

# Third-Party Cooperative Arrangement Review Instrument

## I. Introduction

Historically, some vocational rehabilitation (VR) agencies have used sources of match other than State general revenue fund appropriations directed to the designated State unit (DSU) to meet the non-Federal share (match) requirement for Federal VR program funds. Such matching funds can come from a variety of sources. The use of funds other than State general revenue appropriations to the DSU is allowable under the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), and there are specific statutory requirements pertaining to the use of such funds. A significant number of VR agencies utilize third-party cooperative arrangements (TPCA) to enhance and improve the provision of VR services, and as a source of match for Federal VR funds. The Federal regulations, which detail the TPCA requirements, in 34 C.F.R. § 361.28 read, in pertinent part, as follows:

- A. The designated State unit may enter into a third-party cooperative arrangement for providing or contracting for the provision of vocational rehabilitation services with another State agency or a local public agency that is providing part or all of the non-Federal share in accordance with paragraph (c) of this section, 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, VR services from the designated State unit, including students with disabilities who are potentially eligible for the VR program;
  - 3. Program expenditures and staff providing services under the cooperative arrangement are under the administrative supervision of the designated State unit; and
  - 4. All requirements of the VR services portion of the Unified or Combined State Plan, including a State's order of selection (OOS), will apply to all services provided under the cooperative arrangement.
- B. If a third-party cooperative arrangement does not comply with the statewideness requirement in 34 C.F.R. § 361.25, the State unit must obtain a waiver of statewideness, in accordance with § 361.26.

## II. The Cooperating Agency Must Furnish All or Part of the Non-Federal Share

The first requirement for TPCAs is that the third-party cooperating agency is a State or local public agency that furnishes all or part of the non-Federal share (34 C.F.R. § 361.28(a)). Public, as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal government (34 C.F.R. § 77.1). *TPCAs cannot be developed with private non-profit or for-profit entities.*

The following questions may be helpful.

1. Is the cooperating agency a State agency or other public agency?
2. Is the cooperating agency furnishing all or part of the non-Federal share for the TPCA?

If the answer to the above questions is NO, the TPCA is not in compliance with the requirements of 34 C.F.R. § 361.28 and 34 C.F.R. § 77.1.

In addition, the Federal VR regulations that detail the TPCA non-Federal share requirements, in 34 C.F.R. § 361.28 read, in pertinent part, as follows:

- A. The cooperating agency's contribution toward the non-Federal share required under the arrangement, as set forth in paragraph (a) of this section, may be made through:
  1. Cash transfers to the designated State unit;
  2. Certified personnel expenditures for the time cooperating agency staff spent providing direct vocational rehabilitation services pursuant to a third-party cooperative arrangement that meets the requirements of this section. Certified personnel expenditures may include the allocable portion of staff salary and fringe benefits based upon the amount of time cooperating agency staff directly spent providing VR services under the arrangement; and
  3. Other direct expenditures incurred by the cooperating agency for the sole purpose of providing VR services under this section pursuant to a third-party cooperative arrangement that—
    - a) *Meets the requirements of this section;*
    - b) *Are verifiable as being incurred under the third-party cooperative arrangement; and*
    - c) *Do not meet the definition of third-party in-kind contributions under 2 C.F.R. § 200.1.*

The following questions may be helpful.

1. What is/are the source(s) of non-Federal share that the cooperating agency provides under the TPCA (i.e., cash, certified personnel expenditures, other direct expenditures)?
2. How much/what percentage of each source is provided?
3. What internal controls has the VR agency established to ensure that non-Federal share is reasonable, necessary, and allocable to the TPCA, making it allowable as match for the VR program?
4. Is cash transferred directly by the cooperating agency into the sole account of the VR agency?
5. Are certified personnel expenditures submitted by the cooperating agency along with supporting documentation (e.g., personnel activity reports) to demonstrate time worked on direct VR services under the TPCA vs. time not worked on direct VR services under the TPCA?
6. Are other direct expenditures submitted by the cooperating agency along with supporting documentation (e.g., receipts) that ensures the expenditures were incurred during the time the TPCA contract was in force, for the sole purpose of providing VR services to applicants and recipients of VR services under the TPCA?
7. Is there a budget within the TPCA contract that specifically identifies the portion of allowable costs that meet the 34 C.F.R. § 361.28 provisions, including those incurred as non-Federal share for the direct provision of VR services, and those incurred with Federal VR funds?

### III. New or Modified Services with a VR Focus

The second requirement for TPCAs is “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 VR focus or existing services that have been modified, adapted, expanded, or reconfigured to have a VR focus” (34 C.F.R. § 361.28(a)(1)). The question of whether services are “new” or “modified, adapted, expanded, or reconfigured” may be difficult to discern. The services cannot be services that the cooperating agency is providing or has the legal responsibility to provide.

The following questions may be helpful in determining whether a service is “new” or “modified, adapted, expanded, or reconfigured.”

1. Has the VR agency completed a written assessment of the public cooperating agency that clearly identifies:
  - a. the scope of services (customary or typical) the public cooperating agency was providing prior to the implementation of the TPCA;
  - b. the new services or how existing services were modified, expanded or adapted to have a VR focus;
  - c. whether there is a substantive difference between the customary or typical services provided by the cooperating agency prior to the TPCA and “new” or “modified, adapted, expanded, or reconfigured” VR services;
  - d. were the TPCA staff already providing the same VR services to applicants/recipients of VR services prior to the TPCA’s implementation?
2. Does the TPCA detail the new services or how existing services were modified, expanded, or adapted to have a VR focus?
3. When was the TPCA program started, and what customary services were being provided by the cooperating agency prior to that time?
4. Does the TPCA specify that the cooperating public agency is responsible for providing the new and modified VR services specified in the arrangement? If not, who is responsible for providing the services?
5. Does the TPCA specify the area in which VR services under the TPCA are available?
6. Can applicants and recipients of VR services who are outside the TPCA area still receive services under the TPCA?

7. Are the VR services provided through the TPCA program also available to individuals through avenues other than the TPCA? For example, if a high school student is provided a work-based learning experience under a TPCA, are other high school students who are not being served through the TPCA also provided work-based learning experiences?
8. Were the TPCA staff already providing the same VR services to applicants/recipients of VR services prior to the TPCA's implementation?
9. Is there a substantive difference between the customary or typical services provided by the cooperating agency prior to the TPCA and "new" or "modified, adapted, expanded, or reconfigured" VR services?
10. Does the TPCA contract detail the VR focus of the new or modified services?

If the services are not "new" or "modified, adapted, expanded, or reconfigured," then these services cannot be included in the arrangement. If such services are included in the arrangement, the TPCA is out of compliance with 34 C.F.R. § 361.28(a)(1).

#### IV. Services are Only Available to Applicants for, or Recipients of, VR Services

The third regulatory requirement for TPCAs is that “the services provided by the cooperating agency are only available to applicants for, or recipients of, services from the designated State unit” (34 C.F.R. § 361.28(a)(2)). It is important to look for language in the TPCA document that outlines whom the program will serve. Even if the written document states that the program serves only VR applicants or recipients, it is important to discern how it unfolds in practice. Students with disabilities who are potentially eligible for services from the VR program may receive the five pre-employment transition services required activities (34 C.F.R. § 361.48(a)(2)) regardless of whether they have applied or been determined eligible for VR services (34 C.F.R. § 361.48(a)(1)) and are considered recipients of VR services. However, all individuals must be applicants or determined eligible for the VR program to receive any of the VR services provided under 34 C.F.R. § 361.48(b), including when those services are provided under a TPCA.

The following questions may be helpful in determining whether the services are provided to applicants for, or recipients of, VR services.

1. Are all individuals served through the TPCA program applicants for, or recipients of, VR services?
2. Does the TPCA provide the five pre-employment transition services required activities in 34 C.F.R. § 361.48(a)(2), or other VR services identified in 34 C.F.R. § 361.48(b)?
3. How are individuals referred for VR services under the TPCA?
4. Describe the involvement of and oversight that VR counselors have in selecting TPCA participants, delivering VR services and tracking individual progress under the TPCA program?

If the TPCA provides any VR services under 34 C.F.R. § 361.48(b) that have different requirements than the five pre-employment transition services required activities under 34 C.F.R. § 361.48(a)(2), the following questions apply.

1. How do VR counselors ensure that individuals with disabilities have applied or been determined eligible for VR services when a TPCA provides VR services identified in 34 C.F.R. § 361.48(b)?
2. How and when is an application for VR services taken?
3. How and when is eligibility for VR services determined?

4. When is an individualized plan for employment (IPE) written?
5. At what point in the VR process are VR services provided under the TPCA?

If the cooperating agency wants to serve individuals who are neither applicants for nor recipients of VR services, the cooperating agency may do so provided no Federal or non-Federal VR funds are used to support those services (e.g., personnel costs, supplies, etc.). The VR agency could use neither Title I funds to serve such individuals, nor consider the costs of serving such individuals paid with non-Federal funds in the VR agency's efforts to comply with the matching requirements under 34 C.F.R. § 361.60. These individuals must be served outside of the parameters of the TPCA. RSA recommends that the cooperating agency and VR agency clarify such arrangements in the written agreement implementing the TPCA.

## V. DSU Maintains Administrative Supervision

The fourth regulatory requirement for TPCAs is that “program expenditures and staff providing VR services under the cooperative arrangement are under the administrative supervision of the designated State unit” in accordance with 34 C.F.R. § 361.28(a)(3). Staff providing VR services under the TPCA must not be employees of the VR agency.

The following questions may be helpful in determining whether the DSU is maintaining “administrative supervision.”

1. Is there a signed agreement supported by a line-item budget that details the personnel and other associated costs?
2. Is there a job description for the staff delivering VR services under the TPCA that was developed or jointly developed by the VR agency? Does the job description include the VR services being provided via the TPCA?
3. Who supervises the provision of VR services and TPCA staff under the TPCA?
4. Is a requirement included in the TPCA that TPCA staff submit timesheets or personnel activity reports to the VR agency for review? If so, how frequently are timesheets and personnel activity reports submitted?
5. If cooperating public agency staff are working on multiple programs, how is the amount of time being spent on VR services provided under the TPCA being documented?
6. Does the VR agency manage and administer the TPCA contract (program and fiscal components)? If not, who is designated this responsibility?
7. What types of performance measures are included in the TPCA and who evaluates the performance?
8. Is there a description of how the TPCA contract will be monitored by VR staff?
9. Who/what agency is identified in the TPCA as having the responsibility to maintain control of the expenditures of the program?
10. What internal control activities do VR agency staff conduct to ensure non-Federal and Federal expenditures are spent under the TPCA in accordance with the 34 C.F.R. § 361.28 requirements?



11. How does the VR agency ensure that non-Federal and Federal expenditures reported and incurred under the TPCA are allocable to the TPCA program?
12. How does the VR agency ensure that non-Federal share provided as match under the TPCA is consistent with 34 C.F.R. § 361.28(c)?
13. What are the hiring and firing practices for third-party program staff?
14. What agency is responsible for issuing paychecks to the cooperating agency staff providing the TPCA VR services?
15. Who does the TPCA program staff consider as the lead of the program and supervisor?
16. Who performs the non-delegable VR program duties outlined in 34 C.F.R. § 361.13?

For example, a TPCA transition program's third-party cooperative arrangement staff are employees of the schools (the schools do the hiring and firing, issue the paychecks, etc.). However, the VR agency maintains control of expenditures; has authority over the services provided and TPCA staff; is involved with the interview process; performs continuous reviews of the provision of services and individuals served, performance and internal controls; conducts at least annual reviews of performance expectations; and maintains control of the non-delegable functions of the VR program. This would meet the requirement of "administrative supervision" even though the TPCA staff members are not employees of the DSU but rather are employees of the school.

If there is no administrative supervision exercised by the VR agency, the VR program must restructure the TPCA contract to ensure the requirements listed above are met. RSA is available to provide technical assistance, upon request.

## VI. VR Services Portion of the Unified or Combined State Plan Requirements Apply

The fifth regulatory requirement for TPCAs is that “all requirements of the VR services portion of the Unified or Combined State Plan, including a State’s order of selection (OOS), will apply to all services provided under the cooperative arrangement” (34 C.F.R. § 361.28(a)(4)). If an agency is on an OOS, the TPCA program must also adhere to the OOS for the individuals that it serves. Please note that the VR agency must continue to provide pre-employment transition services to students with disabilities who were receiving any of the five pre-employment transition services prior to being determined eligible for VR services and placed in a closed OOS priority category or waiting list (34 C.F.R. § 361.36(e)(3)(i)). So long as the students received one of the required activities, prior to being placed in a closed priority category under an OOS, they can receive any of the five required activities while on a waiting list.

The following questions may be helpful:

1. If the VR agency is on an OOS, are the individuals served in the TPCA program selected based on that OOS?
2. Does the TPCA serve any individuals on an OOS waiting list besides potentially eligible students in receipt of pre-employment transition services who began receiving such services, prior to being placed on a waiting list?
3. How is informed choice provided to individuals served via the TPCA?
4. Are there any limits or caps on services provided under the TPCA?
5. Are all the requirements within the agency’s VR services portion of the Unified or Combined State Plan being adhered to by the cooperating agency?

NOTE: Individuals served through TPCAs do not circumvent OOS requirements. Only potentially eligible students may continue to receive pre-employment transition services while on a waiting list, if they began receiving such services prior to being placed on a waiting list. All State Plan requirements apply. If any State Plan requirements are not met, then RSA team will provide technical assistance to restructure the arrangement language to clearly specify that all requirements under the VR services portion of the Unified or Combined State Plan are to be met and eliminate provisions that are not consistent with the VR services portion of the Unified or Combined State Plan.

## VII. Statewideness

The final regulatory requirement for TPCAs is that “if a third-party cooperative agreement does not comply with the statewideness requirement in 34 C.F.R. § 361.25, the State unit must obtain a waiver of statewideness, in accordance with 34 C.F.R. § 361.26” (34 C.F.R. § 361.28(b)). Pursuant to 34 C.F.R. § 361.25, “The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that services provided under the vocational rehabilitation services portion of the Unified or Combined State Plan will be available in all political subdivisions of the State, unless a waiver of statewideness is requested and approved in accordance with 34 C.F.R. § 361.26.”

The main questions to ask for this requirement are as follows.

1. Are the services provided through the TPCA available to all individuals across the State in all political subdivisions? If so, statewideness is met.
2. If not, has the VR agency obtained a waiver of statewideness through the submission of its most recent VR services portion of the Unified or Combined State Plan?
3. Are the services provided through the TPCA program offered throughout the State, yet some parts of the State are not participating in the program? If so, this does not meet the statewideness requirement. For example, if a TPCA transition program is offered in all parts of the State but is not available statewide because not all schools in the State participate in the program, the statewideness requirement is not met and the VR agency must request a waiver of statewideness.

TPCAs with school districts to provide transition services to eligible students receiving special education services from the school system or working with a county developmental disability or mental health office to establish an employment program for individuals who are eligible for both the county programs and for VR almost always require a waiver of statewideness.

A VR agency may provide services under a waiver of statewideness when the—

- Non-Federal share of the cost of the VR services to be provided under the waiver is met from funds provided by a public agency;
- Services are likely to promote the vocational rehabilitation of substantially larger numbers of individuals with disabilities, or of individuals with disabilities with particular types of impairments; and

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- The VR agency includes in the VR services portion of the Unified or Combined State Plan, and the Secretary of Education approves, a waiver of statewideness (34 C.F.R. § 361.26(a)).

The requirements for requesting a waiver of statewideness are found in 34 C.F.R. § 361.26(b). VR agencies must request approval from RSA, by submitting an attachment to the State Plan, prior to waiving responsibility for providing services statewide. The waiver of statewideness request must—

- Identify the types of VR services to be provided;
- Include a written assurance that the cooperating agency will make available the non-Federal share of funds required for the arrangement;
- Include a written assurance that the VR agency approval will be obtained for each VR service before that service is put into effect; and
- Include a written assurance that all other requirements under the VR services portion of the Unified or Combined State Plan will apply to all VR services approved under the waiver.