

**U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION & REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, D.C. 20202**

**TECHNICAL ASSISTANCE CIRCULAR
RSA-TAC-02-02
DATE: September 26, 2002**

TO: STATE VOCATIONAL REHABILITATION AGENCIES (GENERAL)
STATE VOCATIONAL REHABILITATION AGENCIES (BLIND)

SUBJECT: Documents to Submit when Requesting a Waiver or Modification
of the State's Maintenance of Effort Requirements under the State
Vocational Rehabilitation Services Program

BACKGROUND: The purpose of this Technical Assistance Circular (TAC) is to update information that was contained in the Rehabilitation Services Administration's (RSA's) Policy Directive (PD) 92-06, issued January 31, 1992. This issuance supercedes PD-92-06. The Maintenance of Effort (MOE) provision under the Rehabilitation Act of 1973, as amended (Act), and its implementing Federal regulations requires a State to expend from non-Federal sources, in any give fiscal year (FY) under the State plan for the vocational rehabilitation (VR) program, an amount that is at least equal to the total of such expenditures from non-Federal sources that was made in the second previous fiscal year. If a State fails to maintain its MOE level requirements, as reported on its Financial Status Reports, the Secretary of the U.S. Department of Education (Department) will reduce the amount otherwise payable to the State in its annual allotment by the amount of the MOE deficit (sections 111(a)(2)(B) of the Act and 34 CFR 361.62(a)(1)). For example, for FY 2001, a State's MOE level is based on the amount of its expenditures under the VR State plan from non-Federal sources in FY 1999. If the State's total non-Federal expenditures in FY 2001 are less than they were in FY 1999, then the State has an MOE deficit in FY 2001. The Secretary will reduce the State's FY 2002 allotment by the amount of the FY 2001 MOE deficit.

RSA continues to monitor the MOE requirement until the final Financial Status Reports are reviewed and approved by RSA. If the Secretary determines that there is a deficit in the MOE and it is too late to reduce the State's allotment, the Secretary will recover the MOE deficit through audit disallowance (34 CFR 361.62(a)(2)).

If a State has a separate State agency to provide VR services to individuals who are blind, satisfaction of the MOE requirements is determined on the basis of the total expenditures by the State from non-Federal sources under both parts of the State Plan. If the State fails to satisfy the MOE requirements, the Secretary will reduce the State's allotment under each part of the State plan in proportion to each individual State agency's share of the State's MOE shortfall (34 CFR 361.62(c)).

The Secretary may waive or modify the MOE requirement if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances (section 111(a)(2)(C) of the Act and 34 CFR 361.62(d)(1)). Federal regulations at 34 CFR 361.62(d)(1) describe "exceptional and uncontrollable circumstances" as including:

a major natural disaster or a serious economic downturn, that --

(i) Causes significant unanticipated expenditures or reductions in revenue that result in a general reduction of programs within the State; or

(ii) Requires the State to make substantial expenditures in the [VR] program for long-term purposes due to the one-time costs associated with the construction of a facility for community rehabilitation program purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment.

The Secretary will determine the amount of the waiver or modification, if any, on a case-by-case basis. The waiver or modification must not exceed the difference between a State's MOE obligation and the total State funding that is available for the State VR program for the fiscal year for which the waiver or modification is requested.

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If a State determines that it will not be able to satisfy the MOE requirements and wants to request a waiver or modification of those requirements, it must submit a written request and supporting documentation justifying the request to the Commissioner of RSA. The request should specify the amount of required non-Federal expenditures that the State wishes to have waived or modified. The supporting documentation must provide sufficient information about the exceptional or uncontrollable circumstances and how they contributed to the MOE deficit in order for the Secretary to make a decision regarding the request.

The State should submit the waiver or modification request as soon as it determines that it has a deficit in the MOE, or no later than 30 days after being notified of the shortfall by RSA. Timely submissions of waiver and modification requests are necessary for the Department to review and act on the request in an appropriate manner. Failure to provide adequate or timely justification could result in the denial of a State's request. The State also should transmit an informational copy of the request to the appropriate RSA Regional Commissioner.

The supporting documentation, justifying the request, will vary depending on the nature of the "exceptional or uncontrollable circumstances" that caused or contributed to the State's MOE deficit. Following are guidelines States should use when submitting requests, including supporting documentation, for waiver or modification of the MOE requirements.

A. General Reduction of Programs Within the State:

If a State experiences a major natural disaster or serious economic downturn that results in significant unanticipated expenditures or reductions in revenue that results in a general reduction of programs in the State, the Department will be focusing on the change in the State's funding level for the VR program as compared to the funding level for other State programs. It will be important to show that the State VR agency has not absorbed an inordinate share of the budget cuts, unless the State can justify that its response to the exceptional or uncontrollable circumstance warrants a different approach.

To substantiate its request for a waiver or modification of the MOE requirements, the State should submit detailed budget, financial, and statistical data that will demonstrate the effect of the crisis on

the State. These data may include Gross State Product, population, per capita income, employment data, or recent disaster history. The Department will use these data to compare State revenues and expenditures during the year for which the waiver or modification is being requested with revenue expenditure levels for the prior fiscal year.

Information Substantiating Significant Unanticipated Reduction in Revenue or Unanticipated Expenditures:

If a State requests a waiver or modification due to a reduction in revenue or unanticipated expenditures, the following types of information, as appropriate, would be useful to the Department in making a determination whether to grant the request:

1. Documentation that fully explains the general economic downturn. Examples include the Executive Order mandating a general budget reduction and a table showing a comparison of gross State revenue, complete with an explanation of major sources; i.e., property, income, and sales taxes, lottery income, fees and permits, etc., for the fiscal year for which the waiver or modification is being requested and the prior fiscal year. Narratives can be included to explain how the figures relate to the finding of a general economic downturn.
2. If a waiver or modification is being requested based on multi-year revenue reductions that have resulted in the need for a general budget reduction for the year for which the waiver or modification has been requested, additional tables breaking down sources of revenue. Narratives can be included to explain how the figures related to the finding of a general economic downturn.
3. A list of other programs, receiving Federal support, which will be unable to meet their matching or MOE requirements, due to the same conditions that form the basis for the VR MOE waiver or modification request.

4. If the waiver or modification request is due to a major natural disaster, an indication of any Federal support received by the State (e.g., dates, amounts, programs, and the name of the Federal agency providing the support) as a result of that disaster.
5. A comparison of the State General Budget showing the amounts budgeted for each department for the fiscal year for which the waiver or modification is being requested and the year immediately prior to that fiscal year.
6. If the VR unit is not a separate line item for the purposes of Item 5 above, a breakdown of the budget for the programs within the department or umbrella agency in which the VR unit is housed should be provided for the fiscal year for which the waiver or modification is requested and the year immediately prior to that fiscal year.
7. Explanations of how legal (including court orders) or other constraints, such as mandated cost increases, individual entitlement programs, and debt service, affect the distribution of reductions in revenue.
8. In the case of either a natural disaster or general economic downturn, an explanation of whether funds have been redirected toward particular activities to alleviate the crisis, thereby decreasing State funds available for other programs.

B. Substantial Expenditures due to One-Time Costs:

The waiver or modification provision applies to all construction and establishment costs that are allowable under Title I of the Act and included in the calculation of the MOE. If a State was forced to make substantial expenditures in the VR program for long-term purposes due to the one-time costs associated with the construction of a facility for community rehabilitation purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment, the Department will need detailed information identifying and substantiating the reason for and long-term effect of one-time expenditures.

The information, submitted by the State should indicate the source of the non-Federal funds (e.g., private contribution or State appropriated) used for the purchase. The Department also requests that the State submit documentation that shows how the fluctuations in expenditures for construction and establishment or the acquisition of equipment produced variation in MOE levels, and that when these expenditures ceased or declined, State expenditure levels decreased.

C. Fiscal Year Data to Submit:

States will need to submit supporting data, when requesting an MOE waiver or modification, that reflects the time period of the MOE shortfall. For States operating on a fiscal year, which does not correspond to the Federal fiscal year of October 1 to September 30, the State should submit information for the four MOE-relevant State fiscal years that correspond to both the Federal fiscal year for which the waiver or modification is requested and the immediately preceding Federal fiscal year. For example, if a State fiscal year covers July 1 through June 30 and a 2001 MOE shortfall is discovered by comparing State expenditures for Federal fiscal year 2001 (October 1, 2000 through September 30, 2001) versus Federal fiscal year 1999 (October 1, 1998 through September 30, 1999), the State must submit data covering the applicable quarters for the four State fiscal years (e.g., July 1, 1998 through June 30, 2002). For States operating on a biennial budget, the State should submit data for the biennium years that correspond to the relevant Federal fiscal years.

CITATIONS

IN LAW:

Section 111(a) of the Rehabilitation Act of 1973, as amended

**CITATIONS IN
REGULATION:**

34 CFR 361.62

EFFECTIVE

DATE:

Upon Issuance

EXPIRATION

DATE:

When Retired

INQUIRIES: Director, Financial Management and Information Systems Staff,
RSA (202) 205-8358

Joanne Wilson
Commissioner, RSA

cc: American Indian Vocational Rehabilitation Programs
Client Assistance Programs
Council of State Administrators of Vocational Rehabilitation
National Association of Protection and Advocacy Systems
National Council for Independent Living
National Rehabilitation Facilities Coalition
Protection and Advocacy of Individuals Rights Program
Regional Rehabilitation Continuing Education Programs
RSA Senior Management Team