




UNITED STATES DEPARTMENT OF EDUCATION


WASHINGTON, D.C. 20202-_____

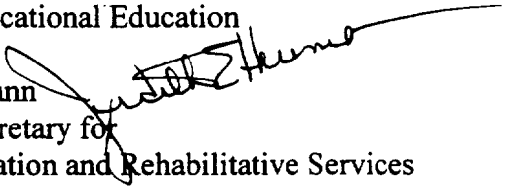
MEMORANDUM

DATE: August 29, 2000

TO: GOVERNORS AND CHIEF STATE SCHOOL OFFICERS

FROM: Michael Cohen 
Assistant Secretary for
Elementary and Secondary Education

Patricia W. McNeil 
Assistant Secretary for
Adult and Vocational Education

Judith Heumann 
Assistant Secretary for
Special Education and Rehabilitative Services

SUBJECT: Nonregulatory guidance pertaining to programs with advance appropriations in
FY 2000

We are writing to provide you with guidance regarding advance appropriations that affect some of our programs in the fiscal year 2000 Department of Education Appropriations Act (Public Law 106-113). Specifically, Congress appropriated a sum of funds for a number of Federal education programs but made only a portion available for obligation on July 1, 2000. The remaining funds do not become available for obligation until October 1, 2000. The grant awards we have recently sent you for the affected programs reflect only the amount of funds made available on July 1.

We have prepared the enclosed guidance for your information. 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 do not hesitate to contact us if you need additional clarification. We look forward to working with you as you implement Federal education programs during the upcoming school year.

Enclosure

Nonregulatory Guidance Pertaining to Programs with Advance Appropriations in FY 2000

Section I: General

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

A1. In the FY 2000 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, 2000. The remaining funds do not become available for obligation until October 1, 2000.

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 designed to reduce Federal discretionary spending, because the advance appropriation (i.e., the amount that becomes available October 1) will count against the FY 2001 cap rather than the FY 2000 cap.

Q2. Which programs have advance appropriations in FY 2000?

A2. In the FY 2000 appropriations act, Congress passed an advance appropriation for the following programs:

PROGRAM	Amount available July 1	Amount available October 1
Education of the Disadvantaged (ESEA, Title I, Part A)	\$1,736,634,000	\$6,204,763,000
Safe and Drug-Free Schools and Communities—SEA and Governor Grants (ESEA, Title IV)	\$109,250,000	\$330,000,000
Class Size Reduction	\$400,000,000	\$900,000,000
Innovative Education Program Strategies--State Grants (ESEA, Title VI)	\$80,750,000	\$285,000,000
Reading Excellence Act	\$65,000,000	\$195,000,000
Vocational Education State Basic Grants	\$264,650,000	\$791,000,000
Individuals with Disabilities Education Act—Grants to States (Part B, section 611)	\$1,247,685,000	\$3,742,000,000

Q3. Because a portion of funds is not available until October 1, will a State receive two grant awards for FY 2000?

A3. Yes. For each affected program, the Department has 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 will issue supplemental awards for each affected program at the beginning of October obligating the remaining funds.

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

A4. Prior to October 1, a State may not award more funds than the Department has made available to the State from the "July 1 funds." Subject to this condition, however, a State has several options for awarding "July 1 funds" to its subgrantees. In most circumstances, a State, like the Department, would 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 knows that certain subgrantees will need more funds prior to October 1 than their initial award would provide, a State may award those subgrantees a larger percentage of the "July 1 funds," provided that doing so does not disadvantage the remaining subgrantees and that all subgrantees receive their correct share of the total funds appropriated in the FY 2000 appropriations act after the "October 1 funds" are awarded. There may also be circumstances in which a State would make full grant awards after October 1, 2000. For Title I Concentration Grants, no funds will be available for obligation until after October 1, 2000.

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 Reading Excellence Act (REA) and the vocational education basic grant programs, the funds that become available on October 1, 2000 will be available for obligation by State

and local recipients through September 30, 2002. Note that the funds made available on July 1, 2000 also are available for obligation until September 30, 2002. 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 educational basic 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, 2002.

With respect to REA funds, beginning with the date of its grant, a State has a three-year period during which to award the REA funds. The State may issue subgrants until the end of that three-year period. In issuing REA local reading improvement subgrants, the State must provide sufficient funds to an LEA to cover a two-year period. In issuing REA tuition assistance subgrants, the State may provide funds for up to a two-year period to an LEA.

- Q6. Must a State or subgrantee account for funds that become available on July 1 separately from funds that become available on October 1?
- A6. No. However, a State must be able to show that each subgrantee received its correct share of the total FY 2000-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."
- Q7. 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 2000-2001 program or REA program?

- A7. Yes. In operating its school year 2000-2001 program or REA program, a State may use and may authorize a subgrantee to use funds it receives on or after October 1, 2000 to retroactively fund allowable pre-award costs it may have incurred between the date it was first authorized to begin obligating FY 2000 funds and October 1. (For example, for most States, the date they may begin obligating FY 2000 formula grant funds would be July 1. However, under 34 CFR 76.703, if a State plan were due and were not submitted in substantially approvable form in a timely manner, that State's authority to obligate Federal funds could be delayed.)

The obligation of pre-award costs is 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).

- 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, a local educational agency (LEA) may not carry over to the 2001-2002 school year more than 15% of the basic and concentration grant funds it receives for FY 2000. Similarly, under the Safe and Drug-Free Schools and Communities Program, an LEA generally may not carry over more than 25% of the total amount it receives for FY 2000. These caps are calculated on the total allocation an LEA receives from its July 1 and October 1 installments.

Section II: Specific Program Issues

Safe and Drug-Free Schools and Communities Program (SDFSCA)

Q9. May a State educational agency (SEA) delay awarding "greatest need" funds until the SEA receives its supplemental grant award?

A9. Yes. Funds for greatest need (the 30% share) are made by SEAs to LEAs on a competitive basis. Therefore, an SEA may choose to award all of these funds after receipt of the "October 1 funds." However, an SEA may also choose to award some of the 30% share in July and the remainder of the 30% share in October.

Q10. Must Governors make two sets of grant awards to their subgrantees/contractors?

A10. States received their first "installment" of FY 2000 SDFSCA funds on or about July 1, 2000. The second installment will not be awarded to States until October 1, 2000. Since the Governor's funds can be awarded on a discretionary basis, the Governor may award funds based on needs and established priorities. Therefore, the Governor may choose to make one set of awards in July and another set of awards in October. However, should the Governor choose to award some of the funds in July, he/she may not award more than the total amount made available in the July installment.

Q11. Can Governors fully fund some of their subgrantees/contractors from the July installment and defer funding to others until October?

A11. Yes. Again, the SDFSCA gives discretion to the Governor's program to establish funding periods that will meet appropriate funding priorities and needs.

Reading Excellence Act

Q12. What is the Reading Excellence Act (REA)?

A12. The REA is a competitive State grant program under which a State conducts two separate subgrant competitions among eligible LEAs. The REA program is subject to the Department's general administrative provisions governing direct grant programs (34 CFR Part 75).

Q13. May a State receiving REA funds distribute partial awards of funds to LEAs?

A13. As discussed in the response to question 4, a State may distribute funds to its subgrantees either in installments (following July 1 and October 1) or by fully funding only some subgrantees until the October 1 funds become available. At this time, however, the Department does not anticipate that any State receiving an FY 2000 REA award will have completed its subgrant competitions among the eligible LEAs or be prepared to issue subgrants under either REA subgrant competition prior to October 1, 2000.