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Assistant Secretary of Education Johnny Collett
Office of Special Education and Rehabilitative Services
Potomac Center Plaza
550 12th St SW Room 5106
Washington DC 20202

September 1, 2018

Dear Assistant Secretary Collett,

I am writing to follow up on my letter dated 8/14/18. After I sent the letter, I realized that words matter and my use of the word "waiver" should actually be replaced by the word "exception." I am resending my letter with this clarification. In §3474.5 *the Secretary of Education, after consultation with OMB, may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part will be permitted only in unusual circumstances.* We believe the very nature of the public vocational rehabilitation program qualifies as having unusual circumstances that would qualify for this exception.

On behalf of the National Council of State Agencies for the Blind (NCSAB) and our state agency members with an urgent plea for your assistance to address a situation that is creating a massive, time-consuming, and – most importantly - unproductive administrative workload for both Vocational Rehabilitation agencies and the Rehabilitation Services Administration: the requirement for individual federal prior written approval of expenditures that have already been evaluated by state program and fiscal staff.

While NCSAB is grateful for the streamlined approval process now available under TAC 18-02, the burden of red tape and paperwork placed on states is still extreme. With full appreciation of our joint responsibility to steward Vocational Rehabilitation resources and manage taxpayer funds responsibly, we request an exception of the prior written approval requirements found in the Uniform Guidance.

Such an exception would maintain appropriate financial safeguards; allow RSA fiscal staff to focus their time and resources on issues that represent a meaningful fiscal risk; and shift state resources from provision of detailed paperwork back to achieving their mission for blind consumers. Most of all, relief from this huge exercise in red tape will restore to states the flexibility to respond to the urgent and immediate needs of our customers as they train for or enter the workforce.

VR is expected to move at the speed of business. While TAC 18-02 and the subsequent sub-regulatory guidance of the RSA Webinars is of some benefit, many cost categories are not included in that relief. RSA has indicated that states should expect the federal prior written approval process to take at least 30 days; this could increase as

more and more states submit prior written approval requests. The federal review and approval process, which is layered on top of long-standing, appropriate state review processes, state audits and periodic federal audits, typically requires multiple back-and-forth questions and responses between federal and state staff, with documentation in escalating levels of exhaustive detail. For your information, attached to this letter are actual examples of the red tape state agencies must go through to receive federal prior written approval.

The federal prior written approval process needlessly imposes *federal* review of what constitutes appropriate purchases under the vocational rehabilitation program for *state* decision-making. Already, consumer purchases must be consistent with the Individualized Plan for Employment, state purchasing policies and regulations, and state internal controls, state accounting policies and procedures, among other safeguards. NCSAB believes that selection of assistive technology and services should be made by the person who is closest to the consumer, with the most information about that consumer's needs, without the red tape and delays associated with federal prior written approval.

The impact of these delays, and the risk that they create for VR programs nation-wide, is evident. For example, blind entrepreneurs operating a business under the Business Enterprise Program don't have 30 days to wait when their freezer goes down. Retail sales are lost forever; customers may be permanently lost; the permit to operate the site as a location for the business enterprise program may be forfeited. What food service business tolerates a loss of sales and the inability to serve customers for even one day? When a state hires new staff, consistent with the businesses served by vocational rehabilitation, it may need to order access technology equipment or make reconfiguration accommodations due to the staff person's ergonomic assessment. The costs of delay in providing job accommodations necessary to perform job duties far outweighs subjecting common employee accommodations that pose little or no risk to the federal award to federal prior written approval.

NCSAB previously requested a waiver to the federal prior written approval requirements in a letter sent December 19th to Secretary DeVos and continues to believe that any possible benefit of prior written approval is outweighed by the unreasonable burdens and costs that it imposes on the vocational rehabilitation program. We understand that the Department of Labor came to the same conclusion regarding its grantees, and has made an exception to the federal prior approval requirements for its programs. As VR and Workforce co-locate, do joint outreach, and work to develop collaborative systems to serve business, the vocational rehabilitation programs are being held to a different standard that adds delay to the process and hinders the state VR agencies ability to respond timely with its WIOA core partners.

The prior written approval exception had been in place since April 21, 1995, and it worked well for over 20 years. Over that time period, NCSAB is aware of no material monitoring or audit findings related to the prior written approval cost categories that identified significant risk to the federal award. Considering the current caveat in prior written approval emails – "...RSA may determine the costs to be unallowable at a later date..." - it appears that federal prior written approval currently provides limited assurance to state VR agencies and relies on subsequent monitoring visits. Federal written prior approval is a "solution" to a problem that did not and does not currently exist in Vocational Rehabilitation.

We believe that there is ample authority in current regulations to issue an exception again. 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..." The cancellation of the prior written approval exception previously granted to states has created significant changes in the way states must conduct business, and experience has demonstrated that the burden of federal prior written approval is much greater than initially anticipated. In addition, the "unusual circumstances" associated with purchases under the VR program make an exception appropriate under 2 CFR 200.102.

If it is not possible to grant an exception of all cost categories, then at minimum, NCSAB requests an exception for the following categories where timely responsiveness is particularly crucial to fulfilling our VR mission:

- General equipment for VR consumers;
- Randolph-Sheppard Act equipment;
- Equipment that is necessary to reasonably accommodate employees; and
- Participant costs for training conferences, State Rehabilitation Council travel and conference costs, independent commissions, and for vendor committees under the Randolph-Sheppard Act.

We understand and appreciate the concern around spending grant dollars appropriately and in alignment with fiscal requirements and safeguards. We also believe it is appropriate for us all to ask ourselves the following questions:

- 1) What is the problem that needs to be solved? How costly is the problem, and how much risk does it create?
- 2) What are the new costs and risks associated with the solution?
- 3) Do the costs and risks of the solution outweigh the costs and risks of the problem?

We believe the answer to the third question above is yes: the costs and risks of the federal prior written approval process outweigh the benefits. Indeed, TAC 18-02 itself acknowledges that "based on past experience" general purpose equipment purchases and participant support costs "represent a relatively low risk of harm to the Federal interest," and they "represent costs necessary to operate and administer the VR program or provide necessary services to consumers." As illustrated in the attached examples, federal prior written approval does require significant changes which hampers VR's flexibility to respond in a timely way to the needs of consumers, staff, WIOA partners and business customers. The burden on state and RSA staff is extreme, with little, if any, benefit to the taxpayer. The end result, at both levels of government: a distraction from VR's core mission.

NCSAB respectfully requests an exception from the federal prior written approval requirements that allows for the vocational rehabilitation program to provide seamless and timely services to our clients, vendors, and employees.

We appreciate your consideration of this request.

Sincerely,



Carol N. Pankow
NCSAB President

cc: Carol Dobak

Attachments as referenced



Illustrative Example of Federal Written Prior Approval Process: Consumer Conference

June 29: VR agency submits request to federal fiscal staff for federal written prior approval for allowable costs associated with a consumer attending a conference under the participant cost category

June 29: VR agency immediately follows up with a clarifying email with a piece of information that was left off the request

July 6: Fiscal staff responded with a request for additional information. Requests were made for a breakdown of costs per category (this was the item sent to RSA in the second email the 29th), and clarifying the dates

July 6: Fiscal staff send a second email questioning the allowability of some agenda items at the conference, depending on the actual goal in the consumer's IPE. Fiscal staff asked the Director to resubmit and certify they had addressed the concerns

July 6: VR agency sends email to internal staff relaying the RSA concerns and asks for further information

July 8: VR agency staff send the Director an email asking for clarification on RSA's email

July 9: VR agency sends email to RSA asking them for clarification on their July 6th email regarding allowability

July 9: VR agency Director sends internal staff an email informing them an email was sent to RSA for clarification

July 9: Fiscal staff responded with a request for a cost breakdown (which was provided on 6/29)

July 9: VR agency responded to the request stating it was already sent on June 29th and resent the email

July 9: Fiscal staff responded stating they had not seen the email

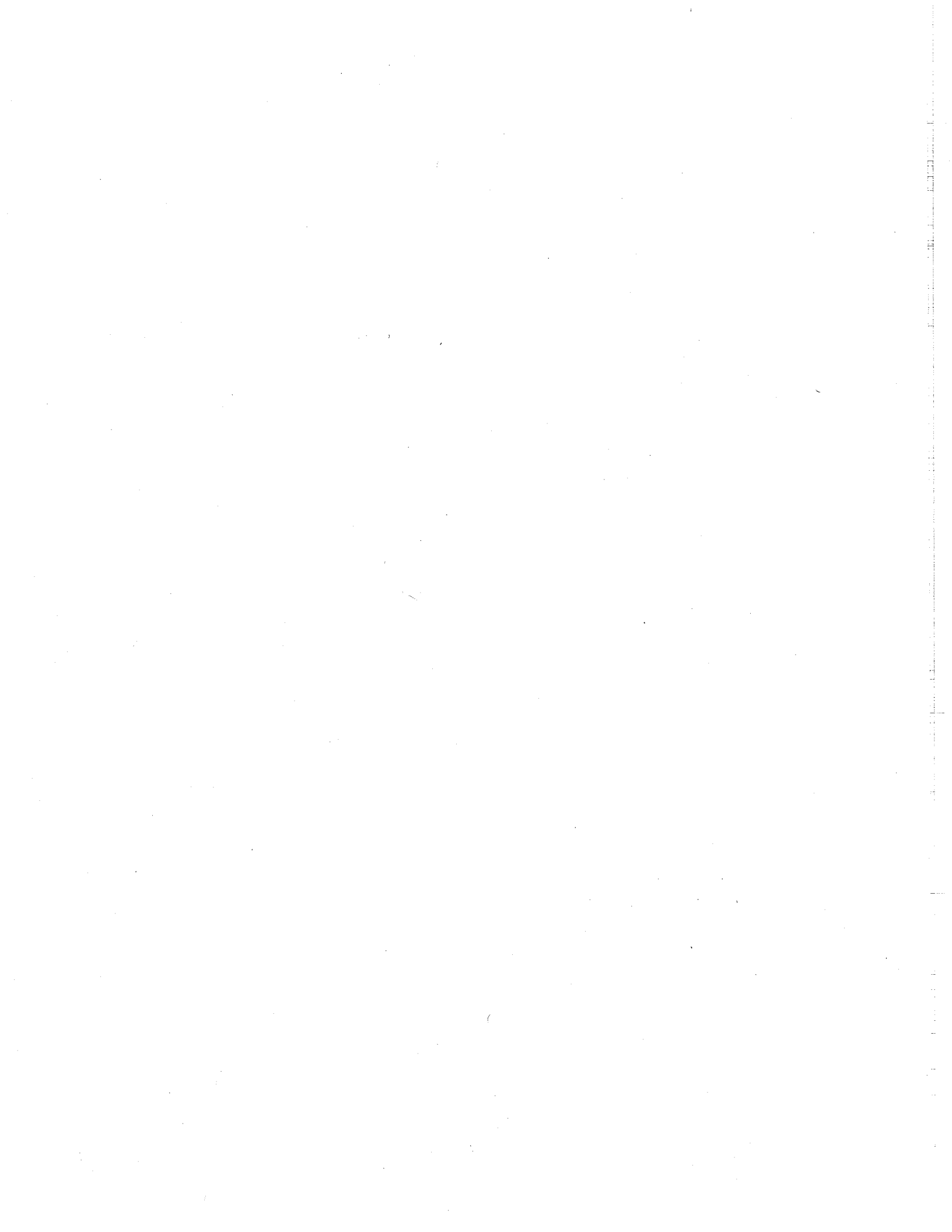
July 11: VR agency submits a revised request per RSA's request

July 11: Fiscal staff responded with an additional clarifying question

July 11: VR agency responded with an answer to the clarifying question

July 17: VR agency requests information regarding the status of the request as the event is on July 30th

July 17: VR agency receives federal written prior approval of the request



Illustrative Example of Federal Written Prior Approval Process: Updated Security System

December 13: Following an extensive state bid process pursuant to the state procurement rules and review of subsequent proposals, VR agency submits request to federal fiscal staff for federal written prior approval for allowable costs associated with procurement of an updated training center security system.

January 2: Fiscal staff respond with request for additional information. Agency staff responsible for the prior approval request are out of the office on vacation; luckily, response is copied to additional staff who are in the office and able to respond.

January 2: Agency staff assemble significant additional information, drawing from the agency's extensive internal review of the project.

January 2: Fiscal staff grant federal prior written approval.

January-April: Agency staff track actual costs against approved project budget. In April, a change order is issued that falls within the state's tolerances for contracts and procurement rules. However, the change order is outside the scope of the request that has received federal prior written approval.

April 27: Agency submits an updated request for federal prior written approval.

As of August 13, 2018: no response has been received by the agency since April 27. Per RSA's guidance that "if the details surrounding this prior approval request change, please inform RSA to determine if there is a need to resubmit this request," RSA's lack of response is interpreted as no need for additional approval.



Illustrative Example of Federal Written Prior Approval Process: WIOA System Changes

April 25: VR agency meets with WIOA partners regarding 911 and PIRL changes to the system. Budget discussed; VR agency needs to seek federal written prior approval before agreeing to pay any part of it.

April 30: VR agency submits request to federal fiscal staff for federal written prior approval to cover updates and maintenance of the RSA 911 in the case management system. Request is submitted under the category "equipment and other capital expenditures," as it includes information technology systems, software, and firmware.

May 7: VR agency holds phone conversation with RSA fiscal staff, which has many questions regarding the request. VR agency is asked to resubmit the request under "Direct Salaries." Fiscal staff would like to understand how IT arrived at the amount of hours requested for each position, what each position is paid per hour, and any other facts used in making the determinations. For example, what were the costs of the 911 for the past year, and the estimated savings for this year?

May 10: VR agency receives expanded information from IT and sends new request for federal written prior approval, submitted under the category Direct Salaries, to RSA, with a new budget report attached.

May 15: VR agency receives email from RSA requesting a copy of the current approved cost allocation plan or indirect cost rate.

May 22: VR agency receives the agreement signed off on by DOL, and submits to RSA

May 22: VR agency receives email back from RSA fiscal staff stating RSA needs all the supporting documentation that was used to determine the rate

May 22: VR agency emails VR agency fiscal staff and state fiscal staff requesting the supporting documentation

May 24: VR agency receives the supporting documentation and submits to RSA

June 1: VR agency receives an email from RSA with an attached spreadsheet to be filled out for the request for IT costs. Number of positions required as being directly assignable to the award is also requested; original submission included total hours, but now a breakdown of the total number of individuals under each position and the assignable FTE is required

June 1: VR agency responds asking if we have to use the spreadsheet. Was told no, but it would help streamline the process

June 1: VR agency sends the information to IT, along with the requested spreadsheet

June 4: IT responds saying it is the same information they already submitted; fills out on spreadsheet

June 5: VR agency submits the form to RSA

June 21: RSA issues federal written prior approval for the expenditures

