



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT - 1 2004

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OSEP 05-01

MEMORANDUM

TO: Chief State School Officers
State Directors of Special Education

FROM: Stephanie Smith Lee *Stephanie Smith Lee*
Director
Office of Special Education Programs

SUBJECT: Part B Grant Award

The Department of Education Appropriations Act for Federal Fiscal Year (FFY) 2004 provided that part of the funds for the Individuals with Disabilities Education Act Section 611 Grants to States program become available on July 1, 2004 and the remainder of on October 1, 2004. Attached is the Part B grant award containing the additional funds that became available for your State on October 1, 2004.

Block 10 of the Grant Award Notification addresses allowable pre-award costs from the funds made available by this supplemental grant award. In addition, we have attached the October 1, 2004 non-regulatory guidance issued by the Department of Education, pertaining to programs with advance appropriations in FFY 2004. Please note that if special conditions were placed on your FFY 2004 Part B grant award from funds that become available for obligation to States on July 1, 2004, these conditions also apply to the enclosed funds.

Should you have any questions, please contact Ruth Ryder at 202.245.7513 or Rex Shipp at 202.245.7523. We appreciate your on going commitment to providing quality services to children and youth with disabilities.

Attachments



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202- _____

MEMORANDUM

DATE: October 1, 2004

TO: CHIEF STATE SCHOOL OFFICERS

FROM: Raymond Simon
Assistant Secretary for Elementary and Secondary Education

Susan Sclafani
Assistant Secretary for Vocational and Adult Education

Troy R. Justesen, Ed.D.
Delegated the authority to perform the functions of Assistant Secretary for
Special Education and Rehabilitative Services

SUBJECT: Nonregulatory guidance pertaining to programs with advance
appropriations in FY 2004

We are writing to provide you with guidance regarding advance appropriations that affect some of our programs in the Fiscal Year (FY) 2004 Department of Education

Appropriations Act (P.L. 108-199). In that Act, Congress appropriated a sum of funds for several Federal education programs but made only a portion of those funds available for obligation beginning on July 1, 2004. The remaining funds did not become available for obligation until October 1, 2004. The initial grant awards issued for the affected programs included only the amount of funds made available on July 1.

We have prepared the enclosed guidance for your information. This guidance is similar to the guidance the Department sent to State officials in the previous four years. We have attempted to provide State and local educational agencies with as much flexibility as possible consistent with applicable Federal budget and appropriations laws. Please contact us if you need additional clarification. We look forward to working with you as you implement Federal education programs during this school year.

Enclosure

Q1. What does it mean when Congress "advances" a portion of a program's appropriation?

A1. In the Fiscal Year (FY) 2004 appropriations for a number of Federal education programs, Congress appropriated a sum of funds but made only a portion available for obligation on July 1, 2004. The remaining funds did not become available for obligation until October 1, 2004.

Advancing a portion of a program's appropriation in this manner allowed Congress to appropriate more money than otherwise would have been permitted under the annual budget caps on Federal discretionary spending, because the advance appropriation (i.e., the amount that becomes available October 1) will count against the FY 2005 cap rather than the FY 2004 cap.

Q2. Which programs have advance appropriations in FY 2004?

A2. In the FY 2004 appropriations act, Congress passed an advance appropriation for the programs listed in the following table. Unlike in previous years, the Congress did not provide an advance appropriation for Safe and Drug-Free Schools (ESEA Title IV, Part A) or Innovative Programs State Grants (ESEA Title V, Part A).

Program	Amount available July 1	Amount available October 1
Education of the Disadvantaged (ESEA, Title I, Part A)	\$5,150,708,200	\$7,188,301,000
Reading First State Grants (ESEA Title I, Part B, Subpart 1)	828,923,000	195,000,000
Improving Teacher Quality State Grants (ESEA Title II, Part A)	1,495,126,132	1,435,000,000
Vocational Education State Grants (Perkins Act, Title I)	404,007,610	791,000,000
Individuals with Disabilities Education Act- Grants to States (Part B, section 611)	4,655,106,452	5,413,000,000

Q3. Because a portion of funds is not available until October 1, will a State receive two grant awards for FY 2004?

A3. Yes. For each affected program, the Department issued, to States meeting the necessary legal requirements, an initial grant award obligating the State's portion of funds the appropriations act made available on July 1. The Department is now issuing supplemental awards for each affected program obligating the remaining funds.

Q4. How does a State make grant awards to its subgrantees?

A4. Prior to October 1, a State could not award more funds than the Department had made available to the State from the "July 1 funds." Subject to this condition, however, a State had several options for awarding "July 1 funds" to its subgrantees. A State, like the Department, could calculate each subgrantee's allocation and award a percentage of that allocation commensurate with the amount of "July 1 funds" available to the State. The State would then issue a supplemental grant after October 1 awarding the remaining funds. However, if the State knew that certain subgrantees will need more funds prior to October 1 than their initial awards would provide, a State could award those subgrantees a larger percentage of the "July 1 funds," provided that doing so did not disadvantage the remaining subgrantees and that all subgrantees receive their correct share of the total funds appropriated in the FY 2004 appropriations act after the "October 1 funds" are awarded. There also may be circumstances in which a State would

make full grant awards after October 1, 2004. For Title I Concentration Grants, Targeted Grants, and Education Finance Incentive Grants, no funds were available for obligation until after October 1, 2004.

Q5. How long are the funds that become available on October 1 available for obligation by State and local recipients?

A5. With the exception of the Vocational Education State Grant program, the funds that become available on October 1, 2004 will be available for obligation by State and local recipients through September 30, 2006. Note that the funds that were made available on July 1, 2004 also are available for obligation until September 30, 2006. This period of availability includes the initial period authorized by the appropriations act and an additional 12 months authorized by section 421(b) of the General Education Provisions Act (the "Tydings Amendment"). Thus, funds awarded on July 1 are available for obligation for 27 months, while funds awarded on October 1 are available for obligation for 24 months.

With respect to Vocational Education State Grant funds, a State may make these funds available to subgrantees for only one academic year. A subgrantee must return any unexpended funds for the State to reallocate. The returned funds will be available for the State to reallocate and for new subgrantees to obligate until September 30, 2006.

Q6. May a State use and permit a subgrantee to use funds it receives on or after October 1 to retroactively fund allowable pre-award costs it may have incurred prior to October 1 in operating its school year 2004-2005 program?

A6. Yes. In operating its school year 2004-2005 program, a State may use and may authorize a subgrantee to use funds it receives on or after October 1, 2004 to retroactively fund allowable pre-award costs it may have incurred between the date it was first authorized to begin obligating FY 2004 funds and October 1. (For example, for most States, the date they may begin obligating FY 2004 formula grant funds would be July 1. However, under 34 CFR 76.703, if a State plan is due and is not submitted in substantially approvable form in a timely manner, that State's authority to obligate Federal funds could be delayed.)

The Department considers (consistent with 34 CFR 76.707) the obligation of pre-award costs to be made at the State or local level on the first day of the supplemental grant or subgrant period -- i.e., a date on or after October 1. They must be costs that would be allowable if incurred after the date of the award and must be approved, in writing, by the Department (in the case of State grants) or the State (in the case of State subgrants).

Q7. Must a State or subgrantee account for funds that become available on July 1 separately from funds that become available on October 1?

A7. No. However, a State must be able to show that each subgrantee received its correct share of the total FY 2004-appropriated funds consistent with any statutory within-State formula applicable to a program. Moreover, if a State does not award pre-award costs to its subgrantees, the subgrantees must be able to demonstrate that their obligations prior to October 1 do not exceed their allocation of "July 1 funds."

Q8. If a program has a limitation on the amount of funds that may be carried over to the following fiscal year, how is that amount calculated?

A8. Under Part A of Title I of the ESEA, an LEA generally may not carry over to the 2005-2006 school year more than 15 percent of the Part A, subpart 2 formula grant funds it receives for FY 2004. These caps are calculated on the total allocation that an LEA receives from its July 1 and October 1 installments.