

**DEPARTMENT OF EDUCATION****Intent to Repay to the State of Ohio Rehabilitation Services Commission Funds Recovered as a Result of an Investigation**

**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 an investigation. 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 April 4, 2001.

**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 the document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:****A. Background**

The Department has recovered \$538,210 from the ORSC for overclaimed indirect costs following an investigation conducted by the Office of Inspector General (OIG) covering Federal fiscal years ending September 30, 1993 and 1994.

The claims involved the ORSC's administration of the State Vocational Rehabilitation (VR) Services Program (Federal Grants H126A930052 and H126A940052). 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.

During a review of ORSC's expenditures for fiscal years 1993 and 1994, the Office of the Chief Financial Officer (OCFO) determined that ORSC's provisional indirect cost rates for those years were greater than its final rate. On July 1, 1997, OCFO asked the OIG to quantify the actual amount of overclaimed indirect costs so that OCFO could recover them from ORSC.

OIG carried out an investigation of the indirect costs claimed by ORSC during fiscal years 1993 and 1994. The investigative report was issued on November 21, 1997. According to that report, in fiscal years 1993 and 1994, ORSC billed Federal programs using the provisional indirect cost rates that turned out to be higher than the final rates negotiated for those periods. The allowable recovery for the 2-year period, based on the final indirect cost rates, was \$13,773,251. By using provisional rates, ORSC actually billed Federal programs \$15,463,402. As a result, ORSC overclaimed indirect costs of \$1,690,151 in fiscal years 1993 and 1994, of which \$538,210 was the portion that belonged to the Department.

Based on the OIG investigation, ORSC submitted a payment of \$538,210 to the Department in August, 1999 in full settlement of the Department's claims arising from the investigation.

On September 20, 1999, the ORSC requested a grantback of \$403,650, 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 under an applicable program because the recipient made an expenditure of funds that was not allowable, 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 findings 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 misexpenditures that resulted in the investigation; 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 \$403,650, 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 for the reengineering of the ORSC Accounting System (RAS) to bring it into operating compatibility with the agency's consumer reporting system and the Ohio Central Accounting System. The project will greatly enhance the agency's ability to efficiently process and track program expenditures and eliminate the outdated overnight batch transfer of consumer and financial information between the two ORSC's internal computer systems. The project will also allow direct entry of payments into the Ohio Statewide Central Accounting System in place of the current overnight batch processing of administrative payments. The new system will be a much more responsive, functional, and integrated computer system that will bring the agency's consumer and financial systems into the same operating environment.

The procedural violation, which led to the repayment of Federal funds has been corrected by the ORSC. In addition, ORSC has clarified to the Rehabilitation Services Administration that the situation has been remedied through the Department of Education's approval of their current fixed rate structure, under which they have been operating since fiscal year 1995. There have been no audit exceptions noted against their indirect cost plans, and none are anticipated.

**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 other investigations.

#### **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 \$403,650, which is 75 percent—the maximum percentage authorized by statute—of the principal amount recovered as a result of the investigation.

#### **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, 2002, in accordance with section 459(c) of GEPA.

(c) The ORSC must, no later than January 1, 2003, 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.

#### **Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>

<http://www.ed.gov/news.html>

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

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

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

Dated: February 28, 2001.

**Andrew J. Pepin,**

*Executive Administrator for Special Education and Rehabilitative Services.*

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