

APPLICATION OF FIRST
CONGREGATIONAL CHURCH
OF DETROIT,
Applicant.

Docket No. 10-31-R
Recovery of Funds Proceeding
ACN: ED-OIG/09-050555

ORDER RETURNING THE DISALLOWANCE
DECISION TO THE ASSISTANT SECRETARY

On May 25, 2010, the Assistant Secretary for Postsecondary Education (Assistant Secretary) issued a disallowance decision with two findings of which only the second finding is pertinent herein. Under finding two, the Assistant Secretary determined that the First Congregational Church of Detroit (Church) violated the terms of its grant application and the terms of the grant because the Church refused to comply with the statutory requirement to submit an audited financial statement for each year in which it received grant funds. As a result, the Assistant Secretary found that the Church must refund to the Department \$499,992.00, the amount of the grant for Fiscal Year 2006.

On July 23, 2010, Church filed an appeal of the disallowance decision. This appeal is heard by the Office of Administrative Law Judges. Upon receipt of the appeal, the Administrative Law Judge assigned to the case is charged with determining whether the disallowance decision establishes a prima facie case for the recovery of funds. 34 C.F.R. §§ 81.38(a) and (b) (2005). Under 34 C.F.R. § 81.34(b)(1), this is a determination based upon the evidence and addresses both the issue of liability and the amount of liability—

(b)(1) The notice [of disallowance decision] must establish a prima facie case for the recovery of funds, including an analysis reflecting the value of the program services actually obtained in a determination of harm to the Federal interest.

Regarding the amount of liability, the Assistant Secretary's disallowance decision simply demanded reimbursement of all monies paid under the grant in Fiscal Year 2006. The disallowance decision failed to include an analysis reflecting the value of the program services actually obtained in a determination of harm to the Federal interest. This failure occurred even though ED's OIG apparently had in its possession financial statements of the Church and other financial documents reflecting all funds received and expended on the grant by the Church. In

this context, the Assistant Secretary's demand for return of all the funds also fails to exclude those monies that were properly expended. The tribunal finds that the disallowance decision fails to establish a prima facie case regarding the amount of harm to the Federal interest for the failure of the grant recipient to provide the required audits.

In light of the above, the disallowance decision of May 25, 2010, is returned to the Assistant Secretary.

Allan C. Lewis
Chief Administrative Law Judge

Issued: July30, 2010
Washington, D.C.