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MEMORANDUM

DATE: May 18, 2010

TO: TechMIS Subscribers

FROM: Charles Blaschke and Blair Curry

SUBJ: "Unexpected" SFSF Funds for Districts and Important Considerations in Negotiating i^3 Grants

Because of the timely nature of information, we are enclosing two Stimulus Funding Alerts.

Following our April 12th Special Stimulus Funding Alert on "still available" Title I and IDEA ARRA funds, we have conducted a similar analysis identifying states which have spent only a small portion of their education Stabilization Funds (SFSF) thus far. Once they receive their final third of SFSF funds, these states are likely to have additional remaining funds after "filling state aid formula "maintenance of effort" requirements. These remaining funds will be reallocated to districts based on the most current district Title I allocations and, if the proposed $23 billion Education Jobs Fund (based on the SFSF formula) is passed, then even more funds will be reallocated to districts in the next six to ten months. The bottom line is that districts in certain states are likely to be recipients of unexpected reallocated SFSF funds which could affect their purchasing cycles (e.g., end-of-year spending before June 30th in certain states and increased expenditures for allowable ESEA products and services next year).

A second Stimulus Funding Alert is particularly important for firms which are participating as partners or as contractors in state i^3 grants which make "finals" and grants have to be negotiated between the applicant (which should include the firm) and the USED Contract Officer. In USED's April 30th FAQ published just 12 days before i^3 grant applications were due, a number of issues were generated including: copyright protection for previously copyrighted programs and non-exclusive rights of the Federal Government to publish "developed" copyrighted content; in-kind private firm donation of staff time in meeting 20 percent matching; and adherence to state competitive contract provisions; pre-award contracts, among other issues. Where appropriate, firms should take into account these issues in negotiating with either the applicant or, in conjunction with the applicant, with the USED Contract Officer.

If anyone has any questions, contact Charles Blaschke directly.

Stimulus Funding Alert:
Education Stabilization Funding Update: States Which are Most Likely to be Reallocating Remaining Stabilization Funds to Districts in Proportion to Title I Allocations

A Technology Monitoring and Information Service (TechMIS)
SPECIAL STIMULUS FUNDING ALERT

Prepared by:
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Last year, as part of the Federal economic stimulus package, USED provided more than $30 billion to states as the first two-thirds of the State Fiscal Stabilization Fund, intended to offset declining state education budgets and to save education jobs. Some states, after using SFSF money to backfill state K-12 and higher education budgets, had funds remaining which are to be reallocated to districts. This Spring, states are beginning to receive the remaining one-third of their SFSF allocations.

Since our Washington Update item on this topic in the last TechMIS issue was sent, several analyses provide further insights into which states are the most likely to have remaining Stabilization Funds that will be allocated to districts based on their "most current" Title I allocations. One new analysis suggests even more states will have more funds which will be reallocated to K-12 (vs. higher education), if the recently-announced $23 billion Education Jobs Fund is passed by Congress.

Jennifer Cohen, from the Ed Money Watch blog of the New America Foundation, conducted an analysis of the April 16th USED spending report to determine the amount of SFSF funding still available in each state. A similar analysis for Title I ARRA and IDEA ARRA funding was conducted by TURNKEY and included in the last TechMIS Washington Update. The attached TURNKEY table shows that education SFSF outlays as a percentage of obligated funds nationwide is about 62 percent. In seven states, the outlays as a percent of funds obligated are less than 25 percent with at least 75 percent still remaining. D.C., West Virginia, and Wyoming have spent none of their SFSF money, while Alaska, Nebraska, South Carolina, and Virginia have had outlays of less than 25 percent. An additional 13 states have spent between 25 and 50 percent of their education SFSF funds.

As of May 18th, 26 states have received the remaining third of their SFSF money. As we have stated in earlier TechMIS reports, the states with SFSF funds "remaining" after filling state aid formula "holes" to FY 2009 and FY 2010 maintenance of effort levels are the ones most likely to allocate such funds to districts based on their most current Title I district allocations. Even more money will be available if Congress passes the proposed $23 billion Education Jobs Fund which could be used at the state level only for job retention salaries and benefits. Such funds would be allocated based on the SFSF formula allocations. In a recent Ed Money Watch analysis, Cohen also attempted to estimate the amount of the Education Jobs Fund which would be allocated on a state-by-state basis for K-12 and for higher education. Based on her method of estimating allocations, Ed Money Watch estimated that nearly 83 percent of the Education Jobs Fund would be spent on K-12 as opposed to higher education. All of the Education Jobs Fund allocation would be used for K-12 in Alaska, Connecticut, Maryland, Nebraska, North Dakota, Texas, and Wisconsin. These estimates suggest that, if the Education Jobs Fund legislation is passed, the states which allocate a higher percent of SFSF funds to K-12 (vs. higher education) would also be good prospects for reallocating remaining funds if they currently have a high percentage of SFSF funds still remaining. A recent analysis by the NEA reported that Texas' allocation ($1.8 billion) would save 12,700 jobs, while Florida's allocation ($1.2 billion) would be used to save 18,000 jobs.

After fulfilling maintenance of effort requirements, the states most likely to have remaining funds to be reallocated to districts under the most current year's Title I formula are: Alaska, D.C., Delaware, Nebraska, South Carolina, Vermont, West Virginia, and Wyoming. Also, based on our April 12th TechMIS Stimulus Funding Alert, the states in which the majority of Title I ARRA funds have not been obligated as an outlay would include: Alaska, D.C., New York, Nevada, New Jersey, Iowa, Delaware, Wisconsin, Utah, and Wyoming; and if the Jobs bill $23 billion is passed by Congress, then even more of these funds in certain states are going to be allocated to K-12 and in turn likely to be reallocated to districts in accordance with the 2010 district Title I allocations (March 25th TechMIS issue). These include: Alaska, Connecticut, Maryland, Nebraska, Texas, Wisconsin, and North Dakota. Districts in more than one of the state groups should seriously be considered a high priority especially those that have received relatively large increases for next year in Title I allocations.

STATE SFSF ARRA SPENDING

(as of 4/16/10)

	STATE	Cumulative Obligated	Cumulative Outlays	Outlays as a Percent of Obligated	Cumulative Available Balance
State Fiscal Stabilization Fund					
Education State Grants	Alaska	$62,338,919	$6,849,443	11.0%	$55,489,476
	Alabama	$536,720,284	$149,688,053	27.9%	$387,032,231
	Arkansas	$243,245,523	$113,275,097	46.6%	$129,970,426
	Arizona	$831,869,331	$505,603,598	60.8%	$326,265,733
	California	$4,387,948,882	$3,952,003,307	90.1%	$435,945,575
	Colorado	$416,658,526	$380,246,774	91.3%	$36,411,752
	Connecticut	$296,978,743	$123,655,756	41.6%	$173,322,987
	District of Columbia	$48,983,997	$0	0.0%	$48,983,997
	Delaw are	$110,320,067	$28,433,019	25.8%	$81,887,048
	Florida	$2,208,839,244	$766,579,141	34.7%	$1,442,260,103
	Georgia	$1,260,799,095	$1,096,903,446	87.0%	$163,895,649
	Haw aii	$105,325,166	$54,583,890	51.8%	$50,741,276
	Iow a	$386,373,745	$302,595,787	78.3%	$83,777,958
	Idaho	$135,138,787	$133,476,087	98.8%	$1,662,700
	Illinois	$1,681,130,685	$1,673,990,422	99.6%	$7,140,263
	Indiana	$823,661,223	$610,787,540	74.2%	$212,873,683
	Kansas	$367,422,833	$242,814,264	66.1%	$124,608,569
	Kentucky	$356,974,381	$217,125,891	60.8%	$139,848,490
	Louisiana	$388,326,963	$232,294,042	59.8%	$156,032,921
	Massachusetts	$813,303,212	$518,252,744	63.7%	$295,050,468
	Maryland	$482,183,579	$218,930,249	45.4%	$263,253,330
	Maine	$106,027,721	$58,241,643	54.9%	$47,786,078
	Michigan	$1,302,368,992	$923,083,307	70.9%	$379,285,685
	Minnesota	$447,485,056	$334,570,143	74.8%	$112,914,913
	Missouri	$753,172,335	$504,625,464	67.0%	$248,546,871
	Mississippi	$262,685,523	$190,894,147	72.7%	$71,791,376
	Montana	$81,490,928	$48,926,576	60.0%	$32,564,352
	North Carolina	$1,161,931,564	$545,731,922	47.0%	$616,199,642
	North Dakota	$57,381,706	$57,262,918	99.8%	$118,788
	Nebraska	$156,750,470	$27,986,885	17.9%	$128,763,585
	New Hampshire	$110,043,449	$83,078,217	75.5%	$26,965,232
	New Jersey	$1,088,335,774	$947,710,545	87.1%	$140,625,229
	New Mexico	$260,436,399	$93,140,132	35.8%	$167,296,267
	Nevada	$217,351,168	$217,351,166	100.0%	$2
	New York	$1,653,933,720	$639,680,442	38.7%	$1,014,253,278
	Ohio	$1,463,709,963	$554,704,297	37.9%	$909,005,666
	Oklahoma	$316,789,878	$228,431,662	72.1%	$88,358,216
	Oregon	$391,827,688	$276,825,959	70.6%	$115,001,729
	Pennsylvania	$1,044,394,619	$453,567,836	43.4%	$590,826,783
	Puerto Rico	$354,927,046	$224,337,508	63.2%	$130,589,538
	Rhode Island	$90,391,135	$53,421,104	59.1%	$36,970,031
	South Carolina	$567,741,302	$120,117,075	21.2%	$447,624,227
	South Dakota	$69,876,101	$68,461,392	98.0%	$1,414,709
	Tennessee	$775,135,036	$281,650,612	36.3%	$493,484,424
	Texas	$2,177,682,329	$828,457,127	38.0%	$1,349,225,202
	Utah	$392,581,821	$337,899,974	86.1%	$54,681,848
	Virginia	$659,190,155	$164,036,242	24.9%	$495,153,913
	Vermont	$51,690,548	$33,561,061	64.9%	$18,129,487
	Washington	$549,364,388	$549,364,388	100.0%	$0
	Wisconsin	$480,615,789	$480,615,789	100.0%	$0
	West Virginia	$146,040,550	$0	0.0%	$146,040,550
	Wyoming	$45,305,532	$0	0.0%	$45,305,532
		$33,181,201,870	$20,655,824,080	62.3%	$12,525,377,790
Education State Grants - Outlying Are	Guam	$50,747,665	$0	0.0%	$50,747,665
	Northern Mariana Islands	$24,352,276	$3,981,168	16.3%	$20,371,108
	Virgin Islands	$35,323,417	$0	0.0%	$35,323,417
		$110,423,358	$3,981,168	3.6%	$106,442,190
Subtotal State Grants		$33,291,625,228	$20,659,805,247	62.1%	$12,631,819,981

Stimulus Funding Alert:
i3 Stimulus Funding Update: April 30th Addendum Likely to Have Copyright Implications for Firms Participating in Winning i3 Grants

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On April 30th, USED published updated i3 Program Guidance and Frequently Asked Questions (FAQ), which attempt to clarify a question we raised in our April 12th TechMIS Special i3 Funding Alert. In response to our question as to whether a grantee under the i3 program can copyright "intellectual property" that is developed with funds from its i3 grant, USED's response was:

> "Department regulations allow grantees to copyright intellectual property developed with funds from a grant of the Department……However, the Department of Education is authorized to publish and distribute any copyrightable materials produced with Department grant funds even if a grantee or other party copyrights those materials. With regard to grants and subgrants awarded to LEAs and consortia of schools, the Department……reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes:
>
> a) The copyright and any work developed under a grant, subgrant, or contract under a grant or subgrant; and
> b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support."

The question still exists as to whether a firm's original copyrighted product, which is modified, further developed, or adapted for a different student population for example under the i3 grant, falls under this provision or just the "adapted" version. When a similar question was raised by for-profit firms under the draft Race to the Top guidelines last year, USED clarified that any proprietary products which are included, for example, in a Federally-funded longitudinal development data system for an entire state would remain the exclusive copyrighted intellectual property of the for-profit firm. For firms that have such products included in an i3 grant, clarification should be obtained prior to the final award through the firm's negotiation either with the winning applicant or between the firm/applicant and USED Contract Officer. On one hand, under a "strict" interpretation, the Federal government could undermine the copyright protection of the for-profit firm and its market potential by allowing others to publish a product at no cost.

On the other hand, if the “adapted” components are distributed freely or allowed publication by others then this, in turn, could increase the demand and marketability of the copyrighted product component as an integral part of an overall sale.

The updated guidance also provides a further clarification to a question raised in the April 12^{th} TechMIS Alert related to the type of evidence of effectiveness that can be used. As we noted, USED guidance places no restriction regarding the source of prior research studies that provide evidence for the proposed practice strategy or program. On the other hand, the newest clarification distinguishes between the types of evidence allowed for Scale-up grants and the other two types of grants (Validation and Development), noting that, for a scale-up grant, the application must demonstrate evidence of effectiveness for “the same kinds of high-need students the proposed project is designed to support.” This suggests that the research evidence should have been compiled by the applicant while implementing the approach at its own site. In the case of Validation grants, evidence of effectiveness on “different kinds of students may be acceptable,” and “……Development grants do not require “the same weight of evidence as applications for Scale-up or Validation grants…..” Discussions with high-level i^3 officials suggest that research evidence collected in sites other than the applicant’s site would be applicable for Development and Validation grants, but not for Scale-up grants where such research would have to have been conducted on prior implementation of the approach or practice which is being taken to scale within that district or other applicant. Hence, it appears to be logical that research evidence compiled on a firm’s particular product could be more acceptable in justifying the use of that product in a Developmental or Validation grant.

As we noted in our April 12^{th} TechMIS Stimulus Funding Alert, earlier guidance stated that an i^3 grantee may “treat costs associated with preparing its grant application, including the costs of a grant writer, as indirect costs,” which would be a break from long-time USED branch processes -- perhaps to encourage more rural districts to apply. However, the April 30^{th} updated Guidance states that “indirect costs that a grantee could have claimed but did not claim under its i^3 grant,” (for example paying the cost of someone to write the proposal) cannot be used to meet the 20 percent matching requirement. On the other hand, the newest guidance does say that when “other organizations” -- including a firm whose product is being developed, validated, or taken to scale -- furnishes free of charge the services of an employee in the employee’s normal work line, it can be considered an in-kind contribution for the 20% match. The services will be valued at “the employee’s regular rate of pay exclusive of the employee’s fringe benefits and overhead costs.” Hence, a for-profit firm could provide, on-loan to the i^3 grant applicant, the services of one or more of its employees, and count that toward the in-kind contribution to meet the 20% matching requirements.

The April 30^{th} updated Guidance states that an applicant which has been selected but not yet awarded an i^3 grant (e.g., while it attempts to get the 20 percent matching commitments from the private sector) may incur pre-award costs for up to 90 days prior to the beginning of the award period. However, if the applicant does not receive an award, the Department will not reimburse the applicant for the pre-award cost. Depending on the degree of risk involved, the applicant could negotiate contracts to procure products and services before the actual award to get the project started.

The April 30th Guidance does make it clear that subgrants cannot be made to for-profit organizations, only to “official partners.” However, if a grantee determines it needs to purchase goods and services from, for example, for-profit companies, it may do so using grant funds, but “the grantee must follow the applicable procurement procedures set out in EDGAR.” Such purchases “must take the EDGAR procurement rules into account so that needed procurements can be conducted in a manner that is both legal and consistent with efficient implementation of its proposed project.” However, the Guidance still does not clarify the question that was raised in the April 12th report of whether the applicant has to conduct a competitive process, if that is required by state law, in using the particular program or practice to be the focus of i^3 grants. Certainly this is an issue that needs to be dealt with during grant negotiations or in separate negotiations between the for-profit firm and the grantee.

For a copy of the April 30th guidance go to: http://www2.ed.gov/programs/innovation/faqs.pdf