Small to Medium Size Districts Can Offer Opportunities for Relatively High-Cost Investments in Products/Services With Low Reoccurring Costs

A Technology Monitoring and Information Service (TechMIS) SPECIAL REPORT

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Under “regular” and “stimulus” Title I and IDEA funding this year, the demand should grow for high-cost products of an investment nature, with low operating costs, which meet immediate needs in certain small/medium size districts. Not only has the demand grown for “priority allowable use” types of products identified in recent USED guidance as “examples,” but some of this increased funding will be used to purchase products and services which meet high district “general” priority needs, providing these districts with the opportunity to move onto the 21st century technology stage, which could result in dramatic reform.

These opportunities exist in certain similarly-situated districts which are going to receive large percentage increases in funding through various buckets and legal “loopholes.” Specifically the similarly-situated districts are those:

- receiving large percentage increases in Title I funding in the FY 2009 budget, which are perceived by district officials as one-time windfall gains;
- located in states with State Fiscal Stabilization Funds (SFSF) that remain after state funding cuts are restored and that are to be redistributed under the current Title I formula allocations;
- which meet IDEA “compliance” requirements and do not have to set aside 15 percent of IDEA funds for early intervening services/RTI because the district does not have “disproportionately” (i.e., overrepresentation of minorities in special education programs).

Each year over the last decade, we have analyzed USED’s preliminary district Title I allocations, identifying districts which are receiving large absolute Title I funding allocations ($200,000-$400,000, depending on the overall Title I funding increase) or large percentage increases (20-40 percent). The most current allocations were included in our April 29th Special Report sent to TechMIS subscribers. In that report, we
identified about 300 districts whose preliminary Title I allocations for this coming school year, prior to final USED and SEA adjustments, represented a 30 percent or greater increase which was at least $100,000. As we reported in the April 29th District Preliminary Title I Allocation Report, in some states such as Georgia, Ohio, and Texas, there are large numbers of districts receiving large percentage increases (i.e., more than 300 percent); however, there are opportunities in other states which may be attributed to Census data or calculation mistakes. While some districts feel that the increase was due to a trend of large increases in Title I eligible students most perceive this increase as a “windfall” due to mistakes either in the “poverty specific counts” in the Census data sets or in the calculation process. In the latter cases, these districts will see the increases as one-time windfalls creating opportunities for immediate investments in products and services which have low reoccurring costs -- in many cases, technology products and/or professional development.

Moreover, many of these similarly-situated districts are located in states which are likely to have SFSF funds remaining after the governor/state restores state cuts which have recently occurred. This is likely due to:

- few general cuts in state aid over the last year, thereby requiring small amounts of SFSF money for restoration;
- very recent governors’ decisions to stave off “bait and switch” tactics by state legislatures to reduce state funds to be replaced by stimulus funds;
- the selection by the governor of specific limited state aid formulas to be restored while not attempting to restore funds in certain categorical programs (e.g., planned preschool initiatives, test preparation, among others).

It is dangerous to predict the final outcomes of political jockeying in many states at this time. It appears, however, that, in certain states such as Wyoming, Arkansas, Texas, and a limited number of others, after restoration to the 2009 or 2010 levels, SFSF funds will remain and be distributed to districts under the most recent Title I funding formula. This will result in districts receiving the largest percentage increases in regular Title I funds noted above, receiving proportionately larger percentage increases in SFSF stimulus funds than other districts in the state. Moreover, the ARRA language clearly states that while such remaining funds are to be distributed under the most recent Title I formula allocation, these funds can be used at the discretion of districts for any purposes supported under Title I, IDEA, the Perkins Act and related Federal titles.

Many of these same districts have an additional legal “opportunity” to take advantage of a provision (Section 613/local adjustment) that has been in the IDEA regulations since 1997 and that was included in the 2004 IDEA reauthorization. This provision, which has seldom been used (and therefore many district officials are not aware of it), allows a district to use up to 50 percent of its increase in IDEA funding over the previous year’s level to replace the same amount of local funds currently being used to pay for district special education programs. Moreover, a provision in the ARRA allows a district legally to “supplant” as long as it uses the “freed-up” local resources for any allowable purpose and use under ESEA. Districts that have **not** been identified as having disproportionality
(and who, therefore, do not have to set aside 15 percent of the entire district’s IDEA allocation for early intervening services/RTI) can, if they meet other conditions (e.g., the SEA has not cited the district for failure to meet Free Appropriate Public Education provisions in IDEA and other conditions) free up the entire 50 percent of the increase. However, the IDEA law states that if the district has to set aside the 15 percent of IDEA funds for disproportionality, the amount that can be replaced under Section 613 cannot be more than the absolute amount constituting the 15 percent set-aside. For example, if a district’s IDEA allocation increased from $1 million to $2 million over the last year, and the district had to set aside 15 percent ($300,000) for early intervening services, the maximum portion of the increase that would be used under Section 613 to replace local funds would not be the entire $500,000, but rather $300,000. However, a “guidance modification” under ARRA released by USED on April 13th is more restrictive in that it states, “Finally, an LEA that is required to use the 15 percent of its IDEA Part B allocation on CEIS (Consolidated Early Intervening Services) because the SEA identified the LEA as having significant disproportionality….will not be able to reduce local MOE (Maintenance of Effort) under IDEA Section 613.” These and other conditions are currently being negotiated between education groups and USED.

While USED lawyers are attempting to iron out their own policy differences, states are moving ahead with their own interpretations. As of this date, over 20 states rely on whether a district’s meets the FAPE requirements of IDEA in determining whether an LEA can take advantage of the Section 613 MOE flexibility. As more districts lobby SEAs to provide them such flexibilities, more states are likely to rely only on the “meets requirements” indicator in determining whether a district can take advantage of the flexibility. Thus far, the percentage of districts which meet requirements vary from 30 percent in Texas to 100 percent in Virginia. In some states, additional SEA eligibility conditions have also been added. We continue to track such LEA determinations in each state as they are made available.

If a district meets all of the above criteria, then it and other similarly-situated districts could have at its disposal a significantly increased amount of regular and stimulus funding from the three separate funding buckets (i.e., Title I, IDEA, Stabilization). Moreover, these funds could be used with greater flexibility than only Title I allowable uses. In some states, there may be “unofficial” priorities regarding allowable uses of freed-up funds under Section 613, and, as noted earlier, conditions which districts must meet to use Section 613 options. However, there is an enormous opportunity during the first year of the stimulus funding for firms with appropriate products to take advantage of such situations.

If anyone has any questions on how to approach district officials and/or what types of products are most appropriate for purchases using portions of the three funding sources, call Charles Blaschke directly.

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