Prior Approval Resource Tool

This prior approval resource tool will help State Vocational Rehabilitation Agencies understand the prior approval requirements and assist in considerations for policy implementation and internal controls.

Prior Approval Requirements

General Requirements

The requirements for State agencies to seek written prior approval for costs are within the Uniform Administrative Requirements, the Cost Principles, and Audit requirements in 2 C.F.R. part 200 (Uniform Guidance). Activities that require written prior approval (prior approval) are listed in 2 C.F.R. § 200.407. The requirement for State agencies to obtain prior approval is applicable to all Federal awards administered by the Rehabilitation Services Administration (RSA), including the State Vocational Rehabilitation Services (VR), State Independent Living Services for Older Individuals Who are Blind (IL OIB), State Supported Employment Services (Supported Employment), and Client Assistance Program (CAP) awards. The prior approval requirements apply to certain activities and expenditures, regardless of the funds used to pay for that activity or expenditure. This means that State agencies must obtain prior approval for activities and/or expenditures requiring a request, regardless of whether the agency plans to use Federal funds, non-Federal funds for match purposes, program income earned under the VR or IL OIB programs, or any combination of these three sources of funds. Prior approval must be sought and received before the State agency incurs obligations or expends funds on costs subject to prior approval.

It is important to note that only the obligation and purchase of equipment has a monetary threshold in which prior approval is required. All other items requiring prior approval have no cost threshold.

Prior Approval Requirements - Applicable in the VR, Supported Employment, and IL OIB programs

The list of items that require prior written approval can be found at 2 C.F.R. § 200.407.

Cost sharing or Matching – 2 C.F.R. § 200.306(c)

"Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate."

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If the VR agency receives unrecovered indirect costs in the FFY of appropriation, and in which the costs were initially obligated, and determined the costs constitute allowable funds as part of the match requirement (34 C.F.R. § 361.60(b) for the VR program, 34 C.F.R. § 363.23 for the Supported Employment program, or 34 C.F.R. § 367.31(b) and 367.63 in the IL OIB program), the agency must have a process to determine the allowability of the costs, and must seek written prior approval from RSA prior to the assignment of those costs toward the non-Federal share.

Real Property – 2 C.F.R. § 200.311(c)

"Disposition. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity."

Real property is defined in 2 C.F.R. § 200.1 as, *"land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment."*

If the VR agency has property that was purchased or renovated with Federal funds, non-Federal funds used for match purposes, or program income, this regulation is applicable. Disposition instructions must be obtained when/if the property is no longer needed, regardless of when initially purchased.

Equipment – 2 C.F.R. § 200.313(a)(2): and Equipment and Other Capital Expenditures – 2 C.F.R. § 200.439(b)

2 C.F.R. § 200.313 - *"Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency."*

Additionally, equipment is defined in 2 C.F.R. § 200.1 as *"tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000."*

2 C.F.R. § 200.439(b) - *"The following rules of allowability must apply to equipment and other capital expenditures:*

- *(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.*

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- *(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See § 200.436, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465.*
- *(4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the Federal awarding agency.*
- *(5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.*
- *(6) Cost of equipment disposal. If the non-Federal entity is instructed by the Federal awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.*
- *(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436."*

Acquisition cost is defined in 2 C.F.R. § 200.1 as *"the cost of the asset, including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation, may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices."*

State VR agencies **MUST** know what State requirements apply to the acquisition cost (e.g., taxes, freight, etc.) to identify whether the acquisition cost exceeds the capitalization threshold. It is important to know the State requirements for acquisition threshold to be able to determine the following:

- The State's acquisition threshold per category of expenditure. For example, some States have higher capitalization thresholds for information technology (IT).
- Whether State policy includes ancillary charges (2 C.F.R. § 200.1 - Acquisition cost) such as taxes and freight in the acquisition cost and circumstances when such costs may or may not be included.

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- Whether or not prior approval is required because the acquisition costs meet orexceed the lessor of the State's threshold or $5,000.
- If the acquisition threshold includes a determination of the number of items purchased.

Generally, prior approval is required for the obligation of funds for administrative equipment or equipment used in a Randolph-Sheppard vending facility.

OSERS-FAQ-Prior Approval for OSEP and RSA Formula Grants issued October 29, 2019, provided additional flexibilities related to the use of the streamlined prior approval submission remains in effect for certain cost categories (i.e., equipment for administrative use and Randolph-Sheppard vending facilities, and direct administrative and clerical staff salaries). The FAQ stated it was issued on an "interim" basis to grantees and was non-binding and imposed no new legal requirements. This means that, at any time, the Department of Education could publish the guidance for public comment and may make additional changes as a result. In the interim, the FAQ granted prior approval for –

- Equipment purchased in the VR program that are necessary for eligible individuals with disabilities, consistent with their IPEs, to achieve employment outcomes.

Prior approval for such costs is still required per 2 C.F.R. § 200.407, but as indicated in the FAQ, grantees no longer need to submit requests for equipment purchased in the VR program necessary for eligible individuals with disabilities, consistent with their IPEs, to achieve employment outcomes as RSA granted approval for such costs via the FAQ.

For equipment and capital expenditure costs that are not directly associated with a participant's individualized plan for employment (IPE), prior written approval from RSA is still required prior to the obligation. The streamlined process is permitted for general purpose equipment for administrative purposes and Randolph-Sheppard vending facilities, described in the FAQ.

State agencies must submit itemized, project-specific prior approval requests for equipment purchases for the –

- Establishment, development, or improvement of a facility for a public or nonprofitcommunity rehabilitation program (CRP) at 34 C.F.R. § 361.5(c)(17);
- Construction of a facility for a public or nonprofit CRP at 34 C.F.R. § 361.5(c)(10);
- Construction or renovation/alteration of a State facility or American Job Center for purposes allocable to the VR program; and

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- Renovation or alteration of facilities in connection with the acquisition of a BEP vending facility or the installation of BEP equipment in accordance with section103(b)(1) of the Rehabilitation Act.

VR agencies must ensure policies and procedures are clear to ensure the agency does not encumber funds for equipment or capital expenditures before prior approval from RSA is sought and received.

Direct Costs – 2 C.F.R. § 200.413(c)

The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

(1) Administrative or clerical services are integral to a project or activity;
(2) Individuals involved can be specifically identified with the project or activity;
(3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and
(4) The costs are not also recovered as indirect costs.

If the VR agency charges salaries for staff that are administrative in nature and typically covered under an indirect rate or cost allocation plan, the costs must be approved, whether charged indirectly or directly. This is applicable if salaries are paid, in whole or part, directly with Federal funds for positions such as the VR Director, Assistant Director, and other agency personnel that perform administrative functions which could include program evaluators, program planners, HR, IT, budgeting and fiscal personnel, and staff development. Clerical personnel who support the above administrative staff functions are also included. The individuals who comprise administrative staff could also include program management staff located in headquarters or in the field such as regional, district and field office supervisors (except that portion or their time assigned to a caseload). Direct charged administrative or clerical services must be integral to a project or activity – as opposed to necessary to the overall operation of the agency and assignable in part to programs.

In some instances, it may be hard for the VR agency to determine direct cost allocation, in which case the salary should be paid with indirect expenditures. For example, the VR Director is responsible for administering all programs the VR agency administers. This includes, if applicable, the VR program, Supported Employment programs, IL OIB program, other non-RSA administered programs, etc. If the Director spends time with a Supervisor that oversees staff working with the State Independent Living Program (SILS), the VR program, and the IL OIB program, the direct allocation of time for the VR Director would be difficult to determine. As a reminder, direct costs must be consistent with 2 C.F.R. § 200.430(i)(C), in which "*the non-Federal entity's system of internal*

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controls includes processes to review after-the-fact interim charges made to a Federal award if based on budget estimates. All necessary adjustments must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated."

Submission of prior approval to direct charge administrative and clerical salaries is not a permissible way to circumvent costs approved through an indirect cost rate or cost allocation plan. Additionally, costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs (2 C.F.R. § 200.413(a)).

Compensation Personnel Services, Standards for Documentation of Personnel Expenses – 2 C.F.R. § 200.430(i)(5)

"For states, local governments, and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, 'rolling' time studies, case counts, or other quantifiable measures of work performed."

If the VR agency is not using a system to account for personnel time in accordance with 2 C.F.R. § 200.430(i)(1), and/or has a separate system even if it has been in place for years, prior approval must be obtained, or the agency must be able to demonstrate prior approval was obtained.

Compensation Personnel Services, Fringe Benefits (severance payments) – 2 C.F.R. § 200.431(i)(2)(ii)

"(1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (a) law, (b) employer-employee agreement, (c) established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part, or (d) circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

> *(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.*

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(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose arenot allowable. However, the Federal Government recognizes its responsibility to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

Due to the complexities of severance pay and State requirements, VR agencies should contact their RSA Financial Management Specialist with specific questions regarding employee buyouts or mass severance as soon as possible.

Entertainment Costs – 2 C.F.R. § 200.438

"Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency."

When considering if entertainment costs are allowable with a programmatic purpose, the VR agency should also review Attachment 3 in the GAN related to conference costs to ensure consistency with requirements and the terms and conditions of the grant award.

Fines, Penalties, Damages, and Other Settlements – 2 C.F.R. § 200.441

"Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations ***are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency****. See also § 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements."*

Due to the unique circumstances regarding a request for prior approval for fines,penalties, damages or other settlements, VR agencies should contact their RSAFinancial Management Specialist with specific questions.

Fundraising and investment management costs – 2 C.F.R. § 200.442

"*(a) Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in § 200.460.*

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(d) Both allowable and unallowable fund-raising and investment activities must be allocated as an appropriate share of indirect costs under the conditions described in § 200.413."

If such costs are considered by the VR agency, the agency should contact their RSA Financial Management Specialist to analyze the specific facts of the individual circumstances surrounding the States' prior approval request to determine possible allowable costs.

Goods or Services for Personal Use – 2 C.F.R. § 200.445(b)

"Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs must be approved in advance by a Federal awarding agency."

Costs associated with an employee of the VR agency are applicable. Such costs may be incurred for relocation costs associated with a new hire, moving costs for an employee to move to the central office area, or costs to move or relocate due to a natural disaster, etc.

If the VR agency pays relocation costs associated with a new hire, the requirements in 2 C.F.R. § 200.464 - Relocation Costs of Employees are applicable as well. Relocation cost regulations state, *"(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section."*

If prior approval was received from RSA, the VR agency must be aware of circumstances in which repayment of Federal funds may be required. The Uniform Administrative Requirements in 2 C.F.R. § 200.464(c) also specifies, *"When relocation costs incurred incident to the recruitment of new employees have been charged to a Federal award and the employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity must refund or credit the Federal Government for its share of the cost."*

If the employee resigns within 12 months of hire, the Federal funds used to pay for the relocation must be returned to RSA. Additionally, if State funds were used to pay for such expenses and were included toward the agency non-Federal share, those funds must be reallocated as State funds not used for match because they were no longer used to support the VR program.

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Insurance and indemnification – 2 C.F.R. § 200.447

"*(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:*

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal awarding agency has specifically required or approved such costs."

If such costs are considered by the VR agency, the agency should contact their RSA Fiscal Representative to analyze the specific facts of the individual circumstances surrounding the States' prior approval request to determine possible allowable costs.

Memberships, Subscriptions, and Professional Activity Costs – 2 C.F.R. § 200.454(c)

"Costs of membership in any civic or community organization are allowable with prior approval by the Federal awarding agency or pass-through entity."

This would not be applicable to CSAVR/NCSAB or other similar organizations as those fall within the definition of 2 C.F.R. § 200.454(a) and (b) as business, professional, or technical organizations. When paying for fees or dues toward civic or community organizations that participate in lobbying, typically included as part of the established rate for membership, VR agencies are responsible for ensuring dues paid with Federal funds are not contributing toward lobbying activities and must determine an appropriate allocation of costs based upon allowability (2 C.F.R. § 200.403).

Examples may include charities, nonprofit organizations, and other entities such as Rotary Club, Lions Club, volunteer fire/rescue groups, local city councils or chambers of commerce, etc. These costs must be reasonable and necessary for the achievement of VR program outcomes.

Organization Costs – 2 C.F.R. § 200.455

"Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the Federal awarding agency."

When the VR agency, DSA, or Governor's Office is actively determining if a reorganization of the organizational chart, or agency personnel reporting assignment is necessary, prior approval must be sought if an attorney, consultant, or accountant is a part of the discussions. This is required regardless of the employer of such staff. The most common examples of when prior approval is necessary for this regulation is related to the restructuring of the DSU or DSA, including strictly fiscal responsibility

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restructuring from the DSU to the DSA or between DSUs, and in instances where the DSU may change DSAs. If at any time during the reorganization process, the VR agency intends to hold such discussions with an attorney, consultant, or accountant (whether hired via a contract or is an internal staff member of the DSA or DSU), the VR agency must receive written prior approval from RSA before any staff time or fees paid in relation to such conversations are obligated or incurred.

It is important to note that this requirement does not specify that prior approval is required only for direct costs. For organization costs, prior approval is required whether paid for with direct Federal funds, State funds used to satisfy match requirements, program income, or indirect funds included in the indirect cost rate or cost allocation plan.

Participant Support Costs – 2 C.F.R. § 200.456

"Participant support costs as defined in § 200.1 are allowable with the prior approval of the Federal awarding agency."

Participant support costs are defined in 2 C.F.R. § 200.1 as, *"direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects."* A conference is stated in 2 C.F.R. § 200.432 as *"a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award."*

The regulations state that costs for travel allowances, etc., are required in conjunction with a conference or training project. If the VR agency reimburses individuals with Federal funds, or with State funds used to satisfy the non-Federal share, the regulations state that prior approval is required. However, OSERS/RSA issued a document clarifying prior approval requirements for their awards, OSERS-FAQ-Prior Approval for OSEP and RSA Formula Grants, issued October 29.

The FAQ stated it was issued on an "interim" basis to grantees and was non-binding and imposed no new legal requirements. Meaning, at any time, the Department of Education could publish the guidance for public comment and make additional changes as a result. In the interim, the FAQ granted prior approval for –

- Participant support costs for meetings (sub- and related subcommittee meetings) required by the Rehabilitation Act, including State Rehabilitation Councils and independent commissions under Sections 101(a)(21) and 105(c) of the Rehabilitation Act;

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- Participant support costs incurred during the provision of services to individualswith disabilities including those incurred for the provisions of VR services underIPEs for individuals with disabilities eligible for VR services; and
- Any other participant support costs that are $5,000 or less for all of the costs associated with one individual participant or trainee for one conference training orevent.

Prior approval for such costs is still required per 2 C.F.R. § 200.407, but as indicated in the FAQ, until published guidance states otherwise or the FAQ is rescinded, grantees no longer need to submit requests for the above bulleted items as RSA granted approval for such costs via the FAQ.

If any participant support costs that are not mandated by the Rehabilitation Act, or not directly related to the provision of services in 34 C.F.R § 361.48(b) and are above the $5,000 threshold, the VR agency will need to submit a request for prior approval for theparticipant support costs to RSA. All other participant support costs paid for by the VR agency that are $5,000 or less per individual per conference are granted approval via the FAQ.

Pre-award Costs – 2 C.F.R. § 200.458

"*Pre-award costs are those incurred prior to the effective date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. If charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency or pass-through entity.*"

The Federal VR award is a formula grant award issued every Federal fiscal year (FFY), contingent on the VR agency meeting Federal requirements (including an approved VR Services Portion of the Unified or Combined State Plan). Therefore, pre-award startup costs are not incurred from one FFY to another. However, if pre-award costs are considered by the VR agency, the agency should contact their RSA Financial Management Specialist to discuss the specific facts surrounding the States' need for pre-award costs and whether such costs could be allowable if the State were to submit the required prior approval request.

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Rearrangement and Reconversion Costs – 2 C.F.R. § 200.462(a)

"Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the Federal awarding agency or pass-through entity."

Costs incurred for ordinary and normal rearrangement and alterations of facilities are allowable as indirect costs. Such costs may include, but are not limited to, rearrangement of cubicle walls, desk installation, alterations to office areas, etc. If an agency determines that such expenditures are allowable as direct costs and intends to pay using Federal VR, Supported Employment, IL OIB funds, or State funds used to meet the non-Federal share, the agency must receive prior approval from RSA. This allows the VR agency to ensure all costs benefiting multiple Federal awards are proportional to all benefiting cost objectives, in accordance with 2 C.F.R. § 200.405 - Allocable Costs and § 200.413 - Direct Costs.

These costs do not include capital expenditures that materially increase the value of the facilities or the useful life.

As a reminder, costs incurred in the restoration or rehabilitation of the non-Federal entity's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable (2 C.F.R. § 200.462(b)).

Selling and Marketing Costs – 2 C.F.R. § 200.467

"Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under § 200.421) are unallowable, except as direct costs, with prior approval by the Federal awarding agency when necessary for the performance of the Federal award."

Since VR agencies administer multiple Federal awards and State programs, if agencies have marketing and selling costs that do not fall under requirements in 2 C.F.R. § 200.421 - Advertising and Public Relations, such costs would otherwise be allowable if included in the agency's indirect cost rate or cost allocation plan.

Advertising and Public Relations costs in 2 C.F.R. § 200.421 are detailed for allowable costs for advertising and public relations in (b) and (d), unallowable costs (e) and details unallowable costs in relation to meetings and conventions with displays and exhibits, etc.

Section 111(a)(1) of the Rehabilitation Act makes clear that VR funds are allocated to each State to pay for costs incurred under the VR program. 34 C.F.R. § 361.3 requires State VR agencies to use VR program funds solely for the provision of VR services and

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the administration of the VR program. VR services are those provided to individuals with disabilities (Section 103(a) of the Rehabilitation Act and 34 C.F.R. § 361.48) and to groups of individuals (Section 103(b) of the Rehabilitation Act and 34 C.F.R. § 361.49). Section 103(b)(5) of the Rehabilitation Act and 34 C.F.R. § 361.49(a)(4) permit VR agencies to provide technical assistance services to businesses who are seeking to employ individuals with disabilities. Administrative costs, for purposes of the VR program, are defined at Section 7(1) of the Rehabilitation Act and 34 C.F.R. § 361.5(c)(2). Administrative costs include costs incurred when providing information about the VR program to the public or providing technical assistance and support services to other State agencies, private non-profit organizations, and businesses and industries (except for the technical assistance to businesses described above, which are VR services and not administrative costs) (Section 7(1)(C) and (D) of the Rehabilitation Act and 34 C.F.R. § 361.5(c)(iii) and (iv)). When providing information to the public about the VR program or technical assistance (regardless of whether the technical assistance provided is a VR service or an administrative cost) and support services to other State agencies, private non-profit organizations, or businesses, State VR agencies may use VR grant funds, non-Federal funds for match purposes, or program income to pay for these expenditures under the VR program.

The provision of information about the VR program, technical assistance, and support services is separate and distinct from advertising and public relations costs governed by 2 C.F.R. § 200.421. **The provision of information about the VR program is focused on the provision of factual information about the VR program, such as the services it provides and the individuals it serves.** It is important to remember that when brochures and other information include or benefit multiple programs, the costs must be allocated to the programs accordingly.

The provision of technical assistance and support services involve providing consultative services, using the VR agency's expertise in working with individuals with disabilities, to assist other entities in working with individuals with disabilities. Public relations, on the other hand, are those activities dedicated to maintaining relations with the community (2 C.F.R. § 200.421(c)). The Uniform Guidance, 2 C.F.R. § 200.421(e)(3), makes clear that the costs of promotional items are not allowable. **Promotional items would include pens, notepads, cups, and other items with the VR agency's logo stamped on them that the agency uses to distribute to the public or businesses as a means of doing community outreach and ensuring good community relations. As such, the costs to produce these promotional items are not allowable under the VR program and, therefore, may not be paid for with VR grant funds, non-Federal funds for match purposes, or program income.**

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Taxes (including Value Added Tax) – 2 C.F.R. § 200.470

"*(a) For states, local governments and Indian tribes:*
(1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.
(2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.
(3) This provision does not restrict the authority of the Federal awarding agency to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof."
(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards. Foreign tax refunds or applicable credits under Federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the non-Federal entity relate to allowable cost, these costs must be credited to the Federal awarding agency either as costs or cash refunds. If the costs are credited back to the Federal award, the non-Federal entity may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, use the foreign government tax refund for approved activities under the Federal award with prior approval of the Federal awarding agency."

Due to the unique nature of VTA Foreign taxes, and taxes where Federal participation is unallowable or may require possible indirect cost allocation, if such costs are considered by the VR agency, the agency should contact their RSA Financial Management Specialist to analyze the specific facts of the individual circumstances surrounding the States' prior approval request to determine possible allowable costs.

Travel Costs – 2 C.F.R. § 200.475(a) and 2 C.F.R. § 200.475(c)(2)

"Notwithstanding the provisions of § 200.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award."

The requirements in 2 C.F.R. § 200.444 - General Costs of Government is defined as, (a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in § 200.475). Unallowable costs include the following:

1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe; Salaries

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and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;
2) Costs of the judicial branch of a government;
3) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not precludethe allowability of other legal activities of the Attorney General as described in
§ 200.435); and
4) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

The costs described in 2 C.F.R. § 200.444 are considered general operations and are unallowable expenditures. However, the travel costs associated with such activities may be allowable expenditures so long as the VR agency submits the costs of travel associated with such activities to RSA and receives prior written approval before the travel occurs. Typically, such costs are covered by the State in the SWCAP.

Additionally, 2 C.F.R. § 200.475(c)(2) states that *"Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the Federal awarding agency. See also § 200.432."*

VR agencies must also determine if the costs are in accordance with allowable costs in State policy or procedures prior to submitting a request to RSA.

Prior Approval Requirements - Unallowable in the VR, Supported Employment, CAP, and IL OIB programs

Program Income – 2 C.F.R. § 200.307(e)(3)

"Use of program income – cost sharing or matching: With prior approval of the Federal awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same."

VR regulations in 34 C.F.R. § 361.63(c)(4), the Supported Employment regulations in 34 C.F.R. § 363.24(b)(3), and the IL OIB regulations in 34 C.F.R. § 367.65(b)(3) all state that program income cannot be used to meet the non-Federal share requirements. If requested, the request would be denied. The Department has clarified that program income earned under its awards must be used under the Addition alternative, and the RSA grant award notification Program Income attachment (RSA-2) applicable to all three awards makes this clear. As a result, no further prior approval action is necessary by State agencies.

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Fixed Amount Subawards – 2 C.F.R. § 200.333

"With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards."

A State agency may **not** subgrant awards made under the Act, as amended by WIOA, for the VR and Supported Employment programs. The Education Department General Administrative Regulations (EDGAR) at 34 C.F.R. § 76.50(b) state: *"(b) The authorizing statute determines the extent to which a State may: (1) Use grant funds directly; and (2) Make subgrants to eligible applicants."*

This means that the authorizing statute must specifically permit subgranting in order for the subgranting of Federal funds to be permissible. Because neither the Rehabilitation Act nor the implementing program regulations for the VR and Supported Employment (or CAP and PAIR) programs specifically permit subgranting, such subgranting is not allowable. Subgranting is allowable under the IL OIB program for subrecipients to carry out part of the Federal award received. However, State agencies may not subgrant the IL OIB award as a fixed amount (as described in 2 C.F.R. §§ 200.201 and 200.333) or using the Simplified Acquisition Threshold, as agencies are still required to adhere to the administration of the program.

Prior Approval Requirements - Not applicable to the VR, Supported Employment, CAP, and IL OIB programs

Use of Grant Agreements (including fixed amount awards), Cooperative Agreements, and Contracts – 2 C.F.R. § 200.201(b)(5)

"Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the Federal awarding agency or pass-through entity."

Since the VR, Supported Employment, Client Assistance Program, and IL OIB programs are not Fixed Amount Awards (as defined in 2 C.F.R. § 200.200) this requirement is not applicable in those programs administered by RSA.

Revision of Budget and Program Plans – 2 C.F.R § 200.308

"(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process … (b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section."

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VR agencies do not submit separate budgets in the VR, Supported Employment, and IL OIB awards. Instead, agencies are required to submit a Unified or Combined State Plan that meets the requirements in section 101(a) of the Act, as amended by WIOA, and the Supported Employment State Plan Supplement (section 101(a)(22) and 606 of the Act, as amended by WIOA). Any costs or services that do not meet Federal requirements and/or are not included in the agency's Unified or Combined State Plan and/or the Supported Employment supplement are unallowable.

Exchange Rates – 2 C.F.R. § 200.440 Does Not Apply to VR

"Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project."

As the VR, Supported Employment, CAP and IL OIB awards are based upon formula data, the fluctuation in exchange rates may increase the cost of services, but no additional Federal funding is available as a result.

Policy Considerations

Agencies are required to have written policies, procedures, and internal controls for obtaining written prior approval (2 C.F.R. § 302(b)(7) and 34 C.F.R. § 361.12). It is important to remember that RSA must approve the cost, not the activity.

When writing prior approval policy and implementing procedures, agencies should consider the following questions:

1. What is the agency process to obtain prior approval for identified costs?
2. Who determines if prior approval is required? What is the agency's process to determine the applicable regulation for the request?
3. Who compiles requests with applicable information for prior approval? Who sends the request to RSA? What is the process for tracking those requests?
4. When would VR counselors need to be aware of prior approval requirements? What is their process to seek prior approval if identified?
5. What is the agency process to determine when contract costs may require prior approval? What is the process to seek prior approval if identified?
6. What are the State regulations that govern purchasing thresholds that may impact this policy and procedure? What is the State threshold for capital asset purchases (e.g., identify if it is lower or the same as the $5,000 Federal capitalization threshold)?
7. What is the agency process for fiscal staff determining whether prior approval is required for costs not tied to a purchase (for example, 2 C.F.R. § 200.306(c))?

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In such instances, what is the process to seek prior approval?

8. How does the agency determine which Federal award or Federal fiscal year (FFY) the prior approval cost will apply?
9. How are these processes similar or different for other Federal awards such as the Supported Employment and IL OIB programs? Are there separate items that may require prior approval in other Federal awards such as the IL OIB program but not the VR program? An example may include relocation (2 C.F.R. § 200.445) or rearrangement and reconversion costs (2 C.F.R. § 200.462) in which prior approval is still required, but the only benefiting cost objective is the IL-OIB program.
10. What is the agency's process to determine whether costs are allowable, allocable, necessary, and reasonable (2 C.F.R. § 200.403 - 405) for all prior approval requirements?
11. If the cost is a direct cost, what is the agency's process to determine appropriate allocability and relative benefit across each applicable cost objective (2 C.F.R. §200.405)?
12. In instances where prior approval is required for indirect costs, what is the agency's process to ensure prior approval is sought for items in the Statewide Cost Allocation Plan (SWCAP) or for costs determined at the designated State agency (DSA) level? Who is responsible to ensure prior approval is sought when required? For example, indirect costs in rates or plans are approved through the indirect cost rate by the cognizant Federal awarding agency, which may not be the Department of Education. Therefore, agencies should not seek prior approval to purchase costs directly from RSA when the cost is covered in an indirect cost rate or cost allocation plan.
13. Since prior approval is required to be obtained in writing, what is the agency's process to review or ensure written approval is on file for required costs?
14. What is the agency's process to document, maintain, and store all items in which prior approval was sought and obtained? Who is responsible for maintaining the information and who has access to it? For internal control requirements (2 C.F.R. § 200.303), what is the agency's process to monitor the documentation and approval process, and how are updates addressed when deficiencies are found?
15. What is the agency's process for addressing situations where prior approval was not obtained from RSA? Is there a tracking mechanism and remediation training for staff involved?

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Internal Control Considerations

When developing or revising policies, procedures, and internal controls for prior approval, agencies must ensure processes include more than simply having the policy. Good internal controls include processes for a State agency to evaluate and monitor its own compliance (2 C.F.R. § 200.303(c)) and take action when issues of non-compliance are identified (2 C.F.R. § 200.303(d)).

Internal Evaluation: To ensure agencies are following their State policies and agency processes applicable to prior approval, agencies must have a method to evaluate items of cost that require prior approval to determine if they sought approval following the proper process. This process may include reviewing the obligation date to ensure prior approval occurred before funds were obligated. Agencies may consider the periodic review of all items of cost (Federal, non-Federal share, or program income) that fall within prior approval and document if they sought prior approval and the requirement used to determine the type of prior approval. Additionally, agencies should review the cost allocation, if direct, to determine if the cost was allocated appropriately to all programs based upon the relative benefit received (2 C.F.R. § 200.405).

In conjunction with RSA's guidance for prior approval which allows for aggregate requests for certain items (explained in detail for applicable items in this document), consider the following information when sending requests for prior approval to RSA. Addressing these considerations may expedite the approval process and minimize additional questions.

1. The item description, cost, quantity, purpose, etc., cost justification, and/or cost allocation methodology if the cost is attributable or benefits more than one program or cost objective.
2. For requests for equipment/capital expenditures that are not permissible via the streamlined process, include the reason for obligation, all programs potentially benefiting from the equipment/capital expenditure, type of equipment, timeframe, and scope of the agreement if applicable, proposed date of obligation, and anticipated duration of usable life.
3. The applicable funding source from which the obligation will occur, for example, the Federal award number(s), non-Federal funds used for match, or program income.
4. The relevant section(s) of 2 C.F.R. part 200 for the cost.

For example, if the VR agency is considering Rearrangement and Reconversion Costs 2 C.F.R. § 200.462(a), a prior approval request to RSA may include (but is not limited to) –

- A description or justification for the required purchase;
- The cost allocation methodology used to determine indirect or direct costs to be charged, including other cost categories not borne by VR;

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- A determination that the VR agency is responsible for such costs, if the area to be rearranged is rented or leased by the agency;
- The Federal award number the cost will be assigned to (such as H126A2100xx); and
- Applicable associated costs (include citations such as 2 C.F.R. § 200.462(a), State procurement policy, lease agreement, etc.).

Remediation for Non-Compliance: If an agency determines that costs were incurred in which prior approval was not obtained, the agency must have written processes regarding correction actions that will be taken as a result. Actions taken to address noncompliance may include tracking all noncompliance instances and reviewing for trends, retraining of staff that failed to follow the procedure, and corrective actions for repeated noncompliance. Additionally, there may be instances where the VR agency determines that Federal funds were spent improperly, such as improper direct allocation of funds based upon the relative benefit received. In such instances when identification of unallowable expenditures occurs, the agency must include written processes for how it will return Federal funds to RSA.

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