

I. Purpose

This directive provides internal U.S. Department of Education (ED) guidance for reviewing and processing requests from eligible recipients for the return of funds (commonly called “grantbacks”) recovered by ED as a result of certain findings as set forth in 20 U.S.C. 1234a. It also provides guidance for ascertaining whether the grantback is expended in compliance with the statutory authority and terms of the grantback award.

II. Policy

ED’s policy guidance on grantbacks includes the following:

- A. The grantback authority is discretionary and is used, when appropriate, to provide an additional opportunity for a grant recipient to spend program funds properly through the use of funds recovered by ED as a result of certain findings and subsequently returned to the recipient.
- B. Only those recipients that currently comply with all regulatory and statutory requirements of the program under which a grantback is sought will be considered eligible for a grantback award.
- C. Only those recipients that are current in terms of payment on all debts owed to ED, including repayment and settlement agreements, will be eligible for a grantback award.
- D. Only those recipients that meet and submit a plan that meets all requirements for grantbacks will be considered eligible for a grantback award.
- E. Settlement and repayment agreements will not commit ED to awarding a grantback or providing technical assistance not generally available to other recipients, but may include terms for a waiver by the recipient of its option to apply for a grantback.
- F. Grantbacks will not be considered for funds recovered due to excess cash findings, investment interest earned on grant funds, accrued interest on audit debts, over-allocation of funds, or recovered funds that would not or should not have been available to the recipient in the first place for expenditure on allowable program activities.
- G. Grantbacks will not be considered if no successor program exists to serve the purpose for which the funds were originally granted.
- H. The amount of each grantback will not be set automatically at the maximum of 75 percent of repaid principal allowable under the statute, but will be determined on a case-by-case basis reflecting circumstances such as the specific program, reason for the repayment, quality or timeliness of corrective action taken, the compliance and accountability history, and plan and timing for use of the grantback.

- I. The amount of funds barred from recovery by the statute of limitations or compromised through settlement agreements will not be used as criteria for determining the amount of a grantback award.

III. Authorization

The authority to repay funds is set forth in Title 20 of the U.S. Code, Section 1234h (Section 459 of the General Education Provisions Act (GEPA)). (See [Appendix A](#).)

IV. Applicability

This directive applies to the grant programs and recipients eligible under the grantback provision in 20 U.S.C. 1234h, which applies to all recipients of Federal funds in programs administered by ED, except for programs under the Higher Education Act of 1965, as amended, and Impact Aid programs.

V. Definitions

- A. Affected Population – The population that would have benefited from the original grant and was, therefore, affected by the failure of the recipient to be in full compliance with program statutes and regulations.
- B. Applicable Program(s) – The program(s) for which funds were recovered and a grantback is being considered.
- C. Approving Official – For the purpose of this directive, it is the Principal Office's delegated official(s) with the authority to approve grantbacks (usually the Assistant Secretary).
- D. Audit History – The events surrounding the particular audit claim(s), which resulted in the recovery of funds by ED.
- E. Authorized Official – For the purpose of this directive, it is the recipient's official designated as responsible for administering the applicable program grants or cooperative agreements.
- F. Current Compliance – Assurance and appropriate documentation of corrective actions from the recipient demonstrating that the violation resulting in the disallowance has been corrected and that the recipient is, and will continue to be, in total compliance with all statutory and regulatory requirements of the applicable program under which a grantback is being considered.
- G. Compliance History – Documentation of the recipient's record of complying with statutory and regulatory requirements of ED programs and grantback provisions.

H. Final Action

1. Final agency action for a determination received by an eligible recipient is the last applicable event of the following that occurs in ED:
 - a. The issuance of a program determination letter or other official notification by the appropriate official in ED notifying a recipient to repay funds to ED, which becomes final 60 days after the recipient receives the determination letter. If no determination letter or other official notification is issued by ED, then the action becomes final on the date that repayment from the recipient is made;
 - b. A decision by the Office of Administrative Law Judges (OALJ), which becomes final 60 days after the recipient receives the OALJ decision, unless the Secretary takes action so that it is not final;
 - c. A decision by the Secretary affirming, modifying or setting aside the OALJ decision, which becomes final when the recipient receives the Secretary's written notice. Such action, if any, by the Secretary must be taken within the 60-day period after the recipient receives the OALJ decision; or
 - d. An executed settlement and/or repayment agreement between ED and the recipient while a case is under administrative review before the OALJ pursuant to 20 U.S.C. 1234a.
2. Final judicial action is the final action taken by the U.S. Court of Appeals for the circuit in which the recipient is located that occurs as the result of a recipient filing a petition for review of the final agency action, a final judicial action by the U.S. Supreme Court (20 U.S.C. 1234g), or an executed settlement and/or repayment agreement while a case is under judicial review, whichever occurs last.
3. The final State agency action for an audit determination or other finding made by the State of a subrecipient is the last applicable event of the following that occurs in the State or ED:
 - a. The issuance of an official notification to the subrecipient of an audit determination by the appropriate official in the State;
 - b. The date of the written ruling by the State in response to the subrecipient's appeal of the final audit determination;
 - c. Following the subrecipient's appeal of the State's written ruling to ED, under Section 432 of GEPA, the date of the Secretary's action upholding the State's audit determination;
 - d. Final action of a court from a judicial appeal of a decision of the Secretary upholding a State's audit determination; or

- e. An executed settlement and/or repayment agreement while a case is under administrative or judicial review.
- I. Grantback – The return of recovered funds to a recipient under 20 U.S.C. 1234h.
- J. Grantback Deposit Fund – A non-budgetary account established to hold the grant funds recovered by ED as a result of certain findings until returned either to the recipient as a grantback or to the U.S. Treasury.
- K. Notice – For purposes of this directive, refers to the Federal Register notice.
- L. Period of Availability – The period of time during which funds for a grantback to a recipient are available for expenditure by the recipient. The period of availability may not be more than three Federal fiscal years (FYs) following the close of the Federal fiscal year in which the final agency or judicial action occurred, whichever is later. Example: If the latest final action occurred on November 25, 2002 (FY 2003), the period of availability would end September 30, 2006.
- M. Plan for Use of Funds – The provisions set forth by the recipient for the use of grantback funds pursuant to the requirements of the applicable programs, and to the extent possible, for the benefit of the affected population.
- N. Principal Office – A major organizational unit of ED, usually headed by an Assistant Secretary, that has been delegated responsibility for administering certain activities and/or programs.
- O. Program Office – An office within a Principal Office with delegated responsibility for administering a program or group of programs.
- P. Recipient (or Subrecipient) – An individual or entity that received a grant, subgrant, or cooperative agreement under an applicable program. The term “recipient” should be read to include subrecipients, if applicable.

VI. Responsibilities

- A. The Principal Office (PO)
 - 1. Approving Official:
 - a. Approves or disapproves the repayment of funds (grantback) after reviewing the program office’s recommendation and supporting documentation.
 - b. If approval is granted, signs the Federal Register Notice of Intent to Award Grantback Funds (referred to as the Notice).

2. Program Office:
 - a. Monitors the agency and judicial activity associated with the recovered funds and notifies OCFO/Grants Programs and Administrative Reporting and Reconciliations Group (GPARRG) when the final action has occurred (so the period of availability for the funds recovered from the recipient can be determined).
 - b. Reviews the recipient's request for a grantback to determine eligibility and ensure that all applicable requirements are met.
 - c. If the request is being rejected, notifies the recipient and identifies the reasons for the rejection.
 - d. If approval is being recommended, processes the request including –
 - (1) analyzes the plan for use of funds,
 - (2) determines the amount of the award, and
 - (3) drafts the Notice (see illustration at [Appendix B](#)) and forwards to the Office of the General Counsel (OGC)/Division of Regulatory Services (DRS) for ED review and comments.
 - e. Notifies the Budget Service of the prospective grantback (so that the funds can be apportioned) by providing a copy of the draft Notice. An apportionment request for the use of the grantback funds must be approved **before** the Notice is published. For grantbacks of \$25,000 or more, OMB must approve the apportionment. For grantbacks under \$25,000, the ED Budget Director is authorized to approve the apportionment.

While the apportionment approval is being obtained, finalizes the Notice based on ED review and comments. Budget Service will notify the program office when the apportionment is approved. The program office then sends the Notice forward for PO approval.
 - f. Following approval of the Notice, proceeds to arrange to publish the Notice.

During the Notice publication comment period, completes the Grantback Award Intra-Agency Transfer of Funds Request (form PB-003) and sends it to Budget Service (see [Appendix C](#)).
 - g. Reviews public comments and, if necessary, recommends to appropriate ED officials whether the grantback should be modified or approved.
 - h. After the conditions of the Notice are met, takes appropriate action to execute the repayment of funds, including updating the Budget Planning System, contacts Budget Service to request the allotment, and issues the grant award.

- i. Monitors post-award compliance.

NOTE: To the extent possible, the program office actions outlined above should be accomplished in the order presented. Refer to Section VIII for more details.

B. Office of the General Counsel (OGC)

1. Reviews the Notice for legal sufficiency and provides technical assistance to program offices and ED officials.
2. Coordinates the ED clearance process through its DRS.
3. Ensures that the Notice meets applicable ED and Office of the Federal Register standards.
4. Notifies the program office of issues that must be addressed and necessary revisions based on comments received during ED clearance.
5. Transmits the approved Notice to the Office of the Federal Register for publication.

C. Budget Service, Office of the Deputy Secretary (ODS)

1. Obtains apportionment of funds.
2. Reviews and approves the Grantback Award Intra-Agency Transfer of Funds Request form.
3. Issues the advice of allotment.

D. Office of the Chief Financial Officer (OCFO)

1. Manages the collections of recovered funds in the Grantback Deposit Fund and processes the return of the recovered funds to the Treasury Department at the end of the period of availability if the funds are not awarded as grantbacks.
2. Verifies the amount of funds repaid by the recipient.
3. Verifies that the recipient is not in arrears on any debts to ED.
4. Transfers the recovered funds to be used for the grantback to the current appropriation account in which the funds will be obligated.
5. Assists program offices in processing grantback awards through the Grants Administration and Payments System (GAPS).

VII. Contents of a Grantback Request

If ED has recovered funds from a grant recipient as a result of certain findings, the recipient's authorized official may submit a request for a grantback of up to 75 percent of the principal amount repaid.

- A. A grantback request involving more than one program must separately identify the affected programs and the amount requested for each program. A Principal Office may combine Notices, if appropriate, for requests involving two or more of its program offices. If a grantback request involves more than one Principal Office, the POs must decide how to coordinate the processing of the grantback.
- B. A grantback request must include enough information to demonstrate that statutory requirements for a grantback have been met. Although ED has not required a particular form or format for the information in a grantback request, ED officials should review the request for information such as that listed below.
 1. For audits, appropriate identifying information, including the audit name, entity number, audit control number, name of the program, purchase order/award number, and Catalog of Federal Domestic Assistance number. If funds were repaid to ED as the result of State audit determinations (under the Single Audit Act or other audits or reviews), the recipient should also submit audit materials that provide the basis for a step-by-step description of how the audit determinations were resolved by the State.
 2. A request for a specific amount up to 75 percent of the principal amount of recovered funds. (NOTE: If funds were recovered from multiple programs, up to 75 percent of each program's recovered amount may be requested.)
 3. Satisfactory evidence that the recipient has satisfied its financial liability to ED through either full repayment of funds in terms of principal and interest that are due or partial repayment in accordance with a satisfactory settlement or repayment agreement. Because of statutory requirements, when repayment involves installments, grantbacks may not exceed 75 percent of the installment payments actually received to date.
 4. A sufficient description, including documentation, of corrective actions taken by the recipient as a result of the determination and, if available, reports from auditors verifying corrective actions taken.
 5. Satisfactory evidence that the recipient is, and will continue to be, in compliance.
 6. A plan that includes information such as:
 - a. An identification of any subrecipients of the grantback funds and separate plans for each subrecipient.
 - b. The date within which the grantback funds would be expended.

- c. A brief description of the recipient's current activities under the applicable program.
- d. A description of the activities to be provided with grantback funds that is specific enough to determine if the plan would ensure that funds would be used in compliance with all current statutory and regulatory program requirements including the requirement to provide equitable services to private school students, if applicable:
 - (1) The plan should demonstrate that, to the extent possible, it benefits the same population that was affected by the failure to comply or by the misuse of funds that resulted in the funds return.
 - (2) When funds have been returned as a result of misuse by a subrecipient, the plan should describe how the funds will be used by the subrecipient if the subrecipient served the affected population.
 - (3) If a time lapse or other reasons make it impossible or impractical to serve the same population affected by the original violation, the plan should justify use of funds for the benefit of the population served by or eligible for the program under which the grantback is being considered. The plan should also show that the use of the funds would achieve the purposes for which the funds were originally granted.
 - (4) The plan should show how grantback funds will be used to supplement, not supplant, activities of the program under which the grantback is being considered.
 - (5) If matching and maintenance of effort requirements were met for the original program that was subject to the return of funds, then matching and maintenance of effort will not be required separately under the grantback. However, the recipient must be in compliance with any matching or maintenance of effort requirements applicable to its current programs.
- e. An itemized budget that shows how the recipient will spend the funds on the proposed activities. Expenditure categories, including direct and indirect costs, should be justified in the proposed plan.

NOTE: If there are multiple programs involved in the grantback request, separate plans for each program must be provided.

- 7. Satisfactory evidence that students, parents, or representatives of the population that would benefit from the grantback funds were consulted.

VIII. Procedures for Reviewing and Processing Grantback Requests

- A. Determining eligibility: ED officials and, in particular, the program office should make determinations such as whether –
1. The requested grantback funds will be expended within the period of availability under 20 U.S.C. 1234h;
 2. Sufficient time remains in the period of availability for ED to complete its administrative review of the request, publish the Notice, and comply with the required comment period so that the funds may be obligated in accordance with 34 CFR Section 76.707 (which defines when an obligation is made) and accomplish effectively the purposes of the program. Normally, a grantback request should be submitted to ED in substantially approvable form no later than six months prior to commencement of the obligations for the proposed activities;
 3. The provisions described in Section VII. have been satisfied;
 4. The recipient's history of compliance with ED program requirements demonstrates adequate follow-through on all corrective actions specified in prior audits or other determinations. Matters in litigation should be considered to the extent that such matters (especially those involving the same type of violation as the original violation) raise serious concerns about the recipient's current compliance;
 5. ED has recovered from the recipient the funds for which a grantback is being requested (the PO confirms with OCFO/GPARRG);
 6. The recipient has repaid funds owed or made timely payments to ED under a settlement or repayment agreement and is not in arrears on any debts to ED; and
 7. The proposed distribution of funds to subrecipients, if applicable, is in proportion to the original amount of the misuse by each subrecipient.
- B. Notifying a recipient of a rejected grantback request: If the approving official decides to deny a grantback request, the PO should –
1. Notify the recipient of the denial, specifically identifying the reasons for the decision including the requirements that have not been met or the aspects of the grantback plan for which insufficient information was provided; and
 2. If appropriate, advise the recipient of further action that could be taken or additional information that could be submitted on a timely basis that might enable it to meet applicable requirements.

C. Processing a recipient's request: The PO –

1. Reviews and analyzes the recipient's request and plan for use of funds, including whether the proposed expenditure of funds is a reasonable, necessary, and allocable expenditure that demonstrates a significant possibility of achieving the purpose of the program and addressing the needs of the affected population. If appropriate, negotiates with the recipient changes in the plan that will enhance the quality and cost effectiveness of the grantback plan.
2. Determines the amount of the award. Up to 75 percent of the principal amount of the returned funds from each affected program may be considered for a grantback, but the approving official has the discretion to award a lesser amount. The amount requested in the plan shall be reduced for costs that are determined not to be reasonable, necessary, allowable, or allocable under the applicable statutes or regulations, including, when appropriate, the cost principles referenced by the Education Department General Administrative Regulations.
3. If approval of a grantback is being recommended, prepares a Notice (see [Appendix B](#)) that complies with ED, Office of the Federal Register and Regulatory Quality Manual standards and should include the following:
 - a. Summary – A statement of the Secretary's intent to enter into a grantback arrangement with the recipient and an invitation to comment on the proposed grantback.
 - b. Date – Deadline by which all comments must be received.
 - c. Address – The address and telephone number of a program contact person to whom comments should be directed or from whom additional information can be requested.
 - d. Supplementary information –
 - (1) Background – A concise history of the audit or determination that includes original statutory and regulatory citations and traces resolution of the audit or determination, including settlement or other resolution activity.
 - (2) Authority for Awarding a Grantback – The statutory authority and requirements for grantback awards.
 - (3) Plan for Use of Funds Awarded Under a Grantback Arrangement – A description of the activities to be provided with the grantback funds.
 - (4) The Secretary's Determination – A statement that the Secretary has reviewed the plan and determined that the statutory conditions have been met.

- (5) Notice of the Secretary's Intent to Enter into a Grantback Arrangement – A statement that specifies a comment period of 30 calendar days following publication of the Notice in the Federal Register and the specific amount to be awarded.
- (6) Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made:
 - (a) The funds must be spent in accordance with all statutory and regulatory program requirements, including matching of funds if required (see Section VII.B.6.d.(5)), the approved plan and budget and/or amendments.
 - (b) The funds must be expended within the period of availability.
 - (c) Separate accounting records must be maintained documenting the obligations and expenditures of the grantback funds.
 - (d) A report must be submitted to the program office no later than 90 calendar days after the expiration date of the approved grantback award that indicates that the funds were spent in accordance with the plan. Multi-year grantback plans must have annual reports, which must be submitted no later than 90 calendar days after the end of each appropriate annual period.
 - (e) Other terms and conditions considered by ED officials necessary to ensure proper use of grantback funds.

NOTE: The supplementary information as provided in VIII.C.3.d identifies the basic requirements for all Notices. Additional information may be included at the program office's discretion.

- e. Electronic access to the document – The websites and technological requirements necessary to access and review the Notice.
4. Submits the draft Notice to DRS for ED review and comments.

NOTE: ED review must include the Office of Inspector General, OCFO, Budget Service, and OGC program attorneys who will concur with the proposed grantback request or provide DRS with reasons for non-concurrence.

5. Provides a copy of the draft Notice to the Budget Service policy analyst, so it can be included with the apportionment request. Delay in notifying Budget Service may result in delays in receiving the funds allotment and issuing the grantback award.

Apportionment for use of the grantback funds

- (1) All grantbacks of \$25,000 or more require apportionment approval by OMB.
- (2) If a grantback is less than \$25,000, OMB apportionment approval is not required. The ED Budget Director is authorized to approve the apportionment. Budget Service will provide OMB with a copy of the plan and Notice and include the grantback on a subsequent OMB apportionment request for the affected appropriation account.

NOTE: The Notice should not be published until after the apportionment for the use of the grantback funds is approved.

6. Makes appropriate revisions to the Notice based upon ED comments submitted to DRS. If problems causing non-concurrences cannot be resolved, OGC will recommend an appropriate course of action to resolve the non-concurrence issue.
7. After receiving notification from the Budget Service that the apportionment is approved, obtains the approving official's signature on the Notice.
8. After the Notice is approved, submits the Notice to OGC/DRS for publication.
9. During the public comment period, prepares and sends the Grantback Award Intra-Agency Transfer of Funds Request form (see [Appendix C](#)) to the Budget Service policy analyst.
 - a. Budget Service verifies the accounting and funding data on the form and forwards the form to OCFO.
 - b. OCFO verifies the funds collection in the Grantback Deposit Fund, transfers the funds to the current year appropriation account in which the grantback will be obligated, completes the appropriate information on the forms and returns it to Budget Service.
10. At the end of the 30-day comment period, to the extent that ED receives any public comments on the Notice, the PO considers the comments and recommends to appropriate ED officials whether the proposed grantback should be approved, modified, or disapproved.
 - a. If approved, the PO requests the advice of allotment in order to obligate the grantback award.
 - b. If modifications are minor, the program office would make the changes and recommend approval. If modifications are substantial, publication of another Notice may be necessary. The program office should consult OGC on the appropriate course of action.

- c. If disapproved, the PO notifies the recipient of the disapproval, and identifies the reason(s) for the disapproval and further action that can be taken, if any.

- D. Issuing the grantback award: Upon receipt of the advice of allotment, following established office procedures, the grant award notification is prepared for signature, the grantback award is obligated in GAPS, and the grantback award notification is issued to the recipient.

IX. Post-Award Activity

After the award has been made, the program office holds the recipient accountable for the use of funds by means such as the following:

- A. Approving amendments: Amendments that propose non-substantial changes must be submitted by the recipient and approved by the PO prior to any changes in the approved plan and budget. Any request for additional funds or for substantial changes in the plan must be submitted as a separate grantback request, and the total amount of the original grantback and the additional funds, if any, may not exceed 75 percent of the principal amount of recovered funds.
- B. Analyzing reports: The program office records receipt of and compares annual and final grantback reports from the recipient with the approved plan and budget. Significant differences in amounts obligated or spent per category or changes not covered by amendments are questioned in writing. The program office may request more frequent reports for a specific grantback if necessary. A report is not accepted unless it shows that the funds were spent in accordance with the approved plan and budget. If funds have not been spent in accordance with the approved plan and budget, funds may need to be recovered. In those cases, the program office should contact OGC (see section IX.C.4 below).
- C. Monitoring: To the extent possible, the program office monitors grantback awards as follows:
 1. During on-site reviews of a recipient that has a current grantback, reviews grantback expenditures to ensure that funds are being used in accordance with the approved plan and budget and the current statutory and regulatory program requirements.
 2. Requests State monitors and A-133 auditors to include grantbacks as a part of their program reviews.
 3. Reviews recipient's compliance with programs and grantback terms and conditions using telephonic, written, video conferencing, and/or other methods.
 4. Takes action when a recipient fails to meet accountability requirements. If the program office demonstrates that the recipient has failed to comply substantially with the approved plan for the use of funds or otherwise failed to comply with program requirements, it takes appropriate enforcement action, such as recovery of funds and termination of the grantback.

Appendix A: General Education Provisions Act, Section 459

20 U.S.C. 1234h.

Use of recovered funds.

(a) Repayment to recipient; factors considered

Whenever the Secretary recovers funds paid to a recipient under a grant or cooperative agreement made under an applicable program because the recipient made an expenditure of funds that was not allowable, or otherwise failed to discharge its responsibility to account properly for funds, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the recipient affected by that action an amount not to exceed 75 percent of the recovered funds if the Secretary determines that -

(1) the practices or procedures of the recipient that resulted in the violation of law have been corrected, and that the recipient is in all other respects in compliance with the requirements of that program, provided that the recipient was notified of any noncompliance with such requirements and given a reasonable period of time to remedy such noncompliance;

(2) the recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and

(3) the use of those funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

(b) Terms and conditions of repayment

Any payments by the Secretary under this section shall be subject to such other terms and conditions as the Secretary considers necessary to accomplish the purposes of the affected programs, including -

(1) the submission of periodic reports on the use of funds provided under this section; and

(2) consultation by the recipient with students, parents, or representatives of the population that will benefit from the payments.

(c) Availability of funds

Notwithstanding any other provisions of law, the funds made available under this section shall remain available for expenditure for a period of time deemed reasonable by the Secretary, but in no case to exceed more than three fiscal years following the later of -

(1) the fiscal year in which final agency action under section 1234a(e) of this title is taken; or

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(2) if such recipient files a petition for judicial review, the fiscal year in which final judicial action under section 1234g of this title is taken.

(d) Publication in Federal Register of notice of intent to enter into repayment arrangement

At least 30 days prior to entering into an arrangement under this section, the Secretary shall publish in the Federal Register a notice of intent to enter into such an arrangement and the terms and conditions under which payments will be made. Interested persons shall have an opportunity for at least 30 days to submit comments to the Secretary regarding the proposed arrangement.

Appendix B: Notice of Intent to Award Grantback Funds

Note: This document is an illustration of a Notice of Intent to Award Grantback Funds as prepared for publication in the Federal Register.

4000-01-P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education;

Intent to Repay to the State of XXXX Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: 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), the Secretary of Education (Secretary) intends to repay to the State of XXXX Department of Education (MDE), the State educational agency (SEA), an amount equal to 75 percent of the principal amount of funds returned to the U.S. Department of Education (Department) as the result of final audit determinations. The Department's recovery of funds followed an audit disallowance issued by the Office of Elementary and Secondary Education under Chapter 1 of Title I of the Elementary and Secondary Education Act (ESEA) for the period July 1, 1991 through June 30, 1992. The MDE returned \$14,476 to the Department in settlement of the 1992 audit exception. This notice describes the MDE's plan for use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before October 4, 2001.

ADDRESSES: All written comments should be addressed to Dr. Joseph F. Johnson, Jr., Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., FOB-6, Room 3W220, Washington, DC 20202-6132.

FOR FURTHER INFORMATION CONTACT: S. Colene Nelson, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., FOB-6, Room 3E335, Washington, DC 20202-6132. Telephone: (202) 260-0979. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339. Internet address: Colene.Nelson@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g. Braille, large print, audiotape, or computer disk) on request to the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION

A. Background

The Department has recovered \$14,476 from the MDE in settlement of a 1992 audit disallowance under Chapter 1 of Title I of the Elementary and Secondary Education Act (Chapter 1) (20 U.S.C. 2701 et seq. (1988)). Under Chapter 1, funds were awarded, through SEAs, to local educational agencies to improve the achievement of educationally deprived children attending high-poverty schools.

The auditors found that, during the year ending June 30, 1992, the salaries of two employees of the MDE's Division of Finance's grants management accounting staff were charged in full to the Chapter 1 program, but they did not spend their entire time on activities directly benefiting the Chapter 1 [[Page 46268]] program. The auditors noted that provisions in the Office of Management and Budget (OMB) Circular A-87, Attachment B, section 10(b), required the salaries and wages of employees chargeable to more than one grant program or other cost objective to be supported by appropriate time distribution records. This resulted in questioned costs of \$29,484 to Chapter 1. The Department upheld the auditors' finding and required the MDE to repay the amount of \$29,484. The MDE appealed the determination and that appeal resulted in an agreement among the parties dated March 27, 1998 that reduced the questioned costs to \$14,476. The State of XXXX has repaid this amount to the Department.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA (20 U.S.C. 1234h) provides that, whenever the Secretary has recovered program funds following a final audit determination, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that--

(1) The practices or procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) The SEA 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 audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA'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 MDE has applied for a grantback of \$10,857--75 percent of the principal amount recovered by the Department--and has submitted a plan for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Title I, Part A, of ESEA, the successor program to Chapter 1.

According to the plan, the MDE will use the grantback funds under Title I to arrange for technical assistance in early literacy strategies to staff in schools designated as priority schools or schools identified as needing improvement. Specifically, the MDE will contract with the Gorham School Department for the purpose of providing a distinguished educator to provide the following services to identified schools in the State: (1) Presentations on best practices in literacy; (2) sessions to facilitate priority school staff as they develop plans for school reform in literacy; and (3) training sessions on topics related to parent involvement. In addition, the distinguished educator will conduct sessions to assist MDE staff in developing strategies to implement the

XXXX Learning Results. The \$10,857 in grantback funds will be used to fund one-fifth of the distinguished educator's salary (\$9,500) and travel expenses for site visits (\$1,357).

D. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by the MDE. Based upon that review, the Secretary has determined that the conditions under section 459 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 may take appropriate administrative action. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

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 must publish in the Federal Register a notice of intent to do so, and the terms and conditions under which 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 MDE under a grantback arrangement. The grantback award would be in the amount of \$10,857.

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

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

(1) The funds awarded under the grantback must be spent in accordance with--

(a) All applicable statutory and regulatory requirements;

(b) The plan that the MDE submitted and any amendments to that plan that are approved in advance by the Secretary, and

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

(2) All funds received under the grantback arrangement must be obligated by September 30, 2001, in accordance with section 459(c) of GEPA and the MDE's plan.

(3) The MDE will, not later than December 31, 2001, submit a report to the Secretary that--

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

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

(4) Separate accounting records must be maintained documenting the expenditure of funds awarded under the grantback arrangement.

Electronic Access to this Document

You may review this document, as well as other Department of Education documents published in the Federal Register, in text or Portable Document Format (PDF) on the World Wide Web at the following site:

<http://www.ed.gov/legislation/FedRegister>

To use the PDF you must first have the Adobe Acrobat Reader Program with Search, which is available free at the previous site. If you have any questions about using the PDF, call the U.S. Government Printing Office, toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

(Catalog of Federal Domestic Assistance Number 84.012, Educationally Deprived Children--State Administration).

Dated: August 29, 2001.

Susan B. Neuman
Assistant Secretary for
Elementary and Secondary Education

Appendix C: Grantback Award Intra-Agency Transfer of Funds Request

(Form PB-003)

The ED prescribed Grantback Award Intra-Agency Transfer of Funds Request form is the PB-003. It is issued and maintained by the Budget Service, Budget Execution Coordination Staff. The PB-003 is used to request that grant funds previously recovered from a recipient and placed in the ED Grantback Deposit Fund be transferred from the deposit fund to the current ED appropriation account from which the grantback will be awarded. To ensure use of the most recently prescribed version of the PB-003 and instructions on completing it, the form should be retrieved at <http://edcapsrpt-b:7779/edcroot.html> (select financial forms, then the Budget Service link).