

**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND
REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, D.C. 20202**

INFORMATION MEMORANDUM

RSA-IM-92-04

RSM-1050 1/

DATE: October 24, 1991

ADDRESSES: STATE VOCATIONAL REHABILITATION AGENCIES (GENERAL)
STATE VOCATIONAL REHABILITATION AGENCIES (BLIND)
CLIENT ASSISTANCE PROGRAMS
RSA DISCRETIONARY GRANTEES
RSA SENIOR MANAGEMENT TEAM

SUBJECT: RSA PROCEDURES FOR THE RECOVERY OF DISALLOWED COSTS
IDENTIFIED THROUGH PROGRAM MONITORING ACTIVITIES

Attached is Commissioner's Memorandum Number 92-39 (CM-92-39) with which I have established the Rehabilitation Services Administration (RSA) Procedures for the Recovery of Disallowed Costs Identified Through Program Monitoring Activities.

While the procedures described are internal to the RSA, familiarity with them is important as they reflect practices which may have an effect on the various programs funded under the authority of the Rehabilitation Act of 1973, as amended.

Please refer to Commissioner's Memorandum Number 92-39 (CM-92-39) and its attachment for a description of the procedures for the recovery of funds.

INQUIRIES: To Regional Commissioners

Commissioner
Rehabilitation Services Administration

1/ Under Development

**OSERS/Rehabilitation Services
Administration**

COMMISSIONER'S MEMORANDUM
CM-92-39
DATE: October 24, 1991

TO : RSA Staff

FROM : Nell C. Carney, Commissioner

SUBJECT: RSA Procedures for the Recovery of Disallowed Costs Identified Through Program Monitoring Activities

With this memorandum, I am adopting and promulgating RSA Procedures for the Recovery of Disallowed Costs Identified Through Program Monitoring Activities. These procedures are described in the attachment to this Commissioner's Memorandum, and are effective this date.

By Information Memorandum, I am also distributing to State vocational rehabilitation agencies, Client Assistance Programs, RSA discretionary grantees, and other interested parties a copy of this issuance.

The Hawkins-Stafford Amendments to the General Education Provisions Act specify that recovery of funds may be based on program monitoring activities as well as audit monitoring activities. This is not a new responsibility for us but a clarification of our mandate to protect Federal interests and assure accountability.

When unallowable costs are discovered, RSA will recover such funds. Regional Commissioners and others so designated by me will take appropriate steps to initiate this recovery process. The attached procedures were designed to aid in those efforts by clarifying methodology and assuring consistency among Regions.

The application of these procedures should assist us in making more effective the maintenance and improvement of our monitoring and accountability systems.

Please address inquiries and technical assistance requests to the Division of Program Administration.

Attachment: RSA Procedures for the Recovery of Disallowed Costs Identified Through Program Monitoring Activities

RSA PROCEDURES FOR THE RECOVERY OF DISALLOWED COSTS IDENTIFIED THROUGH PROGRAM MONITORING ACTIVITIES

I. Purpose

These procedures were developed by the Rehabilitation Services Administration (RSA) to assist in assuring uniform and consistent practices for the recovery of funds by its authorized representatives (Regional Commissioners and others designated by the Commissioner). These procedures are in accordance with applicable principles and provisions of the Rehabilitation Act of 1973, as amended, its implementing regulations, Part E of the General Education Provisions Act (GEPA), and the Education Department General Administrative Regulations (EDGAR). These procedures are consistent with the Department's existing procedures for the recovery of disallowed costs identified through audit monitoring activities.

II. Background

Statutory and regulatory provisions exist which require authorized officials of RSA to recover Federal funds when program monitoring activities result in a determination that a recipient of a grant or cooperative agreement has made an expenditure of funds which is not allowable under the grant or cooperative agreement or has otherwise failed to account properly for funds under the grant or cooperative agreement.

On December 7, 1976, RSA Commissioner Andrew S. Adams issued an internal policy interpretation in which he stated "If you establish and substantiate that Federal expenditures
were

improperly made and claimed under the VR Act and Regulations, the State agency would be out of compliance with the approved State plan and the Federal portion of the improper expenditure must be returned to the Federal government."

On February 24, 1978, RSA Commissioner Robert R. Humphreys transmitted a memorandum to the ten (10) Regional Commissioners of RSA in which he stated "One of the Regional Offices recently raised the question whether the RSA staff have the authority to take funding exceptions when they are performing program administrative reviews, assessments of State agencies' operations, etc. The answer is yes. The authority to assure that funds are appropriately spent in accordance with the law and regulations has always been an inherent part of public
accountability
for the taxpayers' dollars."

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On December 12, 1989, RSA Commissioner Nell C. Carney issued Program Assistance Circular, RSA-PAC-90-3, Subject: Audit Appeals and Authoritative Guidance, which transmitted a copy of 34 CFR Part 81. The regulations in this Part of EDGAR implement Part E of GEPA. Section 81.20 provides for an authorized Departmental official to base a decision to require a recipient to return funds upon an audit report, an investigative report, a monitoring report, or any other evidence.

III. Procedures

A. Applicability

These procedures apply to RSA monitoring activities.

B. Monitoring Activities

Among the types of monitoring activities RSA may use to obtain evidence that a recipient is in compliance with statutory and regulatory requirements applicable to its expenditure of Federal funds received under a grant or cooperative agreement are: (1) site visits; (2) review of documents (such as letters, accounting and financial records, performance and expenditure reports, grants, subgrants, cooperative agreements and contracts) related to the recipient's grant or cooperative agreement; (3) testimony received in response to inquiries of or interviews with persons who have knowledge of the recipient's activities related to its expenditure of Federal funds; and (4) analyses of data collected or reported by the recipient related to activities carried out under a grant or cooperative agreement.

C. Program Monitoring Report

1. Draft Monitoring Report

After concluding its monitoring activities of a recipient of a Federal grant or cooperative agreement, RSA will issue a draft monitoring report that includes preliminary findings, a statement of questioned costs, and recommendations of actions the recipient should take to address problems RSA may have discovered. RSA will provide the recipient a copy of the draft monitoring report and allow at least 45 days from receipt for a response to the preliminary findings, questioned costs and recommendations.

2. Final Monitoring Report

After allowing the recipient an opportunity to respond to its draft monitoring report, RSA will issue a final monitoring report that includes RSA's final findings, statement of questioned costs, the recipient's response, if any, to the draft monitoring report, and recommendations of what actions the recipient should take to address any problems RSA may have discovered.

D. Findings

1. Preliminary and Final Findings

RSA will issue its preliminary findings in a draft monitoring report and its final findings in a final monitoring report. RSA's preliminary and final findings may or may not conclude that a recipient made an unallowable expenditure of or otherwise failed to account properly for Federal funds received under a grant or cooperative agreement.

2. Evidence

RSA's preliminary findings may be based on evidence obtained from its monitoring activities. The evidence on which a preliminary finding is based must be valid, reliable, explicitly relevant to the issue in question, convincing and sufficient. If reasons exist to doubt the reliability or validity of existing evidence, additional evidence must be obtained to ensure that the preliminary finding has convincing and sufficient factual support before concluding that costs should be questioned.

E. Questioned Costs

1. Allegation of Questioned Costs

When RSA makes a preliminary finding that a recipient made an unallowable expenditure of or otherwise failed to account properly for Federal funds received under a grant or cooperative agreement, RSA will question the costs charged to the recipient's grant or cooperative agreement and include a statement of questioned costs in the draft monitoring report.

2. Reconsideration of Questioned Costs

If the recipient's response to the questioned costs included in the draft monitoring report

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persuades RSA that the questioned costs are, in fact, allowable, RSA will not question the costs in the final monitoring report.

If the recipient's response to the questioned costs included in the draft monitoring report does not persuade RSA that the questioned costs are, in fact, allowable, RSA will continue to question the costs in the final monitoring report.

F. Notice of Disallowance Decision (NDD)

If RSA issues a final monitoring report in which it questions the costs charged to the recipient's grant or cooperative agreement, RSA will also issue a NDD in which it will disallow the questioned costs. The NDD may be issued at the same time as the final monitoring report or at any time thereafter. The preparation of NDDs will be consistent with the procedures described in this document and with relevant Department and RSA policy, guidance, and procedures for issuing program determination letters (PDLs).

1. Identification Number

Like the PDL, the NDD will have a unique identification control number. The control number will be alphanumeric and identify the kind of document (NDD), the State of the recipient (standard two-letter abbreviation), the organization of the recipient [Blind (B), General (G), Combined (C), Discretionary (D), other (O)], the fiscal year the NDD is issued, and the sequence (01,02,03...) by fiscal year. For example, a NDD issued to the Minnesota Agency for the Blind in fiscal year 1992 would be NDD-MN-B-9201 indicating the first NDD issued in fiscal year 1992. The sequence designation will be chronological and will be assigned by the Audit Liaison Officer (ALO).

2. Prima Facie Case

The NDD must state a prima facie case when the recovery of funds is sought. This means a statement of law and facts that on their face, and unless rebutted, is sufficient to sustain the conclusion in the NDD that legal requirements were violated and, as a result, funds must be returned.

The NDD must identify the funds at issue by program source and fiscal year and include the dollar amount of the disallowance with sufficient detail to explain how

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the dollar amount was derived. Since the amount disallowed under GEPA must be "...proportionate to the extent of the harm [the] violation caused to an identifiable Federal interest associated with the program...", it is important that the NDD link the violation of the statutory or regulatory requirement to an identifiable Federal interest associated with the funds required to be returned. Illustrations of proportionality may be found in the appendix to 34 CFR Part 81.

If the recipient failed to maintain records required by law or failed to allow a representative of the Commissioner access to those records, a statement to that effect meets the requirement for a prima facie case for recovery of the affected funds. It remains important, however, for the NDD to identify the records that were not maintained or the subject of the denial and also to identify clearly which statutory or regulatory recordkeeping requirements were not met. If access to required documentation was denied, the NDD should describe how and when access was requested and subsequently denied and specify which access requirement was violated.

3. Explanation of Determination

The NDD must fully and clearly explain the legal and factual basis for each specific determination made, contain an accurate description or summary of the recipient's response to the findings, and include a well-reasoned analysis of why its response did or did not affect each finding.

4. Appeal Rights

The NDD must inform the recipient of its right to obtain review of monetary determinations to which Part E of GEPA applies by the Office of Administrative Law Judges (OALJ). The NDD must describe the procedure for filing an application for review and inform the recipient that it must submit an application for review not later than 30 days after receipt of the NDD. The NDD must also inform the recipient of its right to request mediation of the dispute if an acceptable application for review is filed with the OALJ.

G. Mitigating Circumstances and Departmental Guidance

It is possible for recipients to avoid or limit liability for misspent funds to the extent they can

demonstrate the existence of mitigating circumstances as described in 34 CFR 81.23.

H. Statute of Limitations

No funds can be recovered when the questioned expenditure occurred more than five years before the recipient received the NDD. Although the recipient has the burden of providing that Section 452 (k) of GEPA applies, the reviewer shall make a preliminary assessment of the effect of this provision based on available information and include a statement identifying the funds, if any, that the Department is barred by the statute of limitations from recovering.

I. Repayment

Recipients must use non-Federal funds or Federal funds for which accountability to the Federal government is not required in making repayments for disallowed costs. Funds used for matching purposes under another program may not be used for repayment.

1. Method of Repayment

If the recipient's liability is \$100,000 or more, repayment should be made by electronic transfer through the FEDWIRE Deposit System. The Department of Agriculture's National Finance Center (NFC) serves as the Department of Education's collection agency. The recipient should request its bank to transmit payment to NFC through FEDWIRE via the Federal Reserve Bank in New York. If the recipient's bank does not maintain an account at a Federal bank, it may use the service of a corresponding bank.

If the recipient's liability is under \$100,000, payment should be by check payable to the "U.S. Department of Education" and mailed to the following lock box:

U.S. Department of Agriculture
Administrative Collections
P.O. Box 70792
Chicago, Illinois 60673

2. Identification of Repayment

Repayment by FEDWIRE or to the lock box must include the entity identification number and the NDD control number.

The control number will appear on the NDD and all subsequent documents related thereto.

3. Interest

Repayment must be made within thirty days of the date of the NDD unless the applicant files a timely and acceptable appeal of the NDD. If an acceptable appeal is filed, interest is charged from the date of the Department's final decision. If neither payment is received nor an acceptable appeal is filed within the thirty-day period, interest will accrue from the date of the NDD on the unpaid portion of the refund demand. Interest will be charged at the rate established under 31 U.S.C. Section 3717 and published by the Secretary of Treasury Financial Manual as in effect on the date the NDD is issued.

IV. Responsibilities: Coordination of Procedures

A. Office of Program Operations, RSA

The Office of Program Operations, through the ALO, will coordinate the issuance of NDDs and all associated reviews and correspondence within RSA, and to OSERS, OGC, FMS, OIG, and other relevant Department Offices.

B. Regional Commissioners, RSA

The RSA Regional Commissioners will serve as the Primary Action Officials (PAOs) for all formula grants, discretionary grants, and cooperative agreements. The PAOs will carry out their responsibilities in accordance with ED ARS A:MIS AUDIT RESOLUTION SYSTEM (ARS) and all relevant supplemental guidance provided by the Department and RSA. PAOs will coordinate with the Office of Inspector General (OIG) to avoid duplication of questioned costs.

C. Office of General Counsel

Proposed NDDs will be submitted to the Office of General Counsel for a 30-day review and comment period.

D. Grants and Contracts Service

Proposed NDDs with significant grants administration issues may be submitted to the Grants and Contracts Service (GCS) for a 30-day review and comment period.

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A copy of the NDD for each discretionary grant and for each cooperative agreement will be transmitted to the GCS, Grants Division.

E. Office of Inspector General

Proposed NDDs with significant determinations may be submitted to the OIG for a 30-day review and comment period.

F. Financial Management Service

All NDDs that require repayment by cash will be submitted to the Financial Management Service

(FMS), Financial Operations Division at the time of issuance to establish an accounts receivable, collect the debt, track status of all collections, and to advise RSA on a quarterly basis. NDDs that require repayment by non-cash adjustments and revisions to the recipient's SF-269 reports will not be submitted to FMS. When the revised SF-269s are submitted, FMS will be so advised.

STATUTORY

AUTHORITIES: Rehabilitation Act of 1973, as amended, General Education Provisions Act, Part E - Enforcement

REGULATORY

AUTHORITIES: 34 CFR Part 81 (EDGAR)

RELATED

AUTHORITIES: 34 CFR Parts 361, 362, 363, 365, 366, 367, 369, 370, 371, 372, 373, 374, 375, 376, 378, 379, 380, 385, 386, 387, 388, 389, 390, 395, and 396
34 CFR Parts 74, 75, 76, 77, 80, and 85 (EDGAR)