

Steven L. Beshear
Governor



Terry Holliday, Ph.D.
Commissioner of Education

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
DEPARTMENT OF EDUCATION

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June 9, 2014

The Honorable Arne Duncan, Secretary
U.S. Department of Education
400 Maryland Ave., SW
LBJ Education Building, Rm. 7W311
Washington, D.C.

Dear Secretary Duncan:

Thank you for your support and encouragement of states to implement more rigorous college and career ready standards, assessments, accountability systems, data systems, and professional growth and effectiveness systems. We are already seeing significant improvements in graduation rates and college and career readiness across the nation. While there is much work to do in the various states, I appreciate the collaborative nature that you and your department have exhibited in helping states assist more students achieve success.

I write today to request clarification from you concerning the two assessment consortia that were awarded grants through the Race to the Top Assessment Fund. My specific question deals with the availability of assessment items developed by the consortia through the use of federal funds provided to states. The following language was published in the Federal Register, Volume 75, Number 68 on April 9, 2010, and subsequent guidelines and agreements between the award winners and the U.S. Department of Education (USED) also utilized the following language:

Program Requirements

An eligible applicant awarded a grant under this category must:

1. Evaluate the validity, reliability, and fairness of the summative assessment components of the assessment system, and make available through formal mechanisms (*e.g.*, peer reviewed journals) and informal mechanisms (*e.g.*, newsletters), and in print and electronically, the results of any evaluations it conducts;
2. Actively participate in any applicable technical assistance activities . . .
5. Maximize the interoperability of assessments across technology platforms and the ability for States to switch their assessments from one technology platform to another by—
 - (a) Developing all assessment items to an industry-recognized open-licensed interoperability standard that is approved by the Department during the grant period, without non-standard extensions or additions; and
 - (b) Producing all student-level data in a manner consistent with an industry recognized open-licensed interoperability standard that is approved by the Department during the grant period;

6. **Unless otherwise protected by law or agreement as proprietary information, make any assessment content (i.e., assessments and assessment items) developed with funds from this grant category freely available to States, technology platform providers, and others that request it for purposes of administering assessments, provided they comply with consortium or State requirements for test or item security; (emphasis added)**
7. Use technology to the maximum extent appropriate to develop, administer, and score assessments and report assessment results;
8. Use funds from this grant category only for the design, development, and evaluation of the assessment system. An eligible applicant awarded a grant under this category may not use funds for the administration of operational assessments; . . .

Furthermore, the following is a direct quote from the Federal Register:

“In addition, we are requiring that eligible applicants receiving awards under either category in this competition develop assessment items and produce student data in a manner that is consistent with standards for interoperability, and that **they make all assessment content (i.e. , assessments and assessment items) developed with funds from this competition freely available to States, technology platform providers, or others that request it for purposes of administering assessments consistent with States’ needs and with consortium or State requirements for test or item security. We believe that these requirements will ensure that assessment content developed with funds from this competition is widely available, including to States that are not part of consortia receiving funds under this competition as well as to commercial organizations wishing to further develop, extend, and incorporate the content into assessment products intended for state use.**”

Additionally, in an April 17, 2010 description of the Race to the Top assessment competition from USED’s Joanne Weiss, the following language was issued:

The Department has issued several corollary requirements to promote technological innovation and market competition. First, all assessment content (such as assessment items and tasks) developed under this program must use standard data interfaces that promote digital exchange and interoperability. **Second, the content – the assessments and items developed under this grant – must be made freely available to any state, technology platform provider, or others that request it for purposes of administering assessments, provided they comply with consortium or state requirements for test and item security. This provision ensures that content developed with public funds is widely available – including to states that are not part of grantee consortia.** Third, not only the assessment content, but also the data generated from the assessments developed under this grant, must also conform to standard data interfaces, with the privacy of any personally identifiable information appropriately safeguarded. The cumulative impact of these requirements is that states will have the flexibility to switch from one technology platform to another, allowing multiple providers to compete for states’ business and for states to be to be smarter and more cost-effective purchasers.

These requirements should stimulate solutions and services from an array of commercial and open sources responsive to individual states’ needs. Assessment technology companies will benefit from access to free, high-quality content and a large, multi-state market. States will benefit by having their content usable on multiple platforms and selecting the option that best

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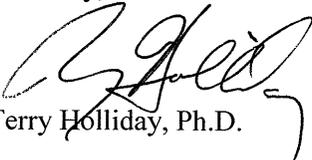
meets their needs. And will benefit from having their dollars used in highly leveraged ways to support goals that would not otherwise be achieved without an infusion of federal funding.

As a state that developed a college and career ready assessment in grades 3-8 and high school in language arts and mathematics and that has administered such tests since 2011, Kentucky desires to gain access to consortia-developed assessment items, pursuant to the program requirements cited above in **bold**, at the end of the 2014-15 school year so that we may enhance Kentucky's assessment item pool for the 2015-16 state assessments. In exchange for this access, Kentucky would certainly develop assessment items and produce student data in a manner that is consistent with standards for interoperability and conform to standard data interfaces, with the privacy of any personally identifiable information appropriately safeguarded. We would comply with consortium or state requirements for test and item security.

It is my understanding that several states have already contacted the consortia to request access to assessment items and have been denied access or told they would have to pay for access to assessment items. Both of these conditions seem to violate the program requirements; thus, the need to have clarification from the USED exists.

Thank you again for your leadership and I look forward to receiving the requested clarification on this issue.

Sincerely,



Terry Holliday, Ph.D.

Cc: All chief state school officers
Mitchell Chester, PARCC
Joseph Martineau and Deborah Sigman, Smarter Balanced
Chris Minnich, CCSSO