

**PURPOSE**

This administrative policy and procedures are to guide Michigan Rehabilitation Services (MRS) in determining when it is appropriate to engage in projects to establish, develop, or improve community rehabilitation programs (CRPs). This administrative policy will also serve as a guide for ongoing establishment activities given that all pre-planning requirements have been met and a project has been initiated. Due to the large scope and complex nature of regulations pertaining to the establishment authority, this administrative policy will not detail these regulations in their entirety. This policy pertains to, but is not limited to, State-operated CRP Michigan Career and Technical Institute (MCTI) and/or state owned/leased buildings. Instead, all individuals involved with pre-planning and ongoing establishment project activities will be made aware of all relevant state and federal regulations prior to the initiation of any establishment activities. All establishment and construction project contracts must contain this administrative policy, in full, as an appendix.

**PERSONS  
AFFECTED**

MRS Bureau Director, Fiscal Manager, Appropriate Division Director (for CRP Improvements), Policy Unit, Strategic Initiatives Division Director, PED Director

**ADMINISTRATIVE  
POLICY**

The goal of MRS is to ensure that 34 CFR § 361.49(a)(1) for the establishment, development, or improvement of a CRP is an allowable use of Vocational Rehabilitation (VR) funds.

**DEFINITIONS**

**Establishment Authority** - Section 103(b)(2) of the Rehabilitation Act of 1973, as amended by WIOA (the Rehabilitation Act), and 34 CFR 361.49(a)(1) authorize the use of vocational rehabilitation (VR) funds. The authority is used to provide financial support to CRPs to establish, develop, or improve service programs and to increase their effectiveness in providing VR services to applicants or eligible individuals.

In serving groups of individuals with disabilities, MRS is authorized to establish, develop, or improve a public or private CRP, pursuant to section 103(b)(2) of the Rehabilitation Act and 34 CFR 361.49(a)(1). MRS is permitted under the VR program to alter or remodel a CRP and install fixed or movable equipment, as

necessary, to establish, develop, or improve the facility for a CRP (34 CFR 361.5(b)(18)(ii) and (v)). Examples below:

- Construction of a facility for a public or non-profit CRP under special circumstances (Section 103(b)(2) of the Act and 34 C.F.R. §§ 361.49(a)(1) and 361.5(c)(10)).
- Establishment of a facility for a public or nonprofit CRP (Section 103(b)(2) and 34 C.F.R. §§ 361.49(a)(1), 361.5(c)(16)(i) and 361.5(c)(17)).

**Community Rehabilitation Program** - Section 7(4) of the Rehabilitation Act of 1973, as amended, and 34 CFR 361.5(c)(7) defines CRP as a program that provides directly or facilitates the provision of one or more VR services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement. CRPs are defined as programs, not as agencies. Therefore, for public or non-profit organizations that provide a variety of services to different populations, the definition of a CRP may apply only to the portion of the building in which VR services are provided.

**Vocational Rehabilitation (VR) Services** - Vocational rehabilitation (VR) services are services provided to an individual pursuant to an Individualized Plan for Employment in accordance with 34 CFR 361.48 or to groups of individuals with disabilities in accordance with 34 CFR 361.49 (section 103 of the Rehabilitation Act of 1973, as amended, and 34 CFR 361.5(c)(57)). Section 111(a)(1) of the Rehabilitation Act of 1973, as amended, and 34 CFR 361.3 require that VR funds be used solely for the provision of VR services or for the administration of the VR program.

## PROCEDURES

### Required Pre-Planning Activities

Prior to initiating an establishment project, MRS must fulfill required pre-planning activities. ***If, during any phase of pre-planning it is determined that these required activities cannot be conducted, MRS must not engage in the project.*** The following questions can be used as a guide to determine if MRS may initiate an establishment project. MRS staff must complete a [Pre-Planning Requirements Check Form](#) and send the completed form to the MRS Fiscal Manager for storage. ***MRS must be able to answer “YES” to each question to proceed with the establishment project:***

1. Has the need for the construction or establishment activities been identified in the [Comprehensive Statewide Needs Assessment \(CSNA\)](#) (34 CFR 361.29(a)(1)(ii))?
2. Has the development of goals and strategies related to the establishment activities been included and discussed in the MRS State Plan (pursuant to 34 CFR 361.29(c)(1) and (4) and (d)(6))?
  - Do the following State Plan attachments include a discussion of goals and strategies related to the establishment activities?
    - CSNA (State Plan Description j for 2020-2023, Description b for 2024-2027)
      - The explanation must discuss in detail how the proposed establishment activities address the specific unmet VR need identified in the CSNA.
    - State Goals and Priorities (Description l, Description c)
    - State's Strategies (Description o, Description c)
    - Cooperative Agreements with Private Nonprofit Organizations (Description ee, Description l)
    - Arrangements and Cooperative Agreements for the Provision of Supported Employment Services (Description f, Description e and l)
    - Evaluation and Report of Progress (as the project moves forward) (Description p, Description d)
3. Have we held public meetings to establish, develop, or improve a CRP?
  - Evidence of public meeting for State plan containing plans to establish, develop or improve a CRP (34 C.F.R. §361.20(a)), such as printed notices of public meeting, meeting transcripts, and meeting sign-in sheets.
4. Will the establishment activities, including construction, be used to provide vocational rehabilitation services that **promote integration and competitive employment** (pursuant to Section 103(b)(2) of the Act and 34 C.F.R. § 361.49(a)(1))?
5. Have relevant written policies (pursuant to 34 CFR 361.49(b)) been developed?

- Is language about [Build America, Buy America Act \(BABAA\)](#) included, In accordance with section 70914 of the BABAA (Pub. L. No. 117-58)?
6. Have you submitted and received prior approval?
- The Uniform Guidance requires prior approval for various grant award activities and proposed obligations and expenditures. Prior approval is written approval from an official of the U.S. Department of Education who is authorized to grant such approval to assign a proposed expenditure to a Federal program. (2 C.F.R. § 200.407).
7. Can all establishment expenditures be monitored by MRS to ensure compliance with Federal requirements pursuant to 2 C.F.R. § 200.329?
8. Once questions 1-7 are answered/reviewed/discussed with the Director of MRS do they approve?

### **Ongoing Establishment Project Issues**

Once all pre-planning requirements have been met, MRS must ensure that ongoing establishment and related reporting activities are within state and federal regulations, as well have requirements for internal control defined in 2 CFR 200.303.

### **Allowable Costs**

Costs associated with the construction and establishment of CRP facilities are allowable under the VR program only to the extent that VR program participants benefit from that expenditure. The amount that is allocable to the VR program is only that which is commensurate with the benefit that VR program applicants and consumers derive from the facility while receiving VR services, not the employment of these or any other individuals in CRP facilities.

Pursuant to 2 CFR 200.439(b)(3), building-related expenditures which add to the permanent value of property or appreciably prolong its intended life are to be treated as capital expenditures. The Rehabilitation Act of 1973, as amended only allows for capital expenditures, including those for CRPs, under the establishment and construction authorities. Here, MRS examines both of these authorities and what each entail:

Establishment (pursuant to 34 CFR 361.5(c)(17)) includes any of the following (i-v):

- (i) The acquisition of an existing building and, if necessary, the land in connection with the acquisition, if the building has been completed in all aspects for a least 1 year prior to the date of the acquisition and the **Federal share** of the cost of acquisition is **not more than \$300,000**.
- (ii) The remodeling or alteration of an existing building provided the estimated cost of remodeling or alteration **does not exceed the appraised value** of the existing building.
- (iii) The expansion of an existing building, provided that:
  - A. The existing building is **complete in all respects**;
  - B. The total size in square footage of the expanded building, notwithstanding the number of expansions, is **not greater than twice the size of the existing building**;
  - C. The expansion is **joined structurally to the existing building and does not constitute a separate building**;
  - and
  - D. The costs of the expansion do not exceed the **appraised value** of the existing building.
- (iv) Architect's fees, site survey, and soil investigation, if necessary, in connection with the acquisition, remodeling, alteration, or expansion of an existing building.
- (v) The acquisition of fixed or movable equipment, including the cost of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

Activities that do not include **at least one** of the above-listed criteria **cannot** be categorized as establishment projects and cannot be entered into as such. In addition, all establishment projects are subject to the following regulations and **CANNOT** commence without **guarantee** of compliance.

- Pursuant to 34 CFR 361.60, the \*federal share of all expenditures under the State Plan, including Establishment expenditures, is 78.7 percent. The State must ensure that the non-federal share of allowable VR program expenditures is at least 21.3 percent of the total allowable VR program

expenditures. However, one significant exception is for construction costs in which the federal share is limited to 50 percent of the total cost of the project.

- The VR regulations permit a VR agency to accept contributions from private entities, such as a CRP, for satisfying its non-federal share of expenditures made under the State Plan, in a few narrow circumstances, only one of which is applicable here: A VR agency may count expenditures incurred with contributions from private entities toward satisfying its VR match requirements if those contributions are earmarked for meeting the state's share of establishing a CRP (34 CFR 361.60(b)(3)(i)).
- Pursuant to 34 CFR 361.60(b)(3) and 34 CFR 361.60(b)(3)(i), 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 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.
- As with construction, off-site improvements under the establishment authority are not allowable. These include access roads, sidewalks and curbs, sewers, utility lines, etc., that are off the land being developed.

#### **Funding for CRP Staff under Establishment Authority**

- Staffing limit is imposed to preserve the amount of funds available to MRS for providing services to eligible individuals, while preserving MRS's authority to expend VR funds to support necessary development or expansion of community rehabilitation facilities.
- If necessary to establish, develop or improve a CRP to serve applicants or eligible individuals, funding for staffing is permitted for a period of four (4) years, with financial participation available at the applicable matching rate for the following levels

of staffing costs (34 CFR 361.5(c)(16)(ii)):

### Staffing Cost Participation

	Percent of Total Staff Costs Available for Federal and Match Funds*	CRP Share
Year 1	100%	0%
Year 2	75%	25%
Year 3	60%	40%
Year 4	45%	55%

*\*The Federal share of funds is 78.7%. The match funds share, provided by the state and/or the CRP, is 21.3%.*

Construction (pursuant to 34 CFR 361.5(c)(10)) includes any of the following (i–vii):

- (i) The acquisition of land in connection with the construction of a **new building** for a community rehabilitation program;
- (ii) The construction of **new buildings**;
- (iii) The acquisition of existing buildings;
- (iv) The expansion, remodeling, alteration, or renovation of existing buildings;
- (v) Architect's fees, site surveys, and soil investigation, if necessary, in connection with the construction project;
- (vi) The acquisition of **initial** fixed or movable equipment of any **new, newly acquired, newly expanded, newly remodeled, newly altered, or newly renovated buildings** that are to be used for community rehabilitation program purposes; and
- (vii) Other direct expenditures appropriate to the construction project, except costs of off-site improvements.

Activities that do not include **at least one** of the above listed criteria **cannot** be categorized as construction projects and may not be entered into as such. In addition, all construction projects are subject to the following regulations and **CANNOT** commence without **guarantee** of compliance.

- A State VR agency may construct a facility, **only under special circumstances**, for a public or nonprofit CRP to provide VR services that promote integration and competitive employment (Section 103(b)(2) of the Rehabilitation Act and 34 CFR 361.49(a)(1)).
  - Examples of special circumstances that permit construction of a public or nonprofit CRP, when a State VR agency deems it necessary, include, but are not limited to:
    - 1) There are no other public agencies or private nonprofit organizations currently able to provide VR services to consumers as a result of the destruction by **natural disaster of the only available center serving an area**, or
    - 2) The **absence of any public agencies or private nonprofit organization in a rural area** (34 CFR 361.49(a)(1)).

In addition, all construction projects are subject to the following regulations and **CANNOT** commence without **guarantee** of compliance.

- Pursuant to Section 101(a)(17)(B) of the Rehabilitation Act, Section 306 of the Rehabilitation Act of 1973 as in effect the day before the Rehabilitation Act amendments of 1998, buildings constructed with federal funds must be used for at least 20 years for the purposes for which they were constructed. **If the buildings cease to be used for such purpose within that 20-year period, the grantee must reimburse the federal government for some of its costs**. MRS will seek disposition instructions from RSA for CRPs constructed or established with VR funds that no longer are needed for their intended purpose as a CRP.
- The **federal share** for expenditures made by VR agencies for the construction of a facility for a public or nonprofit CRP **cannot exceed 10 percent of the state's VR allotment** under the following sections of the Rehabilitation Act:
  - the Federal share of the cost of construction for the facilities for a fiscal year will not exceed an amount equal



- to 10 percent of the State's allotment under section 110 for such (Section 101(a)(17)(A)); and
- the provisions of section 306 (as in effect on the day before the date of enactment of the Rehabilitation Act Amendments of 1998) shall be applicable to such construction and such provisions shall be deemed to apply to such construction (Section 101(a)(17)(B)).
- **The non-federal share is at least 50 percent** (34 CFR 361.60(a)(2)).

### **Davis-Bacon Act**

The Davis-Bacon Act - GEPA, at 20 USC 1232b, requires that all laborers and mechanics, employed by contractors on all construction and minor remodeling projects assisted under applicable programs must be paid wages at rates not less than the prevailing wage on similar construction or minor remodeling projects in the locality, as determined by the Department of Labor in accordance with the Davis-Bacon Act. The VR program, pursuant to Title I of the Rehabilitation Act, is administered by the Department of Education and, therefore, is covered by 20 USC 1232b. The Davis-Bacon Act applies to any construction project in excess of \$2,000 financed in whole or in part by Federal funds, including VR program funds. Although the Davis-Bacon Act uses the terms "public building or public works," to describe the type of contracts that are covered by the Act, the Department of Labor regulations implementing the Act at 29 C.F.R. § 5.5(a) require Federal agencies to apply the Davis-Bacon Act to all contracts in excess of \$2,000 entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds.

### **State Purchasing Requirements**

MRS must comply with all State of Michigan purchasing requirements including solicitation of bids, if applicable, in the provision of establishment activities (2 C.F.R. § 200.317). For ongoing projects, this includes the tracking of expenditures to ensure that funds are used for allowable costs and not used in violation of restrictions and prohibitions of applicable statutes in accordance with 34 CFR 361.3, 34 CFR 361.12, and 2 C.F.R. §§ 200.302, 200.303 and 200.329; and methods and procedures for payment minimize the time elapsing between the transfer of funds

and disbursement by the grantee or subgrantee, in accordance with U.S. Treasury regulations at 31 CFR 205.33.

### **Effect of Costs on Maintenance of Effort**

Non-Federal expenditures incurred for the establishment, development, or improvement of a facility for a CRP are exempt from the calculation of the State's maintenance of effort requirement pursuant to 34 CFR 361.62(b). This includes non-Federal share of construction costs.

Pursuant to section 111(a)(2)(B) of the Rehabilitation Act and 34 CFR 361.62, a State must ensure that non-Federal expenditures under the VR State plan for any given fiscal year must equal or exceed the non-Federal expenditures from two years prior to that year. Costs classified as administrative costs count towards the maintenance of effort requirement; however, costs classified as the establishment, development, or improvement of a facility for a CRP do not count towards the maintenance of effort requirement.

### **Federal Reporting**

Contributions from private CRPs used to meet the non-federal share of an establishment or construction project must be deposited into the account of the MRS in accordance with Michigan state law. Non-federal share of costs must be reported on line 16 of the Federal Financial Report (RSA-17) and lines 30, 31, 34, or 35, as applicable, which will be subtracted from the state's total non-federal share when calculating compliance with Maintenance of Effort requirements.

### **Contract Requirements**

Buildings constructed with federal funds must be used for a least 20 years for the purposes for which they were constructed. If the buildings cease to be used for such purpose within that 20-year period, the grantee **must** reimburse the federal government for some of its costs.

- 1) Depending upon the amount of funds involved, the agency may require repayment of the funds expended on the establishment project should the CRP facilities being renovated or expanded no longer be used for VR purposes.
- 2) If the percentage of costs allocated to the VR program based upon intended usage is less than actual usage, the contract

should allow for recoupment of costs not allocable to the VR program.

MRS will continue to monitor establishment/construction projects during this 20-year time period and track the Federal interest. The recipient CRP/grantee will be responsible for submitting reports to MRS that contain information about the fiscal status and the number of MRS consumers receiving services from the project. MRS will also perform fiscal reviews/audits and conduct periodic site visits to ensure compliance during this time period. MRS will seek disposition instructions from RSA for CRPs constructed or established with VR funds that no longer are needed for their intended purpose as a CRP.

## REFERENCES

[2 CFR § 200](#)

[34 CFR § 361](#)

[Comprehensive Statewide Needs Assessment \(CSNA\)](#)

[Build America, Buy America Act \(BABAA\)](#)

[Pre-Planning Requirements Check Form](#)

[State Plan 2020-2023](#)

State Plan 2024-2027