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MEMORANDUM

DATE: July 18, 2012

TO: TechMIS Subscribers

FROM: Charles Blaschke, Blair Curry and Suzanne Thouvenelle

SUBJ: Waiver Update

Enclosed is a timely update on the waiver process based on discussions with USED high-level officials and recent approval of Washington State's request to free up Title I professional development set-aside. Information should be provided to sales staff to take advantage of end-of-year spending.

State Waiver Update:
New Approved State Waivers, "Freezes" and Freed-Up Professional Development Set-Aside

A Technology Monitoring and Information Service (TechMIS)
Special Report

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As the September 30th "obligation" (spending) deadline for unspent Title I and other funding approaches, firms need to take into account some recent developments regarding the state waiver process. Sales staff ought to be aware of these developments and ensure that district decision makers, under pressure to spend money, are also aware. Seven more states have received comprehensive waiver approval -- including Arkansas, Missouri, South Dakota, Utah, Virginia, Washington, and Wisconsin -- bringing the total to 26 states approved thus far.

One of the last seven states -- Washington -- is conditionally approved for the 2012-13 school year. In addition to the new State accountability system relating to student achievement, progress, and graduation rates, another condition focuses on the State's proposed principal-teacher evaluation system being finalized for USED approval next year. As we reported in our March TechMIS Washington Update, one of the most significant requests included in Washington State's original waiver application was to allow the $40 million of "accumulated" 10% set-aside for professional development, which had grown within districts over the last several years, to be "freed-up" to be used for more flexible purposes. In a March discussion, State Superintendent Dorn confirmed that the accumulated professional development set-aside, if approved, would be used to implement the principal/teacher evaluation system components, of which only a portion would be professional development. The remainder would go toward establishing the tools and an infrastructure to implement the principal/teacher evaluation system and building that capacity (see related Washington State Profile Update). A review of the approved waiver and accompanying documents from the Washington SEA found that USED approved the State's request "to recapture $58 million of Title I set-asides that can be repurposed to go back into the classrooms." As sales staff approach a district which has a large amount of accumulated 10% set-aside money for professional development, and which wants to use a portion of such funds for purchasing products and/or services unrelated to professional development, then the district should be reminded of the allowance made for Washington State and should contact the SEA to request a waiver for the district to follow the Washington State waiver. A USED official has indicated that, even if a state did not specifically request waiver approval to free up carried over, unspent 10% professional development set-aside, it is assumed under the ESEA Flexibility guidance that -- if USED approves the state waiver request unless the state explicitly stated that the 10% set-aside would remain -- the state is allowed to use such funds in a more flexible manner, similar to the freed-up use of SES set-aside. He also indicated that perhaps there is a need for USED to clarify this issue in subsequent guidance. Of the $2.5-$3 billion carryover of regular Title I funds from last year to this year, we estimate that more than $1 billion was accumulated 10% professional development set-aside funding.

Other SEAs should also be reminded of Washington State's approval to free-up professional development and other Title I set-asides which have accumulated or otherwise are unspent and to allow districts to use those funds in a more flexible manner.

By mid-July, waiver applications from ten states and the District of Columbia were still "under review"; among the remaining states, Pennsylvania, California, and Texas have not formally submitted applications. Iowa had its waiver turned down and Vermont was turned down, but may reapply in September. Seven states -- Alabama, Alaska, Idaho, Iowa, Kansas, Maine, and West Virginia-- according to USED's July 13th announcement, may "freeze" their AMOs for the coming school year while they work on their complete waiver request. According to the USED official with whom we spoke, by freezing the AMOs used to calculate AYP, the number of districts and schools identified for improvement will not likely increase and, in some cases, could actually decrease for the coming school year. In some states, we believe the number of districts "identified" could increase. According to the USED statement, the "freeze" enables states to use resources to plan for more complete waiver flexibility "rather than devoting resources to the growing numbers of districts identified for improvement as a consequence of escalating AMOs required by the current law."

The high-level USED official confirmed that, in states which receive freezes (with a few exceptions), all other NCLB requirements, sanctions, and guidelines on the use of funds will apply. He also confirmed that USED's September 2, 2009 guidance on the use of Title I ARRA funds still applies in districts which have been identified for improvement. This allows Title I funds, including those unspent this year, to be used to provide professional development, not only for Title I teachers, but all teachers in similar non-Title I schools related to the topic (e.g., low math performance) that caused the district to be identified for improvement. He also confirmed that a district identified for improvement could also purchase a product previously purchased and used in Title I schools, for a similarly-situated non-Title I school, if it is purchased with non-Title I funds, without violating the supplement not supplant requirement. Hence, as we noted in our May TechMIS Washington Update item, before the September 30th deadline, sales staff should remind district officials in states receiving AMO "freezes" of this and other flexibilities in the September 2, 2009 regulation that allow the more flexible use of Title I funds. It is very likely that most, if not all, states whose waiver applications have not been approved will likely be given "limited waivers" to "freeze" AMOs which would allow districts identified for improvement take advantage of the current Title I flexibility in the use of funds. Other states which have not submitted formal waiver applications thus far, such as Alabama and Alaska, have already received "limited freeze waivers"; more states are likely to receive them in the immediate future.

During discussions with the USED official, we asked whether the 2010 School Improvement guidance which allowed districts to use SIG Part G funds for remediation, professional development, and planning during the "pre-implementation phase" for Tier 1 and Tier 2 schools would also apply to Priority and Focus Schools under the state waiver process. He indicated that freed-up SES money and other Title I funds which will be used for implementing interventions in such schools could be used now through September for such purposes because full implementation of the waiver process is not scheduled until September. Such opportunities could allow firms to begin work in these areas immediately with the intent of receiving additional funds for similar or other purposes in Priority and Focus Schools once full implementation of interventions occur.

A number of TechMIS clients with whom we have talked in the last few weeks have reported that district Title I and other officials appear to be even more confused about allowable uses of freed-up or unspent carried over Title I and other funding. Some have requested clarification from their states, but have received no responses. Our advice would be to parallel what Dr. Joseph Johnson, the Bush appointee who headed the National Title I office after the passage of NCLB, told the National Association of Federal Education Program Administrators (NAFEPA) in April 2002, "Do what you think is right and don't ask any questions." To that we would add, document any requests seeking clarification and then proceed accordingly.