UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION

June 16, 2022

Sent Electronically - Confirmation of Receipt Requested

Drazen Elez
Administrator
Bureau of Vocational Rehabilitation
Department of Employment, Training and Rehabilitation
751 Basque Way
Carson City, NV 89706

Dear Drazen Elez:

This letter is to formally notify your agency of the Nevada Bureau of Vocational Rehabilitation's (BVR) failure to satisfy the maintenance of effort (MOE) requirement under the State Vocational Rehabilitation (VR) Services program during Federal fiscal year (FFY) 2020 and, as a result, of the need to reduce your VR program grant for FFY 2023 by $349,731 the amount of the MOE shortfall. The Rehabilitation Services Administration (RSA) calculated the MOE shortfall based on information contained in the Federal Financial Reports (SF-425) BVR submitted for the VR program.

Section 111(a)(2)(B) of the Rehabilitation Act of 1973, as amended (Rehabilitation Act),[1] requires the amount payable to a State for an FFY to be reduced by the amount by which expenditures from non-Federal sources under the VR program for any previous FFY are less than the total of such expenditures for the FFY two years prior to that previous fiscal year. This means that a State's VR expenditures from non-Federal sources in FFY 2020 must equal or exceed its VR expenditures from non-Federal sources in FFY 2018. If a State has a lessor amount of VR expenditures from non-Federal sources in FFY 2020 than it had in FFY 2018, the Secretary must reduce the State's allotment in a subsequent fiscal year by the deficit amount.

The attached MOE analysis table includes the data reported by your agency on which RSA determines the amount of the State's MOE deficit for FFY 2020. If your agency had FFY 2018 VR expenditures from non-Federal sources, which included expenditures incurred in FFY 2018 but were reported on the FFY 2017 SF-425 for that fiscal year's carryover year rather than on the SF-425s for the FFY 2018 VR award, these non-Federal expenditures incurred in FFY 2018, less the non-Federal share of expenditures for construction of facilities for community rehabilitation program (CRP) purposes and the establishment of facilities for CRP purposes (34 C.F.R. § 361.62(b)), as reported by the agency's SF-425 for FFY 2018, established the MOE level for FFY 2020 pursuant to Section 111(a)(2)(B) of the Rehabilitation Act and 34 C.F.R. § 361.62(a). Similarly, if your agency reported an increase in non-Federal expenditures after the

[1] 29 U.S.C. § 731(a)(2)B)

fourth quarter of your FFY 2019 VR award, that increase has been included in your agency's FFY 2020 MOE level because those expenditures were incurred in FFY 2020 and not in FFY 2019; that increase is reflected in the attached MOE analysis table.

As stated above, Federal law requires RSA to reduce the State's VR grant by the amount of the MOE deficit. Therefore, the FFY 2023 Grant Award Notification, when issued, will be reduced by $349,731.

Revisions to the SF-425:

If you believe that the FFY 2020 SF-425 data included in the table are inaccurate, please send supporting documentation regarding the revised increases or decreases resulting from previously reported SF-425 non-Federal expenditures to the RSA Financial Management Specialist for your State. If RSA agrees with the proposed revision(s), all accounting adjustments must be completed in the State's accounting system prior to any changes being made to the SF-425 reports. Revisions to the SF-425s must be completed *no later than July 15, 2022*. If approved, the revised SF-425(s) could result in a restoration of all or part of the amount by which RSA will reduce your FFY 2023 allotment. *The final SF-425 report for the FFY 2018 grant award has already been received and the award is closed or in a closeout status; therefore, the FFY 2018 SF-425 reports are not available for revision*.

Request for MOE Waiver:

The Rehabilitation Act and its implementing regulations allow a State to request a waiver or modification of its MOE requirement if it fails to meet that requirement because of certain specific circumstances. Section 111(a)(2)(C) of the Rehabilitation Act[2] authorizes the Secretary to grant a waiver or modification of the MOE shortfall when such an action would be "an equitable response to exceptional or uncontrollable circumstances affecting the State." Federal regulations at 34 C.F.R. § 361.62(d)(1)(i) authorize the Secretary to grant a waiver or modification of the MOE deficit when a State has experienced a major natural disaster or a serious economic downturn that causes significant unanticipated expenditures or reductions in revenue that result in a general reduction of programs in the State. In addition, the Secretary may grant a waiver or modification of the MOE deficit if the shortfall was caused by the State making substantial expenditures in the VR program for long-term purposes due to the one-time costs associated with the construction of a facility for CRP purposes, the establishment of a facility for a CRP, or for the acquisition of equipment (34 C.F.R. § 361.62(d)(1)(ii)). Finally, the Secretary may grant a waiver or modification of the MOE requirement for construction, as set forth at 34 C.F.R. § 361.62(b), if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster, that result in significant destruction of existing facilities and require the State to

[2] 29 U.S.C. § 731(a)(2)(C)

make substantial expenditures for the construction or establishment of a facility for CRP purposes in order to provide VR services (34 C.F.R. § 361.62(d)(2)).

If you wish to request a waiver of all or part of the MOE deficit based on one of the circumstances described above, please submit your request, and supporting documentation as described below, *by July 30, 2022*. It is important that you submit the request by this date so RSA can make a timely determination. States should submit the request to RSA at –

U.S. Department of Education, Rehabilitation Services Administration
Attention: David Steele
400 Maryland Avenue, SW
Potomac Center Plaza, Room 5157
Washington, DC 20202-2800
david.steele@ed.gov
Telephone: (202) 245-6520

Supporting Documentation for Waiver Requests:

The waiver request must include sufficient supporting documentation explaining the circumstances that contributed to the MOE deficit and stating how those circumstances were unanticipated or out of the State's control. As stated above, only the circumstances described at 34 C.F.R. § 361.62(d) may provide the basis for a MOE waiver or modification. It is important that you complete the supporting documentation and present it in a logical and succinct format so that RSA can decide on the merits of the request in a reasonable amount of time. Failure to provide adequate, timely, or proper justification may result in the denial of your request.

Submit Information in Federal Fiscal Year Figures:

We realize that many States operate on a State fiscal year (SFY) basis that differs from the FFY. However, we will make part of the determination on whether and how much of a waiver or modification to grant on an FFY basis. Therefore, where requested, convert budget information in the supporting documentation to FFY figures (see below).

For MOE Deficits Caused by Economic Downturn in the State:

In deciding whether to grant a MOE waiver or modification on the basis of a serious economic downturn, RSA will use the information submitted by the State, as outlined below, to determine whether the economic downturn caused a reduction in revenues in the State and how that reduction compares to the amount of reductions in State appropriations to the State and to the VR program. RSA recognizes that a State’s MOE deficit may be caused by multiple years of economic downturn that compound the situation with each passing year. If you are requesting a waiver based on a serious economic downturn that caused a reduction in revenues that resulted in a general reduction of programs in the State, regardless of whether the economic downturn affected a single or multiyear period, please submit the following information as part of your supporting documentation:

1. The following data elements must be submitted by SFY for fiscal years 2018, 2019, and 2020 and must be certified in writing by the State Budget Office:

    A. Total State revenues (identify General Fund revenues and, if applicable, other State revenues).
    B. Total State appropriations (identify State appropriations from the General Fund and, if applicable, other State appropriations). This data element reflects the total amount of funds appropriated by the State Legislature to operate all programs in the State, not the amount of expenditures incurred by the State.

2. The following data elements must be submitted by FFYs 2018, 2019, and 2020 and must be certified in writing by the State Budget Office:

    A. Total State appropriations (identify State appropriations from the General Fund and, if applicable, other State appropriations). This data element is the same as 1.B above, except this time we are asking that the information be provided as an FFY data element, rather than an SFY data element.
    B. State funds to support the Title I VR program:
        - State appropriation for the Title I VR program; and
        - Other State funds (e.g., fringe benefits) allocated to the Title I VR program, if calculated separately from the total funds appropriated to the VR program above.

3. The following data elements must be submitted for FFYs 2018, 2019, and 2020 – non-Federal expenditures for the Title I VR program. The expenditure amounts should reflect the non-Federal share of expenditures reported to RSA in the latest Federal Financial Reports submitted for the relevant years. These data are provided by the VR agency and do not need to be certified in writing by the State Budget Office.

    A. Total non-Federal expenditures for the VR program. Please include as part of this data element all non-Federal expenditures incurred by the VR program regardless of the source of those funds (e.g., State appropriations, third-party cooperative arrangements, or interagency transfers) or the purpose of those expenditures. This figure should be consistent with data submitted to RSA in the agency's most recent SF-425.
    B. Total non-Federal expenditures for the construction or establishment of a facility for a CRP, if any are included in the reporting of total non-Federal expenditures above. These non-Federal expenditures would be those that meet the definitions at 34 C.F.R. § 361.5(c)(10) and 34 C.F.R. § 361.5(c)(17).

For MOE Deficits Caused by One-Time Expenditures:

If you are requesting a waiver or modification because the MOE deficit was caused by substantial one-time expenditures under the VR program for long-term purposes, i.e., 1) the construction of a facility for CRP purposes; 2) the establishment of a facility for a CRP in order to provide VR services; or 3) the acquisition of equipment, please provide sufficient supporting documentation that outlines the purchases made, the need for the purchases, the benefit to the VR program, and the cost of those purchases.

If you have any questions regarding this matter, please contact David Steele, Fiscal Unit Chief, as outlined above.

Sincerely,

CAROL DOBAK

Digitally signed by CAROL DOBAK
Date: 2022.06.16 13:12:33 -04'00'

Carol L. Dobak
Acting Deputy Commissioner,
delegated the authority to perform the functions and duties of the Commissioner

MOE Analysis for FFY 2020
(Comparison of FFYs 2018 and 2020 non-Federal expenditures)

Table 1: 2020 MOE Penalty Summary

State	Agency	2018 MOE Base	2020 MOE Base	2020 Agency MOE Deficit
Nevada	Combined	5,015,582	4,665,851	(349,731)

Table 2: Increases after 4th Quarter in FFYs 2017 & 2019

Federal Fiscal Year	4th Quarter Non-Federal Share	Final Non-Federal Share	Increase in Non-Federal Share *(To be added to subsequent FFY)*	4th Quarter Non-Federal Share of Construction or Establishment	Final Non-Federal Share of Construction or Establishment	Increase in Non-Federal Share of Construction or Establishment *(To be subtracted in subsequent FFY)*	Total to be Applied to Subsequent Fiscal Year
2017	4,343,782	4,343,782	0	0	0	0	0
2019	5,332,608	5,332,608	0	0	0	0	0

Table 3: FFY MOE 2018 & 2020

Federal Fiscal Year	Lesser of FFY Non-Federal Share (4th Quarter or Final)	4th Quarter Non-Federal Share of Construction or Establishment	Prior FFY Increase in Non-Federal Share (See above)	Prior FFY Increase in Non-Federal Share of Construction or Establishment (See above)	FFY MOE Base Level
2018	5,015,582	0	0	0	5,015,582
2020	4,665,851	0	0	0	4,665,851