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August 25, 2009

The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

***Re: Race to the Top Fund – Notice of Proposed Priorities, Requirements,
Definitions and Selection Criteria – Docket ID ED-2009-OESE-0006***

Dear Secretary Duncan:

The National School Boards Association (NSBA) on behalf of the nation's 95,000 local school boards, appreciates this opportunity to comment on the Department of Education's July 29, 2009 Federal Register Notice regarding the Race to the Top Fund (RTTT). In developing these comments, we invited over 50 state school boards associations and territories to provide us with their input as well.

Overall, NSBA believes that the program will provide grant recipient states with a significant opportunity to build a results driven infrastructure and implement initiatives that will raise student achievement. RTTT can also provide a model from which recipient states and other states can learn and adopt strategies that will make a difference in the education of America's school children.

Within that supportive context we offer the attached comments to remove ambiguities, strengthen the focus on specific priorities, and address unnecessary concerns or problems in order to ensure that the program will be understood at the local level and have strong support to produce the most effective results.

In lending our support for many of the strategies set forth in the Notice, we are concerned that the overall impact of the requirements and activities that will flow from them will be difficult to sustain operationally and financially (where costs will not be covered by RTTT funding). We are also concerned that the RTTT is overly prescriptive and focused on certain specific strategies, including those relating to school governance such as an overemphasis on charter schools and school takeovers.

Hence, in moving this important agenda forward, we urge the Department of Education to review the program as a whole—in addition to our specific comments—and focus the requirements and detail on those of greatest importance to assure success at the local school level district level.

We would be pleased to answer any questions that our comments raise and look forward to assisting the Department to maximize the success of this important initiative.

Sincerely,

Michael A. Resnick
Associate Executive Director

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G:FRN/Mike's shared work/letters/2009/Letter accompany RTTT comments 8.24.09.doc

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**National School Boards Association (NSBA)
Comments on Race To The Top Fund – Notice of Proposed Priorities,
Requirements, Definitions, and Selection Criteria
(Federal Register July 29, 2009)**

Background for Proposed Applications

Overall, the National School Boards Association (NSBA) believes that the program will provide grant recipient states with a significant opportunity to build a results driven infrastructure and implement initiatives that will raise student achievement. RTTT can also provide a model from which recipient states and other states can learn and adopt strategies that will make a difference in the education of America's school children.

Within the supportive context we offer these comments to remove ambiguities, strengthen the focus on specific priorities, and remove unnecessary concerns or problems in order to ensure that the program will be understood at the local level and have strong support to produce the most effective results.

Structure of Race to the Top

Given the comprehensive scope of the program, it is recommended that the Department of Education (ED/the Department) provide information as to the number of state awards that are contemplated as well as the size of grants that school districts should be considering as they go through the extensive work to prepare proposals to become participating LEAs.

Timing of Applications and Awards

It is recommended that upon approval, state applications be immediately posted on the Department of Education's website, with funding levels, so that local school districts in states with applications still in the development stage can have examples of activities that could inform the development of their own initiatives.

It is also recommended that ED clarify that states must have a process to enable school districts to modify their plans where warranted by such factors as finances, results, timelines, and future changes in law (e.g. ESEA). Additionally, we recommend that the Department provide greater flexibility to accommodate state and local innovations that are more likely to provide success in specific situations (e.g. turnaround schools) than those that are pre-selected in the Notice.

I. Proposed Priorities

Proposed Priority 1—Absolute Priority

a) The proposed Notice requires grantee states and their participating LEAs to take a systemic approach to education reform. The term "participating LEAs" appears repeatedly throughout the document but beyond being a Title I district it is not explained how a "participating LEA" would become a recipient of funds. For example, would all Title I school districts seeking funds

automatically get their pro-rata shares, or could states set their own criteria for approving applications for a Title I formula based distribution of funds? NSBA recommends that ED clarify the state-local process for how Title I school districts are ultimately awarded funding.

b) The use of NAEP to “monitor” increases in student achievement raises several questions. First, what does the word “monitor” mean and how will the NAEP results be used? Second, will states and participating LEAs be held accountable for meeting achievement goals tied to performance on NAEP? If so, accountability is not the intended purpose of NAEP and, as a practical matter we don’t see the merit of having what could be three different assessments within three years. Third, since NAEP will not necessarily align with a state’s common core standards or its 15 percent “add-on,” how valid of an indicator is it? Fourth, especially since NAEP is a state sample, how will it be administered and how will progress be effectively monitored in the specific LEAs and specific schools that are targeted for RTTT assistance if they are not being appropriately sampled?

Accordingly, it should be clarified that where used, NAEP results will be informational only and not be used for local RTTT grant compliance, AYP, or school improvement purposes. Further, grant recipient states should not be required to expand student participation in NAEP testing where the transition period from the existing state assessment involves one test year.

II. Requirements

C. Annual Report and Performance Measures

If states and participating LEAs are held accountable for meeting annual goals and targets under RTTT that differ from their current performance goals under ESEA and state accountability plans, how will these differences be reconciled? Would RTTT goals/targets be subject to modification if ESEA is reauthorized in a manner in which its requirements go in a different and/or more a stringent direction? We recommend that these issues be addressed.

By way of general comment, the proposed program is very comprehensive in scope and detailed in what it is seeking grant recipients to do. In lending our support to data driven decision-making including specific strategies called for in the Notice, we are concerned that it may be asking too much of local school districts in terms of the simultaneous and on-going requirements to be undertaken by “participating” districts and all districts and being overly prescriptive in certain areas (e.g., turnaround schools). We are also concerned that significant costs that will not be covered by RTTT funding will be posed for districts in general to set up and maintain their programs as well as to implement the strategies that may be required to flow from them. For example, the Appendix not only will result in substantial collection at the local level, but there will be significant program activities flowing from them and other RTTT requirements such as developing and implementing teacher evaluation and compensation systems and engaging in a wide range of instructional changes to implement new standards.

In financial terms, it should be recognized that many states are projected to incur budget shortfalls over the next year or two that are likely to be greater than their current shortfalls. Further, they may not have the appreciated benefit of having another round of stimulus funding, rainy day funds to draw upon, or one-time accounting fixes to make additional money available to LEAs. At the same time many LEAs are likely to have additional budget pressures resulting from lowered assessed property valuations and taxpayer opposition to raising local property tax rates.

We recommend that the Department review the Notice, including the Appendix, from the standpoint of what LEAs, both participating and non-participating, will be required to do – regardless of size or resources – and sort out a set of priorities and/or optional elements or otherwise provide the states with more flexibility as to what they need to include in their applications.

In terms of the RTTT being overly prescriptive, we are especially concerned with what appears to be a focus on specific school governance strategies such as an overemphasis on charter schools and school takeovers. (See Section D (Turning Around Struggling Schools) for details and recommendations).

NSBA also recommends an independent, voluntary process for LEAs to evaluate their experience with the RTTT program in such areas as effective activities, new directions, challenges, accountability, etc. so that the Department can have “on the ground” information to make refinements as well as to take specific activities to larger scale through future initiatives.

II. D. Other Program Requirements

(A) National evaluation—As in II. C. above, NSBA recommends a voluntary, independent role for LEAs in a national evaluation of the program, if the Department chooses to conduct one. In the event that results from an evaluation of the RTTT program are taken to scale nationally, the perspective of LEAs offers a valuable contribution to the evaluation process.

III. Selection Criteria

Proposed Selection Criteria

A. Standards and assessments

A (1). Developing and adopting common standards

With respect to requiring applicant states to adopt common state standards in a consortium of a “significant” number of states, this section and the definition for common standards appear to be tied to the initiative being developed by the National Governors Association and the Council of Chief State School Officers. In that light, presumably the application requirements of this section will be met if the common standards apply only to mathematics and language arts and not other subjects.

In the event the above initiative (which is still in the development stage), does not ultimately prove to be appropriate for some states, the question arises as to what a “significant” number of states means if several states seek to join a regional or other consortium. If the standards are of comparable quality to the NGA/CCSSO initiative then a consortium of at least three states should be considered eligible for these funds.

A (2). Developing and implementing common, high quality assessments

If a state develops acceptable standards, it should not necessarily be required to join a consortium of a significant number of states as long as its own assessment or that of a smaller group of partner states is deemed to be high quality and aligned with those standards.

Reform Plan Criteria

A (3). Supporting transition to enhanced standards and high quality assessments

Local capacity to make the transition to new standards and assessments will be crucial. That capacity will require states to provide both technical information/assistance such as the examples provided in the Notice. However, LEAs will also need financial resources to conduct professional development programs (not just receive materials) and to purchase text books, software, and other course materials. How the state intends to assist LEAs to fund these operational expenditures should be explicitly required in the state plan, especially since most school districts will not be participating as local RTTT grantees.

B. Data Systems to Support Instruction

State Reform Conditions Criteria

(B) (1) Fully implementing a statewide longitudinal data system

In meeting the requirements for a statewide longitudinal data system, there will likely be net costs incurred at the local level to set up and maintain data—including costs for LEAs that do not receive assistance from RTTT. Some school districts will be challenged by older buildings, a limited revenue/staff base to support investing in the necessary technology and data implementation, limited bandwidth and timing concerns. It is recommended that the state application specifically indicate how it plans to technically and financially support LEAs across the state, including developing contracts and systems that can reduce costs by involving multiple LEAs. The Department may also wish to use its \$250 million data fund to support voluntary collaboration among the states in the development of systems that meet their common needs. Especially if the use of these types of data systems is planned to be extended to all states and LEAs under the ESEA reauthorization, the Department may wish to coordinate with the FCC regarding the current utilization of E-Rate funding and long-term opportunities under the national broadband plan under development in order to have a comprehensive and adequately financed federal approach.

C. Great Teachers and Leaders

Reform Plan Criteria

(C) (2). Differentiating teacher and principal effectiveness based on performance

NSBA supports the use of student growth as a significant factor in evaluating teachers and principals, including determining their compensation, promotion, and basis for granting tenure or dismissal.

NSBA is aware that several states have laws or policies that would prohibit the use of such student data when evaluating teachers and principals. School districts in these states should not be penalized or denied much needed RTTT funding if their state can demonstrate that it is taking steps to modify state legislation or policy to connect student progress and teacher/principal effectiveness, or if it can demonstrate the reasons why the current statute/policy should remain in place.

D. Turning Around Struggling Schools

(D) (2) Increasing the supply of high-quality charter schools

The Notice requires a state to demonstrate the extent to which its charter law does not prohibit or effectively inhibit increasing the number of charter schools in the state as a percent of total schools in the state.

In this regard, NSBA supports charter schools but only if they are authorized by the LEA in the school district where the charters are located. Charters authorized in this manner will promote better coordination, sharing of resources and practices, accountability, and a more comprehensive community wide approach and support for education vis-a-vis the school system than will a charter school that is inserted by an external agency. The importance of charter schools being authorized within the public school system is supported by a recent study released by Stanford University. It found that states with multiple authorizers (i.e. entities outside the public K-12 system) experienced significantly lower growth in student learning.¹ This finding suggested that charter applicants strategically look for the option that is the “easiest” to meet, and the study recommended “accountability in exchange for flexibility.” Local school boards are already accountable for student performance and to their communities, and, as such, are logical authorizers for charter schools.

In further support of the local school district being the charter authorizer, President Obama in an interview with the Washington Post on July 24, 2009 stated “I think charters, which are *within the public school system* (emphasis added), force the kind of experimentation and innovation...as long as we are continuing to set high standards and are applying them consistently to charter schools.” Accordingly, for the purpose of ensuring better educational outcomes and to fully align the RTTT program with the President’s policy we recommend clarifying a preference for those charters that are authorized by the local school district in which they are located.

NSBA strongly objects to what appears to be a grant preference or encouragement for states that remove or greatly raise their charter caps regardless of whether good educational policy, practice, or necessity for a particular state and particular school district justifies doing so. Further, placing a premium on encouraging states to remove caps on charters or greatly expand their use isn’t supported by conclusive research that charter schools produce superior results in raising student achievement compared to traditional public schools.

The Stanford study, considered the first national study on student achievement in charter schools, found that students in charter schools are not faring as well as their peers in traditional public schools. Specifically, 37 percent of charter school students posted significantly lower math gains than their counterparts in traditional public schools; 46 percent saw gains that were no different than the average growth of traditional public school students; and only 17 percent experienced higher gains. In reading, the average growth among students in charter schools was lower than that of students in traditional public schools.²

Accordingly, we request that language be added to (D) (2) that will do the following.

- a) Clarify the provision to explicitly say that states don’t need to remove or expand their caps in order to successfully apply for RTTT.
- b) Clarify the provision so it doesn’t encourage states to relax the approval criteria for a charter school in order to demonstrate a greater number or rate of approvals when applying such criteria as fiscal and educational soundness, likely sustainability, accountability, etc—or the

¹ Stanford University. Multiple Choice: Charter School Performance in 16 states (June 2009) at 4,39-40.

² Stanford University, Multiple Choice: Charter School Performance in 16 states (June 2001) at 3,6.

determination for approval they allow LEAs to make as to the overall efficacy of granting a particular application in their community.

- c) With respect to providing charters schools with “equitable” funding it should be clarified that equitable does not mean equal funding to the extent that traditional public schools provide services that are not made available in the charter school, are subject to mandates that don’t apply to charter schools, and typically serve a greater portion of students with special needs.
- d) With respect to states reporting on the access of charter schools to bonds and millage, clarify the provision so that if an LEA is not the authorizing agency of a charter operating in its boundaries that the plan provision requiring states to show the extent to which the charter can share in local bond issues or tax levies is not being encouraged as a condition for receiving RTTT approval—or do not require the information be reported at all. Clearly, it should not be expected or inferred that the taxpayers of a community should be required to construct or finance the ongoing operation of a school that is authorized within its boundaries by another agency--regardless of whether that other agency is at the other end of the state or in a neighboring school district. Further, the school district should not be placed in a position to be fiscally, legally, or politically accountable for raising and turning over local taxpayer dollars to schools over which it is not responsible for authorizing or holding accountable.

The provision should also be clarified to enable states to demonstrate where they have enhanced their financial support for charters in recognition that for legal or other reasons they could not participate in local school district bonds or millage revenues.

Reform Plan Criteria

(D) (3) Turning around struggling schools

This section is a critical part of the program because it addresses schools in greatest need, will involve a substantial portion of RTTT dollars, and is likely to influence how a grantee state will also utilize substantial funding from its portion of the \$3 billion provided nationwide by ARRA for school improvement grants under Title I. Generally, we are concerned that the RTTT would transform the existing ESEA intervention strategies by de-emphasizing the value of improvements through the use of existing school personnel (i.e., the school transformation option) and by adding certain requirements to specific design strategies that would not be an appropriate interventions in all cases.

Overall, the Notice identifies three broad preferred strategies for turning around low performing schools and a fourth strategy which is to be utilized only if the first three are “not possible.” As a result, it is very likely that if an LEA participates in receiving turnaround grants it must surrender all or some of the governance of the schools involved. We strongly object to the assumption that existing school governance is necessarily the cause of failure, or even with adequate financial and technical support, it is not as likely to be successful as the other approaches. We recommend that a less ideological and more pragmatic approach be taken to recognize that with additional resources, the current governance structure (and a fully accountable central office) can produce a stronger commitment for LEAs to participate in RTTT and achieve better results in specific cases than will the Notice’s current top down approach to categorically down grade school board governance.

Our broad concerns on each of the strategies are detailed below:

- Intervention

The first strategy speaks not only to providing new leadership within the school building itself, but to “new governance” as well. If the term “governance” is intended to mean a new administrative staff or that the school board and central office will engage in new activities in how it oversees the school and its plan, it should be stated to include those possibilities. On the other hand, if the term is intended to have its plain meaning, then, as indicated, we strongly object to that absolute requirement for this option.

Expecting that each individual local school would necessarily be improved by bringing it under the authority of a local site council, city or county government, the state, or some other entity other than the local school board is not supported by the evidence. Rather than eliminating the school board (and thereby limiting the central office as well) we recommend a more flexible alternative that the governance of the school system (i.e., the school board) be able to demonstrate what additional attention, support, partnerships with city/county governments and the non-profit sector, and accountability it will provide to that particular school to ensure that it meets its achievement targets.

With respect to urban school districts in particular, it should be noted that Secretary Duncan spoke to the importance of partnerships between school boards and mayors as distinguished from take-overs at the 2009 NSBA convention as well as in an article written for the October 2009 edition of the American School Board Journal. It is recommended that the turnaround component of the RTTT program recognize this important option. NSBA and its Council of Urban Boards of Education will be pleased to provide any assistance to the Department toward that end.

Finally, for urban schools and LEAs that have recently been taken over or have brought in charter schools or management companies the Notice appears to suggest that they must (unless “not possible”), do so again under the first three options if they want to participate in the program.

As generally helpful as the components of the intervention option may be in some instances, for all the reasons cited above, it is recommended that RTTT provide flexibility so that in using this option particular activities will need to be considered but not necessarily adopted if good cause can be shown for doing so.

- Charter Schools/Education Management Organizations

The second strategy speaks to charter schools and education management organizations. Although they can be effective strategies to be considered (assuming in the case of charters they are authorized by the school district involved), after many years, neither of these options have yet been shown to provide superior results as to be preferred over the fourth strategy. Therefore, we recommend that this option not be identified as a preference over the school transformation option.

- Closing the School

While the option to close the school and reassign pupils to a high achieving school can be effective, it will be limited in its use as a result of factors such as district size, school seat capacity, and parent preference for neighborhood schools. Why create an unnecessary preference for it compared to the

fourth strategy? Therefore, we recommend that this option not be identified as a preference over the school transformation option.

- **School Transformation**

The fourth turnaround strategy would only go into effect if the first three are “not possible.” In effect, this option like the other three options, would make a new school by hiring a new principal and implementing a wide range of staffing and instructional strategies that in all likelihood did not previously exist. But this limitation on school transformation could prevent local school districts from implementing strategies that are effective in their schools. Research from the Center on Education Policy on restructuring under the *No Child Left Behind Act* (2008) found that school improvement strategies worked best when states and districts were given the flexibility to create specific interventions that worked for their schools.³ For example, it found that all the schools in the study that exited restructuring and increased the percentages of proficient students used tutoring (not part of supplemental educational services) to provide additional supports to students. All case study schools that exited improvement employed “coaches” who worked with teachers or school leaders to improve student performance.

Yet, if this option is deemed locally to provide a better result than any of the other three options it is categorically precluded if one of the other three is “possible” to do. In this regard the term “not possible” is not defined. Does it mean the Local Educational Agency must fully explore each of the first three options? Does the high price of a management company, the likely weakness of a site council, the objection of the community to close a school down, the overall problems arising from the number of schools in a district using these other options, the size or remoteness of the district, etc. qualify as “not possible”?

NSBA recommends that the school transformation option be included as an equal among the three other options, and the term “not possible” be deleted.

E. Overall Selection Criteria

State Reform Conditions Criteria

NSBA supports the proposed requirement for states to solicit commitments for specific reforms from school districts and other stakeholders in the form of memoranda of understanding. We recommend that states be required to also demonstrate in their applications how local school districts (i.e., school districts in general and Title I districts eligible for special RTTT funds) have been and will continue to be involved in the development and implementing of the state plan including such elements as timelines, activities, and funding levels. In order to be a successful partner with the state, LEAs must play an active role in determining and understanding how the plan is developed and implemented.

IV. Definitions

Common set of K-12 standards

NSBA supports the flexibility for a state to add up to 15 percent in state developed standards as a means of providing more localized relevance to certain content areas, innovation, and greater emphasis on specific subject matters and skills.

³ Center on Education Policy. *A Call to Restructure Restructuring, Lessons from the No Child Left Behind Act in Give States*. September 2008.

Effective teacher and highly effective teachers

NSBA supports the concept of effective and highly effective teachers. In addition to using an assessment of student growth, individual school districts should have the flexibility to establish policies to determine whether a teacher is deemed effective or highly effective in order to recognize that a wide range of conditions can vary from district to district that would make a state-wide definition inappropriate for evaluation, promotion, or compensation purposes. Therefore, we recommend that additional language be included in the proposed definition that would explicitly provide states and school districts with the flexibility to determine criteria that the district-level can use to define an effective teacher and a highly effective teacher.

Student Achievement

NSBA is concerned that the proposed definitions of student achievement for tested and non-tested grades and subjects are unclear and too restrictive. We recommend the following: 1) clarify section (a) under the definition of student achievement so that states and school districts have the flexibility to use other indicators as deemed appropriate by the state, in addition to state assessments, when referring to student achievement; 2) clarify the language in section (b) that non-tested subjects refers to STEM related academic subjects, given the priority of advancing STEM in the proposed Notice. This would eliminate any confusion or concern over the provision's application to all academic and non academic subjects.

Thank you for the opportunity to comment. Questions concerning our comments may be directed to Michael A. Resnick, associate executive director, at 703-838-6720; or by e-mail, mresnick@nsba.org.