

DEPARTMENT OF EDUCATION

Intent To Repay to the State of Ohio Rehabilitation Services Commission Funds Recovered as a Result of a Preliminary Department Decision

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h (1994), the U.S. Secretary of Education intends to repay to the State of Ohio Rehabilitation Services Commission (ORSC), under a grantback arrangement, an amount equal to 75 percent of the principal amount of funds recovered by the U.S. Department of Education (Department) as a result of a preliminary departmental decision (PDD). This notice describes the ORSC's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. This notice invites comments on the proposed grantback.

DATES: We must receive your comments on or before November 5, 1999.

ADDRESSES: Address all comments about the proposed grantback to Syed M. Asghar, U.S. Department of Education, 400 Maryland Avenue, SW., room 3215, Switzer Building, Washington, DC, 20202-6132. If you prefer to send your comments through the Internet, use the following address: syed_asghar@ed.gov

FOR FURTHER INFORMATION CONTACT: Syed M. Asghar. Telephone: (202) 205-3015. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:**A. Background**

The Department has recovered \$227,400 from the ORSC for claims arising from the audit conducted by the State of Ohio under the State of Ohio Single Audit covering State fiscal year 1990 (i.e., the one-year period beginning July 1, 1989 and ending June 30, 1990).

The claims involved the ORSC's administration of the State Vocational Rehabilitation (VR) Services Program (Federal Grant H126A00052). This program is authorized by the Rehabilitation Act of 1973, as amended (Act), 29 U.S.C. 701 *et seq.* The Act

authorizes grants to assist States to meet the current and future needs of individuals with disabilities so that those individuals may prepare for and engage in gainful employment to the extent of their capabilities.

The June 24, 1993 PDD of the Regional Commissioner of Region V of the Rehabilitation Services Administration (RSA) found, in part, that the ORSC was required to refund \$227,400 to the Department because it did not use program funds appropriately during fiscal year 1990.¹ Specifically, the ORSC used program funds to satisfy a judgment entered pursuant to a settlement agreement of a lawsuit brought against the ORSC by a former employee who claimed to have been wrongfully discharged some years earlier. The ORSC's charging of \$227,400 in costs to the State Vocational Rehabilitation Services Program represented a violation of OMB Circular A-87, Attachment A, Section C(1)(a), which required that to be allowable under a grant program, costs must be necessary and reasonable. Since no services were provided by the former ORSC employee, it was determined that these costs were neither necessary nor reasonable for the VR program.

The ORSC appealed the PDD on September 30, 1993 to the U.S. Department of Education, Office of Administrative Law Judges (OALJ). In a settlement agreement between the Department and the ORSC signed on March 3, 1995, under Docket Nos. 93-76-R and 93-120-R, the parties agreed to settle all of the issues in the cases with the exception of finding #19, in 93-76-R, in the amount of \$227,400, which the parties agreed to litigate. On July 14, 1995, the OALJ ruled in favor of the Department and ordered the ORSC to repay the sum of \$227,400. On September 12, 1995, the OALJ's decision became the Final Decision of the Department.

The ORSC then appealed this decision to the circuit court. On November 14, 1996, the United States Court of Appeals for the Sixth Circuit ruled in favor of the Department by denying the petition filed by the ORSC (*State of Ohio, Rehabilitation Services Commission v. United States Department of Education*, No.95-4213, 6th Cir. 1996). As a result of this decision, the ORSC submitted payment of \$227,400 to the Department in February 1997 in full settlement of all claims arising from this audit issue.

¹ This PDD, which contained several other issues of noncompliance, requested repayment of \$883,517, and a second PDD requested repayment of \$10,798.

On March 20, 1998, the ORSC requested a grantback of \$170,550, which represents 75 percent of these recovered funds.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that, whenever the Secretary has recovered funds following a PDD with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the grantee affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback requested by the ORSC if the Secretary determines that the—

(a) Practices and procedures of the ORSC that resulted in the PDD have been corrected, and the State agency is, in all other respects, in compliance with the requirements of the applicable programs;

(b) ORSC has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the PDD; and

(c) Use of funds to be awarded under the grantback arrangement in accordance with the ORSC's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the ORSC has applied for a grantback totaling \$170,550, which is 75 percent of the principal amount of the recovered funds, and has submitted a plan for use of the grantback funds. The agency will use the funds to increase field access to the automated case management system by expanding the licensing agreement from a product license for a single server to an enterprise server license. The additional user licenses are needed to handle the increased use of the product, which occurred when the ORSC implemented a new automated case management system in June 1998. This management system allows the ORSC field counselors to directly access the statewide rehabilitation computer system from remote locations, including laptop computers. According to the ORSC, this increased system access will result in more timely information processing, increased efficiency in entering Individualized Plan for Employment (IPE) and authorization

information, and a higher level of service to the ORSC consumers.

The procedural violation, which led to the judgment against the ORSC, has been corrected. In addition, the ORSC has clarified to RSA that it now has procedures in place to prohibit the use of Federal funds to satisfy any judgment resulting from employment litigation. In the years subsequent to this finding, there have been no other occurrences of a similar nature.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the ORSC. Based upon that review, the Secretary has determined that the conditions under section 459(a) of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 459(a) of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or PDDs.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Ohio Rehabilitation Services Commission under a grantback

arrangement. The grantback award would be in the amount of \$170,550, which is 75 percent—the maximum percentage authorized by statute—of the principal amount recovered as a result of the PDD.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The ORSC agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(a) The funds awarded under the grantback must be spent in accordance with—

(1) All applicable statutory and regulatory requirements;

(2) The plan that the ORSC submitted and any amendments to the plan that are approved in advance by the Secretary; and

(3) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(b) All funds received under the grantback arrangement must be obligated by September 30, 2000, in accordance with section 459(c) of GEPA.

(c) The ORSC must, not later than January 1, 2001, submit a report to the Secretary that—

(1) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and any amendments that have been approved in advance by the Secretary; and

(2) Describes the results and effectiveness of the project for which the funds were spent.

(d) Separate accounting records must be maintained documenting the

expenditures of funds awarded under the grantback arrangement.

(e) Before funds will be repaid pursuant to this notice, the ORSC must repay to the Department any debts that become overdue or enter into a repayment agreement for those debts.

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(Catalog of Federal Domestic Assistance Number 84.126 The State Vocational Rehabilitation Services Program)

Dated: October 1, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

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