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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-199493

July 7, 1980

The Honorable John C. Stennis
United States Senate

Dear Senator Stennis:

This is in response to your request that we look into the law and facts concerning the claim of the Office of Education (now the Department of Education) against the State of Mississippi for the return of a portion of the funds granted the State between July 1, 1969 and January 31, 1973 under Title I of the Elementary and Secondary Education Act of 1965.

As stated in the letter from State Superintendant of Education, C. E. Holladay, the $947,981 claim of the Office of Education is based on audit exceptions made in connection with grants to the State of Mississippi under Title I of the Elementary and Secondary Education Act of 1965, as amended, for the period of July 1, 1969 through January 31, 1973. Superintendant Holladay's letter indicates that the expenditures for certain projects were challenged by the Office of Education on the grounds that they were not designed to meet the special needs of educationally deprived children rather than the educational needs of children in general and that the projects were not demonstrated to be essential to the success or implementation of a related Title I program.

The funds in question were granted to the State of Mississippi to pass on to local educational agencies under plans approved by the Mississippi Office of Education under section 141 of Title I of the Act (20 U.S.C. 241e (1970)). This section provides:

"(a) Approval by State agency; considerations.

"A local educational agency may receive a grant under this subchapter for any fiscal year only upon application therefor approved by the appropriate State educational agency, upon its

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determination (consistent with such basic criteria as the Commissioner may establish)-

"(1) that payment under this subchapter will be used for programs and projects (including the acquisition of equipment payments to teachers of amounts in excess of regular salary schedules as bonus for service in schools eligible for assistance under this section and, where necessary, the construction of school facilities and plans made or to be made for such programs, projects, and facilities) (A) which are designed to meet the special educational needs of educationally deprived children in school attendance areas having high concentrations of children from low-income families* * *."
(Emphasis supplied.)

(This section was amended in 1974 and was again revised in 1978, Pub. L. No. 95-561, section 101(a), November 1, 1978, to be codified at 20 U.S.C. § 2734.)

To simplify an extensive record, the Office of Education through an audit review procedure that included an audit hearing board concluded that, in several instances, the plans of Mississippi's local agencies for construction and acquisition of heavy equipment had not met the requirements of the statute and the Office of Education's implementing regulations. The basic reason for these disallowed expenditures was that the local agency plans approved by the State did not explain and justify how the construction and equipment related to the education of educationally deprived children. Section 141, quoted above, requires this connection. During the review process OE allowed certain expenditures originally questioned by auditors.

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We have reviewed the materials submitted with your inquiry and the decision of the audit hearing board that became the final decision of the Office of Education. The Office of Education's audit review procedure provided the State with an opportunity to express its views and resulted in an exhaustive written explanation of the OE decision. It appears to us that having given the State adequate opportunity to present its case, OE's final position is not arbitrary or capricious. Under such circumstances we can see no basis to question the decision of the Office of Education.

Where grantees receive advances of grant funds but do not spend them for grant purposes, a claim arises on behalf of the Federal Government and the funds must be returned to it. The Claims Collection Act of 1966 and the regulations that implement it (4 C.F.R. Parts 101-105) require agencies to take aggressive action to recover amounts due the Government. This general policy has been indorsed with respect to Title I of the Elementary and Secondary Education Act. Under section 185 of Title I, added Pub. L. No. 95-561, 92 Stat. 2190, to be codified at 20 U.S.C. § 2835, repayment is now specifically required in such circumstances. See also id. § 1232, 92 Stat. 2347, to be codified at 20 U.S.C. § 1234a(e).

As for the question of "paying back" 75 percent of the $947,981 to the State by the Office of Education after the total sum is returned to the Government, the position of OE is that the refund must be made before OE is authorized to make such an amount available to the State. This procedure is required because the period during which the State had authority to use the grant funds in question has expired and until the Government recovers the claim for $947,981 the Government is without authority to obligate the funds.

We agree with this conclusion. The authority to grant 75 percent of this sum to the States is separate budget authority from that used for the original obligation and is only available under the specific authority of Section [illegible] of Pub. L. No. 95-561, 92 Stat. 2351, November 1, [illegible], to be codified at 20 U.S.C. § 1234e. The statute

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provides that:

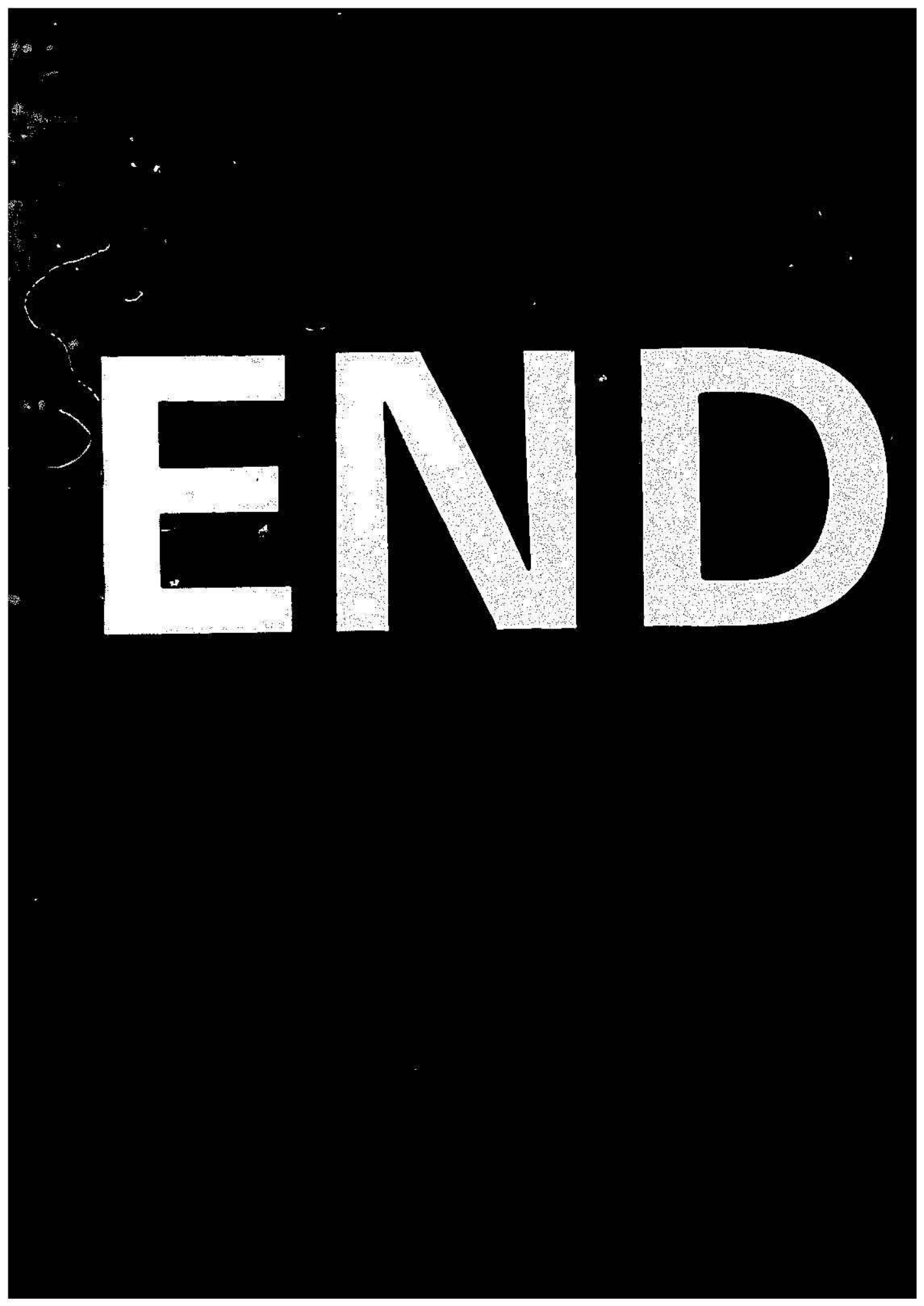
> "Whenever the Commissioner has recovered funds following a final audit determination* * *he may* * *arrange to repay to the State* * *not to exceed 75 percent of those funds* * *."

This provision makes reobligation of the 75 percent conditional on the return of the $947,981. Additionally, before OE can reobligate this sum, the statute provides that it must determine that the State has satisfied the program requirements that attach to any such award.

Finally, this Office has no authority to waive a claim of the United States in these circumstances. Both OE and this Office have limited authority to compromise claims and terminate claims collection actions. Our authority is limited under the Claims Collection Act and implementing regulations to claims of $20,000 or less that have been referred to us by the claimant agency. We may then compromise the claim or terminate it in specified situations where the Government would have problems collecting the full amount, such as where the debtor is unable to pay, the cost of collection is too high or the claim is of doubtful legality. Since these conditions are not present in this case we would be unable to compromise or terminate the claim even in the absence of the $20,000 limitation. OE is generally required to follow the Claims Collection Act and regulations with certain exceptions allowed by the 1978 legislation. Pub. L. No. 95-561, § 1232, 92 Stat. [illegible](f), to be codified at 20 U.S.C. § 1234a(f). Such exceptions do not appear applicable in this case.

Sincerely yours,

Acting Comptroller General
of the United States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