

DEPARTMENT OF EDUCATION**Intent To Repay to the Connecticut Board of Education and Services for the Blind Funds Recovered as a Result of a Final Audit Determination****AGENCY:** Department of Education.**ACTION:** Notice of intent to award grantback funds.

SUMMARY: Notice is given that under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h, the U.S. Secretary of Education (Secretary) intends to repay to the State of Connecticut Board of Education and Services for the Blind (State agency), under a grantback arrangement, an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final action taken by the Department on March 17, 1993 on an audit determination. This notice describes the State agency's plans 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: All comments must be received on or before March 18, 1996.

ADDRESSES: Comments concerning the grantback should be addressed to Peg Covello, U.S. Department of Education, 600 Independence Avenue SW., Room 3223, Switzer Building, Washington, D.C. 20202-2735.

FOR FURTHER INFORMATION CONTACT: Peg Covello, Telephone: (202) 205-9357. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:**A. Background**

The Department has recovered \$168,940 (the \$159,755 disallowance plus interest) from the State of Connecticut Board of Education and Services for the Blind in response to a claim arising from an audit conducted by the Connecticut Office of Auditors of Public Accounts. The audit period was July 1, 1985 through June 30, 1987.

The claim involved the State agency's administration of the State Vocational Rehabilitation Services Program (CFDA No. 84.126), the Independent Living Services for Older Individuals Who Are Blind program (CFDA No. 84.177), and the Education of Children with Disabilities in State Operated or Supported Schools (Chapter 1

Handicapped program) (CFDA No. 84.009).

The final audit determination of the Regional Commissioner and the Assistant Secretary, which was issued on September 29, 1992, found that during the audit period the State agency had—

(a) Overexpended \$110,085 in payroll costs associated with funds under section 110 of the Rehabilitation Act of 1973, as amended (the Act), for the Federal fiscal year (FY) that ended September 30, 1986. Although State funds were available to adjust grant charges to the proper funding levels between Federal and State match accounts, the State Office of Policy and Management would not permit the charging of Federal program salaries to State budgeted appropriation accounts. As a result, the agency carried forward the \$110,085 in payroll costs and reported them as expenditures for the Federal fiscal year that ended September 30, 1987. For these Federal fiscal years, grantees were required to expend Federal funds for programs authorized by section 110 of the Act, which do not include reallocated funds, in the same Federal fiscal year for which they were appropriated by Congress. In addition, 34 CFR 76.707 requires that obligations for personal services by an employee of the State must be made when the services are performed. Because the State agency had no authority to charge salaries and wages of employees earned in one Federal fiscal year to a subsequent Federal fiscal year, the Department sought recovery of \$88,068 (the Federal 80 percent share of the \$110,085);

(b) Rolled over an unexpended and unobligated balance of \$32,687 in Independent Living Services for Older Individuals Who Are Blind program funds for the Federal fiscal year that ended September 30, 1987, into the Federal fiscal year that ended September 30, 1988, for expenditure without proper Federal authorization. The Education Department General Administrative Regulations (EDGAR), 34 CFR 75.703, states that a grantee may use grant funds only for obligations it makes during the grant period. Because the State agency expended these FY 1987 funds in FY 1988, the Department sought recovery of the \$32,687; and

(c) Charged to the Chapter 1 Handicapped program the total salary for one mobility instructor without the substantiation of time and effort reporting. Section 435(b)(5) of GEPA requires the State to use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Chapter 1 Handicapped

program funds. Moreover, section 437(a) of GEPA requires each recipient of Federal funds under any applicable program to keep records that fully disclose the amount and disposition by the recipient of those funds, the total cost of the activity for which the funds are used, the share of that cost provided from other sources, and any other records that will facilitate an effective audit. The Department sought return of those unsupported expenditures of \$39,000 within the statutory period.

The final determination sought the recovery of a total of \$159,755 from the State agency.

The State agency appealed the final determination to the Department's Office of Administrative Law Judges (OALJ) (Application of the State of Connecticut: Docket No. 92-120-R) on November 9, 1992, 10 days after expiration of the 30-day appeal limit. In an Initial Decision issued January 29, 1993, the OALJ dismissed the application because of failure to file the Application for Review on time. On March 17, 1993 the Secretary of Education affirmed the Initial Decision. On March 9, 1995 the State agency made the final repayment for a total recovery, with interest, of \$168,940.

The Connecticut Board of Education and Services for the Blind has submitted a request for a grantback of \$119,816 (75 percent of the \$159,755 recovered by the Department of Education). In its request the State agency provided documentation of the actions taken to correct the practices that resulted in the final audit determination. In October 1994, the Department conducted a comprehensive on-site State Agency Financial Administrative Review (SAFAR) of the State agency. The review confirmed that all of the audit recommendations had been implemented and that the agency was in full compliance with the applicable laws and regulations.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that, whenever the Secretary has recovered program funds following a final audit determination 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 State agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that the—

(1) Practices or procedures of the State agency that resulted in the final audit determination have been corrected, and

the State agency is, in all other respects, in compliance with requirements of the applicable program;

(2) State agency 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 State agency's plan would serve to achieve the purposes of the program under which funds were originally granted.

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

In accordance with section 459(a)(2) of GEPA, the State agency submitted a plan for the proposed use of the funds in its April 10, 1995 request for a grantback. In its plan, the State agency proposes to use the grantback of \$66,051 plus the required State matching funds in the amount of \$17,877 to supplement current State Vocational Rehabilitation Services Program activities.

Over the last two years new intake procedures have been instituted that have resulted in an increase in intakes, clients being served, and individuals being placed in competitive jobs. In FY 1992, 701 clients were served, with 108 placed into competitive jobs. In FY 1993, 1,014 individuals were served, with 170 placed into competitive jobs. In FY 1994, 1,098 were served, with 177 placed into competitive jobs. Over this same three-year period the agency has received level or marginal funding increases at both the State and Federal levels. At the same time, program costs have increased each year in the areas of: (1) Adaptive technology, 31 percent of the FY 1995 budget commitments, with an 11 percent increase in costs over FY 1994; (2) College training, 21 percent of the FY 1995 budget commitments, with a 35 percent increase in costs over FY 1994; (3) Employment related training, 20 percent of the FY 1995 budget, with an 81 percent increase in costs over FY 1994; and (4) Personal adjustment training, which shows a 200 percent increase over FY 1994. All of these factors combined have strained the available funds to meet program goals, and a grantback authorization would have a very positive impact on the agency's ability to continue increasing its number of competitive placement outcomes.

In its plan the State agency proposes to use the grantback of \$24,515 plus the required State matching funds in the

amount of \$2,724 to supplement current Independent Living Services for Older Individuals Who are Blind activities.

The grantback funds would be used specifically to design, pilot-test, and print a train-the-trainer guide.

The guide would be used by key service providers, senior center staff, day care staff, independent living staff, and other community services personnel. Emphasis would be placed on improving the daily independence of older visually impaired individuals.

The State agency would direct its outreach activities toward older individuals who are unserved and underserved by traditional agencies in the field of blindness.

In its plan the State agency proposes to use the grantback of \$29,250 (no State match required) to supplement current activities authorized under Part B of IDEA that were previously authorized and funded under the Chapter 1 Handicapped program, which was terminated effective FY 1995. The funds will be used specifically to provide Computer Camp and Social and Recreational Camp experiences for legally blind children in State operated or supported schools. The children will learn applications of advanced technology to produce braille, large print, and synthesized speech. The summer camps also provide recreational and social skill development, low-vision evaluations, aids and devices, and follow-up training.

D. The Secretary's Determinations

The Secretary has reviewed the State agency's request for a grantback of funds, the State agency's plan (as outlined in the preceding section of this notice), and other information submitted by the State agency. Based upon that review, the Secretary has determined that the conditions contained in section 459 of GEPA have been met.

The determinations are based upon the best information available to the Secretary at the present time. If, at a later date, this information is discovered to have been inaccurate or incomplete, the Secretary will not be precluded from taking appropriate administrative action at that time. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendation or final audit determination.

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

Section 459(d) of GEPA requires that, at least 30 days prior to 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 Connecticut Board of Education and Services to the Blind under a grantback arrangement, as authorized by section 459. The grantback award will be in the amount of \$119,816. This amount is 75 percent—maximum percentage authorized by section 459—of the amount of funds recovered by the Department. The Secretary's intent to award the maximum amount of grantback funds possible under section 459 is based upon the determinations outlined in section D of this notice.

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

The State agency agrees to comply with the following terms and conditions under which payments under a grantback arrangement will be made:

(a) The funds awarded under the grantback and the required State matching funds must be expended in accordance with—

(1) All applicable statutory and regulatory requirements of The State Vocational Rehabilitation Services Program, including those provisions relating to an order of selection if such an order is in effect during the grantback period, the Independent Living Services for Older Individuals Who Are Blind program, and Part B of IDEA, as appropriate;

(2) The plan and the request for the grantback that were submitted on April 10, 1995, and any other amendments to that plan that are approved in advance of the grantback award 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) Pursuant to section 459(c) of GEPA, all funds received under this grantback arrangement must be obligated no later than September 30, 1996.

(c) The State agency must submit two annual reports (not later than December 31, 1995 and December 31, 1996 respectively) to the Secretary that—

(1) Indicate how the funds awarded under the grantback and the State matching funds have been expended in accordance with the proposed plan; and

(2) Describe the results and effectiveness of the project for which the funds were expended.

(d) The State matching funds expended under the grantback arrangement in accordance with The State Vocational Rehabilitation Services Program will be counted for maintenance of effort purposes under The State Vocational Rehabilitation Services Program.

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

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

(Catalog of Federal Domestic Assistance Numbers 84.126 The State Vocational Rehabilitation Services Program; 84.177 Independent Living Services for Older Individuals Who Are Blind; and 84.027 Assistance to States for Education of Children With Disabilities)

Dated: February 9, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

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