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DEPARTMENT OF EDUCATION

Intent to Award Grantback Funds to the Pennsylvania Department of Education

[Docket ID ED-2018-OESE-0048]

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), the Secretary of Education (Secretary) intends to repay to the Pennsylvania Department of Education (PDE) an amount that represents approximately 75 percent of the amount of funds recovered by the Department of Education (Department) under Title I, Part A and Title IV, Part A of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act (NCLB), Catalog of Federal Domestic Assistance (CFDA) number 84.010A. This notice describes PDE's plans for the use of the repaid funds and the terms and conditions under which the Secretary intends to make grantback funds available. This notice invites comments on the proposed grantback.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “Help.”

- Postal Mail, Commercial Delivery, or Hand Delivery: The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about this proposed grantback, address them to James Butler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W246, Washington, DC 20202-4260.

Privacy Note: The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: James Butler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W246, Washington, DC 20202-4260. Telephone: 202-260-9737. Email: James.Butler@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service, toll free, at 1-800-877-8339.

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 400 Maryland Avenue, SW., room 3W246, Washington, DC 20202 between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

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

In March 2017, the Department recovered \$7,186,222 from PDE relating to findings in a March 29, 2011, program determination letter (PDL) issued by the Office of Elementary and Secondary Education and the Office of Safe and Drug-Free Schools. The PDL followed an audit report by the Department's Office of Inspector General (OIG) of the School District of Philadelphia's (SDP) control over Federal expenditures, covering the audit period July 1, 2005, through June 30, 2006 (Audit Control Number ED-OIG-A03H0010). The PDL sustained certain audit findings and disallowed a total of \$9,968,423. Through settlement negotiations, the Department and PDE agreed that \$2,782,201 was barred from recovery by the statute of limitations. PDE appealed the remaining \$7,186,222 liability to an Administrative Law Judge, the Secretary, and the U.S. Court of Appeals for the Third Circuit. The Third Circuit denied PDE's petition for

review, and sustained the remaining liability. PDE filed a Petition for Writ of Certiorari with the U.S. Supreme Court, which was denied on October 3, 2016. SDP paid the full liability to PDE, and in turn, PDE has paid the full liability to the Department.

The claims arose under the ESEA, as amended by NCLB (Pub. L. 107-110), 20 U.S.C. 6301 et seq.¹ Of the total amount recovered, \$7,074,599 resolved findings related to Title I, Part A of the ESEA, and \$111,007 resolved findings related to Title IV, Part A of the ESEA, also referred to as the Safe and Drug-Free Schools and Community Act (SDFSCA). In its grantback application, PDE requests repayment in the amount of \$5,389,204, representing approximately 75 percent of the total amount related to Title I, Part A and SDFSCA.

The Department's claims of \$7,074,599 related to Title I, Part A were contained in Findings 2, 4, and 5 of the March 29, 2011 PDL, and the claims of \$111,007 related to SDFSCA were contained in Findings 4 and 5. As for Title I, Part A, the Department found that SDP had violated section 1120A(b) of the ESEA, as amended by NCLB, by using Title I, Part A funds to supplant non-Federal funds in payments for certain consulting contracts, and that SDP had charged the full cost, rather than the incremental cost, as allowed, of transporting students to the school of their choice. In addition, the Department found that SDP had inadequate procedures for processing transportation costs for afterschool programs, resulting in overcharges to Title I, Part A and violations of 34 CFR 76.731, 80.20, and 80.22(b), and OMB Circular A-87, Attachment A, Section C.² For both Title I, Part A and SDFSCA, the Department found that SDP had

¹ In 2015, the ESEA was amended by the Every Student Succeeds Act (Pub. L. 114-95).

² In 2014, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) replaced 34 CFR part 80 and OMB Circular A-87, among other provisions.

inadequate procedures for charging indirect costs to Federal programs and for processing journal voucher transfers for staff salaries and fringe benefits, resulting in overcharging costs to both ESEA programs and violations of 34 CFR 76.731, 80.20, and 80.22(b), and OMB Circular A-87, Attachment A, Section C.

Following the release of the OIG Audit Report, PDE and SDP immediately took steps to ensure that the practices that led to the audit findings would not reoccur. In collaboration with PDE and the Department's Risk Management Service, SDP developed and began implementing five corrective action initiatives directly responsive to the audit findings and has been implementing these procedures since that time. PDE assures that SDP, with the oversight of PDE, has fully resolved the findings from the OIG audit report.

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 PDE if the Secretary determines that—

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

(b) PDE 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 that 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, PDE has applied for a grantback totaling \$5,389,204, which is approximately 75 percent of the principal amount of the recovered Title I, Part A and SDFSCA funds, and has submitted a plan outlining the activities that would be supported with the grantback funds. While the ESSA amendments to the ESEA eliminated SDFSCA, activities formerly authorized under SDFSCA can currently be supported through Title I, Part A of the ESEA, as amended by ESSA, and PDE plans to use \$85,000 in grantback funds – slightly more than the proportion of grantback funds related to SDFSCA – for activities that would have been authorized under SDFSCA.

SDP plans to use grantback funds for three activities in the 2018-19 school year. First, SDP proposes a math initiative to improve teaching skills and student learning. As proposed, SDP would provide approximately 1,000 kindergarten through 12th grade math teachers with a week-long professional learning institute in the summer of 2018.

Additionally, SDP would provide designated math lead teachers in participating schools with compensation for leading planning and professional development sessions outside of the school day. Finally, SDP would provide eligible schools that participated in the

summer institute with funds for extracurricular salary support for facilitating before and after school sessions for students, and give preference for those funds to low-performing schools.

Next, SDP plans to use grantback funds to provide seven full-time reading specialists to support kindergarten through third grade students who are significantly behind their expected reading level. The specialists would work with targeted students at least weekly in small groups using specially designed lesson plans that use best practices to scaffold student learning.

Finally, SDP plans to use grantback funds to support a school climate initiative in five schools. A coach would provide participating schools with training on how to implement a curriculum centered on social and emotional learning as well as bullying prevention. The coach would work with each school to develop a training plan, provide technical assistance in implementing and teaching the lessons, and monitor implementation.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by PDE. 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 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 Title I, Part A and SDFSCA grants were originally made. The population of intended beneficiaries may not have received the full benefit of the services intended by the Title I, Part A and SDFSCA grant awards, due to the problems that gave rise to the audit recovery described in Section A of this notice. However, the Secretary has determined that if awarded, this grantback would advance and support the same policy goals and purposes of the statutory provisions that authorized the Title I, Part A and SDFSCA programs, 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 PDE

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 PDE under a grantback arrangement. The grantback award would be in the amount of \$5,389,204, which is approximately 75 percent of the principal amount recovered.

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

PDE 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 submitted plan and any amendments to the plan that are approved in advance by the Secretary; and
- (3) The budget 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 September 30, 2020, in accordance with section 459(c) of GEPA and PDE's approved plan.

(c) PDE must, no later than December 31 of each year for which it has funds under this grantback, submit a report to the Secretary that documents the expenditure of funds and progress of activities under the grantback arrangement.

(d) PDE must, no later than December 31, 2020, 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.

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

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 24, 2018.

Jason Botel,
*Principal Deputy Assistant Secretary
Delegated the authority to perform the
functions and duties of the Assistant
Secretary of Elementary and Secondary
Education.*

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