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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

SEP 23 2013

Dear Title I Director:

I am writing in response to recent questions from the field regarding the determination of 2013–2014 Title I, Part A (Title I) allocations for newly opening or significantly expanding charter school local educational agencies (LEAs). Specifically, these questions have focused on the base amount from the 2012–2013 school year that a State educational agency (SEA) should use for its newly opening or significantly expanding charter school LEAs when applying (1) the hold-harmless requirements in sections 1122(c) and 1125A(g)(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA); and (2) the special requirement in section 1003(e) of the ESEA concerning how much an LEA's allocation may be reduced when the SEA reserves funds for section 1003(a) school improvement purposes.

Generally, in calculating Title I allocations under each of the four formulas, an SEA must ensure that no eligible LEA receives an allocation that is below its hold-harmless level. However, reductions in school year (SY) 2013–2014 funding resulting from passage of Public Law (PL) 13-6, the Consolidated and Further Continuing Appropriations Act, 2013, have complicated this process. This is especially true with respect to allocating 2013–2014 funds to newly opening and significantly expanding charter school LEAs consistent with section 5206 of the ESEA and its implementing regulations in 34 C.F.R. Part 76, Subpart H. Section 5206 requires that an SEA take measures to ensure that each eligible charter school LEA that is in its first year of operation or is undergoing a significant expansion receives the Title I and other Federal education formula funds for which it is eligible within five months after opening or undergoing a significant expansion in enrollment. This provision ensures that each newly opening or significantly expanding charter school LEA receives an allocation that reflects its current student count even though allocations may be calculated before the identity and characteristics of the students enrolling in the charter school LEA are fully determined.

Because newly opening and significantly expanding charter school LEAs are treated differently from other LEAs under section 5206, it is important to ensure that the operation of the hold-harmless requirements in sections 1122(c) and 1125A(g)(3) and the special hold-harmless provision in section 1003(e) do not unduly negate increases in Title I allocations based on the SY 2013–2014 student population in these charter school LEAs. Accordingly, I thought it appropriate to provide some clarification to our existing within-State allocation guidance on how the statutory hold-harmless requirements operate in these special cases. The enclosed guidance focuses on:

1. How an SEA should determine the "prior year" (SY 2012–2013) base amount under each Title I formula for a newly opening charter school LEA in order to calculate the allocations for which it is eligible under section 5206 of the ESEA consistent with the hold-harmless provisions under sections 1122(c) and 1125A(g)(3) of the ESEA.

2. How an SEA should determine the "prior year" (SY 2012–2013) base amount under each Title I formula for a significantly expanding charter school LEA in order to calculate the allocations for which it is eligible under section 5206 of the ESEA consistent with the hold-harmless provisions under sections 1122(c) and 1125A(g)(3) of the ESEA.

3. How an SEA uses the base amounts calculated above to meet the special hold-harmless provision in section 1003(e) for both newly opening and significantly expanding charter school LEAs.

If you have any questions about this clarification, please do not hesitate to contact Todd Stephenson on my staff at: todd.stephenson@ed.gov or (202) 205-1645 or Paul (Sandy) Brown at: paul.brown@ed.gov or (202) 260-0976.

Sincerely,

Monique M. Chism, Ph.D.
Director
Student Achievement and
School Accountability Programs

Enclosure

APPLYING THE HOLD-HARMLESS REQUIREMENTS IN SECTIONS 1122(c) AND 1125A(g)(3) AND THE SPECIAL HOLD-HARMLESS REQUIREMENT IN SECTION 1003(e) OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED, TO NEWLY OPENING AND SIGNIFICANTLY EXPANDING CHARTER SCHOOL LOCAL EDUCATIONAL AGENCIES

Introduction

The purpose of this guidance is to address questions concerning the base amount from school year (SY) 2012–2013 that a State educational agency (SEA) should use to calculate Basic, Concentration, Targeted, and Education Finance Incentive Grant (EFIG) allocations under Title I, Part A (Title I) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), for newly opening or significantly expanding charter school local educational agencies (LEAs) when applying (1) the hold- harmless requirements in ESEA sections 1122(c) and 1125A(g)(3),[1] and (2) the special requirement in ESEA section 1003(e) [2] concerning how much an LEA's allocation may be reduced when the SEA reserves funds for section 1003(a) school improvement purposes.

Newly opening and significantly expanding charter school LEAs are treated differently from other LEAs under the law. Specifically, ESEA section 5206 requires that an SEA take measures to ensure that each eligible charter school LEA that is in its first year of operation or is undergoing a significant expansion in enrollment receives the Title I and other Federal education formula funds for which it is eligible within five months after opening or undergoing a significant expansion. This provision ensures that each newly opening or significantly expanding charter school LEA receives an allocation that reflects its current student count even though allocations may be calculated before the identity and characteristics of the students enrolling in the charter school LEA are fully determined. See also 34 C.F.R. Part 76, Subpart H.

In calculating Title I allocations under each of the four formulas, an SEA must ensure that no LEA receives an allocation below its hold-harmless level. However, reductions in SY 2013–2014 funding resulting from passage of Public Law (PL) 13-6, the Consolidated and Further Continuing Appropriations Act, 2013, have complicated this process. Several SEAs did not receive a SY 2013–2014 allocation under one of the four Title I formulas that is large enough for them to meet the hold-harmless requirement for all LEAs that are currently eligible and funded. In such a case, an SEA must ratably reduce the amount needed to meet the hold-harmless level for each LEA down to the amount allocated to the State to ensure that each eligible LEA receives

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[1] ESEA sections 1122(c) (concerning Basic, Concentration, and Targeted grants) and 1125A(g)(3) (concerning EFIG) generally guarantee that an eligible LEA receives no less than 95, 90, or 85 percent of the amount of Title I funds allocated to it under each formula in the previous year, depending on the percentage of formula children in each LEA.

[2] ESEA section 1003(e) requires that, when reserving four percent of a State's Title I allocation under section 1003(a) for school improvement purposes, an SEA may not reduce an LEA's Title I allocation, in the aggregate, below the aggregate amount it received in the preceding year.

an allocation that is as close as possible to its hold-harmless level.[3] In this situation, a newly opening charter school LEA would have a SY 2012–2013 amount of 0 against which an SEA would apply the 85, 90, or 95 percent hold-harmless level in sections 1122(c) and 1125A(g)(3). Consequently, absent ESEA section 5206, a newly opening charter school LEA would receive no funding if there is not enough funding available under a specific formula to meet the hold-harmless requirement for each currently eligible LEA that received an allocation in SY 2012–2013. Similarly, the SY 2012–2013 base amount for a significantly expanding charter school LEA would be the amount it received without regard to the expansion in its formula count for the current year.

The reduction in SY 2013–2014 funds also means that a significant number of SEAs will not be able to reserve the full four percent for school improvement activities required under ESEA section 1003(a) and still ensure that no LEA receives an aggregate Title I allocation below its prior year amount. In such a case, an SEA must reserve an amount as close as possible to four percent of its Title I allocation. Again, a newly opening or significantly expanding charter school LEA could lose most, if not all, of its potential increase because of the operation of section 1003(e). In the case of a newly opening charter school LEA, its SY 2012–2013 allocation for which it would be held harmless is 0 and, therefore, its 2013–2014 aggregate Title I allocation could be reduced to 0 in order for the SEA to reserve funds for school improvement without reducing any other LEA below its aggregate SY 2012–2013 Title I allocation. Likewise, in the case of a significantly expanding charter school LEA, its aggregate Title I allocation could be reduced to the amount it received in the prior year. Therefore, the increase due to its significant expansion in SY 2013–2014 would be eliminated.

In view of the different treatment afforded newly opening and significantly expanding charter school LEAs under ESEA section 5206, it is important to ensure that operation of the hold-harmless requirements in sections 1122(c) and 1125A(g)(3) and the special hold-harmless provision in section 1003(e) do not unduly negate the Title I allocations for these charter school LEAs based on their SY 2013–2014 student population. Accordingly, the following questions and answers provide clarification about how an SEA should derive a SY 2012–2013 hold-harmless base for newly opening and significantly expanding charter school LEAs in order to calculate Title I allocations for these LEAs in SY 2013–2014.

Questions and Answers

1. How does an SEA determine a "prior year" (SY 2012–2013) base amount under each Title I formula against which to apply the hold-harmless percentage in ESEA sections 1122(c) and 1125A(g)(3) for a newly opening charter school LEA?

To determine the "prior year" (SY 2012–2013) base amount for a newly opening charter school LEA, an SEA would take the following steps:

A. Calculate the newly opening charter school LEA's initial SY 2013–2014 allocation under each formula before application of the hold-harmless requirements in ESEA sections

[3] This situation occurs for SY 2013–2014 when the EFIG allocations for six States (Alabama, Mississippi, New Jersey, Oklahoma, Pennsylvania, and Wisconsin) are not large enough to meet the section 1125A(g)(3) LEA hold-harmless requirement under that formula.

1122(c) and 1125A(g)(3) based on the funds that the derived number of formula children generated for that charter school LEA.[4] This amount will serve as the "prior year" base amount for the purpose of meeting the hold-harmless requirements as well as the special hold-harmless provision in ESEA section 1003(e).

B. Based on its derived formula count compared to its population of children ages 5 through 17, determine whether the newly opening charter school LEA's hold-harmless level will be 85, 90, or 95 percent of its "prior year" base amount.

C. Multiply the initial allocation determined in Step A for each formula by the appropriate hold-harmless percentage determined in Step B to determine the newly opening charter school LEA's hold-harmless amount.

This process will ensure that a newly opening charter school LEA is not disadvantaged by the fact that it had no Title I allocation in 2012–2013 against which to apply the hold-harmless level.

The following chart illustrates how this process would work in the case of a newly opening charter school LEA:

	(1) SY 2012–2013 Allocation	(2) Initial SY 2013–2014 Allocation Based on the Derived Formula Count *	(3) Hold-Harmless Level Amount (Col. (2) x 95%)
Basic Grant allocation	0	$92,534	$87,907
Concentration Grant allocation	0	$21,900	$20,805
Targeted Grant allocation	0	$48,798	$46,358
EFIG allocation	0	$42,620	$40,489
Total	0	$205,852	$195,559
Current year poverty count (derived formula count)		168	
Current year 5 - 17 population		432	
Formula percentage		39%	
Hold-harmless level based on formula percentage		95%	

* The amount shown in column 2 would be the SY 2012–2013 base amount to be used for applying the hold-harmless level for ESEA sections 1222 (c) and 1125A(g)(3) purposes.

[4] For more detail on how to derive a formula count, determine eligibility, and calculate an initial allocation for charter school LEAs, please see the guidance on within-State allocation procedures at http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc

An SEA would use the respective amount determined in Column 3 to ensure that the 2013–2014 Title I allocation under each formula for a newly opening charter school LEA does not fall below the Column 3 amount.

2. **What procedure would an SEA follow if it does not have sufficient funds under one or more of the Title I formulas to meet the hold-harmless level?**

   If an SEA does not have sufficient funds to meet the hold-harmless level for every LEA (including a newly opening charter school LEA as determined in the example above) under one or more of the Title I formulas, it must ratably reduce each LEA's allocation for that formula down to the amount available to the State.

3. **What "prior year" amount does an SEA use to determine how much a newly opening charter school LEA's allocation may be reduced when the SEA reserves funds for ESEA section 1003(a) school improvement purposes?**

   An SEA uses the total amount in Column 2 in the chart in Question 1 above as a proxy for a newly opening charter school LEA's 2012–2013 aggregate Title I allocation. In reserving funds under ESEA section 1003(a) for school improvement purposes, the SEA may not reduce a newly opening charter school LEA's 2013–2014 aggregate Title I allocation below this amount.

4. **How does an SEA determine a "prior year" (SY 2012–2013) base amount under each Title I formula against which to apply the hold-harmless percentage in ESEA sections 1122(c) and 1125A(g)(3) for a significantly expanding charter school LEA?**

   To determine the "prior year" (SY 2012–2013) base amount for a significantly expanding charter school LEA, an SEA would take the following steps:

   A. Compare the SY 2013–2014 formula count for a significantly expanding charter school LEA with its SY 2012–2013 formula count and calculate the percentage by which its SY 2013–2014 formula count has increased over its SY 2012–2013 formula count.

   B. Increase the SY 2012–2013 allocation the charter school LEA received under each formula by the percentage calculated in Step A to determine the significantly expanding charter school LEA's "prior year" (SY 2012–2013) base amount.

The amount determined in Step B for each formula would be the SY 2012–2013 base amount against which to apply the hold-harmless percentage in ESEA sections 1122(c) and 1125A(g)(3) to calculate the charter school LEA's hold-harmless amount.

The following chart illustrates how this process would work for a significantly expanding charter school LEA:

		(1) SY 2012–2013 Allocations for Significantly Expanding Charter School LEA	(2) Percentage Increase due to Expanded Enrollment in SY 2013–2014	(3) Adjustment to SY 2012–2013 Base Amount Due to Increase in the Formula Count (Col. (1) x (2))	(4) Adjusted SY 2012–2013 Base to Reflect Increase in Formula Count (Col. (1) + (3))*	(5) Hold-Harmless Percentage (Based on Formula Percentage on Line (11))	(6) Hold Harmless Amount for SY 2013–2014 Allocation Purposes (Col. (4) x (5))
1	SY 2012–2013 formula count (derived Census count)	277					
2	SY 2012–2013 Basic Grant allocation	$119,541	52%	$62,161	$181,702	90%	$163,532
3	SY 2012–2013 Concentration Grant allocation	$23,052	52%	$11,987	$35,039	90%	$31,535
4	SY 2012–2013 Targeted Grant allocation	$62,938	52%	$32,728	$95,666	90%	$86,099
5	SY 2012–2013 EFIG allocation	$54,923	52%	$28,560	$83,483	90%	$75,135
6	Total	$260,454			$395,890		
7	SY 2013–2014 formula count (derived Census count)	420					
8	Increase over SY 2012–2013 (Line 7-Line1)	143					
9	Percent increase	52%					
10	SY 2013–2014 5 - 17 population	1,432					
11	Formula percentage (Line 7÷Line 10)	29%					

* Use this amount as the ESEA section 1003(e) base and the base for calculating the hold-harmless amounts for Basic, Concentration, Targeted & EFIG allocations in the allocation process.

5. What "prior year" amount does an SEA use to determine how much a significantly expanding charter school LEA's allocation may be reduced when the SEA reserves funds for ESEA section 1003(a) school improvement purposes?

An SEA uses the total amount in Column 4, line 6 in the chart in Question 4 above as a proxy for a significantly expanding charter school LEA's SY 2012–2013 aggregate Title I allocation. In reserving funds under ESEA section 1003(a) for school improvement purposes, the SEA may not reduce a significantly expanding charter school LEA's SY 2013–2014 aggregate Title I allocation below the amount in Column 4, line 6.

6. **If an SEA uses estimated data to establish the initial allocation for a newly opening charter school LEA or to establish the extent to which the formula population of a significantly expanding charter school LEA has grown, must it adjust its initial allocations to account for changes resulting from the use of actual data?**

   Yes. If an SEA uses estimated data in either situation, it must adjust its initial allocations to account for changes resulting from the use of actual data. (See 34 C.F.R. § 76.796.)

7. **Does the process described in Questions 1 and 4 apply to non-charter school LEAs or currently-operating charter school LEAs that are not undergoing a significant expansion?**

   No. The special requirements in ESEA section 5206 apply only to newly opening and significantly expanding charter school LEAs with respect to implementing section 5206 consistent with the operation of the hold-harmless requirements in ESEA sections 1122(c) and 1125A(g)(3) and the special hold-harmless provision in ESEA section 1003(e).