



ADMINISTRATIVE
COMMUNICATIONS SYSTEM
U.S. DEPARTMENT OF EDUCATION

DEPARTMENTAL DIRECTIVE

ODS:

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Distribution:
All Department of Education
Employees

Signed by: Denise L. Carter for Andrew Jackson
Assistant Secretary for Management

Grantbacks

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For technical questions concerning information found in this directive, please contact Phil Maestri via email or on (202) 245-8278

Supersedes ACS Directive OS:1-107, Grantbacks, dated 12/18/2014. Re-certified on 07/25/2017.

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 section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. §1234. It also provides guidance for ascertaining whether the grantback is expended in compliance with the statute 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 are 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, are eligible for a grantback award.
- D. Only those recipients that submit a plan that meets all requirements for grantbacks are 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.
- F. Grantbacks will not be considered for funds recovered due to findings of excess cash, 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 same or very similar purpose for which the funds were originally granted.
- H. The amount of each grantback is within the discretion of the approving official and will not be set automatically at the maximum of 75 percent of repaid principal allowable under section 459(a) of GEPA, (20 U.S.C. § 1234h(a)), 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 applicable 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 section 459 of GEPA, 20 U.S.C. § 1234h. (See Appendix A.)

IV. Applicability

This Directive applies to the grant programs and recipients eligible under the grantback provision in section 459 of GEPA, which applies to all recipients of Federal funds in programs administered by ED, except for programs under the Higher Education Act of 1965, and Impact Aid programs under the Elementary and Secondary Education Act of 1965. Grantbacks may be available under both applicable formula and discretionary grant programs.

V. Definitions

For the purpose of this Directive, the following definitions apply:

- 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 – The Principal Office's (PO) delegated official(s) with the authority to approve grantbacks (usually the Assistant Secretary or equivalent official).
- D. Audit History – The documented events surrounding the particular audit claim(s) that resulted in the recovery of funds by ED.
- E. Authorized Official – The recipient's official designated in the grantback application as responsible for administering the applicable program grants or cooperative agreements.

- F. Compliance History – Documentation of the recipient’s record of complying with statutory and regulatory requirements of ED programs and with grantback provisions.
- G. 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.
- H. GEPA - The General Education Provisions Act (20 U.S. C. § 1221, et seq.)
- I. Grantback – The return of recovered funds to a recipient under section 459 of GEPA (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. Final Action
1. With respect to actions by ED, 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 section 452 of GEPA (20 U.S.C. § 1234a).

2. With respect to judicial actions, 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 under section 458 of GEPA (20 U.S.C. § 1234g), or an executed settlement and/or repayment agreement while a case is under judicial review, whichever occurs last.
3. With respect to State actions, 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 issuance of a 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 (20 U.S.C. § 1231b-2), 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.
- L. Notice – The Notice of Intent to Award Grantback Funds published in the Federal Register.
- M. Period of Availability – The period of time during which funds for a grantback 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 FY in which the final agency or judicial action occurred, whichever is later. Example: If the latest final action occurred on November 25, 2015 (FY 2016), the period of availability would end September 30, 2019.
- N. 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.
- O. Principal Office – A major organizational unit of ED, usually headed by an Assistant Secretary or an equivalent official, that has been delegated responsibility for administering certain activities and/or programs.

- P. Program Office – An office within a Principal Office with delegated responsibility for administering a program or group of programs.
- Q. 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 the Office of the Chief Financial Officer (OCFO)/Accounts Receivable and Bank Management Group (ARBMG) 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. Program Staff analyze the plan submitted by the recipient to decide whether to recommend a grantback and if so, the amount (percentage) of that award.
- d. If the approving official rejects the grantback, the program office notifies the recipient and identifies the reasons for the rejection.
- e. If the approving official decides to award a grantback, program staff processes the request including –
 - 1) Draft the Notice (see Appendix B for an example of a Notice) and forwarding it to the Office of the General Counsel (OGC)/Division of Regulatory Services (DRS) for ED clearance.

- 2) Notifies 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 Service Director is authorized to approve the apportionment.
 - 3) While the apportionment approval is being obtained, finalizes the Notice based on ED review and comments received through ED clearance. 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,
- 1) Proceeds to arrange to publish the Notice.
 - 2) During the comment period for the Notice, completes the Grantback Award Intra-Agency Transfer of Funds Request (form BS-010) (see Appendix C). The BS-010 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. The completed form is sent to the appropriate Budget Service policy analyst(s).
 - 3) Reviews public comments and, if necessary, recommends to appropriate ED officials whether the grantback should be modified or approved without modification.
- g. After the conditions established in the Notice are met, takes appropriate action to execute the repayment of funds, including updating the PO operating plan, contacts Budget Service to request the allotment, and issues the grant award.
- h. 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. Provides legal advice on all aspects of the grantback process, including the review of the grantback requests.

2. Reviews the Notice for legal sufficiency and provides technical assistance to program offices and ED officials.
 3. Coordinates the ED clearance process through its Division of Regulatory Services (DRS).
 4. Ensures that the Notice meets applicable ED and Office of the Federal Register standards.
 5. Notifies the program office of issues that must be addressed and necessary revisions based on comments received during ED clearance.
 6. Transmits the approved Notice to the Office of the Federal Register for publication.
- C. Budget Service, Office of Planning, Evaluation, and Policy Development (OPEPD)
1. Reviews the draft Notice.
 2. Coordinates review of proposed grantbacks with OMB.
 3. Obtains apportionment of funds.
 4. Issues and maintains the ED prescribed Grantback Award Intra-Agency Transfer of Funds Request Form (BS-010).
 5. Reviews and approves the Grantback Award Intra-Agency Transfer of Funds Request form.
 6. 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 G5, ED's grants management system.

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 PO may combine Notices, if appropriate, for requests involving two or more of its program offices. If a grantback request involves more than one PO, 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. Evidence that demonstrates 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. When repayment involves installments, grantbacks may not exceed 75 percent of the installment payments actually received to date.
 4. A detailed 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. Evidence that demonstrates that the recipient is, and will continue to be, in compliance.
 6. A Plan for Use of Funds 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 affected population(s).
 - 2) When funds have been returned as a result of misuse by a grantee or subrecipient, the plan should describe how the funds will be used by the subrecipient, including a description of how the funds will be used to serve the affected population(s), if any.
 - 3) If a time lapse or other reasons make it impossible or impracticable to serve the population(s) affected by ED's final recovery action, the plan must justify use of funds for the benefit of one or more populations that would be served under the grantback 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 the grantee met matching and maintenance of effort requirements 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 plan.

However, the recipient must be in compliance with any matching or maintenance of effort requirements applicable to the programs it currently administers.

- e. An itemized budget that shows how the recipient will obligate 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. Evidence that students, parents, or representatives of the affected population were consulted consistent with standards in 20 U.S. C. 1234h(2).

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 section 459 of GEPA;
 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 76.707 (which defines when an obligation is made) and accomplish effectively the purposes of the program within the time period the funds will be available for obligation under the grantback. 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 grantback request contains the information described in Section VII of this Directive;
 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. The PO confirms with OCFO/ARBMG that the amount of funds requested by the grantee does not exceed 75% of the funds that have been recovered by ED at the time the request was received;

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 and each program.
- B. Notifying a recipient of a rejected grantback request: If the approving official decides to deny a grantback request, the Principal Office shall –
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 plan for use of funds for which insufficient information was provided; and
 2. If appropriate, advise the recipient that ED may be able to approve a request if the recipient, on a timely basis, takes further actions or provides more information.
- C. Processing a recipient's request: The PO –
1. Program office staff review and analyze the recipient's request and plan for use of funds, including whether the proposed expenditure of funds is a reasonable, necessary, allowable 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 to make changes in the plan that will enhance the quality and cost effectiveness of the plan for use of funds.
 2. If the plan for use of funds is approvable, program office staff shall recommend to the approving official a proposed amount of funds to include in the grantback. The amount requested in the plan must 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 found in 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.
 3. If the program office recommends approval of a grantback, prepares a Notice (see Appendix B for an example) that complies with ED, and the Office of the Federal Register standards and must 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 and for further information contact – The address of a program contact person to whom comments should be directed and the address, telephone number and e-mail address of a contact person 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 of the violations 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) Proposed 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 of grantback funds 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 period within which the funds must be expended, which may not be more than three fiscal years after the fiscal year in which ED's recovery action became final.

- c) The recipient must maintain separate accounting records that document the obligations and expenditures of the grantback funds.
- d) The recipient must submit a final report to the program office no later than 90 calendar days after the last fiscal year for which the funds are available under the grantback of the approved grantback award. The report must indicate that the funds were spent in accordance with the plan.
- e) If the grantback is a multi-year award, the recipient must provide regular reports, which must be submitted no later than 90 calendar days after the end of each fiscal year of the grantback. If the grantback is awarded in the middle of a FY, the first report shall cover obligations made during that partial FY.
- f) Other terms and conditions considered by ED officials necessary to ensure proper use of grantback funds.

NOTE: The supplementary information as provided in Section VIII.C.3.d identifies the basic requirements for all Notices. Additional information may be included in the Notice 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 must either 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.
- a. If the grantback equals or exceeds \$25,000, the Budget Service shall transmit a copy of the proposed Notice to OMB for a determination of whether OMB approves the grantback. All grantbacks of \$25,000 or more require apportionment approval by OMB.

- b. If the grantback is less than \$25,000, OMB apportionment approval is not required. The ED Budget Service Director is authorized to approve the apportionment. Budget Service shall provide OMB with a copy of the plan and Notice and include the grantback amount on any subsequent 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, including any comments provided by OMB. 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 appropriate Budget Service policy analyst(s).
 - a. Budget Service verifies the accounting and funding data on the form and forwards the form to OCFO.
 - b. OCFO verifies the funds 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 makes the changes and recommends 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 approval official 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 program office prepares for signature by the approving official a grant award notification a record of the obligation is made in G5, and the program office issues the grantback award notification 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 in the plan 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, budget, and documents communications between program staff and the recipient regarding significant matters. The PO shall request in writing from the recipient an explanation for any significant differences between the amounts of funds actually obligated and expended and the amounts that were proposed for obligation and expenditure in the approved plan for the grantback. 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 expended in accordance with the approved plan and budget. If funds have not been expended in accordance with the approved plan and budget, the program office may recover these funds under the procedures in 34 CFR 81.30. 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 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) 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) 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) 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 452(e) is

taken; or

- (2) if such recipient files a petition for judicial review, the fiscal year in which final judicial action under section 458 is taken.
- (d) 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

We recommend using courier new 12 pt font for the notice given that it is the required format.

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

AGENCY:

Department of Education.

ACTION:

Notice of intent to award grantback funds.

Education (Secretary) intends to repay to the Northwest Indian College (NWIC) an amount that represents approximately 57 percent of the amount of funds recovered by the Department of Education (Department) as a result of final audit determinations for audit findings covering fiscal years 1999-2001. The Department's recovery of funds followed resolution of the audit disallowances identified in a September 30, 2004 Program Determination Letter (PDL) issued by the Office of Vocational and Adult Education (OVAE) for the period of July 1, 1999 through November 26, 2001. The PDL sought recovery of \$316,096. On December 1, 2004, NWIC appealed the monetary findings in the September 30, 2004 PDL to the Department's Office of the Administrative Law Judges (OALJ). Following discussions and exchanges of information between the parties, on March 27, 2006, the parties entered into a Repayment Agreement (Agreement) that fully resolved the issues in the proceeding and under which NWIC agreed to repay the Department \$316,096. The NWIC has repaid the full amount in accordance with the Agreement.

This notice describes NWIC's plan for the use of a portion of the repaid funds and the terms and conditions under which the Secretary intends to make grantback funds available to NWIC. This notice invites comments on the proposed grantback.

DATES:

We must receive your comments on or before April 29, 2009.

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ADDRESS:

All written comments concerning the proposed grantback should be addressed to Gwen Washington, U.S. Department of Education, 400 Maryland Avenue, SW., room 11076, Potomac Center Plaza (PCP), Washington, DC 20202-7241. If you prefer to send your comments through the internet, use the following address: gwen.washington@ed.gov. You must include the term "Northwest Indian College Grantback" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT:

Gwen Washington. *Telephone:* (202) 245-7790. *Fax:* (202) 245-7170 or by *e-mail:* gwen.washington@ed.gov.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) toll free, at 1-800-877-8339. Individuals with disabilities can obtain a copy of this notice in an accessible format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person listed in this section.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect on the Secretary's decision regarding awarding this grantback, we urge you to identify clearly the specific proposal that each comment addresses.

During and after the comment period, you may inspect all public comments about this notice in room 11076, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

A. Background

Under the terms of a March 27, 2006 Repayment Agreement between the Department and NWIC, the Department recovered a total of \$316,096 from NWIC following resolution of audit findings contained in an audit report issued by the Department's Office of Inspector General (OIG) covering audit periods July 1, 1999 through June 30, 2001 and October 1, 1999 through November 26, 2001 (Audit Control Number ED-OIG/A09-C0026). Prior to entering into the Agreement, the Department and NWIC engaged in the

cooperative audit resolution of the findings contained in the audit report in an effort to address the root causes of the problems and to avoid recurrence of these findings in the future. The OIG audit report and this grantback request involve two Department grants awarded under the Indian Vocational Education Program (IVEP) (CFDA 84.101A): a Document Imaging Specialist Certificate (DISC) grant and a Promising Practices grant.

The IVEP was authorized under section 103 of the Carl D. Perkins Vocational and Applied Technology Education Act of 1990 (Perkins II). The IVEP was succeeded by the Native American Vocational and Technical Education Program (NAVTEP), authorized under section 116 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III). The NAVTEP was replaced by the Native American Career and Technical Education Program (NACTEP), authorized under section 116 of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV).

1. IVEP-DISC Grant

Under the terms of the DISC grant, NWIC was to provide vocational education and training in electronic document management and document conversion services to unemployed and low-income members of its tribal service population. One finding resulting in NWIC's repayment of funds related to NWIC's improper awards of stipends to certain DISC students who were either ineligible to receive stipends or received more than they were eligible to receive. Moreover, section 103(b)(1)(D) of Perkins II and the regulations in effect when the DISC Project grant award was made to NWIC ([34 CFR 401](#) (1999)) established the

conditions under which an IVEP grantee was authorized to provide stipends to students. The Department determined that NWIC had used its IVEP grant to pay stipends in a manner inconsistent with Perkins II and its implementing regulations. The stipend finding resulted in the Department's claim for recovery of \$150,670.

2. IVEP—Promising Practices Grant

Under the Promising Practices grant, NWIC was required to survey, assemble, and distribute best practices in the use of technology on projects funded by the IVEP. Required deliverables included:

- A survey instrument developed in consultation with OVAE personnel;
- Identification of eight promising practices sites;
- Manuals summarizing practices for all IVEP projects;
- A list of contacts at each IVEP project who were responsible for technology; and
- A presentation at an annual project directors' meeting for IVEP grantees.

NWIC failed to complete most of the activities it had committed to completing under the grant and failed to provide required products and deliverables. The products and deliverables and the draft documents that NWIC provided to the Department contained no comprehensive discussion of survey findings, and the case studies on the selected sites were not prepared. In addition, the quality of products and deliverables that NWIC did prepare under the Promising Practices project had been severely compromised because NWIC had not used a panel of experts to

select the sites of Promising Practices and because NWIC had not identified the criteria or standards it had used to select Promising Practices sites. Moreover, although required to do so under the terms of the Promising Practices grant, NWIC did not produce any Promising Practices manuals.

Because NWIC did not deliver the agreed-upon products and manuals proposed in its approved grant, neither the Department nor its NAVTEP grantees benefited from the information on best practices in the use of technology, and the Department was denied a resource for providing technical assistance to future NAVTEP grantees. Based on NWIC's failure to deliver products and deliverables under the Promising Practices grant, the Department sought repayment of \$57,800.

3. DISC and Promising Practices Grants Unsupported Costs

The Department also sought recovery of \$107,626 due to NWIC's charging of unreasonable and unallowable charges to both the DISC and the Promising Practices grants and because NWIC lacked the required supporting documentation for certain transactions under both grants.

Under the terms of the Agreement between the Department and NWIC, NWIC has repaid to the Department the full \$316,096 and established the necessary managerial and financial systems needed to provide oversight of institutional and grant resources. NWIC is requesting approval of a grantback in the amount of \$179,855, which is Start Printed Page 14111 approximately 57 percent of the amount it repaid to the Department.

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 NWIC if the Secretary determines that—

(a) The NWIC practices and procedures that resulted in the audit findings in question have been corrected, and NWIC is in compliance with the requirements of the applicable programs;

(b) NWIC 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 recovery; and

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

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

Pursuant to section 459(a)(2) of GEPA, NWIC has applied for a grantback totaling \$179,855, which is approximately 57 percent

of the principal amount of the recovered funds and has submitted a plan outlining the activities that NWIC would support with the grantback funds. Specifically, NWIC plans to utilize the grantback of funds recovered under the IVEP to pay costs associated with a proposed Digital Media and Web Technology program. As proposed, students would take the entire Digital Media and Web Technology program in a 20-week block, consisting of 10 weeks of intensive classroom instruction at the main NWIC Lummi campus followed immediately by 10 weeks of an internship and an integrated capstone project. The intensive classes would consist of 24 contact hours a week (six hours per day, Monday through Thursday). The program would provide participants who successfully complete the course training, an internship, and a capstone course with a certificate of completion. Program completers would receive the skills and knowledge necessary to:

- (1) Pass Adobe's Certified Associate exams in: Web Communication—using Adobe "Dreamweaver," Rich Media Communication—using Adobe "Flash," and Visual Communication—using Adobe "Photoshop;"
- (2) obtain Adobe Certified Associate certifications in one or more of those Adobe applications; and
- (3) subsequently obtain high-quality employment in the field of digital media. It is important to note that the proposed new certification program does not supplant non-Federal funds already available to NWIC.

The proposed project would focus strongly on career and technical education (CTE) skill development in digital media and web technology and provide course content that is experiential and individually directed, and concludes with an internship and a capstone project. The capstone project has been specifically designed to integrate and assess the skills developed in the

courses taught during the first 10 weeks of the Digital Media and Web Technology program. Students would be expected to demonstrate mastery of the Adobe Certified Associate skills through a capstone project presentation that reflects both their classroom and internship work. Together, the classroom work, internship, and capstone segments constitute a single coherent and integrated curriculum—the goal of which is to prepare students to master the Adobe Certified Associate skills, receive an Award of Completion, pass the Certified Adobe Associate exam, and gain successful employment.

Funding for the program would support: (1) limited pre-award costs for recruiting students who are academically prepared to benefit from the intensive Digital Media and Web Technology program, and (2) implementation costs, including salaries for the project director and classroom instructors, costs of supervising and advising students, and employment placement costs, through September 30, 2009. In its grantback request, NWIC has stated that a total of 32 students, equally divided between two cycles, would participate in the program with an expected job placement rate of 85 percent within six months of program completion. The proposed Digital Media and Web Technology program is a CTE program using Adobe software and incorporating all of the learning objectives identified by Adobe for the Adobe Certified Associate programs: Web Communication Using Adobe "Dreamweaver," Rich Media Communication Using Adobe "Flash," and Visual Communication using Adobe "Photoshop." The Digital Media and Web Technology program will prepare students to enter their chosen disciplines upon completion of the program. As part of the program, NWIC plans to provide opportunities for students to practice taking the Adobe

Certified Associate exams and expects to administer the exams after the completion of each of the two training cycles. NWIC proposes that exam preparation and testing would be fully integrated into the Digital Media and Web Technology program. In addition, NWIC will identify and recruit potential students in an effort to be fully prepared to start training the first cohort of students by late April or early May 2009, if a grantback is awarded.

NWIC has designed this program to be sustainable after completion of the two cycles, allowing NWIC to continue to deliver a Digital Media and Web Technology program on an ongoing basis once Federal grantback funds are no longer available. NWIC notes in its grantback request that the proposed Digital Media and Web Technology program broadens its technical offerings into areas that are in demand both within tribal communities and throughout the Pacific Northwest. NWIC is hopeful that the Digital Media and Web Technology program will provide attractive long-term employment opportunities, because it will emphasize marketing, recruiting, internship, and placement activities to a greater extent than does NWIC's current computer technology programming. It is NWIC's intention that these activities and their benefits would continue beyond the proposed project time frame and would increase the reach and sustainability of NWIC's computer and technology educational programming. Additionally, preparing NWIC students to pass the Adobe Certified Associate exams would prepare those students for nationally recognized certifications thereby further broadening their employment options.

D. The Secretary's Determinations

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

This determination is 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 Start Printed Page 14112 recommendations or final audit determinations.

The Secretary also has concluded that, to the extent possible, this grantback award would support the provision of services to the population of intended beneficiaries of the program under which the DISC and Promising Practices grants were originally made. The population of intended beneficiaries under IVEP and NAVTEP may not have received the full benefit of the services intended by the Perkins IVEP grant awards, currently NACTEP, due to the problems that gave rise to the audit recovery described in Section A of this notice. The Secretary has determined that if awarded, this grantback would advance and support the same policy goals and purposes of the statutory Perkins II provisions that authorized the initial DISC and Promising Practices grants and would be used in compliance with all current statutory and regulatory program requirements.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement with NWIC

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 would be made. In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to NWIC under a grantback arrangement. The grantback award would be in the amount of \$179,855, which is approximately 57 percent of the principal amount recovered as a result of the Agreement.

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

NWIC 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 NWIC submitted and any amendments to the plan that are approved in advance by the Secretary; and
- (3) The budget that NWIC submitted with the approved 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 NWIC by September 30, 2009, in accordance with section 459(c) of GEPA and NWIC's approved plan.

(c) NWIC must, no later than December 31, 2009, 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, including the number of students who enrolled in the training sessions, the number of students who received an Award of Completion, the number of students who took the Adobe exams, and the number of students who passed the exams and obtained Adobe certifications.

(d) NWIC must maintain separate accounting records documenting the expenditures of funds awarded under the grantback arrangement.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/news/fedregister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the 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: www.gpoaccess.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Numbers: 84.101A, Native American Career and Technical Education Program.)

Dated: March 25, 2009.

Dennis Berry,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. [E9-7036](#) Filed 3-27-09; 8:45 am]

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

The ED prescribed Grantback Award Intra-Agency Transfer of Funds Request form is the BS-010. It is issued and maintained by Budget Service, Budget Execution Analysis Branch. The BS-010 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 BS-010 and instructions on completing it, the form should be retrieved at

[BS 010 Grantback Award Intra Agency Transfer Funds Request](#).