Vocational Rehabilitation Program: Maintenance of Effort

CSAVR Spring Conference

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Introduction

- In anticipation of increased state requests for MOE waivers, the Department of Education is currently undertaking a department-wide review of MOE requirements and programs' policies to ensure consistency and proper administration of each program's requirement.

Legal Requirements

- The Rehabilitation Act requires States to maintain a level of non-Federal expenditures, from all allowable non-Federal sources, for the VR program that is at least equal to non-Federal expenditures for the VR program **from two years prior**.

- Example:
  - State's non-Federal FY 2007 VR program expenditures = $25 million
  - State's non-Federal FY 2009 VR program expenditures = $20 million
  - State's FY 2009 MOE deficit = $5 million

Legal Requirements (cont'd)

- MOE determination is made on a statewide basis for states that have two VR agencies.

- This means that one VR agency's non-Federal expenditures potentially could compensate for the reduction in non-Federal expenditures from the other VR agency and avoid a MOE deficit for the State.

Legal Requirements (cont'd)

- If a State fails to satisfy its MOE requirement, the Secretary reduces the State's VR grant by the amount of the MOE deficit in the subsequent fiscal year (section 111(a)(2)(B) of the Rehabilitation Act and 34 CFR 361.62(a)).

Legal Requirements (cont'd)

Example of Determining MOE Penalty:

- State's non-Federal FY 2007 VR program expenditures = $25 million
- State's non-Federal FY 2009 VR program expenditures = $20 million
- State's FY 2009 MOE deficit = $5 million
- State's FY 2010 grant award is reduced by $5 million (MOE penalty)
- If there are two VR agencies in a State, the MOE penalty is applied in direct proportion to the amount each agency contributed to the MOE deficit (34 CFR 361.62(c)(2)).

Note: The $5 million MOE penalty withheld by RSA is added to funds that are available for reallotment in FY 2010.

Legal Requirements (cont'd)

- A State that fails to satisfy the MOE requirement may request a waiver.

- The Secretary may waive or modify the VR MOE requirement if such action is necessary for the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that:

Legal Requirements (cont'd)

- cause significant unanticipated expenditures or reductions in revenue that result in a general reduction of programs within the State; or

- require the State to make substantial expenditures in the VR program for long-term purposes due to the one-time costs associated with the construction or establishment of a facility for community rehabilitation purposes, or the acquisition of equipment (section 111(a)(2)(C) of the Rehabilitation Act and 34 CFR 361.62(d)).

Legal Requirements (cont'd)

- Match and MOE
  - In addition to the MOE requirement, State VR agencies also must satisfy a match requirement each year of 21.3 percent in allowable non-Federal expenditures (section 111(a)(1) of the Rehabilitation Act and 34 CFR 361.60).
  - States that put more non-Federal funds into the VR program than required to satisfy match could be more likely to suffer a MOE deficit when there are significant State budget cuts.

Legal Requirements (cont'd)

- In the last five years, approximately 50 percent of the states provided more non-Federal funds than required to satisfy match.
- However, in periods of prolonged economic downturn, states that have historically only provided the required match amount could also face MOE deficits if the State's budget has been cut to the point where the State cannot provide match for the entire VR grant.

RSA's Past Approach to MOE Waiver Requests

- If the basis for the MOE waiver request is reductions in revenue that result in a general reduction of programs within the State:

1. Calculate the percentage of overall Statewide budget cuts and State VR program cuts for each of the two years that span the MOE period.

2. Compare the percentage of VR program cuts with the percentage of overall Statewide budget cuts for each of the two years.

RSA's Past Approach to MOE Waiver Requests (cont'd)

- The VR program funding reduction determination is based only on state appropriation for the VR program and does not include other authorized sources of match that may be used to satisfy the MOE requirement.

Example 1

- If the percentage of VR program cuts was less than or equal to the percentage of the overall Statewide cut for the two-year period, grant full waiver.

1. State's FY 2009 MOE Deficit = $5 million

2. FY 2008: State budget cuts = 10%
   VR program budget cuts = 10%

3. FY 2009: State budget cuts = 10%
   VR program budget cuts = 9%

4. Full waiver of $5 million granted since the VR program cut in each of the two years was equal to or less than the overall State budget cut for each of those years.

RSA's Past Approach to MOE Waiver Requests (cont'd)
Example 2

- If the percentage of VR program cuts was greater than the percentage of the overall Statewide cut during the two-year period:

Example 2

1. State's FY 2009 MOE Deficit = $5 million
2. FY 2008: State budget cuts = 10%
   VR program budget cuts = 5%
3. FY 2009: State budget cuts = 10%
   VR program budget cuts = 15%

Example 2 (cont'd)

- Example 2:
  1. Use the percentage of the overall Statewide budget cut to determine how much of the VR program's budget should have been cut had the VR program been cut by the same percentage as the overall Statewide budget.
  2. Add the maximum amounts that could be waived for each of the two years had the VR budget been cut by the same percentage as the overall State budget.
  3. If the State's MOE deficit is more than the total amount that could be waived for the two years, grant a waiver of that lesser amount so that the waiver equals the same percentage as the overall State budget cut.

RSA's Past Approach to MOE Waiver Requests Example 2 (cont'd)

FY 2007 total State budget = $200 million
FY 2008 total State budget = - 180 million
20 million = 10% overall State budget cut

FY 2007 State VR program funding = $20 million
FY 2008 State VR program funding = - 19 million
1 million = 5% VR program budget cut

FY 2008: State budget cut = 10%
VR program budget cut = 5%

FY 2008: State is entitled to MOE waiver of $1 million because the VR program reduction was less than the percentage of the overall State budget cut.

RSA's Past Approach to MOE Waiver Requests Example 2 (cont'd)

FY 2008 total State budget = $180 million
FY 2009 total State budget = - 162 million
18 million = 10% overall State budget cut

FY 2008 State VR program funding = $19 million
FY 2009 State VR program funding = - 16.15 million
2.85 m = 15% VR program budget cut

FY 2009: State budget cut = 10%
VR program budget cut = 15%

FY 2009: State is entitled to MOE waiver = 10% of FY 2008 VR appropriation
= $1.9 million

RSA's Past Approach to MOE Waiver Requests
Example 2 (cont'd)

Calculating Total Waiver Amounts for FY 2009

Maximum allowed for FY 2008 = $ 1.0 million
Maximum allowed for FY 2009 = + 1.9 million
Total MOE Waiver $2.9 million

FY 2009 MOE deficit = $5.0 million
Total MOE Waiver - 2.9 million
FY 2009 MOE penalty $2.1 million

RSA's History of Granting Waivers or Modifications of VR MOE Requirement

Since FY 2001, RSA has received five MOE waiver requests and granted all of them as follows, beginning with the most recent:

1. FY 2004: MOE deficit = $3,866,112

Cause: Serious economic downturn that resulted in multiple-year Statewide budget cuts.

ED Action: granted partial waiver of $2,018,326 granted, which represented an amount equal to the percentage of the overall Statewide budget cuts over a two-year period.

2. FY 2003: MOE deficit = $801,830

Causes: 1) Statewide budget cut in FY 2003; and 2) one-time increase in non-Federal expenditures for the purchase of new computer equipment in FY 2001.

ED Action: Full waiver granted because MOE deficit was less than the percentage of the overall Statewide budget cut plus the total outlay for the computer equipment.

RSA's History of Granting Waivers or Modifications of VR MOE Requirement (cont'd)

3. FY 2003: MOE deficit = $2,280,722

Cause: Serious economic downturn resulted in multiple-year Statewide budget cuts.

ED Action: Full waiver granted because the MOE deficit was less than the percentage of the overall Statewide budget cut over a two-year period.

4. FY 2003: MOE deficit = $4,044,859

Cause: Serious economic downturn that resulted in multiple-year Statewide budget cuts.

ED Action: Partial waiver of $3,568,974 granted, which represented an amount equal to the percentage of the overall Statewide budget cuts over a two-year period.

5. FY 2001: MOE deficit = $60,326

Cause: Serious economic downturn resulted in an unexpected mid-year State-wide budget cut.

ED Action: Full waiver granted because MOE deficit was less than the percentage of the overall State-wide budget cut.

RSA’s Current Thinking On the MOE Requirement

- The MOE requirement can protect the VR program from disproportionate State budget cuts when State budgets are flat or increasing.

- The MOE requirement can penalize States – especially those with a history of providing more than the required match amount – when State budgets are reduced during periods of serious, prolonged economic downturns.

- In such cases, the MOE requirement can function as a disincentive for States to provide additional funds to the VR program during periods when state budgets are increasing.

VR Program Overmatch Data FY 2005-2009

Fiscal Year	Required Match	Overmatch	Percentage Overmatch	Number States Overmatched
2009	358,880,088	88,904,201	24.77%	28
2008	375,775,348	105,257,144	28.01%	31
2007	405,432,165	78,923,563	19.47%	31
2006	246,761,178	86,339,624	34.99%	24
2005	274,485,146	78,163,333	28.48%	28
TOTAL	1,661,333,925	437,587,865	26.34%	

RSA's Current Thinking On the Moe Requirement (cont'd)

- RSA's MOE waiver calculation should maintain States' obligation to the VR program, while also providing as much relief as possible during prolonged periods of State revenue decreases, thus minimizing the disincentive to increase State funding for the VR program.

- Although the RSA MOE waiver calculation accomplishes these two goals, it is overly complicated, and could provide more relief without compromising the protections provided by the MOE requirements.

New RSA Approach: Two-Year Average State Budget Cuts Equal to or Greater than Two-Year Average VR Program Budget Cuts

1. Calculate the difference between the average percentage of total overall Statewide budget cuts for the past two years and the average percentage of State cuts to the VR program.

2. If the average percentage of the VR program cuts is less than or equal to the percentage of the overall Statewide budget cuts, then grant full waiver of MOE deficit. State will not be penalized by having VR grant reduced.

Example of New RSA Approach: Two Year Average State Budget Cuts Equal to or Greater than Two Year VR Program Budget Cuts

<u>Example (#2 earlier)</u>

1. State's FY 2009 MOE Deficit = $5 million

2. FY 2008: overall State budget cuts = 10%
   VR program budget cuts = 5%

3. FY 2009: overall State budget cuts = 10%
   VR program budget cuts = 15%

4. Average overall State budget cut for 08 and 09 = 10%
   Average VR program budget cut for 08 and 09 = 10%

5. Full waiver granted because the average cut to the VR program over two years was equal to the overall statewide budget cuts.

Comparison of Past RSA approach to MOE Waivers with New Approach with Same Facts

1. State's FY 2009 MOE Deficit = $5 million
2. FY 2008: overall State budget cuts = 10%
   VR program budget cuts = 5%
3. FY 2009: overall State budget cuts =10%
   VR program budget cuts =15%

Past Approach: $2.1 million MOE penalty/2.9 million MOE waiver

New Approach: $0 MOE penalty/ full $5 million waiver

New RSA Approach Two-Year Average VR Program Budget Cuts Greater than Two-Year Average Overall State Budget Cuts

- If the two year average of the percentage of VR program cuts is more than two year average of the percentage of Statewide budget cuts, then:

$$\text{MOE penalty} = \frac{(\text{\% VR program cuts} - \text{\% of State budget cuts})}{\text{\% of the Statewide budget cuts}} \times \text{MOE Deficit}$$

Example of New RSA Approach: Average VR Program Budget Cuts Greater than State Budget Cuts

Example 3

1. State A's FY 2009 MOE Deficit = $5 million

2. FY 2008: overall State budget cuts = 10%
   VR program budget cuts = 5%

3. FY 2009: overall State budget cuts = 10%
   VR program budget cuts = 20%

4. Average overall State budget cut for 08 and 09 = 10%
   Average VR program budget cut for 08 and 09 = 12.5%

Example of New RSA Approach: Average VR Program Budget Cuts Greater than State Budget Cuts (cont'd)

$$\text{MOE penalty} = \frac{\%\text{ VR program cuts } - \%\text{ of State budget cuts}}{\%\text{ of the Statewide budget cuts}} \times \text{MOE Deficit}$$

$$= \frac{12.5\% - 10\%}{10\%} \times \$5\text{ million}$$

$$= \frac{2.5\%}{10\%} \times \$5\text{ million}$$

$$= 25\% \times \$5\text{ million}$$

MOE penalty = $1.25 million

MOE waiver = MOE deficit – MOE penalty
= $5 million - $1.25 million
= 3.75 million

Process for Requesting a MOE Waiver

- RSA-PD-92-06

- A request for a waiver must be submitted in writing to the Commissioner of RSA, along with supporting documentation.

- The request should specify the amount of required non-Federal expenditures that the State wishes to have waived and should include an explanation of the reasons for the request.

Process for Requesting a MOE Waiver (cont'd)

- A waiver request ordinarily should be submitted as soon as it has become evident that a major natural disaster, serious economic downturn, or other exceptional or uncontrollable circumstance, has occurred that will make it necessary to reduce general expenditures, including rehabilitation services, or as soon as a State determines it has been unable to meet its MOE level because one-time capital expenditures had created a higher than normal required MOE level.

Process for Requesting a MOE Waiver (cont'd)

- A MOE waiver request should be submitted on the basis of actual reduced non-Federal expenditures, not on the basis of projected reduced non-Federal expenditures.
- In no case should a waiver request be submitted later than six months following the close of the fiscal year for which the waiver is being requested.