

# SPECIAL BULLETIN

December 18, 2009

## Local Educational Agencies, including School Districts, Wishing to Participate in Race to the Top Funding Must Provide an MOU to the California Department of Education By January 8, 2009

As part of the federal American Recovery and Reinvestment Act of 2009 ("ARRA"), which provides stimulus funds to states for various purposes, school districts have the ability to request "Race to the Top" funding. Race to the Top is a competitive grant program to encourage and reward states which implement reforms in four educational areas described in the ARRA:

- ◆ Enhancing standards and assessments;
- ◆ Improving the collection and use of data;
- ◆ Increasing teacher effectiveness and achieving equity in teacher distribution; and
- ◆ Turning around struggling schools.

### General Funding Information

The U.S. Department of Education will award funding in two phases - Phase 1 funding will be awarded in Spring 2010 and Phase 2 funding will be awarded by September 30, 2010. Race to the Top funding is in addition to Title I and School Improvement Grant funding.

As we noted in our **October 2009** issue of *Education Matters*, the California Legislature passed, and the Governor signed, SB 19, which allowed California to be eligible for the Race to the Top funding. (SB 19 allows States to utilize certain data in determining teacher performance, which is a requirement of the program.) As a result, California local educational agencies ("LEAs") are eligible for this funding. The California Department of Education ("CDE") will apply for the funding from the federal Department of Education ("DOE").

LEAs that apply for funds must agree to certain actions commensurate with the goals and objectives of the Race to the Top funding. These include: offering professional development to teachers and administrators; communicating with the CDE regarding its planned adoption of the "national common core standards" created by the DOE; implementing new data systems to support instruction; providing additional supports for teachers; implementing turn around options for low achieving schools; and developing collaborative relationships with other LEAs. Additional information about these and other requirements can be found at the CDE's website. (<http://www.cde.ca.gov/nr/el/le/yr09ltr1214.asp>.)

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It is unclear at this point how much funding each LEA will receive. California should receive between \$350 million and \$700 million to be distributed among LEAs. Funding will be based on the number of LEAs that participate. Fifty percent of the funds received by the State will be allocated pursuant to the Title I formula. It is important to note that, while States must compete for funding, there is no competition among LEAs in California for the funding. Applicants who comply with the CDE's application requirements will be considered a participating member.

### **Application Process**

In order to receive an award, a school district must file a Memorandum of Understanding ("MOU") with the CDE by **January 8, 2009**. This MOU must be signed by, at a minimum, the Superintendent of the applying LEA. The MOU also contains lines for signatures of the governing board and the local teachers union. However, CDE will accept an MOU so long as it is signed by the Superintendent. We recommend obtaining board approval, since the MOU is a binding contract, and Superintendents generally do not have the authority to enter into contracts. The MOU can be found at the CDE's website at <http://www.cde.ca.gov/nr/el/le/yr09ltratta1214.asp>. (There are also three attachments to the MOU, links to which are found at the same website address as the MOU.) It is not necessary to obtain the signature of the teachers union, but California will receive more points in the competition for funding if MOU's have union signatures.

If California wins a Race to the Top grant, participating LEAs will then have 90 days to create a Scope of Work and submit plans for implementation and a budget. LEAs may select only some schools within the LEA to participate, or may seek funding for all schools.

In addition to the January 8, 2009 deadline, CDE is asking that LEAs send a "statement of intent" to participate by **December 31, 2009** via email to [info@caracetothetop.org](mailto:info@caracetothetop.org). This email is not binding, but will allow the CDE to compile necessary data for the State application.

There has also been some discussion about whether the MOU, itself, is binding, or whether LEAs can opt out. The MOU provides that the agreement may be terminated upon the mutual agreement of the LEA and the State, but does not otherwise contain an "opt out" provision. Districts have been told that the language regarding mutual termination of the contract provides some flexibility, and may allow a District to opt out. However, whether Districts can opt out is not entirely clear. If an LEA participates, but does not meet the requirements of the program, the CDE may take appropriate enforcement measures, including the withholding of funds. Therefore, it is important to carefully consider whether participation is within the best interests of each particular LEA.

Further information is available at [caracetothetop.org](http://caracetothetop.org). In addition, please do not hesitate to contact Liebert Cassidy Whitmore with any questions.

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*If you have questions about this issue, please contact our  
Los Angeles, Fresno or San Francisco office.*