

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

INFORMATION MEMORANDUM  
RSA-IM-10-04  
DATE: May 5, 2010

**ADDRESSEES:** STATE VOCATIONAL REHABILITATION AGENCIES  
CLIENT ASSISTANCE PROGRAMS  
PROTECTION AND ADVOCACY SYSTEMS  
INDEPENDENT LIVING FORMULA GRANTEEES  
SUPPORTED EMPLOYMENT GRANTEEES  
STATEWIDE ASSISTIVE TECHNOLOGY GRANTEEES  
RSA DISCRETIONARY GRANTEEES

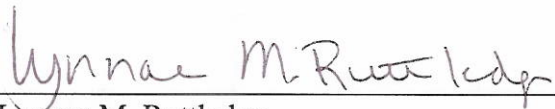
**SUBJECT:** RSA PROCEDURES FOR THE RECOVERY OF DISALLOWED  
COSTS IDENTIFIED THROUGH PROGRAM MONITORING  
ACTIVITIES

Through this information memorandum (IM), the Rehabilitation Services Administration (RSA) is distributing to its grantees listed above the procedures it has established for the recovery of disallowed costs identified through program monitoring activities. The attached document contains a detailed description of these procedures. Although the procedures are for internal use by RSA, a grantee's familiarity with them is important as they reflect practices that may have an effect on the various programs funded under the authority of the *Rehabilitation Act of 1973*, as amended.

The *Hawkins-Stafford Amendments to the General Education Provisions Act* specify that recovery of funds may be based on program monitoring and related activities as well as audit monitoring activities. RSA has not adopted the attached procedures pursuant to a new mandate, but has done so to clarify its responsibility to protect federal interests and assure accountability. When RSA discovers unallowable costs it may initiate procedures to recover such funds. RSA will take the appropriate steps identified in the attached procedures to initiate and carry out the recovery process. RSA designed these procedures to aid in those efforts by clarifying the process for the recovery of disallowed costs and to assure their consistent implementation.

This memorandum rescinds and replaces RSA-IM-92-04, "Subject: RSA Procedures for the Recovery of Disallowed Costs Identified Through Program Monitoring Activities."

**INQUIRIES:** RSA State Liaisons and discretionary grant program officers.

  
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Lynnae M. Ruttledge  
Commissioner

Attachment

cc: Council of State Administrators of Vocational Rehabilitation  
National Council of State Agencies for the Blind  
National Disability Rights Network  
National Council on Independent Living

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

## **I. Purpose**

The Rehabilitation Services Administration (RSA) developed these procedures to assist in assuring uniform and consistent practices for the recovery of funds by its appropriate RSA program or fiscal staff (e.g., RSA state liaisons, grant management specialists and financial management specialists). These procedures are in accordance with the authorizing legislation for all formula and discretionary grants administered by RSA, relevant implementing regulations, Part D of the *General Education Provisions Act (GEPA)*, and the *Education Department General Administrative Regulations (EDGAR)*. These procedures are consistent with existing procedures for the recovery of disallowed costs identified through program monitoring activities established by the Department of Education (Department).

## **II. Background**

Statutory and regulatory provisions exist that require RSA to recover federal funds when grant monitoring activities result in a determination that a recipient of a grant or cooperative agreement has: (1) made an expenditure of funds that is not allowable under the grant or cooperative agreement; or (2) has otherwise failed to account properly for funds under the grant or cooperative agreement.

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 D of *GEPA*. Section 81.30 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.

On October 24, 1991, RSA Commissioner Nell C. Carney issued Information Memorandum RSA-IM-92-04, "Subject: RSA Procedures For The Recovery of Disallowed Costs Identified Through Program Monitoring Activities," wherein she clarified the mandate to protect federal interests and assure accountability. The procedures issued through IM-92-04 are being replaced by the procedures set forth in this document and described below.

## **III. Procedures**

### **A. Applicability**

These procedures apply to the grant and program monitoring activities conducted by RSA.



## **B. Monitoring and Related 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; (4) analyses of data collected or reported by the recipient related to activities carried out under a grant or cooperative agreement; (5) A-133 annual audits; and (6) other audits or investigations conducted by agencies outside RSA (e.g., the Federal Bureau of Investigations (FBI), the Department's Office of Inspector General (OIG), and the Government Accountability Office (GAO)).

## **C. Program Monitoring Report**

### **1. Draft Monitoring Report**

After concluding its monitoring activities of a federal grant or cooperative agreement recipient, RSA will issue a draft monitoring report that includes preliminary findings, a statement of questioned costs, if any, 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 30 days from receipt for a response to the preliminary findings, questioned costs and recommendations.

#### *a. Preliminary Findings*

RSA's preliminary findings may be based on evidence obtained from its monitoring activities and, if appropriate, other audits or investigations conducted by agencies outside RSA (e.g., FBI, OIG and GAO).

The evidence on which a preliminary finding is based must be explicitly relevant to the issue in question, valid, reliable, 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.

#### *b. Questioned Costs*

If 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. Final Monitoring Report**

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

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

### **D. Notice of a 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 also will 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 remedying matters of noncompliance.

#### **1. Identification Number**

The NDD will be assigned a unique identification control number. The control number will be alphanumeric and identify the type of document (e.g., NDD), the state of the recipient (standard two-letter abbreviation), the organization of the recipient (e.g., 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, RSA would give a NDD issued to the Minnesota Agency for the Blind in fiscal year 2009 the identification number "NDD-MN-B-0901" to indicate that this NDD is the first NDD issued in fiscal year 2009.

#### **2. Contents**

The NDD will identify: (1) the RSA official issuing the NDD; and (2) the scope of the monitoring review on which any determination in the NDD is based. The NDD must describe under separate subheadings: (1) each statement of questioned cost, (2) the recipient's response, if any, to each statement of questioned cost and (3) RSA's determination. If the NDD includes a determination based on findings and recommendations resulting from an audit or other type of investigation, the NDD must indicate which division within RSA identified the disallowed costs (i.e., State Monitoring



and Program Improvement Division (SMPID) or Training and Service Programs Division (TSPD)).

If money is to be returned to the Department, the NDD must indicate that the monetary determinations of the RSA official constitute "preliminary departmental decisions" within the meaning of Part D of *GEPA*.

### **3. Prima Facie Case**

If RSA seeks the recovery of funds, the NDD must state a prima facie case. A prima facie case means a statement of law and facts that, on its face, and unless rebutted, is sufficient to sustain the conclusion in the NDD that a recipient violated legal requirements and, as a result, must return disallowed funds.

The NDD must provide sufficient detail to explain how RSA arrived at the dollar amount of the disallowance. The NDD must identify specifically the grants or programs, the specific funds and the project period, including fiscal year, that are the subject of the monitoring review (or audit or investigation, if applicable).

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. However, the NDD must identify the records the recipient did not maintain, or the subject of the denial of access, and identify clearly and specifically which statutory or regulatory recordkeeping requirements the recipient did not meet. If the recipient denied access to required documentation, the NDD must describe how and when RSA requested access, when the recipient subsequently denied RSA access to the documentation, and specify which access requirement the recipient violated.

### **4. Explanation of Determination**

The NDD must explain clearly and specifically the legal and factual basis for each specific determination and include: (1) an accurate description or summary of the recipient's response to the findings; and (2) a well-reasoned analysis of why the recipient's response did or did not affect each finding.

More specifically, each determination in the NDD must: (1) summarize briefly and objectively RSA's finding, including the rationale provided in the monitoring report for that finding and the requirements that the recipient violated; (2) discuss RSA's recommended corrective action, including recommendations for disallowed or questioned costs and recommendations for nonmonetary corrective action; (3) summarize the recipient's response to the finding, including in this section any new documentation or evidence that was presented by the recipient after issuance of the final monitoring report; and (4) state RSA's final position on the finding (i.e., whether RSA sustains, sustains in part or does not sustain the finding).

## **5. Proportionality**

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," the NDD must connect clearly and specifically the violation of the statutory or regulatory requirement to an identifiable federal interest associated with the funds the recipient is required to return. The appendix to 34 CFR Part 81 includes illustrations of proportionality. The NDD must also include an analysis reflecting the value of the program services actually obtained in determining harm to the federal interest.

## **6. Mitigating Circumstances**

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 81.33. The NDD should specifically address the issue of mitigating circumstances only if the issue has already been raised by the grantee or if it is clear that mitigating circumstances exist.

## **7. Statute of Limitations**

RSA may not recover any funds if the questioned expenditure occurred more than five years before the recipient received the NDD. Although the recipient has the burden of proving 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.

## **E. Appeal Rights**

The NDD must inform the recipient of its right to obtain review by the Office of Administrative Law Judges (OALJ) of monetary determinations to which Part D of *GEPA* applies. The NDD must describe the procedure for filing an application for review and inform the recipient that it must submit an application for review within 60 days after receipt of the NDD. The NDD must also inform the recipient of its right to request mediation of the dispute if the recipient files with the OALJ an acceptable application for review.

## **F. Repayment**

Recipients must use nonfederal funds or federal funds for which accountability to the federal government is not required in making repayments for disallowed costs. A recipient may not use funds used for matching purposes under another program for repayment.

### **1. Method of Repayment**

If the recipient's liability is \$100,000 or more, it should make repayment by electronic transfer through the FEDWIRE Deposit System. The Department of Agriculture's



National Finance Center (NFC) serves as the Department'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 Education  
P.O. Box 979026  
St. Louis, Missouri 63197-9000

## **2. Identification of Repayment**

Repayment by FEDWIRE or to the lock box must include the entity identification number, the NDD control number, the DUNS number and the Taxpayer Identification Number (TIN). The control number will appear on the NDD and all subsequent documents related thereto.

## **3. Interest**

Recipients must submit repayment within 60 days of the date of the NDD unless the recipient files a timely and acceptable appeal of the NDD. If the recipient files an acceptable appeal, interest will accrue from the date of the Department's final decision. If either the Department does not receive payment or the recipient does not file an acceptable appeal within the 60-day period, interest will accrue from the date of the NDD on the unpaid portion of the refund demand. Interest will accrue at the rate established by 31 U.S.C. Section 3717 and published by the Secretary of Treasury Financial Manual as in effect on the date RSA issues the NDD.

## **IV. Responsibilities: Coordination of Procedures**

### **A. Appropriate RSA Program or Fiscal Staff**

The appropriate RSA program or fiscal staff will coordinate the issuance of NDDs, including all associated reviews and correspondence, within RSA and between RSA and OSERS, the Office of the General Counsel (OGC), OIG, the Office of the Chief Financial Officer (OCFO), and other relevant Department Offices.

### **B. OGC**

RSA will submit proposed NDDs to OGC for a 30-day review and comment period.



### **C. OIG**

RSA may submit proposed NDDs with significant determinations to the OIG for a 30-day review and comment period.

### **D. OCFO**

At the time of issuance, RSA will submit to the Department's OCFO all NDDs that require repayment by cash. OCFO will establish an accounts receivable, collect the debt, track the status of all collections and issue a report to RSA on a quarterly basis. RSA will not submit to OCFO either NDDs that require repayment by noncash adjustments or revisions to the recipient's SF-269 and SF-425 reports. RSA will advise OCFO when recipients submit revised SF-269 and SF-425 reports.

#### **STATUTORY**

**AUTHORITIES:** *Rehabilitation Act of 1973, as amended; Assistive Technology Act of 1998, as amended; Helen Keller National Center Act; and General Education Provisions Act, Part D - Enforcement*

#### **REGULATORY**

**AUTHORITIES:** 34 CFR Part 81 (*EDGAR*)

#### **RELATED**

**AUTHORITIES:** 34 CFR Parts 361, 363, 364, 365, 366, 367, 369, 370, 371, 373, 376, 377, 379, 380, 381, 385, 386, 387, 388, 389, 390 and 396; and 34 CFR Parts 74, 75, 76, 77, 80, and 85 (*EDGAR*)