COMMONWEALTH OF VIRGINIA
Office of the State Inspector General

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The Honorable Brian Ball
Secretary of Commerce and Trade
P.O. Box 1475
Richmond, VA 23218

Dear Secretary Ball:

The Office of the State Inspector General (OSIG) conducted an investigation based on a confidential complaint made to the State Fraud, Waste and Abuse Hotline regarding the Tobacco Region Revitalization Commission (TRRC), case #18229. The allegation involved Executive Director Evan Feinman and a decision to waive partial repayment of a Tobacco Region Opportunity Fund (TROF) grant when the project failed to meet its jobs and capital investment obligations.

The scope of the review was limited to relevant circumstances as specified in the complaint. Therefore, this inquiry was limited to interviews and the review of pertinent statutes, regulations and documentation. The period covered during this review was January 2018 to February 2020.

Allegation

TRRC and Feinman violated policy and the terms of their agreement with Charles Lessin, CEO of Appalachian Biofuels, LLC (Appalachian) by giving him credit for jobs created on a separate project to avoid "claw-backs" from TRRC for Appalachian's failed project.

Finding of Fact

Appalachian executed a performance agreement dated August 8, 2014, with the Virginia Tobacco Indemnification and Community Revitalization Commission (Commission, predecessor to TRRC) and the [redacted], the grantee, for a

$565,000 grant. Lessin signed the agreement on behalf of Appalachian. TRRC's grant accounting system showed $565,000 was disbursed to Appalachian in 2014. The TROF grant required Appalachian to meet specific employment and taxable capital asset investment targets. Appalachian's performance obligations were 40 jobs and taxable assets of $3.5 million. The terms of the agreement indicated that if Appalachian did not meet the targets within 36 months, it would be responsible for paying the unearned portion of the grant to the [redacted]. Additionally, the agreement specified the [redacted] is liable for repayment to TRRC the portion of the grant determined to be due, and agreed to make the repayment without regard to whether the [redacted] had received repayment from Appalachian.

Appalachian spent $210,000 on project-related costs, but stopped using TROF funds after a significant drop in oil prices from 2014 to 2016 made the project unviable. Appalachian placed the unused $355,000 in an escrow account. The company failed to hire employees or make any capital investments as required under the TROF performance agreement. TRRC staff requested repayment of the full $565,000 on March 24, 2017, and later offered a repayment plan over five years.

At the TRRC's Executive Committee (Committee) meeting on January 8, 2018, Lessin's attorney appealed for a waiver from full repayment or claw-back and offered to return the escrowed $355,000 plus $20,000. None of the Committee members made a motion to vote on the appeal, so full repayment was still required. The Committee Chairman ended the discussion by saying to Lessin's attorney, "I think if you can sit down with [redacted] and Evan and figure out anything, that would be the best route to take. Because I've heard no motion, we can't do anything."

On January 22, 2018, Appalachian repaid the $355,000 held in escrow, which left an unpaid balance of $210,000. Several weeks later, Feinman and [redacted] agreed to give Lessin two years to bring another business prospect into TRRC's service area to meet the employment and capital investment obligations of the Appalachian project. The performance of this new project could reduce Lessin's $210,000 liability in whole or in part.

In July 2019, Lessin provided a list of projects in which he is involved as Vice Chairman of the Virginia Israel Advisory Board (VIAB) that were to be completed within TRRC's service area. In a letter dated August 5, 2019, to Lessin, Feinman indicated that the Appalachian project could be closed based on TRRC staff confirmation that its employment and capital investment obligations were met with the VIAB projects in localities eligible for TRRC funding. None of these projects were completed at the time the letter was issued.

According to the terms of the agreement, Feinman believed the [redacted] was liable for repaying the grant, regardless of the amount collected from Lessin or Appalachian. Feinman knew if they requested payment from the [redacted], the county would have to sue Lessin for the money. [redacted]

[redacted]

After Lessin's attorney refused to settle and said he would win or lose in court, Feinman discussed the issue with OAG counsel. [redacted] Therefore, to minimize the risk of potentially losing more funds [redacted], Feinman opted not to pursue repayment from the [redacted] or Lessin. The arrangement to substitute the jobs and capital investment from VIAB projects in the TRRC's service area in place of the Appalachian project was a compromise. While the VIAB projects were not completed as of August 2019, TRRC's [redacted] researched and verified that the projects could yield a sufficient number of jobs and capital expenditures after approval from the localities.

TRRC's TROF policy says, "Unless otherwise approved by the Commission (*ref: TRRC*), the Performance Agreement shall require repayment of full or pro-rata grant amounts if the specific performance targets set forth therein are not achieved." Subsequent to the January 8, 2018, Committee meeting where Appalachian's appeal for debt relief was denied, there was no mention of the grant in the meeting minutes of the TRRC Full Commission, the Executive Committee or the TROF Committee. Feinman was sure he spoke to TROF Committee members separately to make them aware of the situation and the reason TRRC was allowing Lessin to substitute jobs and capital investment from other projects to satisfy the liability. Because the outstanding liability was $210,000, Feinman thought his actions were within his $1 million TROF approval authority.

Conclusion

The allegation is **substantiated**. There were valid business reasons for not taking legal action to pursue payment from Lessin. The Committee denied Lessin's appeal for a repayment waiver, but the Committee Chairman encouraged TRRC staff and Lessin to work out a mutually agreeable arrangement. The substitution of planned jobs and capital investments from VIAB projects was a compromise in lieu of repayment; however, it lacked TRRC approval as required by TROF policy.

Recommendation

TRRC staff should adhere to policies and obtain proper approval for claw-back waivers or other arrangements in lieu of repayments prior to making any official agreements.

Additionally, OSIG uncovered an issue with the grant management software used by TRRC staff. The software tracks active and closed grants; however, it does not readily identify TROF grants that did not meet performance targets and where a repayment plan or a claw-back waiver is being used. It is possible for TRRC staff to determine TROF grants meeting these characteristics by viewing or sorting accounts according to certain data fields. Therefore, OSIG also recommends that TRRC staff establish a system code to identify TROF grants that did not meet performance targets and are making repayments or have obtained a claw-back waiver. Additionally, TRRC staff should develop a report listing TROF grants that have passed the project completion date and failed to meet performance obligations so commissioners are aware of those that may require follow-up action.

OSIG appreciates the assistance provided by TRRC staff during this investigation. Please provide a response to the recommendations made in this report indicating the corrective action you plan to take within 30 days of the issuance of this report. Please contact me at 804-625-3255 or michael.westfall@osig.virginia.gov should you have any questions.

Respectfully,

Michael C. Westfall, CPA
State Inspector General

cc: Martha S. Mavredes, Auditor of Public Accounts, Commonwealth of Virginia