



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF VOCATIONAL AND ADULT EDUCATION

THE ASSISTANT SECRETARY

MAY 11 1999

PROGRAM MEMORANDUM – OVAE – 99-10

TO: State Director of Vocational – Technical Education for Alaska  
State Director of Vocational – Technical Education for Delaware  
State Director of Vocational – Technical Education for the District of Columbia  
State Director of Vocational – Technical Education for Montana  
State Director of Vocational – Technical Education for North Dakota  
State Director of Vocational – Technical Education for South Dakota  
State Director of Vocational – Technical Education for Vermont  
State Director of Vocational – Technical Education for Wyoming

State Director of Adult Education for Alaska  
State Director of Adult Education for Delaware  
State Director of Adult Education for the District of Columbia  
State Director of Adult Education for Montana  
State Director of Adult Education for North Dakota  
State Director of Adult Education for South Dakota  
State Director of Adult Education for Vermont  
State Director of Adult Education for Wyoming

FROM: Patricia W. McNeil *Patricia W. McNeil for*

SUBJECT: Reservation of Funds for State Administration under the Carl D. Perkins Vocational and Technical Education Act of 1998 and the Adult Education and Family Literacy Act

The purpose of this memorandum is to provide non-regulatory guidance to identify the options that the Department believes are available to you to address ambiguous provisions in the statutory language of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Public Law 105-332)(Perkins III) and the Adult Education and Family Literacy Act (Public Law 105-220) (AEFLA) relating to the maximum amount of the State allocation that may be made available for State administration.

**Perkins III**

Section 112(a)(3) of Perkins III authorizes an eligible agency to make available "an amount equal to not more than 5 percent, or \$250,000, whichever is greater" of the State allocation for the administration of the State plan. Section 112(a)(2) authorizes the eligible agency to make available "not more than 10 percent" of the State allocation for State leadership activities

described in section 124. Section 112(a)(1) requires the eligible agency to make available "not less than 85 percent" of the State allocation for distribution to eligible recipients under sections 131 and 132.

For each of your States, \$250,000, the maximum amount permitted for State administration, exceeds 5 percent of your State's allocation for Fiscal Year 1999, creating uncertainty as to how to reconcile the provisions of section 112(a)(3) with the provisions of sections 112(a)(1) and (2). While we do not plan to issue regulations to implement these provisions, we are providing the following guidance to help States develop their own reasonable interpretations of these statutory provisions.

If you wish to make available the full \$250,000 authorized by section 112(a)(3) for State administration, the Department believes that there are two options available to you that would be reasonable interpretations of the law:

1. You may subtract the amount necessary to reach the \$250,000 permitted by section 112(a)(3) for State administration from funds made available for State leadership activities under section 112(a)(2); or
2. You may subtract the amount necessary to reach the \$250,000 permitted by section 112(a)(3) for State administration on a proportionate basis from funds made available for State leadership activities under section 112(a)(2) and from funds distributed to eligible recipients under sections 131 and 132.

*EXAMPLE:* A State receives a Perkins III Title I allocation of \$4,000,000. Five percent of the allocation equals \$200,000, which is \$50,000 less than the maximum permissible amount that may be made available for State administration.

The State first subtracts \$250,000 from the State's \$4,000,000 Title I allocation.

State allocation	\$4,000,000
<i>State Administration:</i> up to 5% or \$250,000, whichever is greater	= - \$250,000

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\$3,750,000

Second, the State determines the amount that would have been made available for State leadership activities and distribution to eligible recipients in the absence of a shortfall in the amount available for State administration:

<i>Distribution to eligible recipients:</i> not less than 85% of State allocation	= \$3,400,000
<i>State Leadership activities:</i> not more than 10% of State allocation	= \$400,000

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\$3,800,000

Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts that would have been made available for each purpose in the absence of a shortfall in the amount available for State administration (\$3,800,000):

$$\begin{array}{l} \text{Distribution to eligible recipients } (\$3,400,000/\$3,800,000) \times \$3,750,000 = \$3,355,263 \\ \text{State Leadership Activities } (\$400,000/\$3,800,000) \times \$3,750,000 = \$394,737 \end{array}$$

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\$3,750,000

For your information, I have attached two charts showing the estimated amounts that would be available in Fiscal Year 1999 for your State for State administration, State leadership, and distribution to eligible recipients under both options.

Given the legislative history of Perkins III and the emphasis on directing greater Federal resources to the local level, we do not believe it would be a reasonable interpretation of the statute for a State to subtract the entire amount required to reach the \$250,000 permitted by section 112(a)(3) from the amount that must be distributed to eligible recipients under sections 131 and 132.

Should you wish to utilize either of the two options identified above, this choice should be included as part of the State plan submitted to the Secretary under section 122. If you wish to make corrections to the State plan you have already submitted, you may do so. Please contact your State's liaison in the Division of Vocational and Technical Education for additional information.

### **Adult Education and Family Literacy Act**

Section 222(a)(3) of AEFLA authorizes an eligible agency to use "not more than 5 percent" of the State allocation under section 211(c) or "\$65,000, whichever is greater" for the administrative expenses of the eligible agency. Section 222(a)(2) authorizes the eligible agency to use "not more than 12.5 percent" of the State allocation for State leadership activities under section 223. Section 222(a)(1) requires the eligible agency to use "not less than 82.5 percent" of the State allocation to award grants and contracts under section 231 and to carry out section 225.

For each of your States, \$65,000, the maximum amount permitted for State administrative expenses, exceeds 5 percent of your State's allocation for Fiscal Year 1999, creating uncertainty as to how reconcile the provisions of section 222(a)(3) and the provisions of sections 222(a)(1) and (2). While we do not plan to issue regulations to implement these provisions, we are providing the following guidance to help States develop their own reasonable interpretations of these statutory provisions.

If you wish to make available the full \$65,000 authorized by section 222(a)(3) for State administrative expenses, the Department believes that there are two options available to you that would be reasonable interpretations of the law:

1. You may subtract the amount necessary to reach the \$65,000 permitted by section 222(a)(3) for State administrative expenses from funds available for State leadership activities under section 222(a)(2).
2. You may subtract the amount necessary to reach the \$65,000 permitted by section 222(a)(3) for State administrative expenses on a proportionate basis from funds available for State leadership activities under section 222(a)(2) and from funds used to award grants and contracts under section 231 and used to carry out section 225.

*EXAMPLE:* A State receives a AEFLA allocation of \$1,000,000. Five percent of the allocation equals \$50,000, which is \$15,000 less than the maximum permissible amount that may be made available for State administrative expenses.

The State first subtracts \$65,000 from the State's \$1,000,000 AEFLA allocation.

State allocation	= \$1,000,000
State administrative expenses: up to 5% or \$65,000, whichever is greater	= - \$65,000

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\$935,000

Second, the State determines the amount that would have been made available for State leadership activities and used to award grants and contracts to eligible providers and to carry out section 225.

Eligible Providers/Corrections: not less than 82.5% of State allocation	= \$825,000
State Leadership Activities: not more than 12.5% of State allocation	= \$125,000

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\$950,000

Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts that would have been made available for each purpose in the absence of a shortfall in the amount available for State administrative expenses (\$950,000):

Eligible providers/Corrections $(\$825,000/\$950,000) \times \$935,000$	=	\$811,973
State Leadership Activities $(\$125,000/\$950,000) \times \$935,000$	=	\$123,027

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\$935,000

For your information, I have attached two charts showing the estimated amounts that would be available in Fiscal Year 1999 for your State for use for State administrative expenses, State leadership, and the award of grants and contracts to eligible providers and to carry out section 225 under both options.

Given the legislative history of AEFLA and the emphasis on maximizing the Federal resources available for adult education and literacy activities at the local level, we do not believe it would be a reasonable interpretation of the statute for a State to subtract the entire amount required to reach the \$65,000 permitted by section 222(a)(3) from the amount that must be awarded to eligible providers and used to carry out section 225.

Should you wish to utilize either of the two options identified above, this choice should be included as part of the State plan submitted to the Secretary under section 224. If you wish to make corrections to the State plan you have already submitted in light of this information, you may do so. Please contact your State's liaison in the Division of Adult Education and Literacy for additional information.

**VOCATIONAL EDUCATION: Estimated Amounts Available for State Leadership After Subtracting the Amount Necessary to Make Available \$250,000 for State Administration (Option #1 in Program Memorandum OVAE 99-10)**

<b>State</b>	<b>FY 1999 Allotment</b>	<b>State Administration (Sec. 112(a)(3))</b>	<b>Eligible Recipients (Sec. 112(a)(1))</b>	<b>State Leadership (Sec. 112(a)(2))</b>
Alaska	\$4,214,921	\$250,000	\$3,582,683	\$382,238
Delaware	4,214,921	250,000	3,582,683	382,238
D.C.	4,214,921	250,000	3,582,683	382,238
Montana	4,958,769	250,000	4,214,954	493,815
N. Dakota	4,214,921	250,000	3,582,683	382,238
S. Dakota	4,214,921	250,000	3,582,683	382,238
Vermont	4,214,921	250,000	3,582,683	382,238
Wyoming	4,214,921	250,000	3,582,683	382,238

**ADULT EDUCATION: Estimated Amounts Available for State Leadership After Subtracting the Amount Necessary to Make Available \$65,000 for State Administrative Expenses (Option #1 in Program Memorandum OVAE 99-10)**

<b>State</b>	<b>FY 1999 Estimated Allotment</b>	<b>State Administrative Expenses (Sec. 222(a)(3))</b>	<b>Eligible Providers/ Corrections (Sec. 222(a)(1))</b>	<b>State Leadership (Sec. 222(a)(2))</b>
Alaska	\$645,994	\$65,000	\$532,945	\$48,049
Delaware	1,081,141	65,000	891,941	124,200
D.C.	1,224,300	65,000	1,010,048	149,253
Montana	1,067,641	65,000	880,804	121,837
N. Dakota	1,000,568	65,000	825,469	110,099
S. Dakota	1,074,426	65,000	886,401	123,025
Vermont	840,529	65,000	693,436	82,093
Wyoming	652,183	65,000	538,051	49,132

**VOCATIONAL EDUCATION: Estimated Amounts Available for State Leadership and for Distribution to Eligible Recipients after Pro-Rating the Amount Necessary to Make \$250 Available for State Administration (Option #2 in Program Memorandum OVAE 99-10)**

State	FY 1999 Allotment	State Administration (Sec. 112(a)(3))	Eligible Recipients (Sec. 112(a)(1))	State Leadership (Sec. 112(a)(2))
Alaska	\$4,214,921	\$250,000	\$3,547,561	\$417,360
Delaware	4,214,921	250,000	3,547,561	417,360
D.C.	4,214,921	250,000	3,547,561	417,360
Montana	4,958,769	250,000	4,213,109	495,660
N. Dakota	4,214,921	250,000	3,547,561	417,360
S. Dakota	4,214,921	250,000	3,547,561	417,360
Vermont	4,214,921	250,000	3,547,561	417,360
Wyoming	4,214,921	250,000	3,547,561	417,360

**ADULT EDUCATION: Estimated Amounts Available for State Leadership and for Distribution to Eligible Providers and to Carry Out Section 225 after Pro-rating the Amount Necessary to Make \$65,000 Available for State Administrative Expenses (Option #2 in Program Memorandum OVAE 99-10)**

State	FY 1999 Estimated Allotment	State Administrative Expenses (Sec. 222(a)(3))	Eligible Providers/ Corrections (Sec. 222(a)(1))	State Leadership (Sec. 222(a)(2))
Alaska	\$645,994	\$65,000	\$504,547	\$76,447
Delaware	1,081,141	65,000	882,438	133,703
D.C.	1,224,300	65,000	1,006,761	152,539
Montana	1,067,641	65,000	870,715	131,926
N. Dakota	1,000,568	65,000	812,467	123,101
S. Dakota	1,074,426	65,000	876,607	132,819
Vermont	840,529	65,000	673,486	102,043
Wyoming	652,183	65,000	509,922	77,261