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September 25, 2018

The Honorable Johnny W. Collett, Assistant Secretary
Office of Special Education and Rehabilitative Services
United States Department of Education
400 Maryland Avenue Southwest
Washington, D.C 20202-7100

Dear Mr. Secretary:

Thank you again for your time on the phone on September 18 to talk with our Executive Committee members about providing an exception to the federal prior written approval requirements for the Vocational Rehabilitation program. We are writing to respond to your request for additional background regarding the Department of Education's authority to grant such an exception and restore much-needed flexibility to state VR programs.

The Uniform Guidance provides authority for exceptions to the federal written approval requirement under several circumstances. We understand from RSA fiscal staff that the Department of Labor has exercised its discretion and issued an exception to the federal written prior approval requirements. Further, we understand that when Department officials initially considered how to implement the Uniform Guidance, a decision was made to "treat all programs the same," and issue no exceptions regardless of individual program details, risks or needs.

2 CFR 200 includes several authorities for exceptions and state flexibility. These include, but are not limited to, the following:

- 2 CFR 200, Subpart E, grants states flexibility "...the application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity..." When the Uniform Guidance was implemented and superseded the previous EDGAR exception, the implementation of the written prior approval requirement with no guidance on process has created significant changes in the way states must conduct business, despite other internal controls and audits that occur.
- CFR 200.102 allows exceptions under "unusual circumstances." We believe that the need for at-the-speed-of-business purchases to make accommodations that facilitate the hiring of VR clients, replace equipment needed for Randolph-Sheppard business operations, and accommodate the needs of VR staff, including those with disabilities, represents an unusual circumstance in government and justifies an exception.
- 200.313, Paragraph B states: "(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section." 200.313 (B) can legitimately be understood to state that Paragraph D does not apply to states, presumably because of the additional layers of protection contained in state law, policy and reviews.

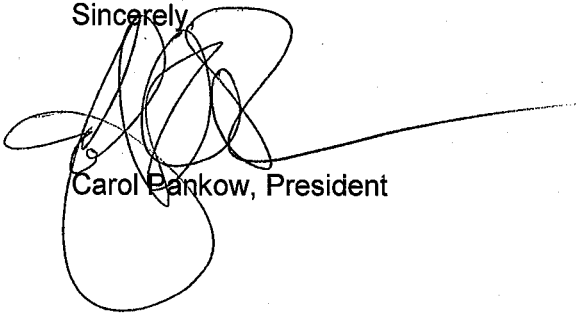
Paragraph D appears to not apply to states, meaning that states must follow state laws with respect to fixed assets.

There is also an important additional statutory justification for treating Vocational Rehabilitation grants differently from other programs with similar structure. As you know, 34 CFR 361.13(c)(2) of the Vocational Rehabilitation Act requires that certain functions be reserved solely to the Designated State Unit Director and these functions may not be delegated to any other agency or individual including the allocation and expenditure of VR funds (34 CFR 361.13(c)(1)(iv)). Obviously, this does not remove the responsibility of the states to manage their programs in accordance with the law. Nor does it relieve the Department of the obligation to monitor state programs for such compliance. However, it does create a unique authority in statute for states to make the detailed, day-to-day decisions that are currently subjected to federal written prior approval under the current policy.

Additionally, RSA did use the exception authority in the issuance of TAC 18-02 around the State Rehabilitation Council participant costs for their meeting expenses. States were instructed that we no longer needed to submit those requests anymore, so it can be done.

We know that you understand the vital customer service mission of Vocational Rehabilitation, and the need for maximum appropriate state flexibility to achieve that mission. We appreciate your consideration of our concerns and look forward to meeting with you and your staff in Long Beach in hopes of reaching successful resolution of this pressing problem.

Sincerely,

A handwritten signature in black ink, appearing to be "Carol Pankow", with a long horizontal line extending to the right.

Carol Pankow, President