

GUIDANCE

Funds for Title I, Part B of the Rehabilitation Act of 1973, as amended

Made Available Under

The American Recovery and Reinvestment Act of 2009



U.S. Department of Education
Office of Special Education and Rehabilitative Services
Rehabilitation Services Administration

Purpose of the Guidance

The purpose of this guidance is to provide comprehensive information on the Recovery funds made available to the Vocational State Grants program, authorized under Title I of the Rehabilitation Act of 1973, as amended. The guidance provides the U.S. Department of Education's interpretation of various statutory provisions and does not impose any requirements beyond those included in the American Recovery and Reinvestment Act of 2009 and other applicable laws and regulations. In addition, it does not create or confer any rights for or on any person.

The Department will provide additional or updated guidance as necessary. If you are interested in commenting on this guidance, please send your comments to RSARecoveryActComments@ed.gov.

**Funds for Title I, Part B of the
Rehabilitation Act of 1973, as amended
Made Available Under
The American Recovery and Reinvestment Act of 2009 (ARRA) (P.L. 111-5)**

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Introduction

The American Recovery and Reinvestment Act of 2009 (ARRA) appropriates significant new funding for the Vocational Rehabilitation (VR) State Grants program, authorized under Title I of the Rehabilitation Act of 1973, as amended (Rehabilitation Act). The VR State Grants program provides grants to states to help individuals with disabilities, especially those individuals with the most significant disabilities, prepare for, obtain, and maintain employment.

The ARRA provides an unprecedented opportunity for states and VR agencies to implement innovative strategies to improve employment outcomes for individuals with disabilities. Under the ARRA, \$540 million is provided for the VR State Grants program. Information about each state's formula allocation is available at:

<http://www.ed.gov/about/overview/budget/statetables/recovery.html>. This website also provides information about the State Fiscal Stabilization Fund (SFSF) under the ARRA, which is separate from the VR ARRA funds described in this document.

A. Timing and Eligibility

A-1. What programs funded under the Rehabilitation Act will receive ARRA funds?

ARRA funds are available for the VR State Grants program authorized under Title I, Part B of the Rehabilitation Act and for the Independent Living (IL) programs authorized under Title VII, Chapter 1, Part B (State IL), Part C (Centers for Independent Living) and Chapter 2 (IL Services for Older Individuals Who Are Blind). Only questions pertaining to the VR State Grants program are addressed in this document. Separate Questions and Answers documents for the Independent Living programs are available at:

<http://www.ed.gov/recovery>.

A-2. Will the American Indian Vocational Rehabilitation Services (AIVRS) programs receive VR ARRA funds?

No. The VR ARRA funds were appropriated for "states to carry out the Vocational Rehabilitation Services program under part B of title I" of the Rehabilitation Act. The AIVRS program is authorized under Title I, Part C of the Rehabilitation Act; therefore, the AIVRS program will not receive funding under the ARRA.

However, the VR regulations at 34 CFR 361.30 require each State VR agency to provide VR services to American Indians with disabilities living in the state to the same extent that it provides VR services to other populations of individuals in the state. Furthermore, 34 CFR 361.24(c) requires each State VR agency to enter into formal cooperative agreements with AIVRS grantees in the state that describe the strategies for collaboration and coordination of VR services to American Indians with disabilities. Given these requirements, RSA anticipates that the expenditure of VR ARRA funds will be used to benefit American Indians with disabilities.

A-3. Will the Client Assistance Program (CAP) receive VR ARRA funds?

No. The ARRA appropriates funds specifically to "states to carry out the Vocational Rehabilitation Services program under part B of title I" of the Rehabilitation Act. In addition, Congress provided in the ARRA Conference Report that the \$540 million "is available for Vocational Rehabilitation State Grants." Section 100(b)(2) of the Rehabilitation Act is explicit that the term "grants to states under part B" does not refer to grants to the CAPs under section 112 of the Rehabilitation Act. Although the CAPs receive grants under part B of title I, they do not receive funds to carry out the VR State Grants program and, therefore, will not receive ARRA funds.

A-4. How and when will VR ARRA funds be allocated by the Department of Education (Department)?

The Department awarded 50 percent of the VR ARRA funds to states on April 1, 2009. The other 50 percent will be awarded by September 30, 2009. These awards will be in addition to

the regular fiscal year (FY) 2009 VR awards. Together, these grant awards will constitute a state's total FY 2009 VR State Grants allocation.

A-5. What must a state do to receive VR ARRA funds?

A state does not need to submit a new or amended VR State Plan to receive the first 50 percent of the VR ARRA funds because these funds will be made available to each state based on the state's eligibility established for FY 2009 VR funds and the provision in of the certification required by section 1607 of the ARRA. The assurances in the state's FY 2009 State Plan will apply to these ARRA funds, as well as the requirements of the ARRA. In order to receive the remaining funds, your state will need to submit, for review and approval by the Department, additional information that addresses how the State will meet the accountability and reporting requirements in section 1512 of the ARRA. The second half of the awards will be made by September 30, 2009 upon approval of the State's recordkeeping and reporting submission. The Department will issue specific guidance for preparing and submitting this recordkeeping and reporting information and other guidance governing ARRA funds in the coming weeks.

A-6. What is the period of availability for the VR ARRA funds?

State VR agencies may begin obligating VR ARRA funds immediately. All VR ARRA funds must be obligated by September 30, 2011. Costs are allowable beginning February 17, 2009, the effective date of the grants. A chart indicating when an obligation occurs for various types of activities is provided in the Education Department Administrative Regulations (EDGAR) at 34 C.F.R. 76.707.

A-7. Will the VR ARRA funds be awarded to states separately from the regular FY 2009 VR State Grants awards?

Yes. States will receive separate grant awards for the VR ARRA and the regular FY 2009 VR State Grants funds.

B. Match and Indirect Costs

B-1. Are states required to provide the same 21.3% non-Federal matching funds required under the VR State Grants program to obtain VR ARRA funds?

No. The ARRA waives the matching requirements for the VR ARRA funds. However, it does not waive the requirements under this program to match the regular grant funds. Therefore, a state still must provide the requisite non-Federal funds, as provided in section 7(14) of the Rehabilitation Act, to match its FY 2009 VR grant award received through the program's regular annual appropriation.

B-2. Can states count State Fiscal Stabilization Funds or VR ARRA funds as non-Federal funds for meeting the match and maintenance of effort (MOE) requirements for the VR State Grants program?

No. A state may not count State Fiscal Stabilization funds or VR ARRA funds as non-Federal funds for purposes of meeting the MOE requirement for the VR State Grants program or the match that the state is required to make for the regular FY 2009 VR grant award.

B-3. How might the ARRA funding affect indirect cost recoveries by grantees?

In order to obtain indirect cost recoveries, grantees are allowed to apply their currently negotiated indirect cost rate to expenditures incurred under the ARRA. The negotiated indirect cost rate for the current fiscal year is based on actual cost information from a prior fiscal year. Therefore, applying the currently negotiated indirect cost rate to the increased funding under ARRA (which was not considered in the rate calculation) could result in an over-recovery of indirect costs in the current period. Such an over-recovery will be adjusted in a future fiscal year, thereby reducing indirect cost recoveries during that future period. In order to avoid a future compounding effect of less program dollars and reduced indirect costs, we recommend grantees closely monitor the potential impact of the ARRA on their indirect cost recoveries and consider making appropriate adjustments during the current periods. Such adjustments will lessen the dollar impact in future years and allow for stability in future budgets. Adjustments to indirect cost recoveries should first be discussed with the cognizant Federal agency.

C. Waivers

C-1. Does the ARRA provide any additional authority for the Secretary to grant waivers for state MOE requirements under the Rehabilitation Act?

No. The Secretary does not have any additional authority, beyond the authority that already exists in section 111(a)(2)(C) of the Rehabilitation Act, to grant waivers for state MOE requirements under the Rehabilitation Act.

C-2. Under what circumstances can the Secretary waive the state MOE requirements?

Section 111(a)(2)(C) of the Rehabilitation Act grants the Secretary authority to waive a state's MOE requirement, in whole or in part, based on a determination that a waiver is necessary to permit the state to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn that causes significant unanticipated expenditures or reductions in revenue that result in a general reduction in programs within a state.

C-3. What must states do to obtain a waiver under section 111(a)(2)(C) of the Rehabilitation Act?

If a state determines that it will not be able to satisfy the state's MOE requirement under section 111(a)(2)(B) of the Rehabilitation Act and wants to request a waiver or modification, it must submit a written request and supporting documentation justifying the request to the Secretary. The request should specify the amount of required non-Federal expenditures that the state wishes to have waived or modified.

The state should submit the waiver or modification request with supporting documentation justifying the request as soon as it determines that it does not expect to be able to meet the MOE requirement. States that are considering submitting a waiver request under section 111(a)(2)(C) of the Rehabilitation Act are encouraged to review previous guidance developed by the Secretary for the purpose of granting MOE waivers to state VR Agencies at: <http://www.ed.gov/policy/speced/guid/ras/tac-02-02.doc>

D. Authorized Uses of VR ARRA Funds

D-1. What provisions of the Education Department General Administrative Regulations (EDGAR) and the General Education Provisions Act (GEPA) apply to use of the VR ARRA funds?

All provisions of EDGAR and GEPA, as well as those in the Rehabilitation Act and the VR program regulations, that currently apply to VR State Grants funds apply to the VR ARRA funds.

D-2. How can VR ARRA funds be used?

VR ARRA funds can be used for activities that are allowed under the Rehabilitation Act, current VR program regulations, EDGAR, and the cost principles set forth in OMB Circular A-87. Additional guidance on specific issues will be developed as questions are submitted to the RSA Recovery Comments mailbox. The link to this mailbox can be found at the end of this document.

D-3. Can State VR agencies use VR ARRA funds to benefit vending facilities established under the Randolph-Sheppard (R-S) program?

Yes. State VR agencies may use VR ARRA funds for any allowable expenditure under the VR program. Section 103(b)(1) of the Rehabilitation Act and 34 CFR 361.49(a)(5) specifically authorize state VR agencies to expend Title I VR funds for management and supervision services, acquisition of vending facilities, initial stocks and supplies, and initial operating expenses of those vending facilities. Therefore, state VR agencies also may expend VR ARRA funds for these purposes.

D-4. Does RSA have any suggestions on how state VR agencies should use the VR ARRA funds?

The VR ARRA funds constitute a large one-time increment in VR State grant funding that offers state agencies a unique opportunity to improve employment outcomes for individuals with disabilities, especially those with the most significant disabilities. State VR agencies are encouraged to consider serving individuals on waiting lists in agencies currently using an order of selection; increasing services to eligible consumers; expanding services to traditionally underserved and unserved populations, including students with disabilities transitioning from school to the workplace; and increasing the capacity of agencies to improve the state VR program.

D-5: May VR ARRA funds be used for construction or alteration of facilities?

The Rehabilitation Act allows for expenditure of VR program funds for construction for community rehabilitation program purposes; therefore, VR ARRA funds may be used for this purpose as well. However, pursuant to 34 CFR 361.61, no more than 10 percent of a state's allotment under the VR program may be spent on construction. While 34 CFR 361.60(a)(2) requires state VR agencies to provide a 50 percent match for construction activities done with regular VR grant funds, the ARRA waives the matching requirements for VR ARRA funds. States must comply with all relevant requirements pertaining to construction set forth in the ARRA, Rehabilitation Act, VR program regulations and EDGAR, as well as the terms and conditions attached to the state's grant award notification.

Additionally, if a state uses VR ARRA funds for construction, it must comply with specific requirements relating to the use of American iron, steel and manufactured goods used in the project (ARRA section 1605), as well as the wage rate provisions of ARRA section 1606. Also, ARRA section 1604 prohibits the use of any ARRA funds, including VR ARRA funds, for any casino, or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D-6. What additional rules apply to using VR ARRA funds for construction or alteration of facilities?

Under OMB Circular A-87 (2 CFR Part 225), the following general criteria must be met in order for a cost to be allowable under any Federal award. The cost must--

- a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
- b. Be allocable to Federal awards under the provisions of OMB Circular A-87 (2 CFR Part 225).
- c. Be authorized or not prohibited under state or local laws or regulations.
- d. Conform to any limitations or exclusions set forth in OMB Circular A-87, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.

- e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
- f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- g. Except as otherwise provided for in OMB Circular A-87, be determined in accordance with generally accepted accounting principles.
- h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
- i. Be the net of all applicable credits.
- j. Be adequately documented.

D-7. Can a State VR agency use VR ARRA funds to pay for internships for its consumers as a necessary service to facilitate permanent employment for those individuals? (added July 9, 2009)

Under Section 103(a) of the *Rehabilitation Act* and 34 CFR 361.48, a VR service is any VR service described in an individualized plan for employment (IPE) “necessary” to assist an individual with a disability to achieve an employment outcome. Both the statute and implementing regulations provide a broad, although not exhaustive, list of VR services, including training. Thus, a State VR agency could determine that a paid internship is “necessary” as a VR service in order for an individual to achieve an employment outcome. For example, a VR agency could determine that the paid internship is necessary to train the individual on how to perform a particular job skill or to learn about the culture of day-to-day employment if that individual has never held long-term employment. The paid internship would be a VR service under the Title I VR program and would be an allowable expenditure with VR ARRA funds. However, the VR agency must make this determination on a case-by-case basis and should document the determination in the individual’s IPE and case file. For federal reporting purposes, State VR agencies should report paid internships, when provided as a VR service, as “on-the-job training.”

D-8. If a State VR agency decides to provide a paid internship as a VR service for a consumer with VR ARRA funds, should it do so as a reimbursement to the employer or as a direct payment to the individual? (added July 9, 2009)

Both Section 103(a) of the *Rehabilitation Act* and 34 CFR 361.48 of the VR regulations authorize “goods or services” necessary to assist an individual to achieve an employment outcome. Generally, the VR agency purchases goods or services that benefit the consumer rather than make direct payments to the individual. For example, when a VR agency pays for a student to attend college as a training service, funds are paid to the college, not the student. To be consistent with the scope of services outlined in the *Rehabilitation Act* and regulations and the established practice of the VR program, any paid internships should be handled as reimbursement to employers. In addition, State VR agencies should consult with their Department of Labor to ensure compliance with wage and hour laws and other relevant employment laws prior to initiating paid internships for their consumers.

E. Transparency, Accountability, and Reporting

E-1. Are states required to track VR ARRA funds separately from VR regular funds?

Yes. ARRA requires that recipients of funds made available under that Act separately account for, and report on, how those funds are spent. The Department has assigned a new CFDA number to the VR ARRA funds in order to facilitate separate accounting for the funds. Recipients will need to maintain accurate documentation of all ARRA expenditures to ensure that the data reported is accurate, complete, and reliable. States will be expected to monitor sub-recipients to help ensure data quality and the proper expenditure of ARRA funds. We expect to make further information about the ARRA reporting requirements available shortly.

E-2. Are there rules that govern the amount of VR ARRA funds that a state VR agency may draw down at any one time?

Yes. A state VR agency must have an effective system for managing the flow of funds that ensures that it is able to draw down funds as needed to pay program costs but that also minimizes the time that elapses between the transfer of the funds and their disbursement by the state VR agency, in accordance with U.S. Department of the Treasury regulations at 31 C.F.R. Part 205. (See 34 C.F.R. § 80.21(b).) The state VR agency must promptly, but at least quarterly, remit to ED interest earned on advances. (34 C.F.R. § 80.21(i)) The Department will take appropriate actions against a state VR agency that fails to comply with his requirement.

E-3. What information is a state required to include in its quarterly reports under the ARRA?

A state is required to submit reports containing the information required under section 1512(c) of the ARRA. These reports must be submitted not later than 10 days after the end of each calendar quarter. OMB is expected to issue government-wide guidance on the ARRA reporting requirements and procedures.

E-4. What are our shared responsibilities for ensuring that all funds under the ARRA are used for authorized purposes and instances of fraud, waste, and abuse are prevented?

All ARRA funds must be spent with an unprecedented level of transparency and accountability. Accordingly, recipients of ARRA funds must maintain accurate, complete, and reliable documentation of all ARRA expenditures. The law contains very stringent reporting requirements and requires that detailed information on the uses of funds be available publicly on www.recovery.gov.

States have important oversight responsibilities and must monitor grant activities to ensure compliance with all applicable Federal requirements. If a state fails to comply with requirements governing the funds, the Department may, consistent with applicable administrative procedures, take one or more enforcement actions, including withholding or

suspending, in whole or in part, funds awarded under the program, or recovering misspent funds following an audit.

The ARRA establishes the Recovery Act Accountability and Transparency Board, which is responsible for coordinating and conducting oversight of spending under the ARRA to prevent fraud, waste, and abuse. The Department's Office of Inspector General (OIG) will be conducting comprehensive audits of ARRA implementation activities. In addition, Department program offices will closely monitor these activities.

Any instances of potential fraud, waste, and abuse should be promptly reported to the OIG hotline at 1-800-MIS-USED or oig.hotline@ed.gov. Moreover, recipients are reminded that significant new whistleblower protections are provided under section 1533 of the ARRA.

In coming weeks, the Department will provide additional information on how to help prevent instances of fraud, waste, and abuse.

F. Civil Rights Obligations

F-1: Does the receipt of VR ARRA funds require recipients to comply with civil rights laws?

Yes. The receipt of Federal funds obligates recipients to comply with civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability and age. For additional information, see: <http://www.ed.gov/policy/gen/leg/recovery/notices/civil-rights.html>.

Additional Information

The Department will provide regular updates as additional information regarding the details of the VR ARRA grants become available.

If you have questions about these provisions, or ideas you would like to share about innovative ways to meet the ARRA goals, please email them to: RSARecoveryActComments@ed.gov.

While we will not be able to respond to every question, all questions will be compiled and considered as we develop further guidance and Q and A documents.