%	24.2%	33.6%	7.5%	23.0%
TOTAL EXITED AFTER ELIGIBILITY, BUT PRIOR TO RECEIVING SERVICES	Number	7,050	6,672	5,419	4,975	7,975	925	73,121
	Percent	24.3%	24.9%	24.2%	29.6%	37.0%	13.1%	27.1%
Exited with employment	Number	9,656	7,520	5,707	3,373	3,510	-6,146	82,978
	Percent	33.3%	28.1%	25.5%	20.1%	16.3%	-63.6%	30.7%
Exited without employment	Number	5,952	6,206	5,413	3,959	3,660	-2,292	65,667
	Percent	20.5%	23.2%	24.2%	23.5%	17.0%	-38.5%	24.3%
TOTAL RECEIVED SERVICES	Number	15,608	13,726	11,120	7,332	7,170	-8,438	148,645
	Percent	53.8%	51.3%	49.7%	43.6%	33.3%	-54.1%	55.0%
EMPLOYMENT RATE	Percent	61.87%	54.79%	51.32%	46.00%	48.95%	-20.87%	55.82%
Transition age youth	Number	7,126	6,552	6,049	5,351	6,471	-655	96,725
	Percent	24.5%	24.5%	27.0%	31.8%	30.0%	-9.2%	35.8%
Transition aged youth employment outcomes	Number	2,003	1,499	1,269	1,044	1,211	-792	30,753
	Percent	20.7%	19.9%	22.2%	31.0%	34.5%	-39.5%	37.1%
Competitive employment outcomes	Number	9,381	7,324	5,535	3,220	3,383	-5,998	79,092
	Percent	97.2%	97.4%	97.0%	95.5%	96.4%	-63.9%	95.3%
Supported employment outcomes	Number	301	219	196	163	292	-9	10,295
	Percent	3.1%	2.9%	3.4%	4.8%	8.3%	-3.0%	12.4%
Average hourly wage for competitive employment outcomes	Average	\$12.88	\$13.42	\$12.75	\$11.16	\$10.58	-\$2.30	\$11.26
Average hours worked for competitive employment outcomes	Average	33.8	32.8	31.6	30.1	28.8	-5.0	31.3
Competitive employment outcomes at 35 or more hours per week	Number	5,780	4,195	2,842	1,420	1,330	-4,450	40,729
	Percent	59.9%	55.8%	49.8%	42.1%	37.9%	-77.0%	49.1%

<b>All Individual Cases Closed</b>	<b>Number, Percent, or Average</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>Change from 2008 to 2012</b>	<b>Agency Type 2012</b>
Employment outcomes meeting SGA	Number	6,743	4,941	3,509	1,789	1,684	-5,059	48,900
	Percent	69.8%	65.7%	61.5%	53.0%	48.0%	-75.0%	58.9%
Employment outcomes with employer-provided medical insurance	Number	4,877	3,671	2,406	1,138	693	-4,184	19,345
	Percent	50.5%	48.8%	42.2%	33.7%	19.7%	-85.8%	23.3%

## **VR Performance Trends**

### **Positive Trends**

OOD improved its performance in several areas during the review period. OOD's VR employment rate improved by approximately three percentage points between FY 2011 and FY 2012, increasing from 46.00 percent to 48.95 percent. In addition, OOD assisted a greater percentage of individuals to achieve supported employment between FY 2008 and FY 2012. In FY 2008, 301 or 3.1 percent of the employment outcomes were closed in supported employment. In FY 2012, the percentage was more than five percentage points greater, at 8.3 percent. Finally, the percentage of transition-age youth who exited the VR program increased between FY 2008 and FY 2012, from 20.7 percent to 34.5 percent.

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

The data set forth in Table 2.1 above indicate that OOD has potential risks in multiple performance areas. During the review period, OOD experienced a 25.8 percent decline in the number of individuals whose cases were closed between FY 2008 and FY 2012. In FY 2008, the cases of 29,038 individuals were closed, compared to those of 21,559 individuals in FY 2012. Additionally, the number of individuals whose cases were closed after the determination of eligibility, but prior to receiving services, increased by 7.5 percent, from 6,737 individuals in FY 2008 to 7,239 in FY 2012.

This decline in performance was also reflected in the quantity and quality of employment outcomes achieved by OOD VR program participants during the same period of time. The number of individuals who achieved employment outcomes decreased significantly, down by 63.6 percent (9,656 individuals in FY 2008 to 3,510 in FY 2012). Of these individuals, the number who exited the VR program without employment after receiving services also decreased, from 5,952 individuals in FY 2008 to 3,660 in FY 2012, a decline of 38.5 percent. Although, as described above, OOD's employment rate improved slightly between FY 2011 and FY 2012, the rate decreased sharply over the entire review period, from 61.87 percent in FY 2008 to 48.95 percent in FY 2012.

Likewise, the quality of these outcomes as measured by the indicators in Table 2.1 declined. The average hourly wage decreased by \$2.30, from \$12.88 in FY 2008 to \$10.58 in FY 2012, for individuals who achieved competitive employment. The average hours worked by individuals who achieved competitive employment decreased by five hours, from 33.8 hours in FY 2008 to 28.8 hours in FY 2012. The number of these individuals working 35 or more hours per week decreased by 77.0 percent, from 5,780 individuals in FY 2008 to 1,330 in FY 2012, a difference of 4,450 individuals. The number of individuals who achieved employment with earnings meeting the level of substantial gainful activity (SGA), as determined by the Social Security Administration, decreased by 75.0 percent, from 6,743 in FY 2008 to 1,684 in FY 2012, a difference of 5,059 individuals. Finally, the number of individuals who achieved employment and received employer-provided medical insurance declined by 85.8 percent, from 4,877 individuals in FY 2008 to 693 in FY 2012, a difference of 4,184 individuals.

During the course of the review, RSA discussed these performance trends with OOD management. OOD attributed the decline in the number of individuals served and the employment outcomes they achieved, in part, to a significant reduction in staff, particularly VR counselors. The agency also reported that it is serving greater numbers of individuals with significant disabilities other than sensory impairments and fewer individuals who are employed at application, which may have affected its performance with respect to the quality of employment. OOD indicated its intent to conduct further analyses to determine the degree to which these and other factors affected its performance related to the number of individuals engaged in the various stages of the VR process, as well as the quantity and quality of employment outcomes they achieve. These analyses will enable OOD to more effectively modify and enhance the goals by which it assesses the performance of the program and the strategies used to attain these goals.

## Fiscal Analysis

**Table 2.2  
OOD Fiscal Performance Data for FY 2008 through FY 2012**

VR Fiscal Profile	Quarter	2008	2009	2010	2011	2012
Grant amount	4 <sup>th</sup>	118,727,629	121,443,769	98,527,009	105,641,313	133,070,320
	Latest/ Final*	118,727,629	121,443,769	98,527,009	105,641,313	
Total outlays	4 <sup>th</sup>	111,513,785	83,348,625	46,039,055	41,397,543	55,351,599
	Latest/ Final*	150,864,484	154,319,450	124,604,797	128,531,555	
Total unliquidated obligations	4 <sup>th</sup>	9,496,262	9,031,782	14,390,322	27,552,950	27,075,679
	Latest/ Final*	0	0	0	0	
Federal share of expenditures	4 <sup>th</sup>	82,273,754	50,497,862	19,819,614	14,027,898	29,434,832
	Latest/ Final*	118,727,629	121,443,769	98,063,975	101,154,334	
Federal share of unliquidated obligations	4 <sup>th</sup>	6,601,904	9,013,473	13,943,622	27,448,563	27,075,679
	Latest/ Final*	0	0	0	0	
Total federal share	4 <sup>th</sup>	88,875,658	59,511,335	33,763,236	41,476,461	56,510,511
	Latest/ Final*	118,727,629	121,443,769	98,063,975	101,154,334	
Recipient share of expenditures	4 <sup>th</sup>	29,240,031	32,850,763	26,219,441	27,369,645	25,916,767
	Latest/ Final*	32,136,855	32,875,681	26,540,822	27,377,221	
Recipient share of unliquidated obligations	4 <sup>th</sup>	2,894,358	18,309	446,700	104,387	0
	Latest/ Final*	0	0	0	0	
Agency actual match (total recipient share)	4 <sup>th</sup>	32,134,389	32,869,072	26,219,441	27,369,645	25,916,767
	Latest/ Final*	32,136,855	32,875,681	26,540,822	27,377,221	
Agency required match (total recipient share required)	4 <sup>th</sup>	22,267,229	13,667,147	5,535,564	4,061,339	8,024,008
	Latest/ Final*	32,133,399	32,868,517	26,540,822	27,377,221	
Over/under match (remaining recipient share)	4 <sup>th</sup>	-9,867,160	-19,201,925	-20,683,877	-23,308,306	-17,892,759
	Latest/ Final*	-3,456	-7,164	0	0	

MOE **	4 <sup>th</sup>					
	Latest/ Final*		32,875,681	26,540,822	27,377,221	
Unobligated funds qualifying for carryover	4 <sup>th</sup>	29,851,971	61,932,434	64,763,773	64,164,852	76,559,809
	Latest/ Final*	0	0	463,034	4,486,979	
Total federal program income earned	4 <sup>th</sup>	8,241,843	14,348,398	3,749,130	2,005,485	4,366,631
	Latest/ Final*	8,250,409	14,379,643	3,749,130	1,643,596	
Total indirect costs	4 <sup>th</sup>	6,545,792	7,162,369	5,522,406	4,523,206	5,349,279
	Latest/ Final*	7,048,500	6,860,758	5,522,406	4,523,632	

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

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

The grant award amounts in Table 2.2 do not include the amount of funds OOD voluntarily relinquished to the U.S. Department of the Treasury. While OOD met the matching requirement for the amount of federal funds expended by the agency, it was unable to provide sufficient non-federal contributions to match all federal funds available during each year of the review period. Consequently, OOD relinquished a significant and increasing amount of federal VR program funds, beginning with \$1,673,257 in FY 2008, increasing significantly to \$32,938,588 in FY 2010, and concluding with \$19,450,668 in FY 2011. Although this amount decreased in the last two years for which this figure is available, OOD returned to the federal government a total of \$56,238,430 over the four years from FY 2008 to FY 2011.

In addition, in FY 2011, OOD experienced a deficit in the State's required maintenance of effort (MOE) and received a penalty of \$5,941,948. Finally, the data related to the inaccurate reporting of program income is discussed in Section 6, Finding 3 of this report.

## SECTION 3: EMERGING PRACTICES

While conducting the monitoring of the VR program, the review team collaborated with the OOD, the IC, 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 IC;
- the improvement of employment outcomes, including supported employment and self-employment;
- VR agency organizational structure; and
- outreach to unserved and underserved individuals.

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

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

### **Improvement of Employment Outcomes, including Supported Employment and Self-Employment**

- **Consumer Advisory Committee:** As an independent commission, OOD established a statewide consumer advisory committee (CAC) to enhance the delivery of VR services. CAC members volunteer their time to provide input on OOD policies and practices, educate their local communities about the VR services provided by OOD, engage in outreach activities and advocate on behalf of people with disabilities. The CAC is comprised of 17 volunteers who reflect the diversity of the disability community from all geographic regions of Ohio. Statewide CAC meetings allow the Commission Board Chair, the OOD Deputy Director of the Bureau of VR, and the OOD Communications Liaison to share information and solicit feedback from a consumer perspective.

The CAC has actively participated in OOD's comprehensive statewide needs assessment. CAC members also have provided input and feedback on the development of OOD's vendor fee schedule by answering questions specific to the provision of VR services. CAC members participated in a Consumer Track Subcommittee that designed and provided training workshops to over 100 participants at OOD's Disability Jobs Summit. Finally, CAC members act as mentors and role models for youth with disabilities.

## **Outreach to Unserved and Underserved Individuals**

- **Consumer Support Advocate Program:** In October 2010, OOD began an outreach program using individuals currently receiving VR services as Consumer Support Advocates (CSAs), who provide information and referral services to individuals with disabilities in the State and connect them with agencies such as OOD. CSAs have first-hand experience as consumers of social service agencies, which they use to assist other individuals with disabilities to better navigate various systems. Through this collaborative effort, CSAs utilize The Benefit Bank (TBB) to assist their consumers in applying for SSI/SSDI as well as Medicaid, Food Assistance and other benefits as appropriate. The TBB is an online tool that connects Ohioans to federal and State benefits and tax credits for which they may be eligible. In addition, as OOD currently implements an order of selection, the CSAs direct individuals on the agency's waiting list for VR services to other resources, such as one-stops, food pantries and TBB.

Finally, CSAs can obtain work experience and skills that may contribute to the achievement of their employment goals. OOD reports that 12 of 32 individuals who volunteered as CSAs beginning in FY 2011 have since achieved permanent employment with average hourly wages greater than those of others served by OOD.

A complete description of the practices described above can be found on the RSA website at <http://rsa.ed.gov/emerging-practices.cfm>.

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

During its review of the OOD's VR and SE programs in federal FY 2013, RSA assessed progress toward the implementation of recommendations accepted by the agency resulting from the prior monitoring review in FY 2008 and the resolution of compliance findings from that review. OOD reported throughout the course of the FY 2013 review its continued efforts towards addressing recommendations made by RSA and have indicated a potential request for TA in most if not all areas of recommendation.

In response to RSA's monitoring report dated September 24, 2008, FY 2008, OOD accepted the recommendations described below, along with a brief summary of the agency's progress toward implementation of each recommendation.

### **1. Personnel Vacancies and Order of Selection (OOS):**

RSA recommended that OOD continue its efforts toward the hiring and retention of qualified VR counselors, as well as development of strategies that included an analysis of relevant data in forecasting its need to implement an OOS on a statewide basis. Additionally, recommendations were made to train managers and staff on proper implementation of an OOS complete with steps outlined to revise the definitions of priority categories. Lastly, RSA recommended that OOD use relevant data to analyze its current and projected financial situation to determine resources and staffing needed to serve current and projected applicants.

**Update:** OOD reported that it has resumed the hiring of qualified VR counselors and plans to streamline the hiring processes for counseling staff, including the reconfiguration of new counselor training. Additionally the agency reports that all VR counseling staff, supervisors and area managers receives routine training regarding eligibility and OOS decisions to help facilitate the consistent implementation of OOS on a statewide basis. As a result of ongoing analysis, the agency has redefined OOS definitions and priority categories. OOD continues to analyze service capacity as it relates to OOS and a year ago began releasing individuals from the waiting list. The agency further reports that the newly implemented targeted review process has shown an increase in the accuracy of eligibility and OOS decisions, with an OOD reported accuracy rate for FY 2012 of 95.93 percent. The agency continues to work on improving the timeframe for eligibility decisions and review of best practices.

### **2. Underserved Individuals:**

RSA recommended in FY 2008 that OOD include more effective methodologies in its comprehensive statewide needs assessment to determine to what extent individuals are being underserved according to disability types. RSA also recommended the agency develop goals to increase the number of individuals with mental illness, cognitive impairments and physical disabilities served by the agency, along with the development of strategies to achieve those goals and to conduct outreach to individuals from minority backgrounds to assist them in accessing VR services.

**Update:** OOD reported that it completed and published its most recent comprehensive statewide needs assessment (CSNA) on June 25, 2012. The CSNA focused on the identification and prevalence of certain types of disabilities, including visual, hearing, communicative, physical, psychosocial and cognitive impairments, traumatic brain injury, developmental disability, autism, and drug and alcohol abuse, on a county-by-county basis. Data from the CSNA were made available to local supervisors and associated teams to develop and implement strategies for outreach and education efforts specific to the counties they serve.

### **3. Supported Employment:**

RSA recommended that OOD develop annual goals, long-term targets and strategies to increase the number of supported employment (SE) outcomes. During the monitoring review it was also recommended that OOD analyze the local area agreements to help with increasing area and agency-level performance as it related to the number and quality of SE outcomes achieved. Additional training was recommended as well to offset the possibility of coding errors.

**Update:** OOD identified short-and long-term goals, as well as strategies to improve the SE success rate. Some of the strategies included revising the procedures for providing SE services, participation in statewide partnership agreements related to the provision of extended support services and identifying coding errors. As a result, OOD developed additional staff training and implemented procedures utilizing the new electronic case management system.

### **4. Productivity Goals:**

RSA recommended that OOD develop quality employment goals, timely VR services and effective outcome strategies for individuals with disabilities, particularly for those with the most significant disabilities (MSD).

**Update:** OOD reported that it is now focused on the quality of services and outcomes for individuals with the most significant disabilities. It has implemented recommendations from the FY 2012 CSNA, developed the Consumer Support Advocates program and restructured its fee schedule to better serve these individuals. OOD restructured caseloads and productivity goals to allow counselors more time to focus on delivering quality VR services and achieving employment outcomes.

### **5. Quality Assurance (QA):**

RSA recommended that OOD improve and expand QA activities to encompass an agency-wide approach including an evaluation of OOD policies and guidance directives and to what extent they are being implemented consistently in the field. Evaluation of services purchased or provided by OOD staff, evaluation of agency outcomes, including fiscal and data management, involving staff, stakeholders, individuals with disabilities,

and community partners, all were recommendations as an aspect of quality assurance measures and accountability for the agency.

**Update:** OOD reported it uses a process called the Program Integrity and Evaluation (PIE) case review to address consistency with OOD policies and guidance to field offices. The use of technology by way of video conferencing on a monthly basis was reported as a primary approach for providing ongoing communication and guidance to staff regarding policy updates and the VR case process. The consumer satisfaction survey conducted by the PIE staff is the main reported method for evaluation of quality of services purchased and those provided by OOD staff. Additional planning is underway to develop further methods of evaluating service quality from staff, employers and those services purchased under the new VR fee schedule implemented October 2012.

## **6. Planning and Communication:**

RSA recommended in FY 2008 that OOD place a greater emphasis on the integration of fiscal and programmatic planning in the strategic planning process, as well as greater involvement of counselors and one-stop partners. RSA further recommended developing methods to improve communication between headquarters and frontline staff.

**Update:** OOD reported that it's FY 2012 and FY 2013 strategic plans were developed with input from the CSNA. A communication strategy which divides Ohio into four distinct areas was instituted to help improve the consistency of shared information and improve the communication of area staff. This has increased the communication to and from the executive director to the area managers and staff. OOD is considering additional ways to use technology to increase communication with the field.

## **7. The High Cost of Services:**

RSA recommended that OOD conduct an analysis of the method used to establish fees with community rehabilitation programs (CRP) to determine the extent to which this method contributes to the agency's high costs for outcomes. RSA further recommended that OOD develop strategies to control the agency's costs for successful and unsuccessful outcomes based on this analysis and explore purchasing of placement services to determine the most cost effective means of providing VR services.

**Update:** OOD reported it contracted with a consulting service to establish a fee schedule for 29 different VR services. A comprehensive analysis was provided to OOD that utilized data from federal entities, other State VR programs, other Ohio agencies and from service providers and associations. The report recommended that OOD establish commonly defined fees based on market information, including CRP survey results, other State information, Ohio agencies and other market indicators. OOD reported that its new fee schedule defines common purchased services and provides improved consistency in its application.

## **8. Contract Administration:**

RSA recommended that OOD enter into comprehensive contractual agreements with VR vendors and develop agreements that provide specific requirements on similar services offered throughout the State, while allowing for flexibility in rates charged according to location and service population.

**Update:** OOD reported that it sets service rates and expectations with VR service providers based on the institution of the new market based fee schedule. The revised fee schedule agreements detail a standard scope of work an individual can expect to receive which is consistent across the State. The current iteration of the fee schedule is structured to gather information that will allow OOD to consider moving to a cost based fee structure in the future.

## **9. Fiscal Controls:**

RSA recommended in FY 2008 that OOD develop additional fiscal controls and provide training to affected staff on the implementation of current and new procedures.

**Update:** OOD reported implementation of a new fee schedule to address issues about the lack of provider standards and inconsistency in fees across Ohio. OOD offered ten training sessions to CRP staff statewide on the revised CRP fee schedule.

## **SECTION 5: FOCUS AREAS**

### **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 OOD with the federal requirements related to its organization within Ohio government and the ability of OOD 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 OOD toward the implementation of recommendations related to these requirements identified in prior monitoring reports (see Section 4 above);
- compliance with statutory and regulatory provisions governing the organization of the OOD under 34 CFR 361.13(b);
- processes and practices related to the promulgation of VR program policies and procedures;
- the manner in which OOD 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 OOD 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:

- OOD executive director and chief of staff;
- Bureau of Vocational Rehabilitation (BVR) and Bureau of Services for the Visually Impaired (BSVI) deputy directors;
- OOD staff members responsible for the fiscal management of the VR program;
- Members of the Independent Commission;
- Client Assistance Program staff members; and
- TACE 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 full-time employees (FTEs) in each program, identifying the specific programs on which they work and the individuals to whom they report, specifically including:
  - o individuals who spend 100 percent of their time working on the rehabilitation work of OOD;
  - o individuals who work on rehabilitation work of the OOD and one or more additional programs/cost objectives (e.g., one-stop career centers); and
  - o individuals under OOD 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 Ohio's procurement requirements and processes.

## **Overview**

OOD, formerly ORSC, is the designated State agency and an independent commission within Ohio State government. OOD consists of three program bureaus: the Bureau of Vocational Rehabilitation, the Bureau of Services for the Visually Impaired and the Division of Disability Determination. OOD is supported by six administrative divisions, including the Office of Communications, the Division of Fiscal Management, the Division of Human Resources, the Division of Information Technology, the Division of Legal Services, and the Division of Performance and Innovation.

The OOD executive director reports directly to the Ohio governor and was appointed in January 2011. A seven-member commission is appointed by the governor and oversees OOD. Four of the members must have a disability and all members serve staggered seven-year terms.

OOD employs 378 staff to administer and operate its VR program, 377 (99.7 percent) of whom devote 100 percent of their time to this program. OOD operates 14 statewide offices that provide vocational assessments, counseling, job training, assistive technology, orientation and mobility training, and job-placement assistance to adults and transition-age youth.

## **Technical Assistance**

During the course of this review, RSA provided technical assistance to OOD related to this focus area. Specifically, RSA provided guidance related to the composition requirements of independent commissions in light of a recent vacancy on the OOD commission, explaining that a majority (at least 51 percent) of the commission members must be individuals with disabilities. RSA also provided technical assistance related to the federal requirements concerning the oversight responsibilities of independent commissions, reviewing and providing input on proposed Ohio legislation addressing the role of the OOD commissioners. This technical assistance is ongoing as this proposed legislation continues to be revised through the legislative process.

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

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

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

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

To implement this focus area, RSA reviewed:

- formal interagency agreements between the VR agency and the State educational agency (SEA);
- transition-related VR service policies and procedures;
- VR agency resources and collaborative efforts with other federal, State and local entities;
- third-party cooperative arrangements and other cooperative agreements;
- samples of signed and implemented third-party cooperative agreements; and
- samples of other cooperative agreements, if applicable.

To assess the performance related to the provision of transition services and the outcomes achieved by youth with disabilities, RSA reviewed OOD relevant data from FY 2008 through FY 2012, 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 individualized plan for employment (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, rehabilitation technology 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 OOD with the national average of all combined agencies as appropriate.

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:

- OOD executive director;
- BVR and BSVI deputy directors;
- OOD VR counselors and transition staff; and
- OOD transition coordinators serving as liaisons with the SEA and other agencies.

RSA's review of transition services and employment outcomes achieved by youth with disabilities resulted in the identification of the following observation and recommendations. Appendix A of this report indicates whether or not the agency has requested technical assistance to enable it to implement any of the below recommendations. In addition, the compliance findings identified by RSA through the implementation of this focus area are contained in Section 6 of this report.

## **Observations and Recommendations**

### **5.B.1 Quantity and Quality of Employment Outcomes**

**Observation: During the period under review, OOD assisted a decreasing number of transition-age youth to achieve employment and the quality of these outcomes declined as well.**

From FY 2008 to FY 2011, the number of transition-age youth who exited the VR program with employment decreased from 2,003 to 1,044 individuals, which accounted for 25.01 percent of all transition-age youth whose cases were closed. FY 2012 data show an increase to 1,211 youth who obtained employment; however, the corresponding percentage decreased further to 18.7 percent of all closures.

- The decline in OOD performance on measures by which the quality of employment outcomes is measured is demonstrated by the data described below.

- o The average hours worked per week by youth who achieved employment decreased from 31.09 in FY 2008 to 27.30 in FY 2012.
- o Of all youth who achieved competitive employment outcomes, the percentage who worked at least 35 hours per week decreased from 47.98 percent in FY 2008 to 30.72 percent in FY 2012.
- o Of all youth who achieved competitive employment, the percentage who earned wages meeting or exceeding the level of SGA decreased from 57.41 percent in FY 2008 to 38.65 percent in FY 2012.
- o Of the youth who obtained competitive employment, the percentage who received employer-provided medical insurance decreased from 40.39 percent in FY 2008 to 17.18 percent in FY 2012.
- o Youth who achieved competitive employment earned an average hourly wage of \$9.29 in FY 2008, which increased by 4 cents to \$9.33 in FY 2012.
- o In FY 2012, of the seven employment outcomes defined according to the occupational classification codes most frequently obtained by transition-age youth, none provided an average hourly wage in excess of \$8.90.
- Throughout the review period, OOD supported increasingly fewer youth to attend college and university training. Of the youth whose cases were closed in FY 2011, 13.29 percent received college and university training, compared to the national average for all combined agencies of 19.44 percent. In FY 2012, this figure further decreased to 10.88 percent. Likewise, trending downward for youth whose cases were closed, the percent receiving occupational and vocational training decreased from 15.63 percent in FY 2011, to 9.96 percent in FY 2012.
- OOD reported that this performance resulted from serving fewer individuals with sensory disabilities, while increased numbers of individuals with mental health and cognitive disabilities were served. As a result, these individuals with more significant disabilities required job readiness and skills training, rather than postsecondary and vocational training.

**Recommendation 5.B.1:** RSA recommends that OOD conduct analysis to determine the factors leading to the decline in the quantity and quality of employment outcomes for transition-age youth; develop and implement measurable goals and strategies to improve this performance; and track progress.

### **Technical Assistance**

During the course of monitoring, RSA provided technical assistance to OOD related to the increasing number of transition-age youth for whom eligibility is not determined within 60 days as required by regulations at 34 CFR 361.41, and who are determined not eligible for VR services. OOD indicated that this trend results, in part, from the lack of current and complete medical documentation in school records, including documentation describing functional limitations. RSA reviewed the agency's interagency agreement with the State's educational agency, identifying for OOD personnel areas of the agreement that could be strengthened so that OOD counselors are better able to obtain sufficient medical documentation from the schools and, thus, determine eligibility for transition-age youth in a timelier manner.

## 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 maintenance of effort (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 FY 2008 thru FY 2012, 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 federal FY 2008 monitoring report issued pursuant to Section 107 of the Rehabilitation Act (see Section 4 above for a report of the agency's progress toward implementation of recommendations and resolution of findings);
- A-133 audit findings and corrective actions;
- State/agency allotment/budget documents and annual 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 OOD did not result in the identification of observations and recommendations. The compliance findings and corrective actions resulting from the implementation of this focus area are contained in Section 6 of this report.

## SECTION 6: COMPLIANCE FINDINGS AND CORRECTIVE ACTIONS

RSA identified the following compliance findings and corrective actions that OOD is required to undertake. Appendix A of this report indicates whether or not the agency requests technical assistance 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.

OOD must develop a corrective action plan for RSA's review and approval that includes specific steps the agency will take to complete the corrective actions, the timetable for completing those steps, and the methods the agency will use to evaluate whether the compliance findings have been resolved. RSA anticipates that the corrective action plan can be developed and submitted online using the RSA website at <http://rsa.ed.gov> within 45 days from the issuance of this report and RSA is available to provide technical assistance to enable OOD to develop the plan and undertake the corrective actions.

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

### 1. Third-Party Cooperative Arrangements

#### Legal Requirements:

- Rehabilitation Act – Sections 7(38), 103(a) and 111(a)(1)
- VR Program Regulations – 34 CFR 361.3, 34 CFR 361.5(b)(58), 34 CFR 361.12, 34 CFR 361.28, 34 CFR 361.48 and 34 CFR 361.60(b)(1)
- EDGAR – 34 CFR 80.20(a) and 34 CFR 80.24(a)
- Federal Cost Principles – 2 CFR 225, Appendix A, paragraph C(1) and C(3)a

#### Finding:

The 73 FY 2013 and prior third-party cooperative arrangements (TPCA) established by OOD with State and local public agencies to provide services to transition-age youth and other targeted groups of individuals with disabilities are not in compliance with Section 111(a)(1) of the Rehabilitation Act; and regulations at 34 CFR 361.3, 34 CFR 361.28 and 2 CFR 225, Appendix A, paragraph C, because:

- A. the case management activities provided to OOD through the TPCAs are not allowable services under a TPCA because they do not constitute VR services delivered to applicants or eligible individuals (34 CFR 361.28(a)(2));
- B. the services provided through the TPCAs to applicants and eligible individuals are duplicative of those provided by the same cooperating agencies under other contracts with OOD or are those customarily provided by the cooperating agency, and, thus, are not new, expanded or modified to include a VR focus (34 CFR 361.28(a)(1));

- C. OOD paid for other unallowable VR expenditures through the line item budgets included in the TPCA contracts; and
- D. OOD lacked the internal controls necessary to ensure that the use of VR funds for expenditures under the TPCAs were in compliance with all pertinent federal requirements (34 CFR 361.12 and 34 CFR 361.20(a)).

In addition, because these arrangements do not meet all the requirements for TPCAs and, thus, the expenditure of VR program funds associated with them is not allowable, the corresponding non-federal expenditures resulting from the arrangements are not a permissible source of match for the program in accordance with regulations at 34 CFR 361.60(b)(1) and 34 CFR 80.24(a).

## **Background**

Federal VR regulations permit VR agencies and other State and local public agencies to enter into TPCAs in order to enhance and improve the provision of VR services to individuals with disabilities who are applicants or consumers of the VR program. However, they must adhere to the following 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 program expenditures 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 regulations at 34 CFR 361.26 (34 CFR 361.28(b)).

OOD implemented 91 TPCAs with public agencies between FY 2008 and FY 2013, 73 of which were still in operation in FY 2013. OOD refers to these TPCAs as “Vocational Rehabilitation Public and Private Partnerships” (VRP3). Of the 73 TPCAs in existence in FY 2013, 23 were implemented on October 1, 2012. OOD reported that these arrangements were designed to enable it to satisfy the VR program matching requirement of 21.3 percent. OOD also reported that the resulting partnerships and funding level increase would facilitate a substantial increase in employment outcomes for Ohioans with disabilities by expanding the agency’s service delivery capacity. OOD established these TPCAs with various State agencies, including the Ohio Bureau of Workers’ Compensation and the Ohio Department of Alcohol and Drug Addiction Services (ODADAS), as well as local public agencies, such as the Employment Connection, mental health county boards, mental health and recovery services, alcohol drug and mental health services, and developmental disability county boards. Of the 73 ongoing TPCAs, 61 TPCAs were developed

using a “case management” template – meaning that the cooperating agency provides case management services, not direct VR services. The 61 case management TPCAs include 20 Bridges to Transition (BT) contracts for transition-age youth; 18 Recovery to Work (RTW) contracts for individuals with alcohol or drug diagnoses; and 23 contracts for diverse populations, including individuals with mental and emotional disorders, developmental disabilities and recipients of Workers’ Compensation. The remaining 12 on-going TPCAs were developed using an “administrative” template. These contracts will be discussed in more detail in part B below.

During the course of the monitoring, RSA reviewed a sample of the TPCAs that were operational in FYs 2011, 2012 or 2013. RSA also reviewed OOD-provided spreadsheets entitled “VRP3 Financials” and “VRP3 Deliverables” for FYs 2011, 2012 and 2013. RSA likewise reviewed a subcontractor spreadsheet for the last 12 months of an 18-month TPCA between OOD and ODADAS entitled “ODADAS Financials – Deliverables (ending September 2012)”. Though RSA noted some additions and deletions from the template language when reviewing different agreements, e.g., modifications regarding the eligibility and dispute resolution processes, each of the TPCAs reviewed followed a generally consistent template. This format included attachments entitled, “Standard Terms and Agreements,” “Scope of Services and Additional Terms (Exhibit A),” and a “VRP3 Contract Budget Proposal.” OOD advised RSA that it added a guide for competitive employment closures to the Exhibit A template for the first time in FY 2012, with the exception of the FY 2012 TPCA between OOD and ODADAS.

Although the specific terms of each of the arrangements may vary, all current agreements were developed using the case management or administrative templates and, therefore, are similar in those aspects that raise questions of compliance with federal requirements. Therefore, the analysis below relies upon the TPCA template, VRP3/subcontractor spreadsheets, and an FY 2013 ODADAS status table, entitled “ODADAS 2011-2012 Sub-Contractors.” The status table summarizes the number of county level subcontractors from ODADAS’ March, 2011 through September, 2012 TPCA. The analysis also relies upon several written agreements, including those executed separately with the Knox County Board of Developmental Disabilities (Contract Number 13F938VRP3-12, dated September 28, 2012) and the Fairfield County Board of Developmental Disabilities (Contract Number 13F969VRP3-12, dated October 1, 2012). RSA likewise reviewed the agreements with ODADAS (Contract Number 125204VRP3, dated March 14, 2011 with a renewal addendum dated July 5, 2011), the Butler County Alcohol and Drug Addiction Services (ADAS) Board (Contract Number 13F856VRP3-12, dated September 28, 2012) and the ADAS Board of Lorain County (Contract Number 13F1006VRP3-12, dated January 7, 2013). In addition, RSA met with a variety of OOD staff and representatives of the cooperating agencies to discuss the manner in which the terms of the written agreements are implemented. Based on this review, RSA finds that these TPCAs are not in compliance with pertinent federal requirements as set forth below.

### **1.A. Unallowable Activities (Case Management Services)**

OOD’s case management TPCAs are not in compliance with federal regulations because the case management activities provided by the cooperating agencies are not VR services provided to applicants or eligible individuals, as required by 34 CFR 361.28(a)(2). Rather, the case

management activities provided by the cooperating agencies benefit OOD counselors and staff; they are not VR services, as defined at 34 CFR 361.5(b)(58), provided directly to individuals with disabilities served through the VR program.

During the course of its monitoring, RSA reviewed several of the 61 ongoing case management TPCAs and noted that the aspects that raised questions of compliance were similar in each of them. Given the identical nature of these TPCAs, the analysis of this particular finding relies on a case management TPCA between OOD and the Knox County Board of Developmental Disabilities (Contract Number 13F938VRP3-12, dated September 28, 2012) to highlight these concerns. In addition to reviewing the actual TPCA, RSA met with OOD personnel involved in programmatic and financial oversight activities of the TPCAs, as well as representatives of the Knox County Board of Developmental Disabilities to further understand the implementation of the case management TPCAs, the specific services provided through these arrangements and the monitoring of the arrangements by OOD.

Through the 61 ongoing case management TPCAs, the various cooperating agencies employ a total of 168 Coordinators, each of whom is responsible for a targeted caseload of 60 to 70 VR consumers who meet the eligibility requirements of both OOD and the cooperating agency. In this regard, the TPCAs comply with the requirement at 34 CFR 361.28(a)(2). However, based on the terms of the Knox County agreement (see Exhibit A – Section 2B at Contract Page 10 of 17), which, as stated above, is being used as the example for purposes of this analysis, the coordinators engage in the following case management activities:

- meeting with potential consumers to provide information concerning their rights, federal and State regulations, and OOD policies and procedures;
- opening a referral for the potential consumer;
- providing documentation of a disability and a justification that the consumer requires and would benefit from vocational rehabilitation services;
- drafting the IPE for each eligible consumer and submitting it to OOD for approval;
- authorizing and providing oversight of services as described in the approved plan;
- making contact with each consumer every 60 days for the duration of each case; and
- providing justification for case closure.

These same activities are provided through 18 FY 2013 RTW TPCAs per the agreements with 26 ODADAS county-level agencies, or groupings of ODADAS county-level agencies, that served as FY 2011 and FY 2012 subcontractors for the ODADAS' TPCA, including both Lorain and Butler Counties (Exhibit A – Section 2B of the respective agreements).

As described more fully in the Background section above, TPCAs are a framework through which a cooperating agency provides VR services to applicants and eligible consumers of the VR program. VR services are defined in Section 7(38) of the Rehabilitation Act and at 34 CFR 361.5(b)(58) as services provided to individuals (Section 103(a) of the Rehabilitation Act and 34 CFR 361.48), or groups (Section 103(b) of the Rehabilitation Act and 34 CFR 361.49). Only three of the above-listed activities -- making contact with consumers every 60 days, assisting the individual to develop an IPE, and meeting with potential consumers to provide information concerning their rights under federal and State regulations, and OOD policies and

procedures -- could constitute a VR service pursuant to 34 CFR 361.48. Each of these activities could be considered counseling and guidance, which is an allowable VR service to VR consumers and applicants and, therefore, would be permissible as a VR service provided under a TPCA.

However, the other four activities identified above – e.g., opening a referral for a potential consumer, authorizing services, providing justification for case closure, and documenting disabilities -- are administrative activities provided to OOD as the VR agency, not VR services provided to applicants and eligible individuals, as required by 34 CFR 361.28(a)(2). Administrative services, such as these, do not constitute a VR service as defined at 34 CFR 361.5(b)(58) and described at 34 CFR 361.48. While the cooperating agency can administer the services provided by its subcontractor on its behalf as the cooperating agency, there is no authority pursuant to 34 CFR 361.28 for the cooperating agency to provide administrative services that benefit OOD VR counselors and staff under a TPCA as OOD has done. OOD, however, could enter into a contract with another agency – including any of the agencies at issue here -- to provide these administrative services, but that contract would be separate and distinct from the third-party cooperative arrangement authorized by 34 CFR 361.28.

Regulatory history for 34 CFR 361.28 also stresses that the services provided by the cooperating agency are to be VR services provided to individuals. It states that “[t]he proposed regulations would also clarify that applicants, as well as eligible individuals, can receive services under these cooperative arrangements.” Likewise, in response to commenters on the draft regulations regarding 34 CFR 361.28, the Secretary stated that “[t]hird-party cooperative arrangements provide a framework for cooperating agencies to provide vocational rehabilitation services and contribute to the State's non-federal financial share under the program. The Secretary further “clarified that services provided by the cooperating agency under a cooperative arrangement must either be new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a VR focus. These requirements are consistent with longstanding RSA subregulatory guidance.” (See Notice of Proposed Rulemaking (NPRM), 60 Fed. Reg. 64475, 64485 (Dec. 15, 1995)).

For the foregoing reasons, the four administrative activities identified above are not allowable activities under a TPCA in accordance with 34 CFR 361.28(a). As a result, VR funds may not be expended for such activities under a TPCA.

**Corrective Action 1.A:** OOD must, within ten days following the issuance of the final monitoring report, submit a written assurance that OOD will cease immediately using federal VR funds to pay for TPCA costs that are unallowable, namely expenditures for administrative case management activities performed by the cooperating agencies, in accordance with 34 CFR 361.28(a)(2) and that all activities performed under a TPCA will constitute a VR service to VR applicants and consumers, as defined at 34 CFR 361.5(b)(58).

## **1.B. New and Expanded Services**

When entering into TPCAs with cooperating agencies, a VR agency must ensure that “[t] he services provided by the cooperating agency are not the customary or typical services provided

by that agency, but are new services that have a VR focus or existing services that have been modified, adapted, expanded, or reconfigured to have a VR focus” (34 CFR 361.28(a)(1)).

To the extent that the TPCA services provided to applicants for, or recipients of, VR services are duplicative of those services delivered to VR program consumers through other contracts between OOD and the same cooperating agencies, the TPCAs are not in compliance with these federal regulations. Additionally, the provision of treatment services through the 18 RTW FY 2013 TPCAs and the FY 2012 ODADAS TPCA are not in compliance with these regulations because such services are customarily and typically provided by the cooperating agencies and, therefore, are not new or expanded services with a VR focus as required.

Of the 73 ongoing TPCAs in existence in FY 2013, 12 were developed under the administrative template with local public agencies. These 12 TPCAs are different from the 61 case management services TPCAs discussed in part A above. In general, these administrative arrangements allow the cooperating agency to purchase from CRPs VR services, such as paid internships/work experiences, personal adjustment services, job readiness and skills training, career exploration, job coaching, job placement, job retention, follow along, and transportation. The individuals referred to these TPCA programs by VR counselors must be eligible for services from both the OOD VR program and the cooperating agency. These services, unlike the case management services discussed in part A above, constitute VR services, as defined at 34 CFR 361.5(b)(58), and appear, on the surface to comply with the requirements of 34 CFR 361.28(a).

However, during the monitoring process, RSA learned that, in some instances, OOD has entered into both a TPCA with the county boards or other cooperating agencies, and established separate fee-for-service contracts with these same agencies. In several instances, the services contracted in both the TPCA and the separate fee-for-service contracts were similar. In those instances, it was clear that the cooperating agency was not providing new or expanded services with a VR focus as it is required to do in accordance with 34 CFR 361.28(a)(1), but rather services that were duplicative of those customarily performed by that cooperating agency.

During the course of its monitoring on this issue, RSA reviewed several of the 12 administrative TPCAs, one of which included an administrative TPCA between OOD and the Fairfield County DD Board. RSA also met with OOD staff and board representatives to discuss implementation of that particular TPCA. According to Exhibit A – Section 2A at Contract Page 10 of 15 of this agreement, and confirmed by Fairfield County DD Board staff during onsite meetings with RSA, the Fairfield County DD Board was charged with providing job coaching services through the TPCA to OOD consumers. In addition to that TPCA, OOD also has entered into a vendor agreement with this same board for the provision of job coaching services to other VR consumers who are not served under the TPCA. Since the board provides job coaching through both a TPCA and a vendor agreement with OOD, the job coaching services do not constitute new and expanded services within the meaning of 34 CFR 361.28(a)(1) and, thus, would not be an allowable activity under a TPCA.

In March of FY 2011, OOD entered into an 18-month RTW TPCA with ODADAS, which, in turn, developed subcontracts with 50 county-level agencies for the provision of services. The total cost of this TPCA was budgeted to total \$34,683,705 in FY 2012. Though this TPCA was

not renewed for FY 2013, 18 of ODADAS' subcontractors, including Lorain County and Butler County, entered into FY 2013 TPCAs with OOD. The combined net award for services for these 18 FY 2013 TPCAs is \$9,394,565. The FY 2013 RTW TPCAs merged approximately 26 county-level agency subcontractors from FY 2011 and FY 2012 into 18 RTW contracts. Likewise, 14 FY 2011 – FY 2012 subcontractors are reported to have merged with 8 existing TPCAs that are not classified as RTW contracts.

Using the Lorain RTW TPCA as one example for this analysis, Exhibit A – Section 3G at Contract Page 14 of 18 requires the cooperating agency to use up to 40 percent of the program funds to provide treatment services to OOD consumers referred to the program and who require treatment for alcohol and drug abuse prior to employment. According to information RSA learned while discussing this issue with relevant OOD and cooperating agency staff, the Lorain County cooperating agency at issue here routinely provides these same treatment services to other individuals who are not served under the OOD TPCA. Therefore, it is clear that these services are not new or expanded services with a VR focus, as required by 34 CFR 361.28(a)(1), and, thus, would not be allowable services under a TPCA. Furthermore, the agreement specifies that the remaining portion of the program funds under the TPCA are to be used to provide the same case management activities referenced above in Section A of this finding (Exhibit A – 2B at Contract Page 11 of 18). For the reasons discussed in part A above, these case management activities also would not be allowable activities under a TPCA to the extent that they are more administrative in nature and benefit the OOD staff rather than being VR services, as defined at 34 CFR 361.5(b)(58), and provided directly to VR applicants and consumers.

Review of the FY 2012 ODADAS TPCA provides further insight into the services available through the ongoing RTW TPCAs. Article I Section 3.1.3 at contract page 3 of 19 States, in pertinent part, that the following services may be provided: information and referral, diagnosis and treatment of impairments, training services, maintenance, job-related services, transportation, personal assistance services, rehabilitation technology and technical assistance services. Section 3.1.3 states that “[o]ther services may include, but are not limited to: addiction and/or mental health treatment services (when not otherwise funded), mental health and/or MAT pharmaceuticals (when not otherwise funded); and time limited residential treatment and/or halfway house (when not otherwise funded)”. This particular provision of the agreement between the cooperating agency and OOD makes it clear that the cooperating agency already provides these same addiction and substance abuse services to other individuals who are not served under the TPCA. Further information obtained during the course of the review supports the fact that a primary purpose for the development of the RTW TPCAs is to provide a source of treatment for individuals when other financial resources are not available. For example, the ODADAS Central Clinic webpage states, “that RSC provides funding for mental health and AOD services when clients who are newly referred to treatment have no other existing payer source. RSC will pay for vocational services regardless of a client’s payer source.” Likewise, the Ohio Association of County Behavioral Health Authorities, in a monthly update about the RTW initiative, dated May 11, 2011, described OOD “as the payer of last resort.” Again, the website and monthly report information of these cooperating agencies makes it clear that the cooperating agency already provides these same treatment services to other individuals that it is providing under the TPCA to OOD VR consumers. Again, these facts make it clear that these treatment services are not new or expanded services offered by the cooperating agency, but

rather routine and customary services for that agency. Because 34 CFR 361.28(a)(1) requires that the services provided by the cooperating agency under a TPCA be new or expanded services with a VR focus, these treatment services would not be allowable activities under a TPCA because they appear to be the same services that the cooperating agency provides to other individuals in other contexts.

Based on the foregoing, some services provided by the TPCA cooperating agencies, such as job coaching, are also available through fee-for service contracts with these same cooperating agencies and are considered duplicative of such services when provided under the TPCAs. As such, they are not new or expanded services with a VR focus, as required by 34 CFR 361.28(a)(1). In addition, the treatment services provided through the RTW TPCAs are the same services customarily and typically provided by the cooperating agencies. Thus, OOD has not ensured that the services provided by the county DD boards and other cooperating agencies through the TPCAs are new, expanded or modified with a VR focus as required by 34 CFR 361.28(a)(1). For this reason, VR funds may not be used to provide these services under a TPCA. OOD could, however, contract with any of these agencies to provide these same services to its VR consumers and applicants, but those contracts would be separate and distinct from a TPCA and its unique requirements set forth at 34 CFR 361.28.

**Corrective Action 1.B:** OOD must, within ten days following the issuance of the final monitoring report, submit a written assurance that OOD will cease immediately using federal VR funds to pay for TPCA costs that are unallowable pursuant to 34 CFR 361.28(a)(1), namely expenditures for services that are duplicative of other services provided to OOD consumers by the same cooperating agencies or that are the customary and typical services provided by the cooperating agencies.

### **1.C. Other Unallowable Expenditures**

The VRP3 contracts include standardized Budget Proposals that detail the operating costs by line item and also show the contracts' indirect costs. It is important to note that these TPCAs were not implemented as flat-fee contractual arrangements even though such would have been permissible. Federal VR regulations require that VR funds be spent solely on the provision of VR services or the administration of the VR program (34 CFR 361.3). Moreover, Federal Cost Principles require that federal funds be spent solely on costs that are allowable and allocable to the federal program. To be allowable, costs must be allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with the relative benefits received (2 CFR 225, Appendix A, C.3.a).

During the monitoring process, RSA reviewed the VRP3 Budget Proposals. In doing so, RSA noted several budget line items that raised questions as to their allowability as a VR expenditure under the TPCAs. Although there were several examples of questioned costs in these contracts, this finding will highlight a few of them for illustrative purposes.

Several of the VRP3 Budget Proposals include indirect costs charge against the federal case management services funds matched by the cooperating agency. In order for indirect costs to be an allowable charge, they must be attributable to allowable costs incurred in the administration

of the program or the provision of allowable VR services. As discussed in part A above, case management services are not an allowable activity under the TPCA because they are not a VR service, as defined at 34 CFR 361.5(b)(58), to VR applicants and consumers, but rather are activities performed for the benefit of OOD staff. Because these activities are not allowable under the TPCAs, federal VR funds may not be expended for such activities under the TPCAs. Given that these expenditures are not allowable as direct costs, indirect costs charged against these activities also are not allowable under these arrangements. RSA also noted that the Employment Connection (TEC) BT contract for October 1, 2011 through September 30, 2012 included several questionable budget line items, such as:

- Area Chamber Dues - \$125
- Financial Services - \$9,868
- Liability Insurance - \$1,085
- Audit Fee - \$700

While on-site, RSA requested documentation from OOD staff responsible for the oversight of these VRP3 TPCAs to demonstrate that these particular budget items were allowable under and allocable to the VR program through the TPCA. As stated above, itemized costs, including itemized costs under a TPCA, must be incurred solely for allowable activities (34 CFR 361.3 and 2 CFR part 225, Appendix A, section C.3). However, OOD could provide no documentation that these and other similar itemized costs were allowable or allocable to the VR program. Without such documentation, there is no evidence to demonstrate that these, and other similar expenditures incurred in the VRP3 contracts, are allowable under and allocable to the VR program pursuant to 34 CFR 361.3. Only allowable costs can be assigned to a federal award. In order to be an authorized activity under Title I of the Rehabilitation Act, and thus an allowable program cost, an expenditure must cover the cost of providing a VR service or administering the VR program (section 111(a)(1) of the Rehabilitation Act and 34 CFR 361.3).

For the foregoing reasons, it appears from all the contracts and invoices that RSA reviewed while on-site, as well as interviews RSA had with OOD staff responsible for oversight of the TPCAs, that OOD used federal VR funds to pay for expenditures through the TPCAs that were not allowable under or allocable to the VR program. As such, OOD failed to comply with 34 CFR 361.3 and 2 CFR part 225, Appendix A, section C.3.

**Corrective Action 1.C:** OOD must:

- 1.C.1 cease paying unallowable indirect costs with federal VR funds and using federal VR funds to reimburse unallowable expenditures under the VR program in accordance with section 111(a)(1) of the Rehabilitation Act and 34 CFR 361.3; and
- 1.C.2 submit any documentation it has to demonstrate that questioned itemized costs, such as those discussed herein, were indeed allowable under and allocable through the VR program.

**1.D. Lack of Internal Controls**

As a recipient of VR funds, OOD must:

- 1) administer the program properly and efficiently (34 CFR 361.12);
- 2) ensure that VR funds are properly accounted for and that accurate data are collected and reported (34 CFR 80.20(a));
- 3) ensure that VR funds are spent solely on the provision of VR services and the administration of the VR program (Section 111(a)(1) of the Rehabilitation Act and 34 CFR 361.3); and
- 4) monitor grant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity (34 CFR 80.40(a)).

OOD is not in compliance with 34 CFR 361.12 and 34 CFR 80.20(a), because OOD does not utilize methods of administration to ensure the proper administration of the VR program and accurate accounting of VR funds, including the ability to track the expenditure of funds to the VR program, such as those VR funds spent under the TPCAs. As a result and as demonstrated in parts A, B, and C above, OOD has failed to comply with 34 CFR 361.3, which requires that VR funds be spent solely for the provision of VR services, as defined at 34 CFR 361.5(b)(58), or the administration of the VR program. Moreover, OOD failed to monitor the TPCAs to ensure that funds were spent only for allowable costs and activities, as required by 34 CFR 80.40(a).

As stated above in the other parts of this finding, RSA reviewed the various TPCA agreements and interviewed both OOD staff responsible for the oversight of these arrangements and relevant cooperating agency staff in order to get an accurate understanding of the implementation and oversight of these arrangements. In parts A, B, and C above, RSA has demonstrated how VR funds have been spent for unallowable activities and costs. In this portion of the finding, RSA focuses on the lack of internal controls in place by OOD that enabled these unallowable costs to be incurred. The costs used for illustrative purposes in this portion of the finding are in addition to those set forth above, but are not exhaustive. Following are several areas of concern with these TPCAs that raised questions regarding OOD's compliance with 34 CFR 361.12, 34 CFR 80.20(a), and 34 CFR 80.40(a).

- The TEC TPCA supply budget included \$1,500 for pens, paper, pencils and ink. Additional supply costs of \$500.00 each were included in the line item budget for the Licking and Fairfield office. Supply costs, such as these, are typically included as part of the indirect costs charged against a contract. Since TEC also charges an indirect cost rate against the itemized direct contract costs, RSA asked OOD staff for documentation regarding the cost categories that comprised the indirect cost rate charged by TEC and whether they included basic supplies, such as the pens, pencils, ink, and paper mentioned herein. OOD could not provide RSA the requested documentation regarding the cost categories included in the indirect cost rate and, therefore, could not ensure that VR funds were not used to pay for the same supplies twice -- once through a direct budget line item and also through the indirect cost rate. OOD must have fiscal controls in place that enable it to administer the program efficiently and expend and account for funds to such a degree that it can trace the funds for each activity to ensure that the funds were expended in accordance with Federal requirements (34 CFR 361.12 and 34 CFR 80.20(a)). Given OOD's inability to ensure that VR funds were not spent twice for the same supplies, OOD did not comply with 34 CFR 361.12 and 34 CFR 80.20(a).

- The TEC BT contract for October 1, 2011 through September 30, 2012 included the following direct itemized costs under a general “supplies” category:
  - o OACB project management fee - \$47,103
  - o Various Supplies (Licking) - \$800
  - o Cell Phone Stipends - \$570
  - o Consumer Transportation - \$14,200
  - o Cell Phone Plan - \$610
  - o Volunteer - \$100

During the monitoring process, namely through interviews with OOD staff and cooperating agency personnel as well as review of relevant contracts and invoices, RSA learned that OOD had other contractual arrangements with most, if not all of the cooperating agencies, that were separate and distinct from the TPCAs discussed in this finding. In addition, RSA learned that most, if not all of these cooperating agencies, also provided services to individuals who are not OOD applicants and consumers in other contexts. Because these agencies are providing VR services through both TPCAs and fee-for-service contracts, as well as serving non-VR individuals, it is critical that documentation be maintained to ensure that costs charged to the VR program are proportional to the actual allowable use of those funds in each context (e.g., fee-for-service contract vs. TPCA) and that they do not include the proportion allocable to another program. Only in this manner, can OOD demonstrate that VR funds were spent accurately and efficiently and only for allowable purposes. With the above examples, RSA requested documentation to demonstrate that the costs listed above were indeed apportioned across all relevant programs accurately to ensure that VR funds were not used to pay for more than their proportional amount in accordance with the requirements of federal cost principles. OOD could not provide the requested documentation and confirmed that it approved these, and other similar, budget items listed above without ensuring the reasonableness and allowability of the charges to the VR program under the TPCAs, as it is required to do pursuant to 34 CFR 361.12 and 34 CFR 80.20(a).

In addition to the issue of proportional costs, RSA also requested documentation from OOD to explain the necessity for both a cell phone plan and cell phone stipends, and the distinction between the two. As above, OOD could provide no documentation or explanation for these costs. As such, OOD could not ensure the allowability of these costs pursuant to 34 CFR 361.3 and 2 CFR part 225, Appendix A, section C.3, therefore raising questions as to the allowability of these costs. Had OOD had methods in place to ensure the accurate and efficient administration of the VR program, as it is required to do pursuant to 34 CFR 361.12 and 34 CFR 80.20(a), OOD would have been able to demonstrate whether these costs were indeed allowable under the VR program.

Finally, with regard to the OACB project manager cost itemized above. RSA notes that a similar line item appears in the Knox County Board of DD BT VRP3 contract for the budget period October 1, 2012 through September 30, 2013 for \$27,000. When RSA sought clarification as to the nature of this cost, OOD informed RSA that OACB refers to the Ohio Association of County Boards. However, there was no justification in either of these contracts for this line item nor

could OOD demonstrate that this cost was necessary, reasonable and proportionate to the benefit received by the VR program. The substantial amount of funds subcontracted to the Ohio Association of County Boards through BT VRP3 contracts, especially under the broad category of supplies, raises substantive questions regarding OOD's ability to document those costs are allowable, allocable, reasonable and necessary, as it is required to do when administering the VR program in an efficient and proper manner in accordance with 34 CFR 361.12 and 34 CFR 80.20(a).

The Fairfield County Board of Developmental Disabilities Lifeworks contract for the period of October 1, 2012 through September 30, 2013 included the following itemized costs that raised questions as to their allowability under the VR program during the monitoring process:

- intern travel/mileage reimbursement -- \$7,177. RSA notes that the contract does not mention the use of an intern or the VR specific duties the intern would perform while traveling.
- 9 staff (4.85 FTEs) contracted through Employment Connections -- \$128,369, not including associated costs like travel. The costs included in the budget proposal are based upon a percentage of the individual staff's salary and fringe benefit costs. In addition, each position is also included under mileage reimbursement. While onsite, RSA confirmed that the Fairfield Board of DD subcontracts with Employment Connection based upon an hourly rate. Therefore, it is unclear why the contract with OOD includes personnel salary, fringe benefits and travel as a cost basis.

As with each of the other questioned costs discussed herein, RSA requested supporting documentation to demonstrate that the costs were an allowable expenditure under the VR program, in accordance with 34 CFR 361.3, and were apportioned appropriately across all eligible programs, in accordance with the federal cost principles so that only the allocable portion was charged to the VR program, under either the fee-for-service contract or the TPCA. However, OOD could provide no justification, thus raising questions as to whether these charges were allowable under the VR program. Given OOD's inability to provide such documentation, OOD has failed to utilize the necessary internal controls to ensure the accurate and efficient administration of the VR program to ensure the proper expenditure and accounting of VR funds, as required by 34 CFR 361.12 and 34 CFR 80.20(a).

As stated several times in this finding, OOD has entered into fee-for-service contracts directly with certain providers who also are the providers under a separate and distinct TPCA. Given the potential for duplication of costs under such circumstances, RSA requested documentation that would show the breakdown of the VR funds used to provide services under the fee-for-service contracts versus those spent under the TPCAs. OOD was unable to provide the requested supporting documentation. As a result of this lack of supporting documentation, OOD could not demonstrate that it could ensure that certain costs were not paid twice under the VR program. For example, while OOD has a contract directly with Employment Connection that covers multiple staff, Developmental Disability Boards also subcontract directly with Employment Connection for the same services through their VRP3 contracts. While staff names were sometimes included in the VRP3 contracts, the Employment Connection Contract did not include

staff names. Therefore, OOD was unable to determine whether any duplicate personnel costs were paid to Employment Connection.

- In addition to the potential for duplication of personnel charges under these arrangements, RSA also noted the potential for duplication of administrative fees. For example, the Fairfield DD Board's contract with TEC includes an administrative fee. OOD also contracts directly with the Fairfield DD Board as a vendor for job coaching for consumers served directly by VR counselors. When VR counselors refer consumers under the vendor contract, the same TEC subcontractors provide the services. However, there is an additional administrative cost incurred when the services are provided through the DD boards. As with the questioned duplication of personnel costs above, OOD also could not provide supporting documentation to demonstrate that it could ensure that OOD was not paying duplicate administrative fees by virtue of the fact that it had multiple contractual arrangements with the same providers for the same services. As a result, OOD could not ensure that VR funds had been spent properly and efficiently, as required by 34 CFR 361.12 and 34 CFR 80.20(a).
- Finally, as mentioned in part B above, many of the TPCAs entered into by OOD are not for the provision of new or expanded services with a VR focus by a cooperating agency. Instead, according to the information that RSA learned during the monitoring process, many of the cooperating agencies provide services that they routinely and customarily provide in other contexts. In order to understand this particular issue more fully, RSA asked OOD to explain how the agency monitors the cooperating agencies to ensure that the requirements of 34 CFR 361.28, including the requirement for new or expanded services, are satisfied. In on-site interviews and subsequent teleconferences, OOD management reported that OOD has not evaluated all of its contracts to ensure the provision of new, expanded or modified VR services and indicated that they are aware that some of the same services are provided by the cooperating agencies through other contracts with OOD. As a recipient of federal funds, OOD must monitor all grant-supported activities to ensure compliance with all requirements (34 CFR 80.40(a)). OOD's failure to monitor the TPCAs contributed to the expenditure of VR funds for unallowable activities, as demonstrated in parts A, B, and C above. As such, OOD has failed to administer the VR program in compliance with 34 CFR 361.12 and 34 CFR 80.20(a).

**Corrective Action 1.D:** OOD must develop and implement internal control processes, including monitoring protocols, necessary to ensure that TPCAs and other vendor contracts comply with all relevant VR requirements, including the provision of allowable services and the expenditure of funds in a manner that ensures the allowability and allocability of those costs. Only in doing this can OOD ensure that it is in compliance with 34 CFR 361.12, 34 CFR 80.20(a), and 34 CFR 80.40(a).

### **1.E. Unallowable Source of Match**

OOD may use non-federal expenditures to satisfy its match requirement under the VR program, so long as those expenditures are for allowable costs under the VR program, which include expenditures for the cost of providing VR services and the cost for administering 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, OOD may use non-federal expenditures incurred by a State or local public agency, including, but not limited to, county DD and mental health boards, for the provision of VR services through TPCAs to satisfy its match requirement under the VR program if those expenditures are for allowable costs under the VR program (34 CFR 361.28(a)). Through such arrangements, each cooperating agency provides 21.3 percent of the total costs of the TPCA in non-federal contributions, with OOD providing the remaining 78.7 percent using federal VR program funds. To the extent that the costs incurred under the TPCAs were not allowable under the VR program as described in other parts of this finding, the non-federal share of those same expenditures also would not be an allowable source of match under the VR program. Consequently, there was no legal basis for OOD to count the non-federal share of those unallowable costs toward satisfying its match requirement under the VR program (34 CFR 361.60(b)).

**Corrective Action 1.E:** Within ten days following the issuance of the final monitoring report, OOD must provide a written assurance that it will immediately cease using non-federal contributions associated with unallowable expenditures under its TPCAs to satisfy the VR program matching requirement and that it will ensure non-federal expenditures used for satisfying VR match requirements, such as those incurred through the TPCAs, are only for allowable expenditures under the VR program, namely expenditures for the cost of providing VR services and the cost for administering 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)).

## **2. Contract Management and Monitoring**

### **Legal Requirements:**

- Rehabilitation Act—Section 111(a)(1)
- VR Program Regulations—34 CFR 361.3 and 34 CFR 361.12
- EDGAR—34 CFR 80.20(a) and 34 CFR 80.40(a)

### **Findings:**

OOD was not in compliance with Section 111(a)(1) of the Rehabilitation Act, and regulations at 34 CFR 361.3, 34 CFR 361.12, and 34 CFR 80.20(a), because it did not ensure that VR program funds were used properly and efficiently and only for allowable VR expenditures under its contract with ODADAS dated March 14, 2011, a third-party cooperative arrangement. Furthermore, OOD did not have fiscal controls in place that enabled it to expend and account for funds expended under the contract to such a degree that it could trace the funds for each activity to ensure that the funds were expended in accordance with federal requirements.

Federal regulations require OOD to have methods of administration to ensure financial accountability for the efficient administration of the State Plan and VR program and to ensure accurate accounting of allowable expenditures for the VR program. In order to accomplish this, OOD must ensure appropriate monitoring of contract activities per 34 CFR 80.40(a).

Section 3.1.6 of the ODADAS contract signed March 14, 2011 (discussed in the finding above), stated that “The budget shall include administrative expenses of not more than \$626,818.00 which includes and is not limited to contracting with the Ohio Association of County Behavioral Health Authorities in the amount of \$223,080.00 for administrative functions related to the ADAS/ADAMHS Boards in carrying out the terms of this agreement.” According to information provided by OOD staff, the \$223,080 paid to the Ohio Association of County Behavioral Health Authorities was for ODADAS to subcontract for training related to implementation of the RTW program. However, the specific purpose of the funds was not included anywhere in the ODADAS contract. By not stating a purpose for the funds being paid to the Ohio Association of County Behavioral Health Authorities by ODADAS, OOD was unable to ensure the funds were used as intended under the award.

In addition, the ODADAS contract did not include deliverable outcomes consistent with the contract’s scope of services. The scope of services was for the provision of “case management services, which may include a broad range of vocational rehabilitation services...” The goal listed in 3.1.4 was to provide an integrated model of service delivery including an evidenced based model...” However, the deliverables/outcomes listed in 3.1.5 were that the grantee would refer at a minimum 2,977 individuals for services.

Also, under Section V of the ODADAS contract, Related Agreements, 4.2 states that the “Grantee intends and may sub-contract with the following to perform the work and services described in Article III, Scope of Services:

- ADAS/ADAMHS Boards throughout Ohio
- ODADAS certified drug and alcohol treatment programs
- The Ohio Association of County Behavioral Health Authorities”

ODADAS transferred \$8,909,995 to OOD, which was money that was received from local ADAS/ADAMHS Boards throughout Ohio. According to the contract, the total award was for \$36,392,937. ODADAS was responsible for developing sub-contracts/sub-grants with the ADAS/ADAMHS Boards and overseeing implementation of the sub-contracts/sub-grants. OOD was not a signatory to the sub-grants that were issued by ODADAS. ODADAS developed budgets with the ADAS/ADAMHS Boards that included line item budgets for salaries, travel, equipment, other expenses, and sub-contractor indirect costs. ODADAS billed OOD on a letterhead invoice for each month in which costs were incurred under the agreement. However, there was no indication that OOD staff monitored the invoices submitted by ODADAS for reimbursement to ensure that expenses incurred by the ADAS/ADAMHS Boards were allowable and allocable to the VR program. As stated above in Finding 1, pursuant to 34 CFR 361.28(a)(3), the agency is responsible for maintaining administrative control of the VR funds expended under third-party cooperative arrangements, including those under the ODADAS contract. This includes the monitoring and oversight of contractors and their sub-contractors to ensure compliance with federal requirements (34 CFR 80.40(a)).

Further, the ODADAS contract line item budget included expenses related to 15 staff positions for employees with ODADAS. The percentage of time allocated to the award for each position ranged from 0.05 percent to 0.2 percent. It is unclear how OOD monitored the small amount of

time these individuals may have worked on the program to ensure that the costs charged were allowable. For example, there is no indication that OOD ensured these individuals maintained Personnel Activity Reports and that the costs billed under the contract were consistent with the time worked on the contract.

Finally, although OOD had developed a detailed process for checking invoices against budgeted amounts, it did not have processes necessary to determine whether the cost items that comprise the budgeted line item were allowable costs to the VR program. While the agreements included budgets, the invoices submitted by the contractors did not reflect the level of specificity necessary to connect the charges with the allowable activity approved under the budget. OOD paid the invoices, even though it could not determine that the charges were allowable and allocable to the VR program. Federal regulations require OOD to adopt fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of and accounting VR funds (34 CFR 364.34). This includes monitoring contracts to ensure that VR funds are used only for allowable VR expenditures.

**Corrective Action 2:** OOD must develop and implement procedures to:

- A. monitor the programmatic and fiscal aspect of the activities and services provided by State agencies and contractors receiving Title I funds to ensure compliance with federal requirements; and
- B. ensure fiscal controls permit the tracking of expenditures necessary to ensure that the funds are not used in violation of restrictions and prohibitions of applicable statutes in accordance with 34 CFR 80.20(a)(2).

### **3. Unallowable Use and Disbursement of Program Income**

#### **Legal Requirements:**

- Rehabilitation Act – Sections 7(38), 103(a) and (b); and 111(a)(1)
- VR Program Regulations – 34 CFR 361.3, 34 CFR 361.5(b)(58), 34 CFR 361.12, 34 CFR 361.48, 34 CFR 361.49, and 34 CFR 361.63(a), (b) and (c)
- EDGAR – 34 CFR 80.20(a)

#### **Background:**

Ohio Statute 4344, 29 U.S.C. 796d, Social Security reimbursement funds requires that:

Reimbursement funds received from the Social Security Administration, United States Department of Health and Human Services, for the costs of providing services and training to return disability recipients to gainful employment shall be expended from the Social Security Reimbursement Fund (Fund 3L10), to the extent funds are available, as follows:

- (A) Appropriation item 415601, Social Security Personal Care Assistance, to provide personal care services in accordance with Section 3304.41 of the Revised Code:

- (B) Appropriation item 415605, Social Security Community Centers for the Deaf, to provide grants to community centers for the deaf in Ohio for services to individuals with hearing impairments; and
- (C) Appropriation item 415608, Social Security Special Programs/Assistance, to provide vocational rehabilitation services to individuals with severe disabilities who are Social Security beneficiaries, to enable them to achieve competitive employment. This appropriation item shall also be used to pay a portion of indirect costs of the Personal Care Assistance Program and the Independent Living Programs as mandated by federal OMB Circular A-87.

Pursuant to this statute, OOD has expended approximately .7 million dollars of Social Security Administration (SSA) reimbursement funds for FY 2012 to support contracts with community centers for the deaf and hard of hearing (CCDHH) across Ohio. These funds are used to cover the personnel costs of staff who provide a variety of services to, and on behalf of, individuals with hearing impairments, including support, community education and advocacy, interpreting and leadership services. In addition, OOD expended approximately 2.7 million dollars in SSA reimbursement funds during this same period under the Ohio Personal Care Assistance Program (PCA). PCA program funds are used to: 1) directly reimburse individuals with disabilities for assistant services paid to independent contractors, family members or other providers; and 2) support separate administrative contracts with Independent Living Centers to assess the need of PCA program participants for such services, and provide follow-up services.

### **3.A. Unallowable Use of VR Program Income Funds for Non-VR Services**

#### **Finding:**

OOD is not in compliance with Sections 103 and 111(a)(1) of the Rehabilitation Act and implementing regulations at 34 CFR 361.3 and 34 CFR 361.63, to the extent that program income in the form of SSA reimbursement was used to support unallowable VR program expenditures under CCDHH contracts and the State PCA program.

Regulations at 34 CFR 361.63(a), define “program income” as income received by the State that is directly generated by an activity supported by Title I VR program funds. Sources of program income include, but are not limited to, payments from SSA for assisting beneficiaries and recipients to achieve employment outcomes, and payment received from worker’s compensation funds (34 CFR 361.63(b)). Program income from these identified sources, whenever earned, except as otherwise provided must be used for the provision of VR services and the administration of the State plan (34 CFR 361.63(c)). To constitute an allowable expenditure as a VR service, the cost must be incurred in the provision of VR services to individuals in accordance with their approved IPEs, pursuant to Section 103(a) of the Rehabilitation Act and 34 CFR 361.48, or to groups of individuals with disabilities, pursuant to Section 103(b) of the Act and 34 CFR 361.49 (Section 7(38) of the Act 34 CFR 361.5(b)(58)).

### **Contracts with Ohio Community Centers for the Deaf and Hard of Hearing**

OOD has established its CCDHH contracts using a single template. Therefore these contracts are similar in all respects essential to the analysis herein and RSA has based this finding on the terms of the Hearing Speech & Deaf Center of Greater Cincinnati, contract number 13F1023VR-12, dated October 1, 2012, with applicable signatures October 23, 2012. According to the statement of services on page 10 (exhibit A of the contract), the individuals to be served under the contracts are those who are “culturally and audilogically deaf, hard of hearing, deaf-blind and between the ages of 14 years and older”. Each CCDHH is to serve a list of targeted counties in the State. Exhibit A of the contract describes examples of the services to be provided as:

- support services: vocational, legal, financial and other education; cultural integration; referrals to other community supports;
- community advocacy and education: deaf awareness trainings, individual advocacy, consultation with CRPs and one-stop centers;
- interpreting and Communication services: ASL, oral, tactile and C-Print (The contracts contain a prohibition against double-billing when the CCDHH also provides these services to OOD VR program participants through fee-for -service contracts.); and
- leadership services (hosting consumer advocacy committee meetings, developing initiatives to serve on local boards or workgroups, and hosting leadership skills trainings).

Title I VR funds, and consequently program income in the form of SSA reimbursements, must be used solely for the provision of VR services or for the administration of the VR program in accordance with Section 111(a)(1) of the Rehabilitation Act, and 34 CFR 361.3. VR services to an individual are those that are listed on the IPE as being necessary for the achievement of an employment outcome, as required by Section 103(a) of the Rehabilitation Act, and 34 CFR 361.5(b)(58)(i), and 361.48. OOD is also permitted to provide VR services that are intended to contribute substantially to the vocational rehabilitation of groups of individuals but are not related to any one individual’s IPE, in accordance with Section 103(b) of the Rehabilitation Act, and 34 CFR 361.5(b)(58)(ii), and 361.49 of the VR program regulations.

The determination of which services provided by the CCDHHs, as described in Exhibit A of the contract template, are allowable VR program services depends on the specific service and to whom it is provided. Based on the descriptions contained in Exhibit A and the federal requirements, they can provide support services in the form of “vocational” education and referral to other programs to an individual who is deaf or hard of hearing, if the service is included on the IPE as necessary for the achievement of the employment outcome. In addition, the centers can use contract funds to advocate for services affecting the deaf and hard of hearing in the area of vocational rehabilitation and employment, as well as provide consultation to CRPs and one-stop centers related to employment, to the extent that such services are narrowly tailored to benefit a group, namely individuals who are deaf or hard of hearing, for the purpose of improving the rehabilitation of the group in terms of achieving employment outcomes. In addition, the provision of interpreting services to individuals with hearing impairments is permissible pursuant to 34 CFR 361.49(a)(3), which allows for the provision of “Special services to provide...access to information...including the use of telecommunications, Braille, sound recordings, or other appropriate media; captioned television, films or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind;

and other special services that provide information through tactile, vibratory and auditory, and visual media.”

However, the remaining activities of the centers, as described in Exhibit A, are broader than would be allowable under the VR program, since their scope is more general and the activities are not designed to assist eligible individuals to obtain employment or to improve the vocational rehabilitation of a group of individuals with disabilities. Specifically, contract funds cannot be used to provide legal, financial and other education; cultural integration; deaf awareness trainings; and individual and group advocacy related to vocational rehabilitation and employment.

### **Ohio Personal Care Assistance Program**

Over 90 percent of the funding for the PCA program is paid directly to program participants. The program reimburses individuals for costs associated with the hiring of personal care attendants, who provide such services as bathing, dressing, personal grooming, assistance with fine motor activities, reading services, driving services, communication services, household chores, and record keeping. To receive reimbursement, participants submit signed requests to the PCA program every two weeks reflecting the actual number of hours each assistant worked, the amount of wages per hour, and the requested reimbursement amount. Participants are also eligible to be reimbursed on a quarterly basis for some of the incurred employer costs (e.g., FICA, Bureau of Workers Compensation payments, and local taxes). In addition, The PCA program also contracts with independent living centers to provide assessments to determine whether individuals referred to the PCA program qualify for services.

PCA services may be provided through the VR program when identified on an eligible individual’s IPE as necessary for the achievement of employment. Regulations at 34 CFR 361.48(n) permit the provision of “personal assistance services,” defined as, “a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability” 34 CFR 361.5(b)(39). Pursuant to this definition, “[t]he services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.” Unlike the interpreting services discussed above, the Rehabilitation Act and regulations contain no authority for personal assistance services to be provided to a group of individuals with disabilities.

Therefore, to the extent that reimbursement for PCA services was paid to PCA participants who are not OOD VR program consumers, those costs are not within the scope of Section 103 of the Rehabilitation Act and its implementing regulations at 34 CFR 361.48 and .49. Thus, neither Title I funds nor program income, including SSA reimbursements, can be used to support these activities under the PCA program.

Additionally, Section 103(a)(1) of the Rehabilitation Act and regulations at 34 CFR 361.48(b) permit the conduct of assessments for the purpose of determining the vocational rehabilitation needs of the individual. In the VR process, these assessments are conducted once the individual has been determined eligible for services. Therefore, VR program funds, including SSA reimbursement program income, can only be used to pay for the costs of providing assessments to determine the need for PCA program services if the individuals already have been determined eligible for OOD's VR program and not if the individuals are applicants for VR services or are not involved with the VR program.

A review of published Ohio legislative regulations related to the Ohio PCA program and published information on the OOD website and relating PCA pamphlet contain no requirement for a PCA applicant or participant to also be a VR applicant or to be determined an eligible individual for the purpose of VR services. It appears that the Ohio PCA program is presented to the public as separate and distinct from the VR program. In fact, PCA program information on the OOD website specifies that, to be eligible for the PCA program, the individual should "not be receiving services from OOD's vocational rehabilitation programs." While the pamphlet and relating Ohio legislative administrative regulation indicate that priority for PCA services should be given to individuals who need these services to maintain employment, are actively seeking employment or are attending State-accredited vocational training programs, RSA was unable to identify a requirement that PCA program participants be eligible to receive VR services as required by Section 103(a) and 34 CFR 361.48. Furthermore, a fourth category of PCA program participants, now closed to new applicants, required no employment goal as a criteria for participation, further indicating that this program is not designed to serve VR program consumers.

In summary, for the reasons set forth above, OOD's use of SSA reimbursements to support CCDHH contracts and the PCA program is not in compliance with federal requirements to the extent that expenditures were related to the provision of services not permitted under Sections 103(a) and (b) of the Rehabilitation Act and regulations at 34 CFR 361.48 and .49, as required by 34 CFR 361.63(c).

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

- 3.A.1 submit a written assurance to RSA, within 10 days of the issuance of the final monitoring report, that OOD will cease disbursing VR program income funds in a manner that is inconsistent with the VR implementing regulations pursuant to 34 CFR 361.63, including disbursements for the PCA program and CCDHH contracts in support of unallowable VR program services; and
- 3.A.2 develop written processes to ensure that federal program income is disbursed according to the implementing regulations on allowable VR services or the administration of the VR State Plan.

**3.B. OOD Does Not Expend Program Income before Drawing Down Federal Funds**

**Finding:**

OOD is not in compliance with 34 CFR 80.21(f)(2) because it does not disburse program income prior to requesting additional cash drawdowns from its federal VR award.

When received by OOD, Social Security reimbursement, VR program income, is deposited into a single account that is used primarily to support the PCA and CCDHH programs discussed above. Program income is not transferred to allowable programs per 34 CFR 361.63(c)(2). At the end of the fiscal year, OOD determines how much program income must be paid to support the PCA/CCDHH programs. Any remaining program income funds are used to support the VR or Independent Living programs. Discussions with OOD 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 required by 34 CFR 80.21(f)(2).

As a recipient of federal VR funds, OOD is required to: 1) have administrative procedures in place that ensure financial accountability (34 CFR 361.12), and 2) comply with the requirements set forth in 34 CFR Part 80. Regulations at 34 CFR 80.21(f)(2) require grantees to disburse program income prior to requesting additional cash payments. This means that OOD must disburse all program income prior to requesting a drawdown of additional VR funds from its federal award. This requirement was also included in Grant Award Notification Attachment G that accompanied the OOD's grant awards.

Disbursement of program income may include the transfer of VR Social Security reimbursement program income to the client assistance, supported employment or independent living programs, pursuant to 34 CFR 361.63(c)(2). If the funds are transferred pursuant to the regulations, the transferred program income must be spent in the recipient program before additional federal funds are drawn down for that program in accordance with 34 CFR 361.63(c)(2).

In FY 2010, RSA reminded VR grantees of the requirement to expend VR program income funds prior to drawing down additional federal funds. At that time, OOD had a sizeable balance of unexpended federal program income. OOD has maintained those funds separately from the program income received after FY 2010. At the time of the on-site visit, OOD had approximately \$1.7 million in unexpended federal program income. Retaining these funds while subsequently drawing down additional federal funds is in violation of 34 CFR 80.21(f)(2). These funds may be subject to interest payments in accordance with the Cash Management Improvement Act (CMIA).

It is important that OOD ensure that budget requests for spending authority are in compliance with federal requirements related to allowable uses of federal program income. Federal regulations require that VR program income be used only for allowable purposes and that it should be disbursed prior to the drawdown of federal funds as detailed in the findings above.

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

- 3.B.1 submit a written assurance within ten days of the issuance of the final monitoring report that OOD will cease drawing down federal VR funds prior to disbursing

available program income, including any federal program income received in the past regardless of the fiscal year in which it was received; and

3.B.2 develop written processes for ensuring the disbursement of program income prior to requesting additional cash drawdowns of federal award funds per 34 CFR 80.21(f)(2).

#### **4. Incorrect Personnel Activity Reporting and Personnel Cost Reconciliation**

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

- Rehabilitation Act – Section 101(a)(10)A
- VR Program Regulations: 34 CFR 361.12
- EDGAR – 34 CFR 80.20(a)
- Federal Cost Principles – 2 CFR 225, Appendix B, paragraph 8.h.5.b. and 8.h.5.e.

##### **Finding:**

Federal regulations require OOD to assure in its VR State Plan that it will implement policies and procedures for the efficient and effective administration of the VR program to ensure that all functions are carried out properly and financial accounting is accurate (34 CFR 361.12). OOD is also required to implement fiscal controls to ensure that VR funds are expended and accounted for accurately and that expenditures are traceable to a level sufficient to determine that such expenditures were made in accordance with applicable federal requirements (34 CFR 80.20(a)). OOD is not in compliance with 2 CFR 225, Appendix B, paragraph h.5.b which requires employees working on multiple cost objectives to maintain Personnel Activity Reports (PARs) that account for the total activity for which each employee is compensated. Additionally, OOD is not in compliance with 2 CFR 225, Appendix B, paragraph h.5.e because OOD does not reconcile personnel distribution percentages determined before the services are performed with the activity actually performed if the amount of variance is less than ten percent.

##### **A. Personnel Activity Reports**

In preparation for the onsite review, RSA requested examples of PARs completed by OOD employees. OOD uses employee Time Allocation Sheets to meet the PAR requirement. The Time Allocation Sheets submitted to RSA did not account for the total activity for which each employee was compensated. For example, one employee's Time Allocation Sheet accounted for 28 hours, across various activities, for the pay period May 20, 2012 to June 3, 2012. The employee's timesheet shows he/she was paid for 52 hours of work and 28 hours of leave during the same pay period. None of the reviewed matched the amount of time for which the employee was compensated. The federal cost principles at 2 CFR 225, Appendix B, paragraphs h.4. and h.5., require employees working on multiple cost objectives to maintain PARs that reflect an after-the-fact distribution of the actual activity of each employee, in order to determine the amount of expenses to be allocated to the VR award. PARs must be signed by the employee, prepared at least monthly, coincide with one or more pay periods, and account for the total activity for which each employee is compensated.

##### **B. Personnel Cost Reconciliation**

In accordance with 2 CFR 224, Appendix B, paragraph h.5.e, “budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to federal awards but may be used for interim accounting purposes, provided that:...

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent...” At the time of RSA’s review, OOD was not reconciling the difference between the budgeted and actual personnel costs if the difference was less than ten percent. If the agency’s quarterly reconciliation of personnel costs finds that the differences between budgeted and actual costs are less than ten percent, the agency must still adjust the personnel costs charged to federal awards to reflect the actual expenditures on at least an annual basis.

**Corrective Action 4:** OOD must:

- 4.1 develop and implement internal processes, including monitoring protocols, to ensure that PARs account for the total activity for which an employee is compensated in accordance with 2 CFR 225, Appendix B, paragraph h.5.b; and
- 4.2 develop and implement internal processes, including monitoring protocols, necessary to ensure that personnel expenditures are reconciled in accordance with 2 CFR 225, Appendix B, paragraph h.5.e.

**5. Inaccurate Program Income Reporting**

**Legal Requirements:**

- VR Program Regulations - 34 CFR 361.12, 34 CFR 361.40(a) and 34 CFR 361.63
- EDGAR - 34 CFR 80.20(a) and 34 CFR 80.25

**Finding:**

OOD is not in compliance with 34 CFR 361.12 and 34 CFR 80.20(a), which require the recipients of federal funds to accurately report the financial results of all federally-assisted activities. VR grantees are required to submit accurate SF-269/SF-425 Federal Financial Reports (34 CFR 361.40(a)).

As part of the monitoring process, RSA staff compared the financial data provided by OOD with the information entered into the RSA-MIS by OOD staff. The following program income reporting issues were noted:

- For FY 2008, the amount of program income received increased from \$8,241,823 in the fourth quarter to \$8,250,409 in the final SF-269 report.
- For FY 2009, the amount of program income received increased from \$14,348,398 in the fourth quarter to \$14,379,643 in the final SF-269 report.
- For FY 2011, the amount of program income received decreased from \$2,005,485 in the fourth quarter to \$1,643,596 in the latest/final SF-425.

Program income is considered earned in the fiscal year in which the funds are actually received by the grantee (34 CFR 361.63; 34 CFR 80.25). Therefore, the amount of program income reported should not change after the grantee submits its fourth quarter (September 30th) report for any fiscal year.

**Corrective Action 5:** OOD must develop and implement processes necessary to ensure the accurate completion and verification of program income reported in the SF-425 financial reports.

# APPENDIX A: AGENCY RESPONSE

## Section 4: Results of Prior Monitoring Activities

OOD requests the additional technical assistance described below to enable it to implement the following outstanding accepted recommendations identified in the FY 2008 monitoring report.

### Outstanding Recommendations

#### 1. Supported Employment

**Additional Technical Assistance Requested:** OOD is requesting additional technical assistance in this area. OOD is in the final stages of reviewing the policy and procedure for Supported Employment. OOD will send these draft documents to RSA and requests review and feedback. OOD is interested in technical assistance related to code language that restricts supported employment to individuals with the most significant disabilities. OOD provides services to many individuals with significant disabilities that we believe require supported employment to achieve positive employment outcomes. OOD would also like to request technical assistance related to the proper coding of supported employment.

#### 2. Quality Assurance

**Additional Technical Assistance Requested:** OOD is not requesting any additional technical assistance in this area.

#### 3. High Cost of Services

**Additional Technical Assistance Requested:** OOD is requesting technical assistance in this area. OOD implemented a Vocational Rehabilitation Fee Schedule on October 1, 2012. Prior to this, Ohio Administrative Code established that OOD would pay fees as established by community rehabilitation programs (CRPs). In addition to establishing rates for services, this fee schedule established consistent definitions and expectations for services provided to the VR program. The establishment of this fee schedule was an important first step in assuring that OOD is purchasing consistent high quality services at a fair price. Future plans for OOD in this area include the establishment of cost based rate structures, development of a provider scorecard and enhancement of provider management procedures. OOD would benefit from technical assistance from RSA in terms of proper benchmarking of the agency's costs against other comparable State VR programs as well as the identification of other State VR program practices that could be evaluated for replication in Ohio.

## **Section 5: Focus Areas**

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

#### **5.B.1 Quantity and Quality of Employment Outcomes**

**Recommendation 5.B.1:** RSA recommends that OOD conduct analysis to determine the factors leading to the decline in the quantity and quality of employment outcomes for transition-age youth and develop measurable goals and strategies to improve this performance.

**Agency Response:** In FY 2014, OOD will conduct a targeted needs assessment related to CRP-provided services. Included in this needs assessment will be an evaluation of whether there are sufficient summer youth and other transition oriented services across the State. This will assist OOD in addressing this observation. On October 29, 2013, OOD requested technical assistance from RSA regarding the new model of Third-Party Cooperative Agreements (TPCAs) for transition youth. OOD will also be requesting assistance from RSA in identifying effective models and practices in serving transition youth that lead to positive outcomes in other State VR programs, in particular those related to post-secondary vocational and supportive services.

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

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

Subsequent to the issuance of the draft FY 2013 monitoring report on OOD'S VR program, dated October 18, 2013, OOD sought technical assistance regarding Findings 1.A through 1.E related to its implementation of third-party cooperative arrangements (TPCA) contained in Section 6 of this report and to which OOD responded below. For example, OOD submitted several questions seeking clarification on issues concerning the provision of case management activities and the meaning of terms such as "new," "expanded," "modified," and "reconfigured" in the context of the regulatory provisions governing the implementation of TPCAs at 34 CFR 361.28. RSA responded to these questions in writing on November 18, 2013, prior to the submission of OOD's response to the draft report. In addition, to address OOD's continuing questions concerning these findings and the steps necessary to bring the TPCAs into compliance with regulations, RSA staff met with OOD officials and personnel in Washington, D.C., from December 11 through 12, 2013, responding to questions and suggesting alternatives to the implementation of the TPCAs that would enable OOD to maintain its relationships with the agencies providing the activities and services under the TPCAs, obtain the non-federal share involved in the arrangements, and not disrupt the delivery of services to individuals being assisted through the TPCAs.

As a result, OOD determined to restructure the TPCAs as interagency transfers through which the providing agencies would transfer non-federal funds to OOD to be used by OOD in contracts with these agencies for the provision of case management activities and the delivery of VR services. Shortly following the conclusion of the technical assistance visit, OOD submitted draft interagency transfer and service delivery contracts for RSA's review on December 20, 2013. RSA provided input on these draft contracts on January 9, 2014, making suggestions to improve

their implementation and enabling OOD to take the steps necessary to resolve the findings with little or no disruption to the delivery of VR services to the individuals assisted under the former TPCAs.

Nonetheless, the findings contained in Section 6 of this report were identified through the course of RSA's monitoring activities. Therefore, they remain in Section 6 of this final report, along with OOD's responses to each of the issues addressed in the findings as included below. RSA provides additional technical assistance through its answers to OOD's responses to Findings 1.A through 1.E.

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

### **A. Unallowable Activities (Case Management Services)**

**Corrective Action 1.A:** OOD must, within ten days following the issuance of the final monitoring report, submit a written assurance that OOD will cease immediately using federal VR funds to pay for TPCA costs that are unallowable, namely expenditures for administrative case management activities performed by the cooperating agencies, in accordance with 34 CFR 361.28(a)(2) and that all activities performed under a TPCA will constitute a VR service to VR applicants and consumers, as defined at 34 CFR 361.5(b)(58).

**Agency Response:** OOD respectfully disagrees with this finding for several reasons. First, the activities contracted for are VR counseling and guidance services under federal and State law. Second, the activities performed under the TPCA are direct services that benefit individuals with disabilities, not OOD staff. Third, these activities are properly classified as VR counseling and guidance services, and also fall within the "other goods and services" category of VR services outlined in 34 CFR 361.48. Fourth, even if these services are administrative, they are necessary to provide VR services and administer the VR program, and therefore, should be allowable. Fifth, case management activities are not prohibited under the Rehabilitation Act and OOD acted in good faith in describing to RSA how services were provided under TPCAs, and RSA did not convey to OOD any concerns with its TPCA service model. Finally, for two consecutive years prior to the draft monitoring report, RSA approved OOD's State Plan stating that the TPCAs were providing case management services.

*i. The activities contracted for are VR counseling and guidance services pursuant to State and federal law*

OOD believes that the services which RSA has classified as unallowable, "case management activities," are VR counseling and guidance services pursuant to State and federal law for which VR funding is appropriate. Counseling and guidance services are not defined in the federal law. Absent federal law or regulations, 34 CFR 361.39 recognizes the authority of the State to impose State requirements on the VR program administered by that State. The federal regulations detail that the "designated State unit (DSU) must, upon request, identify those regulations and policies relating to the administration or operation of its VR program that are State imposed, including any regulations or policy based on State interpretation of any federal law, regulations, or guidelines." (34 CFR 361.39 and Section 17 of the Act, 29 U.S.C. 714). This section recognizes

the State's authority to impose regulations and policies on the VR program and to use VR funds for those items defined in State law that are not defined in federal law. State "policy" includes the laws of the State of Ohio. Ohio laws define what constitutes counseling and guidance services.

Pursuant to Ohio law, these services are counseling and guidance services. Ohio Administrative Code 3304-2-55(A), "Vocational Rehabilitation Counseling and Guidance, Referral," states OOD "staff shall provide counseling and guidance, including information and support services to assist an individual in exercising informed choice. It includes personal adjustment counseling and vocational counseling, to maintain a counseling relationship throughout the rehabilitation process. RSC [OOD] shall provide referral to other programs when necessary to help the person secure needed services from other agencies." OOD in Policy VRP-221, "Vocational Rehabilitation Counseling and Guidance" further outlines what counseling and guidance services include. In accordance with this policy, "counselors are to maintain a counseling relationship through the rehabilitation process while providing personal adjustment counseling, vocational counseling, and counseling and guidance, including information and support services to assist the consumer in exercising informed choice. Counselors use counseling and guidance to provide the applicant or consumer referrals to other programs, when necessary to help the applicant or consumer secure needed services. Counseling and guidance services that are provided throughout the rehabilitation process are not required to be listed on the IPE."

*ii. The activities performed under the TPCAs are direct services that benefit individuals with disabilities – not OOD staff.*

RSA is drawing a distinction between services that benefit individuals with disabilities and services that benefit the VR agency. RSA states that "the other four activities identified above e.g., opening a referral for a potential consumer, authorizing services, providing justification for case closure, and documenting disabilities – are administrative activities provided to OOD as the VR agency, not VR services provided to applicants and eligible individuals, as required by 34 CFR 361.28(a)(2)." OOD disagrees that these services are purely administrative in nature and are not a direct benefit to the individual with a disability receiving services.

A VR case cannot be opened without taking a referral or an application from a person with a disability interested in services. It is through taking the referral that the counseling and guidance relationship begins. In addition, meeting with the individual with a disability to document that individual's disability and justification that the individual requires services and would benefit from vocational services is an integral part of the counseling and guidance relationship. It is through this process that a determination of eligibility is made, the order of selection is determined and the individual's strengths and weaknesses are explored. The importance of this step to the overall counseling and guidance relationship is outlined in 34 CFR 361.41. This section states that the DSU must "establish and implement standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services...The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information for determining eligibility and priority for services."

Likewise, VR services, which the counselor and/or coordinator develop as part of the counseling and guidance services and the development of a job goal and IPE cannot be provided if the counselor and/or coordinator does not authorize the services. Thus, it is OOD's position that because the counseling and guidance needed to draft the IPE for services (as an allowable cost) is so closely intertwined with the related activities required for authorization and oversight of those services in the IPE, the latter services are fairly reimbursable as VR services.

Finally, RSA has determined that providing justification for case closure is an administrative activity provided to OOD as the VR agency, not a VR service provided to applicants and eligible individuals, as required by 34 CFR 361.28(a)(2). The federal code (34 CFR 351.37, 34 CFR 361.43, 34 CFR 361.47 and 34 CFR 361.56) makes it clear that the decision to close a case and the documentation necessary to do so are not merely administrative functions, but are counseling and guidance services provided to the individual with a disability. Case closure includes: making referrals to other appropriate Federal and State programs, including other components of the statewide workforce investment system and to local extended employment providers for consumers closed ineligible; enumerating required elements in the notice to the individual when closure is triggered for reasons of ineligibility; requiring documentation for closure on reasons other than ineligibility including satisfying requirements of attempts to contact prior to closing ineligible; requiring verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals; and finally, requiring documentation that demonstrates the services provided under the individual's IPE contributed to the achievement of the employment outcome.

OAC 3304-2-54, "Eligibility for Services, Assessment, and Trial Work Experiences," addresses the need for clear and convincing evidence that an individual cannot benefit from VR services in terms of an employment outcome in order to close a case based upon the severity of the disability. OAC 3304-2-61, "Closure," mirrors the Code of Federal Regulations in delineating reasons for case closure, circumstances under which consultation prior to case closure is required, and the specifications and documentation necessary for successful case closure.

Documentation of all of the counseling decisions and guidance presented to the consumer when closing a case is not merely an administrative function, but is integral in the provision of services to an individual with a disability.

*iii. These activities are properly classified as VR counseling and guidance services, and also fall within the "other goods and services" category of VR services outlined in 34 CFR 361.48.*

The scope of VR services to individuals with disabilities is outlined in 34 CFR 361.48 and includes: assessment for determining eligibility and priority for services; assessment for determining VR needs; VR counseling and guidance, including information and support services to assist an individual in exercising informed choice; referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies; physical and mental restoration services, to the extent that financial support is not readily available from a source other than the DSU; vocational and other training services; maintenance and

transportation in connection with the rendering of any VR services; VR services to family members; interpreter services, reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind; job-related services, including job search and placement assistance, job retention services, follow-up services and follow-along services; supported employment services; personal assistance services; post-employment services; occupational licenses, tools, equipment, initial stocks, and supplies; rehabilitation technology; transition services; technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome; and other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

On January 17, 2001, the Federal Registrar published changes to 34 CFR Part 361, including an Appendix, which provided an analysis of the comments and changes to the code. When reviewing the comments and changes to 34 CFR 361.48, the United States Department of Education, Rehabilitation Services Administration stated, “we believe it is important to note that the list of authorized services in this section of the regulations is not exhaustive and that §361.48(t) specifically authorizes ‘other goods and services’ that the DSU [Designated State Unit] and individual determine to be necessary for the individual to achieve an employment outcome.”

In the draft monitoring report, RSA has defined VR services narrowly and acts as if 34 CFR 361.48 is an exhaustive instead of a partial list. All seven of the services provided in TPCAs are limited to the provision of VR services to OOD consumers. To the extent that the coordinators under a TPCA were opening a referral, providing documentation of a disability and justification that the individual with a disability would benefit from VR services, authorizing and providing oversight of VR services as described in the approved plan, and providing justification for case closure in connection with specific VR consumers, such activities should be considered to be part of the services actually provided to the consumer and should be allowable activities under the TPCA in accordance with 34 CFR 361.28(a)(2).

RSA reviewed a similar issue regarding TPCAs in its monitoring of another VR agency. In that monitoring report, RSA found that “in addition to the provision of AT [assistive technology] assessments, reports and inspections for the VR agency consumers throughout the State, 20 percent of the RT [rehabilitation technology] Specialist 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.” RSA notes that it attempted to distinguish whether the VR agency tech activities with the counselors were specific to the actual consumers being served or whether these activities were more generalized training and technical assistance. To this end, RSA stated that “[t]o the extent that the VR agency 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 consumers and would be allowable activities under the TPCA, in accordance with 34 CFR 361.28(a)(2).” Likewise, to the extent that contract staff under a TPCA in the VRP3 program were providing consultation and technical assistance to the

VR Counselors via processing referrals, gathering information about an individual's disability, authorizing and overseeing services under an IPE, and providing justification for case closure, these activities should be considered to be part of the services actually provided to the consumers and should be allowable activities under the TPCA in accordance with 34 CFR 361.28(a)(2)

*iv. Even if these services are administrative, they are necessary to provide VR services and administer the VR program, and therefore, should be allowable.*

Even if RSA found that these services were administrative in nature, they are necessary to provide VR services and administer the VR program. The federal code explicitly states that “[t]he DSU may enter into a third-party cooperative arrangement for providing or administering vocational rehabilitation services...” (34 CFR 361.28(a)). There is no clear guidance in the code of federal regulations as to what “administering vocational rehabilitation services” entails. With no definition in code, OOD interpreted the work done by TPCAs, in respect to their assistance in authorizing services to individuals, to be “administering VR services” to individuals.

*v. Case management services are not prohibited under the Rehabilitation Act and OOD acted in good faith in describing to RSA how services were provided under TPCAs, and RSA did not convey to OOD any concerns with its TPCA service model.*

The Rehabilitation Act is silent regarding what RSA is classifying as “case management” activities. There is nothing in the law that prohibits them or forbids paying for them with VR funds.

OOD sought guidance from RSA in 2011, regarding the structure and funding of its TPCAs. While OOD ultimately sought a formal legal opinion regarding the source of match funds and reversion to donor issues, OOD on May 4, 2011, provided RSA with numerous documents that described in detail the structure of OOD's TPCAs. These documents included: a recent RFP; sample proposals; sample contracts; sample invoice information; a sample program report; and an example of a certification of funds request. There were also numerous discussions with RSA program and fiscal staff regarding how OOD's TPCAs were structured, including the fact that the contractor was providing case management activities.

At no time during the three (3) plus months of discussion with RSA about OOD's TPCAs did RSA program or fiscal staff ever raise the issue about case management being an unallowable activity.

One proposal stated that the contractor will “coordinate the referral process and obtain eligibility information. This same proposal also states that the Vocational Contract Coordinator's job responsibilities are to “[p]articipate in RSC [OOD] training to perform the duties on behalf of RSC [OOD], manage the individual's case, perform intake, develop individualized rehabilitation plan, and choose vendors to provide appropriate services.” Part of the deliverables in the contract that RSA received and reviewed included the contractor processing 80 referrals.

The Transitions proposal clearly stated that “Local County Boards of DD will deliver VR counseling services (or contract with local agencies through sub-contracts) including: development of IPEs, monitoring the implementation of the plan and evaluating outcomes.”

Another proposal provided to RSA states that the “project will follow the traditional model and replicate the VR system by hiring two full-time-equivalent (FTE) rehabilitation counselors who will be housed in each of the three service areas.” The proposal stated that the “intent of the project is to help increase RSC’s [OOD’s] capacity to provide the full range of VR services by replicating the VR service delivery system.” The supervisor in the proposal “will manage the referral and intake process, conduct case reviews, monitor expenditures and help develop and implement strategies to reach annual goals for the project. This position will commit 100% of its time to “those related to the referral process, consumer orientations and assessments and scanning documents into the case management system. This position will also generate and process authorizations for consumer services, and review and process billings for consumer services.” The proposal describes in detail the case management activities it will be performing, including: developing and maintaining a case record for each individual served; purchasing VR services from qualified vendors; and completing an authorization and billing invoice for services purchased, including timely cancellation and correction of all outstanding authorizations. In addition, the proposal clearly states that “[o]nce the individual has been successfully placed in employment consistent with his or her employment goals and capacities and abilities for a minimum of 90 days, the project will prepare a closure statement. If the individual who is being served becomes ineligible for services, fails to cooperate, or decides not to pursue employment at this time, the applicant will prepare a closure statement. Such closure statement will be presented within a week to the OOD liaison counselor for review and approval. The project will not close the case until the liaison signs the closure.” This proposal states that the “work plan will consist of a traditional referral, counseling, eligibility determination and service provision VR model.”

Finally, this project proposal clearly states that “the project, with regard to business practices, quality individualized services, and record-keeping practices will parallel the operation of an RSC [OOD] office utilizing information management and performance improvement. The project staff will document service being provided in the electronic clinical record system. The staff will work with RSC [OOD] in ensuring appropriate status changes are being documented. Case notes, reports and employment verification forms will be maintained in the client files. The project supervisor will run biweekly reports indicating client status as well as tracking client referrals and job placements...Outcome reporting will be generated on a monthly basis and include case service spending, number of referrals, number of candidates meeting eligibility requirements and number of clients placed.”

Another transitions TPCA contract states that the target services being performed by the contractors include monitoring the implementation of the plan and evaluating outcomes and coordinating service provision with local school districts. Attached to the contract is twenty (20) pages of deliverables and outcomes broken down by each county. All twenty pages state that OOD was contracting for a set number of referrals processed, applications processed, and eligibility determinations, among other items. OOD also provided to RSA a “VRP3 Case Service Contract Review” of the program. This review was completed quarterly to look at the

contractor's progress on deliverables and outcomes. In this document, the cooperating agency provided a summary of its caseload management for the project. The contract states "[a]ll our 'new' Coordinators are doing excellent work talking with internal and external referral sources, developing informational materials, taking referrals and generally growing a caseload."

The Request for Proposal (RFP) that was sent to RSA in May 2011 also outlined the duties of the VRP3 coordinators under the TPCA. In Attachment 1 of the RFP, it states, in relevant part, that the VRP3 coordinator:

- (1) demonstrates understanding of the points of eligibility and be able to obtain appropriate and sufficient diagnostic information to determine eligibility;
- (2) moves cases through time sensitive statuses as expected and utilizes technology/support staff to achieve this process;
- (3) demonstrates case documentation skills by summarizing consumer progress at various points in the vocational rehabilitation process;
- (4) reviews reports from service providers and ensures that all services requested were provided, report is complete and billing coincides with dates, times and elements. Process authorizations and bills timely and correctly; and
- (5) documents reason for case closure and for successful closures what needs to be different for case to proceed next time.

This RFP was sent to RSA in 2011, along with all of the other documents discussed above. In RSA's review of these documents, RSA never raised any concern that OOD was contracting through a TPCA for these case management services. However, over two years later, RSA has now found in its VR monitoring report that these exact activities (opening a referral, providing documentation of a disability and a justification that the consumer requires and would benefit from vocational rehabilitation services, authorizing and providing oversight of services as described in the approved plan, and providing justification for case closure) are "administrative activities provided to OOD as the VR agency, not VR services provided to applicants and eligible individuals, as required by 34 CFR 361.28(a)(2). For the foregoing reasons, the four administrative activities identified are not allowable activities under a TPCA in accordance with 34 CFR 361.28(a). As a result, VR funds may not be expended for such activities under a TPCA.

*vi. For two consecutive years prior to RSA's draft monitoring report, RSA approved OOD's State Plan, which states that case management services were being provided and paid for under TPCAs.*

Finally, the case management activities in the TPCAs were described in OOD's State Plan for FY 2012 and FY 2013. RSA approved both of these plans. In the FY 2012 and the FY 2013 State Plans, OOD requested a waiver of statewideness. In these waiver requests, OOD describes in detail the structure of its third-party cooperative arrangements. OOD even states that it is currently working closely with RSA to ensure that the structure of the TPCAs complies with federal regulations governing the VR program. In OOD's description of the Mental Health Program TPCAs, OOD stated that "VR coordinators (staff of the public agency or their subcontractors) open the VR case and conduct the vocational rehabilitation case management."

In describing the Developmental Disabilities Programs TPCAs, OOD stated that the “local public agencies offer vocational rehabilitation case management services geared to the specific needs of this population” and that “VR coordinators, (employees of the public agency or their subcontractors) open the VR case and conduct the vocational rehabilitation case management.” OOD also described the Transition Youth Programs TPCAs. In this description, OOD stated that the “local public agencies provide VR case management services geared toward the special needs of this population...VR coordinators (employees of the public agency or their subcontractors) open the VR case and conduct the vocational rehabilitation case management...VR coordinators...facilitate identifying necessary services and supports...”

Since FY 2011, OOD acted in good faith and exhibited due diligence in providing RSA a full description of the structure of TPCAs in the State of Ohio. Soon after his appointment, Executive Director, Kevin Miller, requested that RSA review and consult on OOD’s TPCAs that were already in existence and operational in the agency. OOD shared documentation that described and stated that contractors under a TPCA were performing all of the activities that RSA is now stating are unallowable. RSA never expressed concern that these activities were being provided and paid for under a TPCA. RSA approved OOD’s State plan and waiver of statewideness, which contained this information, for two consecutive years leading up to this monitoring review. Having said all of this, every action or inaction from RSA led OOD to believe that TPCA’s as constructed were acceptable VR practices worthy of payment with federal funds. Based upon this information, OOD disagrees with RSA’s finding regarding case management activities performed under a TPCA.

In conclusion, OOD respectfully disagrees with this finding for several reasons. First, the activities contracted for are VR counseling and guidance services under federal and State law. Second, the activities performed under the TPCA are direct services that benefit individuals with disabilities, not OOD staff. Third, these activities are properly classified as VR counseling and guidance services, and also fall within the “other goods and services” category of VR services outlined in 34 CFR 361.48. Fourth, even if these services are administrative, they are necessary to provide VR services and administer the VR program, and therefore, should be allowable. Fifth, case management activities are not prohibited under the Rehabilitation Act and OOD acted in good faith in describing to RSA how services were provided under TPCAs, and RSA did not convey to OOD any concerns with its TPCA service model. Finally, RSA, for two consecutive years prior to the draft monitoring report, approved OOD’s State plan which stated that the TPCAs were providing case management services.

**RSA Response:** For the following reasons presented in reply to each of the arguments contained in OOD’s response to Finding 1.A, RSA continues to maintain that case management activities not considered to be within the scope of counseling and guidance services cannot be provided by the cooperating agency under a TPCA. To support its position that all case management activities provided by the cooperating agencies under the TPCAs were allowable as counseling and guidance, OOD first argues that federal law and regulations do not define “counseling and guidance” and, therefore, the State of Ohio may define this term for itself in accordance with regulations at 34 CFR 361.39. Although the language of 34 CFR 361.39 cited by OOD in its response recognizes the ability of states to make regulations and policies based on their interpretation of federal laws and regulations governing the VR program, it does not permit

states to establish regulations and policies that are inconsistent with federal requirements, including RSA's interpretation thereof.

Pertinent to this finding, RSA interprets the provision of "counseling and guidance," as described at 34 CFR 361.48, to encompass only those services that directly benefit eligible individuals. OOD may not interpret this category of service or develop State regulations in a manner inconsistent with RSA's interpretation. Consequently, it cannot include activities such as making referrals to the VR program, authorizing services, preparing material related to the determination of eligibility, and developing justifications for case closure, within the scope of counseling and guidance, since RSA expressly interprets these activities to be of benefit to OOD and its staff - not its consumers - and therefore, not to be encompassed within this category of service.

Nonetheless, OOD further argues this point by stating that it interprets its policies contained in the Ohio Administrative Code concerning the provision of counseling and guidance services to include the activities RSA interprets as not within this category of service. The language of OAC3304-2-55(A) quoted by OOD is similar to that used in Section 103(a) of the Rehabilitation Act and 34 CFR 361.48, except it further states that, "[counseling and guidance] includes personal adjustment counseling and vocational counseling, to maintain a counseling relationship throughout the rehabilitation process. [OOD] shall provide referral to other programs when necessary to help the person secure needed services from other agencies." To the extent the language of the quoted section of OAC 3304-2-55(A) as well as the OOD policy defining counseling and guidance, and the federal provisions read similarly, the Ohio provisions must be interpreted in the same manner as the federal requirements to only include those services directly benefiting eligible individuals. In addition, the language found in the Ohio provisions regarding delivery of personal adjustment and vocational counseling by the VR counselor, a service of direct benefit to the individual, supports this interpretation and does not speak to case management activities of benefit to OOD staff.

OOD also contends that the case management activities RSA finds not to be within the scope of counseling and guidance ultimately benefit OOD consumers, not its staff, and should be considered allowable activities performed under TPCAs. RSA agrees in part that referral to the VR program, eligibility determination, authorization of services and the determination of case closure are integral steps in the VR process and enable consumers to complete their individual VR programs. However, administrative activities, such as these, do not constitute a VR service as defined at 34 CFR 361.5(b)(58) and described at 34 CFR 361.48. Thus, these administrative activities provided to OOD, the VR agency, cannot be provided through TPCAs pursuant to 34 CFR 361.28(a)(2), which requires that cooperating agencies provide only VR services to applicants and eligible individuals.

OOD also argues that the scope of VR services to individuals with disabilities set forth in the Rehabilitation Act and program regulations is not an exhaustive list and can include the provision of case management activities under 34 CFR 361.48(t), making their provision allowable through TPCAs. RSA agrees that 34 CFR 361.48(t) permits the provision of other goods and services not specifically identified in the Rehabilitation Act and regulations that are necessary to assist individuals to achieve their employment outcomes. However, VR agencies

are to use 34 CFR 361.48(t) as the basis for providing VR services in a case-by-case and limited manner as the service provided must be necessary for the achievement of a particular individual's employment outcome. Even if the case management activities in question could be considered VR services, they are applicable to all VR cases and are not engaged in on an individualized basis. Rather, these activities represent stages in the VR process that must be performed so that all consumers can complete the VR program and, consequently, are not within the scope of 34 CFR 361.48(t).

Next, OOD contends that even if the case management activities are administrative in nature, they are necessary to provide VR services and administer the VR program and, thus, their provision is allowable through TPCAs. In making this argument, OOD relies on the language of 34 CFR 361.28(a), which reads as follows, "[t]he designated State unit may enter into a third-party cooperative arrangement for providing or administering [VR] services..." OOD interprets the phrase "administering VR services" as referring to the performance of activities related to the VR process, such as the case management activities disallowed in finding 1.a. RSA disagrees with this interpretation. The term "administering" as used in 34 CFR 361.28(a) refers to the situation in which cooperating agencies administer contracts with other providers for the provision of the VR services through the TPCAs. VR agencies can enter into TPCAs, through which the cooperating agencies provide the services directly or enter into sub-contracts with CRPs or other vendors for the provision of the services. In the latter situation, the cooperating agencies "administer" the contracts through which the TPCA services are delivered by performing all activities related to their development and implementation.

OOD further contends that the Rehabilitation Act and its regulations do not prohibit the use of VR funds for case management activities and that it acted in good faith when implementing TPCAs for the provision of these activities. RSA agrees that the Rehabilitation Act does not prohibit the use of VR funds to support case management activities and, as stated in the finding, VR agencies may contract with other entities for these activities. Nevertheless, the use of VR funds to support TPCAs is more limited than when used in other contractual arrangements. As explained in the finding and above, cooperating agencies engaged in TPCAs can only provide VR services to applicants for, or individuals eligible to receive, these services (34 CFR 361.28(a)(2)). Although, OOD may develop other types of arrangements, such as fee-for-service contracts or interagency transfers, for the provision of case management activities by the contracting parties, it cannot use TPCAs for this purpose as these activities are provided to its staff, not its VR consumers.

To support its position that it acted in good faith when entering into TPCAs for the provision of case management activities, OOD provides examples of TPCA requests for proposals and contracts submitted to RSA in May 2011, and states that RSA did not indicate at that time that the provision of these activities was not allowable under program regulations. However, RSA reviewed these documents for the purpose of responding to OOD's specific inquiry concerning the source of the non-federal share being contributed through the arrangements. RSA's response to this inquiry, sent to OOD on July 15, 2011, addressed this inquiry only and did not contain any guidance or information concerning the services provided through the TPCAs. Given the narrow scope of the inquiry and RSA's response, OOD should not have considered this lack of

guidance to signify RSA's approval of all aspects of the arrangements, including the services to be provided and the activities to be performed thereunder.

Finally, OOD argues that RSA approved the TPCAs when it approved the agency's FY 2012 and 2013 State Plans that contained descriptions of the arrangements. RSA's approval of a State Plan does not constitute its determination that the activities mentioned in the plan are consistent with federal requirements. Such approval indicates that the content requirements for the State Plan have been satisfied. However, the language contained in the FY 2012 and FY 2013 State Plans, referred to in OOD's response, is not detailed enough to have caused RSA to question the compliance of the arrangements with 34 CFR 361.28.

For instance, Attachment 4.7(b)(3) of the FY 2012 and FY 2013 State Plans describe the TPCAs with several types of agencies, including county mental health and developmental disability boards. These descriptions state, "VR coordinators, (employees of the public agency or their subcontractors) open the VR case and conduct the vocational rehabilitation case management and counseling and guidance in conjunction with an [OOD] Liaison Counselor." These general statements do not specify the case management activities to be performed, some of which RSA found were permissibly provided under the TPCAs, and some were not; nor do they indicate which activities were to be performed by the VR coordinators or OOD VR counselors. The descriptions also do not include the amount of VR funds involved in the TPCAs and to what degree the funds were to be used to support the case management activities versus the wide array of VR services described as being provided through the TPCAs. Inclusion of this level of detail in the State Plans would have been necessary to cause RSA to question compliance of the TPCAs with federal requirements.

For all these reasons, RSA maintains Finding 1.A and it stands as written.

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

## **B. New and Expanded Services**

**Corrective Action 1.B:** OOD must, within ten days following the issuance of the final monitoring report, submit a written assurance that OOD will cease immediately using federal VR funds to pay for TPCA costs that are unallowable pursuant to 34 CFR 361.28(a)(1), namely expenditures for services that are duplicative of other services provided to OOD consumers by the same cooperating agencies or that are the customary and typical services provided by the cooperating agencies.

**Agency Response:** RSA found that OOD's TPCAs were not in compliance with federal regulations because RSA stated that OOD's TPCA services are duplicative of those services delivered to VR program consumers through other contracts between OOD and the same cooperating agency. RSA also stated that the provision of treatment services in OOD's TPCAs are not in compliance because such services are customarily and typically provided by the cooperating agency and therefore were not new and expanded. Upon receiving RSA's draft monitoring report, OOD sought written clarification from RSA regarding the meaning of these terms. RSA responded by stating that RSA cannot create official definitions for these terms, but

nonetheless, it can provide descriptive guidelines that OOD can use when determining if services delivered through TPCAs meet the requirements of 34 CFR 361.28(a)(1).

The Ohio behavioral healthcare and developmental disability system is a home-rule structure, which means that there is strong local control over services and eligibility determinations. County and regional systems vary in the extent to which they are able to devote staff and resources. In addition, there is variation in the degrees of capacity to provide certain services. Further complicating this system is the fact that in Ohio, county funding, such as local levies and revenue from other local systems, are an important source of financial support for local human service programs.

As a result of the levy structure and home-rule, services available in various counties for individuals with developmental disabilities, mental health and addiction issues vary. For example, county boards of developmental disabilities have discretion in deciding how to use their non-Medicaid funding. Planning, funding and contracting with provider agencies are managed at the county level by mental health boards and alcohol and drug addiction boards. In some counties these boards are combined into one organization. The boards do not provide any direct services to individuals. Instead, they contract with agencies to provide these services. Community mental health systems are funded, reviewed, and monitored by the Ohio Department of Mental Health and Addiction Services through fifty (50) county-level boards. Established through legislation in 1967, these boards function as “local mental health authorities,” funding, planning and monitoring services provided by nearly five hundred (500) not-for-profit community mental health agencies. Board areas consist of one to five counties, and most oversee both mental health and addiction services as Alcohol, Drug Addiction and Mental Health (ADAMH) Service Boards. This approach focuses on community care and emphasizes local management. Each board is a quasi-independent part of the county government. The boards have the legal responsibility and authority for the provision of mental health and addiction treatment services and contracts with provider agencies to deliver services. As a result, the breadth of services provided across Ohio is incredibly diverse.

OOD respectfully disagrees with this finding. In Ohio local governments also have a significant role in providing services to individuals with disabilities, but the degree and types of services differ by locality. Thus some areas have a greater need for OOD services and assistance in the first instance, and in those areas, the services OOD provides are properly classified as “new” or “expanded” and not “duplicative” or those “customarily provided” by cooperating agencies. The services provided under the TPCA were either new services that have a VR focus and were not customarily provided by the cooperating agency or existing services that were modified, adapted, expanded or reconfigured to have a VR focus.

*i. Services provided in the TPCAs were new services that have a VR focus*

Ohio’s TPCAs benefited individuals with disabilities by providing new avenues and access to VR services. TPCAs are often operated in counties where OOD does not maintain offices. The TPCAs benefited individuals with disabilities by making it easier to access VR services. Likewise, through TPCAs, OOD increased access and availability of VR services to underserved populations such as individuals with substance abuse and mental health issues. The local partners

engaged in TPCAs were subject matter experts in the unique challenges faced by such as recovery or mental health, they were able to ensure those unique challenges were sufficiently addressed through holistic approaches such as person centered planning.

It must be first noted, the TPCA agreements were for vocational rehabilitation case management services, which clearly are not services that the cooperating agencies were providing prior to their participation in the TPCA. While RSA alleges that case management services are not allowable services under a TPCA, OOD disagrees with RSA's position on this matter and thus believes that these services were "new" and meet the requirements of 34 CFR 361.28(a)(1). (Refer to OOD's response to Corrective Action 1.A)

One type of TPCA that OOD entered into was a model whereby OOD counselors were directly responsible for the individual with a disability's case but were able to purchase a comprehensive new model of service from the cooperating agency. OOD internally referred to this type of contract as an "administrative contract;" however, the model of service being purchased from the cooperating agency was strictly a package of direct VR services to individuals with disabilities. Through this type of TPCA, OOD was able to offer and provide new services in areas that may have had limited or none of the services identified within individual administrative contracts. For example, many of Ohio's County Boards of Developmental Disabilities do not provide or offer the majority of services listed in the OOD's Fee Schedule.

*ii. Services provided in the TPCAs were not the customary services provided by the cooperating agency*

RSA additionally took issue with OOD's TPCA with the Ohio Department of Alcohol and Drug Addiction Services (ODADAS), indicating that treatment services were provided, which are customary services provided by the cooperating agencies. OOD would note that restoration services (i.e., treatment), are clearly allowable VR services under 34 CFR 361.48(e). While treatment services may be available through the cooperating agency, these agencies do not have an unlimited supply of funds to provide these services. OOD has policies in place that require the use of comparable benefits for the provision of services and these policies applied to these projects. OOD did purchase restoration services under this TPCA as the payer of last resort when other resources for the services were not available, meeting the criteria of expanded services. OOD would also note that the TPCA with ODADAS was not renewed.

Finally, RSA has alleged that "some services provided by the TPCA cooperating agencies, such as job coaching, are also available through fee for service contracts with these same cooperating agencies and are considered duplicative of such services when provided under the TPCAs." First, OOD does not have fee for service contracts with any CRP or cooperating agency. While OOD developed and launched a fee schedule for VR services on October 1, 2012, OOD does not have fee for service contracts. Second, OOD does not agree with this logic. Services provided through fee for service are not being "provided" by the cooperating agency; they are being provided by the VR program. When cooperating agencies provide services through the TPCA, these services are now being funded by the contributions of the cooperating agency and would therefore constitute new services. Third, RSA's conclusion is illogical. According to RSA's reasoning, OOD could only enter into a TPCA for services that the cooperating agency did not

previously provide at all. For example, RSA states that because OOD's TPCA with Fairfield County DD Board included them providing job coaching and because OOD also purchased job coaching services from Fairfield County DD Board off the fee schedule, that the service of job coaching was not new or expanded and was unallowable under a TPCA.

*iii. Services provided in the TPCAs are existing services that have been modified, adapted, expanded or reconfigured to have a VR focus*

These TPCAs delivered services in an integrated service delivery model and OOD further asserts that these programs therefore meet the requirements of being modified, adapted and/or reconfigured to have a VR focus. In addition, through the TPCAs, OOD was able to expand services to increase Ohio's overall capacity to provide services, given Ohio's Order of Selection waiting list.

OOD concludes, different localities in Ohio provide varying degrees and types of services. TPCAs with county boards to provide services to individuals with developmental disabilities, mental health or addiction issues were either new services in that particular region or were existing services that were modified, adapted, expanded or reconfigured to have a VR focus. As a need for further analysis and response to this finding, OOD requested that RSA provide definitions for the terms new, modified, adapted, expanded, and reconfigured on October 30, 2013. On November 18, 2013, RSA provided definitions. After review of the definitions and the RSA guidance in its draft monitoring report, OOD has determined that the best course of action is to seek RSA's review and written approval of any and all TPCAs models developed. Hence, on October 28 and October 29, 2013, OOD asked for RSA to approve two new models that OOD is in the process of implementing to ensure that RSA's requirements are met. OOD is currently awaiting responses from RSA on these requests.

**RSA Response:** For the following reasons presented in reply to each of the arguments contained in OOD's response to Finding 1.B, RSA continues to maintain that the services provided through the TPCAs to applicants and eligible individuals were duplicative of those provided by the same cooperating agencies under other contracts with OOD or were those customarily provided by the cooperating agency, and, thus, not new, expanded or modified to include a VR focus (34 CFR 361.28(a)(1)).

OOD first contends that it lacked adequate guidance regarding the meaning of "new and expanded" as it relates to the requirements within 34 CFR 361.28(a)(1). However, RSA provided this guidance throughout its monitoring activities and by email on November 18, 2013, in response to a written request from OOD. This guidance, referenced in OOD's response above, contained descriptive guidelines that can be used when determining if services provided through TPCAs satisfy the criteria of 34 CFR 361.28(a)(1) and is consistent with that contained in appendices to the FY 2011 through FY 2013 VR Program Monitoring and Technical Assistance Guides.

The agency then asserts that the Ohio behavioral healthcare and developmental disability system(s) are locally governed and the services provided by each system vary depending on structural and funding resources, so that the services provided by each differ. RSA recognizes

this variability and, therefore, it is incumbent upon OOD to determine for each TPCA it enters into if the requirements of 34 CFR 361.28(a)(1) are met. The TPCA with the Fairfield County DD Board cited in Finding 1.B is one example of an arrangement in which the services provided were found to be duplicative of those also being provided under a separate contractual arrangement between OOD and the board and, thus, not in compliance with this regulation.

OOD next responds that the case management activities provided through the TPCAs were new and expanded services because they were not customarily provided by the boards and other cooperating agencies and were not duplicative of those already provided through other contracts with OOD. RSA refers OOD to Finding 1.A. It is OOD's responsibility to determine, based on RSA guidance, if those activities RSA determined could be continued under Finding 1.A are new services not customarily provided by the cooperating agencies and are not duplicative of those services they provide through other arrangements with OOD.

Focusing on the TPCA with ODADAS, OOD argues that the treatment services provided under the arrangement are new and expanded services within the meaning of 34 CFR 361.28(a)(1) because these services are allowable VR restoration services that many of the local boards lack the funding to provide. However, the treatment services provided through the arrangement with ODADAS are not "expanded" in such a manner as to satisfy the criteria of 34 CFR 361.28(a)(1) because treatment services are customarily and typically provided by ODADAS and its providers. Section 3793:2-1-08 of the Ohio Administrative Code, defining treatment services and identifying who can deliver and supervise such treatment services, states:

- (A) the purpose of this rule is to define alcohol and drug addiction treatment services, and identify who can deliver and supervise treatment services.
- (B) the provisions of this rule are applicable to all of the following Ohio alcohol and drug addiction programs public or private, regardless of whether they receive any public funds that originate and/or pass through the Ohio department of alcohol and drug addiction services, in accordance with division (A) of section 3793.06 of the Revised Code

RSA recognizes that some ODADAS providers may not have sufficient funding to provide treatment services to all persons who need them, despite the legal responsibility to provide these services under the Ohio Administrative Code. However, TPCAS cannot be used to provide services that the cooperating agency is providing or has the legal responsibility to provide. The purpose of this requirement is to ensure that VR dollars are not being used to supplant what the State is already required to provide. In other words, the cooperating agency cannot use VR funds to pay for the cooperating agency's current program or current program responsibilities.

RSA has consistently interpreted 34 CFR 361.28(a) to mean that the services already provided by another public agency, either directly or through its contractors, cannot be used as the basis for a TPCA through which the VR agency will obtain matching funds. This includes services that the VR agency already purchases from the public agency off of a fee schedule or through fee-for-service agreements. The reference to "fee-for-service contracts" in the finding is only meant to reference all types of fee-for-service and vendor agreements that utilize a direct payment system for individualized services.

Finally, OOD contends that the VR services provided through the administrative TPCAs are part of a new “integrated service” model and, thus, are not existing services of the cooperating agencies. However, each service offered through this model must be viewed individually to determine exactly which activity fits the requirement of 34 CFR 361.28(a)(1) as being new or modified services and those which are typically offered by the cooperating agencies and, therefore, do not fit the requirement of 34 CFR 361.28(a)(1).

For all these reasons, RSA maintains Finding 1.B and it stands as written. In the meantime, RSA provided technical assistance to OOD management and personnel on the application of 34 CFR 361.28(a)(1) to proposed TPCA models during a meeting in Washington, D. C., on December 11 and 12, 2013.

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

### **C. Other Unallowable Expenditures**

**Corrective Action 1.C:** OOD must:

- 1.C.1 cease paying unallowable indirect costs with federal VR funds and using federal VR funds to reimburse unallowable expenditures under the VR program in accordance with section 111(a)(1) of the Rehabilitation Act and 34 CFR 361.3; and
- 1.C.2 submit any documentation it has to demonstrate that questioned itemized costs, such as those discussed herein, were indeed allowable under and allocable through the VR program.

**Agency Response:** In its response, OOD summarized Finding 1.C and then states the below.

*i. Case management activities under OOD’s TPCAs are allowable*

As outlined in OOD’s response to Corrective Action 1.A above, OOD believes that what RSA calls “case management” services under the TPCAs are allowable services. Therefore, OOD respectfully disagrees that any expenditures made for these services are unallowable or that any indirect costs charged against case management activities are unallowable.

*ii. OOD has a sound methodology for calculating indirect costs under TPCAs*

As stated in OOD’s response to Corrective Action 1.A above, OOD paid for what OOD understood to be allowable direct services and thus, OOD paid for what it believed to be allowable indirect costs.

OOD then described procedures it employed when determining indirect cost rates charged by the cooperating agencies under the TPCAs, stating:

OOD believes that the procedures described [in its response] limited expenditures for indirect costs, to the extent possible, to only those costs that were allowable, allocable, reasonable, and necessary for the execution of the cooperative arrangement and the provision of contracted VR services.

**RSA Response:** For the following reasons presented in reply to each of the arguments contained in OOD's response to Finding 1.C, RSA continues to maintain that OOD used federal VR funds to pay for expenditures through the TPCAs that were not allowable under or allocable to the VR program, including indirect costs. First, OOD contends that it paid for what it understood to be allowable direct services and thus, paid for what it believed to be allowable indirect costs. RSA has addressed the question regarding the allowability of the services in its response to Finding 1.A. above. To the extent that the services were unallowable, any indirect costs paid in support of those services would also be unallowable.

OOD contends that its procedures "limited expenditures for indirect costs, to the extent possible, to only those costs that were allowable, allocable, reasonable and necessary..." However, OOD's procedures resulted in the charging of unallowable indirect costs to VR funds. For example, as included in the finding, several of the VRP3 agreements resulted in indirect costs being charged against the federal case management service funds matched by the cooperating agency. These funds were administered through OOD's electronic case management system and the cooperating agency did not have direct access to the funds. However, OOD permitted the cooperating agencies, which incurred no allowable costs in the direct administration of the funds, to charge a substantial amount of indirect costs against them. In accordance with OMB Circulars, indirect costs can only be charged when an agency has costs incurred related to program operations. The contractors who charged the indirect costs did not incur expenses associated with the expenditure of the case service funds.

If contractors have direct federal awards, they should already have an indirect cost rate approved by their cognizant federal agency. If the contractor does not have a federal award, OOD has fiduciary responsibility for the contractor's actions and is responsible for indirect cost oversight. In determining the allowability, allocability and reasonableness of the indirect costs charged by contractors, OOD should consider the relevant program regulations, OMB circulars, and supplemental guidance.

The agency's internal processes did not ensure that only allowable indirect costs were charged to the award and that supporting documentation was available to demonstrate the allowability of the charges. For these reasons, RSA maintains Finding 1.C and it stands as written.

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

#### **D. Lack of Internal Controls**

**Corrective Action 1.D:** OOD must develop and implement internal control processes, including monitoring protocols, necessary to ensure that TPCAs and other vendor contracts comply with all relevant VR requirements, including the provision of allowable services and the expenditure of funds in a manner that ensures the allowability and allocability of those costs. Only in doing

this can OOD ensure that it is in compliance with 34 CFR 361.12, 34 CFR 80.20(a), and 34 CFR 80.40(a).

**Agency Response:** OOD summarized Finding 1.D and states the below.

OOD disagrees with the finding that it lacks internal controls. OOD acknowledges RSA has determined that purchasing case management services is not an allowable use of VR funds and that the controls did not prevent the expenditure of VR funds for this purpose. However, in support of OOD's position that purchasing case management services was an allowable use of VR funds, OOD established a multi-layered system of internal control to ensure that funds were only used to reimburse costs that were reasonable, allowable, allocable, and necessary to carry out this VR program.

*i. OOD has a contract management handbook*

The first control layer serves as the foundation for all other controls and occurs prior to entering into any engagement with a cooperating agency. OOD has published guidelines in a Contract Management Handbook regarding the types of costs that would be allowed under a cooperative arrangement based on a review of federal cost principles and other relevant laws and regulations. These guidelines include such basic information as the mileage and per diem rates established by the U.S. General Services Administration, and more complex information such as the procedure for establishing an indirect cost rate for engagement.

*ii. OOD reviews all invoices to ensure both administrative and case service costs are appropriate*

The second control layer occurs after the engagement has been executed and activity has begun. This control relies heavily on the approved budget established under the first control and involves two distinct paths operating in tandem: one path related to administrative activities and costs, and a second path related to case service activities and costs.

*iii. OOD monitors and audits activities after payments have been made*

The third control layer involves monitoring and auditing activities conducted after payments have been made to cooperating agencies for administrative costs or case services. These processes are discussed in detail in OOD's response to Compliance Finding 2 – Contract Management and Monitoring.

**b. Conclusion:**

In summary, fiscal monitoring and auditing procedures involve an examination of a cooperating agency's accounting policies and ledgers to determine if expenditures related to the engagement are properly recorded. OOD staff will conduct a general assessment of the control environment by reviewing policies and procedures, which helps determine whether there is adequate segregation of duties among cooperating agency staff and whether the policies and procedures are properly implemented... RSA further states "In on-site interviews and subsequent

teleconferences, OOD management reported that OOD has not evaluated all of its contracts to ensure the provision of new, expanded or modified VR services and indicated that they are aware that some of the same services are provided by the cooperating agencies through other contracts with OOD...” OOD contends that the comments in the report are not reflective of the information provided by OOD staff at the time of the review and as additional follow up to the review.

OOD has learned through RSA’s monitoring visit that there is an opportunity and need to better record and describe the current state of services in a contract area and to explain specifically how services to be delivered through a TPCA are “new, expanded or modified with a VR focus.” OOD intends to develop a standard Program Summary document to record this information for any future TPCAs prior to implementation. OOD also requests assistance from RSA for a recommended tool or form to capture any information necessary to demonstrate that future TPCAs meet this requirement.

The procedures outlined above, from budget development to contract monitoring, illustrate an extensive system of internal controls established specifically to ensure that all costs incurred under third party cooperative arrangements are reasonable, allowable, allocable and necessary.

**RSA Response:** For the following reasons presented in reply to each of the arguments contained in OOD’s response to Finding 1.D, RSA continues to maintain that OOD did not utilize methods of administration to ensure the proper administration of the VR program and accurate accounting of VR funds, including the ability to track the expenditure of funds to the VR program.

According to OOD, the agency has “published guidelines in a Contract Management Handbook regarding the types of costs that would be allowed under a cooperative arrangement based on a review of federal cost principles and other relevant laws and regulations.” OOD states that the Contract Management Handbook serves as the foundation for all other controls and occurs prior to entering into any engagement with a cooperating agency. Additionally, prior to executing any contract, “OOD requires cooperating agencies to submit a proposed budget for review and approval with the expectation that the proposal adheres to OOD’s published guidelines.” RSA agrees that the Contract Management Handbook is a valuable tool that can serve as a foundation for other internal controls.

The A-102 Common Rule and OMB Circular A-110 (2 CFR part 215) require that non-Federal entities receiving Federal awards (i.e., auditee management) establish and maintain internal controls designed to reasonably ensure compliance with Federal laws, regulations, and program compliance requirements. OMB Circular A-133, Part 6, is intended to assist non-Federal entities and their auditors in complying with these requirements by describing, for each type of compliance requirement, the objectives of internal control, and certain characteristics of internal control that, when present and operating effectively, may ensure compliance with program requirements.

The objectives of internal controls pertaining to the compliance requirements for Federal programs (Internal Control Over Federal Programs), as found in §105 of OMB Circular A-133, are as follows:

- (1) Transactions are properly recorded and accounted for to:
  - (i) Permit the preparation of reliable financial statements and Federal reports;
  - (ii) Maintain accountability over assets; and
  - (iii) Demonstrate compliance with laws, regulations, and other compliance requirements;
- (2) Transactions are executed in compliance with:
  - (i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and
  - (ii) Any other laws and regulations that are identified in the compliance supplements; and
- (3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

OOD's response did not address why its internal control processes resulted in a lack of supporting documentation necessary to demonstrate compliance with laws and regulations. For example, multiple staff positions were funded under several of the TPCAs. However, there were no position descriptions for the employees paid under the agreements to ensure the work being performed was allowable. TPCAs included compensation for executive directors, multiple supervisors, administrative and fiscal staff without any documentation regarding their specific job responsibilities. Without a determination of each employee's role under the agreement, OOD was not able to document that the salary costs charged to the TPCAs were allowable or proportional to the benefit received by the VR program. Additionally, OOD could not provide documentation as to why the number of staff paid under the agreements varied so dramatically given that the agreements were based upon a template. Some of the cooperating agencies were able to provide similar services under the agreements without the additional personnel costs.

The finding included several examples of agreement costs for which OOD could not provide supporting documentation (e.g., OACB project management fees, duplicate costs paid for cell phone stipends and for purchasing cell phones, etc.). While OOD states there is an "expectation" that the agency's proposed budget adheres to OOD's published guidelines, OOD is solely responsible for expending and accounting for funds to such a degree that it can trace the funds for each activity to ensure that the funds were expended in accordance with federal requirements. The agency's internal processes did not ensure that federal funds were used only for allowable purposes and that supporting documentation was available.

For all the reasons stated above, RSA maintains Finding 1.D and it stands as written.

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

## **E. Unallowable Source of Match**

**Corrective Action 1.E:** Within ten days following the issuance of the final monitoring report, OOD must provide a written assurance that it will immediately cease using non-federal contributions associated with unallowable expenditures under its TPCAs to satisfy the VR program matching requirement and that it will ensure non-federal expenditures used for satisfying VR match requirements, such as those incurred through the TPCAs, are only for allowable expenditures under the VR program, namely expenditures for the cost of providing VR

services and the cost for administering 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)).

**Agency Response:** OOD summarized Finding 1.E and its justification that case management activities are allowable under TPCAs, stating, “OOD disagrees that costs provided under the TPCA were unallowable (see OOD response to Corrective Action 1.A above) and therefore asserts that the non-federal share for these expenditures were allowable.”

**RSA Response:** In reply to OOD’s response to Finding 1.E, RSA maintains that, to the extent that the costs incurred under the TPCAs were not allowable under the VR program, the non-federal share of those same expenditures also would not be an allowable source of match under the VR program. In its response, OOD restated its position that case management activities are allowable under TPCAs and therefore, the match would be allowable. RSA provided a detailed response to the agency’s assertion of allowability in Finding 1.A above. To the extent the costs incurred were not allowable VR program costs, the same expenditures would not be an allowable source of match. For this reason, RSA maintains Finding 1.E and it stands as written.

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

## 2. Contract Management and Monitoring

**Corrective Action 2:** OOD must develop and implement procedures to:

- A. monitor the programmatic and fiscal aspect of the activities and services provided by State agencies and contractors receiving Title I funds to ensure compliance with federal requirements;
- B. ensure fiscal controls permit the tracking of expenditures necessary to ensure that the funds are not used in violation of restrictions and prohibitions of applicable statutes in accordance with 34 CFR 80.20(a)(2).

**Agency Response:** OOD summarized the finding and states the below.

OOD disagrees with this finding. OOD does monitor the expenditures provided under contracts, both programmatically and fiscally, to ensure compliance with federal regulations. OOD has established an extensive system of internal controls to meet the requirements of 34 CFR 80.20(a)(2).

OOD then described the manner in which it conducted contract monitoring and implemented procedures to ensure that VR program funds were expended in compliance with federal requirements as follows.

*i. OOD monitors the expenditures under contracts programmatically and fiscally to ensure compliance with federal regulations*

OOD created a unit to manage and monitor TPCAs. This unit is dedicated solely to manage and monitor third-party cooperative arrangements. OOD provided training to ODADAS staff

regarding the purpose and goals of the VR program and the outcomes sought for individuals with disabilities. Additionally, OOD required that ODADAS implement a monitoring protocol to evaluate subcontractor expenditures. OOD provided to ODADAS a monitoring procedure and forms, periodic mentoring sessions, and hands-on technical assistance during an on-site monitoring visit. OOD also directly monitored expenditures against the approved budget to ensure that total costs remained within established parameters.

*ii. OOD has established an extensive system of internal controls to meet the requirements of 34 CFR 80.20(a)(2)*

OOD has established an extensive system of internal controls designed to meet the requirements of 34 CFR 80.20(a)(2). Please refer to the response offered to Compliance Finding 1.D for a full explanation of those internal controls.

**RSA Response:** For the following reasons, presented in reply to the arguments contained in OOD's response to Finding 2, RSA continues to maintain that OOD did not have fiscal controls in place that enabled it to expend and account for funds expended under the contract to such a degree that it could trace the funds for each activity to ensure that the funds were expended in accordance with federal requirements.

OOD's response referred to its response regarding internal controls, Finding 1.D, to support its position. Additionally, OOD stated that it "monitors the expenditures provided under contracts both programmatically and fiscally to ensure compliance with federal regulations." While OOD may monitor expenditures, its response did not address why the agency's process resulted in substantial unsupported costs to the federal award.

Monitoring policies and practices are implemented in order to effectively identify and prevent unallowable expenditures. They can also provide evidence of effective internal controls. In order to accomplish this, the agency must have processes to ensure the allowability of expenditures and maintain supporting documentation as evidence. RSA provided additional information in response to the agency's position related to internal controls in RSA's response to Finding 1.D.

The ODADAS contract budget included numerous staff and no job descriptions. OOD permitted ODADAS to subcontract to local mental health boards and develop individual budget agreements without oversight necessary to determine allowability under the subcontracts. At the time of the agreement, OOD's contract management and monitoring processes did not sufficiently determine whether the budgeted line item costs were allowable costs to the VR program. Additionally, the ODADAS contract did not include deliverable outcomes consistent with the contract's scope of services. Without such outcomes, OOD was unable to ensure that the service costs were proportional to the benefit received by the VR program.

For all the reasons stated above, RSA maintains Finding 2 and it stands as written.

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

### **3. Unallowable Use and Disbursement of Program Income**

#### **A. Unallowable Use of VR Program Income Funds for Non-VR Services**

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

- 3.A.1. submit a written assurance to RSA within 10 days of the issuance of the final monitoring report that OOD will cease disbursing VR program income funds in a manner that is inconsistent with the VR implementing regulations pursuant to 34 CFR 361.63, including disbursements for the PCA program and CCDHH contracts in support of unallowable VR program services; and
- 3.A.2 develop written processes to ensure that federal program income is disbursed according to the implementing regulations on allowable VR services or the administration of the VR State Plan.

**Agency Response:** OOD has already taken corrective action to remedy this finding. During the monitoring visit, RSA asserted that OOD had misspent SSA reimbursement funds. OOD did not misspend these funds. However, OOD acknowledges that these funds were reported incorrectly on the VR RSA-425. 34 CFR 361.63(2) states that, “Payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes may also be used to carry out programs under Part B of Title I of the Act (client assistance), Part B of Title VI of the Act (supported employment), and Title VII of the Act (independent living).” OOD can demonstrate that the funds in question were, in fact, spent on appropriate programs as allowed by 34 CFR 361.63(2).

OOD had included Community Center for the Deaf and Hard of Hearing (CCDHH) and the Personal Care Assistance (PCA) expenditures on the VR RSA-425 report. OOD acknowledged the misunderstanding and immediately offered solutions to correct the reporting issue. RSA determined that it could allow OOD staff to reduce expenditures on the VR RSA-425 and add those expenditures to the IL RSA-425 reports that were within the parameters of this monitoring review. RSA fiscal staff acknowledged the proposed solutions and made the reports available for OOD staff to update. The reports were updated by OOD on April 5, 2013, including remarks in Field 12 stating “Report originally submitted on 2/6/2013. Being resubmitted April 5, 2013 after the RSA monitoring visit to correct reporting of program income, expenditures of refunds and for construction.”

OOD continued to follow up on the recommendations by RSA and made the appropriate adjustment to the State Plan for Independent Living (SPIL) for FFY 2014 to include CCDHH contracts and the State PCA program. The SPIL was submitted on August 28, 2013, and OOD received notice of RSA’s approval of the SPIL on September 24, 2013.

OOD acknowledged that the funding structure did not allow clear distinction when liquidating program income for VR programs and the program income being used for Independent Living (IL) programs (CCDHH and PCA). At the time of review, OOD held all Social Security Reimbursement (SSR) dollars in one single fund. Funding for the PCA and CCDHH programs was drawn from this fund, as was funding used for the VR program. There was no physical transfer of dollars from this fund into the IL program prior to disbursing funds

to the PCA and CCDHH programs. To correct this, OOD went to the State of Ohio Controlling Board in September 2013 to realign the funding structure for the IL Program by creating a new fund. This new fund combined all IL programs into one fund and separated them from VR funds. The IL programs within the new fund receive some SSR revenue as well as federal IL grant funds, allowing OOD to expend program income dollars in accordance with federal regulations. The creation of this new fund was proposed to RSA during the monitoring visit and was received with positive feedback.

Written procedures are in the process of being developed to reflect this correction and ensure any future federal program income is disbursed according to the implementing regulations on allowable VR services or the administration of the VR State Plan and will be provided to RSA.

**RSA Response:** RSA acknowledges the steps taken by OOD to remedy this finding.

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

## **B. OOD Does Not Expend Program Income before Drawing Down Federal Funds**

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

- 3.B.1. submit a written assurance within ten days of the issuance of the final monitoring report that OOD will cease drawing down federal VR funds prior to disbursing available program income, including any federal program income received in the past regardless of the fiscal year in which it was received; and
- 3.B.2 develop written processes for ensuring the disbursement of program income prior to requesting additional cash drawdowns of federal award funds per 34 CFR 80.21(f)(2).

**Agency Response:** As mentioned in the response to 3.A.2., OOD's funding structure required that all program income (Social Security Reimbursement) be deposited into the same fund, which limited OOD's ability to transfer SSR dollars for Independent Living (IL) programs (34 CFR 361.63 (c)(2)) and comply with federal regulations that require expenditure of all SSR dollars prior to drawing down federal VR or IL grant dollars. In addition, there existed a separate fund into which federal IL grant dollars were deposited and there was no mechanism to transfer program income to that fund.

On September 23, 2013, OOD received Controlling Board approval to restructure its funds that receive Program Income and IL grant dollars. A new IL Program Fund was created that will receive some program income dollars that are being used to carry out IL programs as well as federal IL grant funds. The program income funds not being used for IL will be deposited into a separate Program Income VR Fund that will be liquidated immediately. The Program Income VR fund is set up as the first priority (before match or federal VR grant dollars) for spending through OOD's case management system.

When Program Income is received by the Ohio State Treasury, OOD receives notification and then must take steps to claim the dollars and direct the deposit into the proper fund. OOD fiscal management has set up a process whereby when the notification is received by the accounts

receivable clerk, the budget unit is consulted prior to the deposit of the dollars. The budget unit analyzes the budget of the IL programs, expenditures to date, and cash balance in the IL Program Fund. Based on this analysis, the budget unit communicates back to the accounts receivable clerk the amount of program income that should be deposited into the IL Program Fund with the remainder deposited into the Program Income VR Fund.

**RSA Response:** RSA acknowledges the steps taken by OOD to remedy this finding.

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

#### **4. Incorrect Personnel Activity Reporting and Personnel Cost Reconciliation**

**Corrective Action 4:** OOD must:

- 4.1 develop and implement internal processes, including monitoring protocols, to ensure that PARs account for the total activity for which an employee is compensated in accordance with 2 CFR 225, Appendix B, paragraph h.5.b; and
- 4.2 develop and implement internal processes, including monitoring protocols, necessary to ensure that personnel expenditures are reconciled in accordance with 2 CFR 225, Appendix B, paragraph h.5.e.

**Agency Response:** OOD has taken steps to correct this finding. Immediately following the on-site visit from RSA, OOD budget staff began the process of reconciling actual payroll expenditures to the time and effort reported on the Personnel Activity Reports (PARs). The reconciliation is done by first compiling the time and effort for each program as reported in their PAR by each split-funded staff person. Then budget staff run reports from the State accounting system to determine the staff person's actual payroll costs by grant fund. If the percentage of payroll expenditures does not reconcile to the percentage of time and effort reported for each grant, budget staff processes a corrective payroll journal to ensure the actual expenditures reconcile to reported time and effort by grant fund. OOD continues to refine and enhance this process. OOD staff is now required to enter the funding source for every hour worked (in one-tenth of an hour increments) directly into the payroll module of the State accounting system (OAKS). This provides real-time allocation of time and effort among funding sources. These allocations are validated by staff supervisors during the bi-weekly payroll approval process.

As noted in the response to Compliance Finding 4.1, OOD staff is now required to enter the funding source for every hour worked (in one-tenth of an hour increments) directly into the payroll module of the State accounting system (OAKS). This provides real-time allocation of time and effort among funding sources. These allocations are validated by staff supervisors during the bi-weekly payroll approval process. Additionally, OOD fiscal staff performs a quarterly validation of allocations by comparing data on the personnel activity reports to the entries in OAKS. This process will help ensure compliance.

**RSA Response:** RSA acknowledges the steps taken by OOD to remedy this finding.

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

## 5. Inaccurate Program Income Reporting

**Corrective Action 5:** OOD must develop and implement processes necessary to ensure the accurate completion and verification of program income reported in the SF-425 financial reports.

**Agency Response:** OOD has taken corrective action to remedy this finding. OOD has developed a Federal Reporting Tool to more accurately report data, submit timely reports, identify risks in each report, define report elements, share quality information, and be proactive in addressing reporting issues. In turn, this better positioned OOD to formally address changes in reporting requirements, staff turnover, case management system conversion (OSCAR to AWARE), and knowledge transfer. In order to accomplish the above, OOD took the below steps, which are now reviewed and updated as changes occur.

- Each RSA federal report and subject matter experts (SME) were identified, including SME back-ups and quality assurance sign-off representatives.
- Each data element, along with timelines, risks, gaps, and opportunities associated with each report were documented.
- Through the creation of this tool, risks were identified in each report. Some risks were known, but additional risks were discovered during the research phase. The tool has positioned OOD to identify future improvements to reduce the risk of errors and to ensure accuracy.
- After the tool was drafted, a final vetting process with each SME and bureau/division deputy was held; this vetting occurs minimally on an annual basis, or as changes occur.
- The Federal Reporting Tool is divided into the following sections: (1) Table; (2) Coversheet; (3) SMEs; (4) Each report individually listed; and (5) Calendar.

Maintenance of the tool resides with the Division of Performance and Innovation's Performance and Reporting Manager. The Federal Reporting Tool has resulted in more consistent data, effective monitoring, and greater accountability overall.

**RSA Response:** RSA acknowledges the steps taken by OOD to remedy this finding.

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

## APPENDIX B: LEGAL REQUIREMENTS

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

### Rehabilitation Act of 1973, as Amended

#### Section 7 Definitions

For the purposes of this Act:

(38) Vocational rehabilitation services

The term "vocational rehabilitation services" means those services identified in section 103 which are provided to individuals with disabilities under this Act.

#### Section 103 (a) and (b) Vocational Rehabilitation Services for Individuals or Groups of Individuals

##### (a) Vocational Rehabilitation Services for Individuals

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

- (1) an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;
- (2) counseling and guidance, including information and support services to assist an individual in exercising informed choice consistent with the provisions of section 102(d);
- (3) referral and other services to secure needed services from other agencies through agreements developed under section 101(a)(11), if such services are not available under this title;
- (4) job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;
- (5) vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials, except that no training services provided at an institution of higher education shall be paid for with funds under this title unless maximum efforts have been made by the designated State unit and the individual to secure grant assistance, in whole or in part, from other sources to pay for such training;
- (6) to the extent that financial support is not readily available from a source (such as through health insurance of the individual or through comparable services and benefits consistent with section 101(a)(8)(A)), other than the designated State unit, diagnosis and treatment of physical and mental impairments, including--

- (A) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition that constitutes a substantial impediment to employment, but is of such a nature that such correction or modification may reasonably be expected to eliminate or reduce such impediment to employment within a reasonable length of time;
- (B) necessary hospitalization in connection with surgery or treatment;
- (C) prosthetic and orthotic devices;
- (D) eyeglasses and visual services as prescribed by qualified personnel who meet State licensure laws and who are selected by the individual;
- (E) special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the treatment of individuals with end-stage renal disease; and
- (F) diagnosis and treatment for mental and emotional disorders by qualified personnel who meet State licensure laws;
- (7) maintenance for additional costs incurred while participating in an assessment for determining eligibility and vocational rehabilitation needs or while receiving services under an individualized plan for employment;
- (8) transportation, including adequate training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service described in this section and needed by the individual to achieve an employment outcome;
- (9) on-the-job or other related personal assistance services provided while an individual is receiving other services described in this section;
- (10) interpreter services provided by qualified personnel for individuals who are deaf or hard of hearing, and reader services for individuals who are determined to be blind, after an examination by qualified personnel who meet State licensure laws;
- (11) rehabilitation teaching services, and orientation and mobility services, for individuals who are blind;
- (12) occupational licenses, tools, equipment, and initial stocks and supplies;
- (13) technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;
- (14) rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;
- (15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the individualized plan for employment;
- (16) supported employment services;
- (17) services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome; and
- (18) specific post-employment services necessary to assist an individual with a disability to, retain, regain, or advance in employment.

(b) Vocational Rehabilitation Services for Groups of Individuals

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

(1) In the case of any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by the designated State agency, the provision of such services and supervision, along or together with the acquisition by the designated State agency of vending facilities or other equipment and initial stocks and supplies.

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

(B) The provision of other services, that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any 1 individual with a disability.

(3) The use of telecommunications systems (including telephone, television, satellite, radio, and other similar systems) that have the potential for substantially improving delivery methods of activities described in this section and developing appropriate programming to meet the particular needs of individuals with disabilities.

(4)(A) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media.

(B) Captioned television, films, or video cassettes for individuals who are deaf or hard of hearing.

(C) Tactile materials for individuals who are deaf-blind.

(D) Other special services that provide information through tactile, vibratory, auditory, and visual media.

(5) Technical assistance and support services to businesses that are not subject to title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and that are seeking to employ individuals with disabilities.

(6) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

#### Section 111 (a) Payments to States

(a)(1) Except as provided in paragraph (2), from each State's allotment under this part for any fiscal year, the Commissioner shall pay to a State an amount equal to the Federal share of the cost of vocational rehabilitation services under the plan for that State approved under section 101, including expenditures for the administration of the State plan.

## VR Program Regulations

### 34 CFR 361.3 Authorized activities.

The Secretary makes payments to a State to assist in—

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

### 34 CFR 361.5 Applicable definitions.

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

(58) *Vocational rehabilitation services*— (i) If provided to an individual, means those services listed in 34 CFR 361.48; and

- (ii) If provided for the benefit of groups of individuals, also means those services listed in 34 CFR 361.49.

### 34 CFR 361.12 Methods of administration.

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

### 34 CFR 361.28 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 361.40(a) Reports.

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

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

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the designated State unit must ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

- (a) Assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with § 361.42.
- (b) Assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with § 361.45.
- (c) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with § 361.52.
- (d) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the Statewide workforce investment system, in accordance with §§ 361.23, 361.24, and 361.37, and to advise those individuals about client assistance programs established under 34 CFR part 370.
- (e) In accordance with the definition in § 361.5(b)(40), physical and mental restoration services, to the extent that financial support is not readily available from a source other than the designated State unit (such as through health insurance or a comparable service or benefit as defined in § 361.5(b)(10)).
- (f) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.
- (g) Maintenance, in accordance with the definition of that term in § 361.5(b)(35).

- (h) Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in § 361.5(b)(57).
- (i) Vocational rehabilitation services to family members, as defined in § 361.5(b)(23), of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.
- (j) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.
- (k) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.
- (l) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.
- (m) Supported employment services in accordance with the definition of that term in § 361.5(b)(54).
- (n) Personal assistance services in accordance with the definition of that term in § 361.5(b)(39).
- (o) Post-employment services in accordance with the definition of that term in § 361.5(b)(42).
- (p) Occupational licenses, tools, equipment, initial stocks, and supplies.
- (q) Rehabilitation technology in accordance with the definition of that term in § 361.5(b)(45), including vehicular modification, telecommunications, sensory, and other technological aids and devices.
- (r) Transition services in accordance with the definition of that term in § 361.5(b)(55).
- (s) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the Statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.
- (t) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

34 CFR 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.

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

- (2) Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities, including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate.
- (3) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.
- (4) Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals with disabilities.
- (5) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the designated State unit, including enterprises established under the Randolph-Sheppard program, management services and supervision provided by the State unit along with the acquisition by the State unit of vending facilities or other equipment, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:
  - (i) "Management services and supervision" includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with significant disabilities. "Management services and supervision" may be provided throughout the operation of the small business enterprise.
  - (ii) "Initial stocks and supplies" includes those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed 6 months.
  - (iii) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which may not exceed 6 months.
  - (iv) If the designated State unit provides for these services, it must ensure that only individuals with significant disabilities will be selected to participate in this supervised program.
  - (v) If the designated State unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the State unit must maintain a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.
- (6) Other services that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any one individual. Examples of those other services might include the purchase or lease of a bus to provide transportation to a group of applicants or eligible individuals or the purchase of equipment or instructional materials that would benefit a group of applicants or eligible individuals.

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

34 CFR 361.60 Matching requirements.

- (a) *Federal share*—(1) *General*. Except as provided in paragraph (a)(2) of this section, the Federal share for expenditures made by the State under the State plan, including expenditures for the provision of vocational rehabilitation services and the administration of the State plan, is 78.7 percent.
  - (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;

34 CFR 361.63 Program Income.

- (a) *Definition*. For purposes of this section, program income means gross income received by the State that is directly generated by an activity supported under this part.
- (b) *Sources*. Sources of program income include, but are not limited to, payments from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes, payments received from workers' compensation funds, fees for services to defray part or all of the costs of services provided to particular individuals, and income generated by a State-operated community rehabilitation program.
- (c) *Use of program income*. (1) Except as provided in paragraph (c)(2) of this section, program income, whenever earned, must be used for the provision of vocational

rehabilitation services and the administration of the State plan. Program income is considered earned when it is received.

- (2) Payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes may also be used to carry out programs under part B of Title I of the Act (client assistance), part B of Title VI of the Act (supported employment), and Title VII of the Act (independent living).
- (3) The State is authorized to treat program income as—
  - (i) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2); or
  - (ii) A deduction from total allowable costs, in accordance with 34 CFR 80.25(g)(1).
- (4) Program income cannot be used to meet the non-Federal share requirement under 34 CFR 361.60.

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

34 CFR 80.20(a) Standards for financial management systems.

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

34 CFR 80.24 Matching or cost sharing.

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

34 CFR 80.25 Program income.

- (a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.
- (b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a

result of the grant agreement during the grant period. “During the grant period” is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

- (c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.
- (d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.
- (e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 80.34.)
- (f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 80.31 and 80.32.
- (g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.
  - (1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.
  - (2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.
  - (3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.
- (h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

#### 34 CFR 80.40 Monitoring and reporting program performance.

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

## **OMB circulars as cited in the CFR**

### 2 CFR 225 Cost Principles

#### Appendix A,

#### (C) Basic Guidelines

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 2 CFR part 225.
  - c. Be authorized or not prohibited under State or local laws or regulations.
  - d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
  - e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
  - f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
  - g. Except as otherwise provided for in 2 CFR part 225, be determined in accordance with generally accepted accounting principles.
  - h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
    - i. Be the net of all applicable credits.
    - j. Be adequately documented.
  
3. Allocable costs.
  - a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

### 2 CFR 225, Cost Principles

#### Appendix B

#### 8. Compensation for personnel services

- a. General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this and other appendices under 2 CFR Part 225, and that the total compensation for individual employees:
  - (1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;
  - (2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and
  - (3) Is determined and supported as provided in subsection h.

- h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.
- (5) Personnel activity reports or equivalent documentation must meet the following standards:
- (a) They must reflect an after-the-fact distribution of the actual activity of each employee,
  - (b) They must account for the total activity for which each employee is compensated,
  - (c) They must be prepared at least monthly and must coincide with one or more pay periods, and
  - (d) They must be signed by the employee.
  - (e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:
    - (i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;
    - (ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and
    - (iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.