



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

December 2, 2003

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**OSEP-04-02**

**OSEP MEMORANDUM**

TO: Lead Agency Directors  
Part C Coordinators

FROM: Stephanie Smith Lee *Patricia J. Lynch for*  
Director  
Office of Special Education Programs

SUBJECT: Procedures for Receiving a Federal Fiscal Year (FFY) 2004 Grant Award Under Part C of the Individuals with Disabilities Education Act (IDEA)

**ACTION**

**REQUIRED:** Submission of Part C Application by April 16, 2004

The purpose of this memorandum is to inform States of the procedures they are to follow in order to receive a grant under Part C of the IDEA for FFY 2004 funds, which will become available to States on July 1, 2004. The package contains the instructions and forms needed for the completion of your State's Application. It should be returned to the Office of Special Education Programs (OSEP) April 16, 2004. The estimated FFY 2004 State allocation table will be sent under separate cover as soon as it becomes available to the Department.

Upon receipt and approval of the required certifications and information in the Application, your State will be eligible to receive the FFY 2004 Part C funds. If you have any questions related to this memorandum, please contact your Part C State Contact.

## **I. Submission Requirements**

### **A. Submission Statement and Other Assurances, Certifications and Information**

In order to demonstrate eligibility for the FFY 2004 Part C grant award, a State must sign and submit the “Submission Statement for Part C of IDEA” in Appendix A, Part I of the Application.

In addition, if there is a change to the State’s information supporting any of the following, please file a new certification, a copy of which may be obtained by contacting your OSEP Part C State Contact.

1. ED Form 80-0013 – Certifications Regarding Lobbying, Debarment, Suspension, and other Responsibility Matters; and Drug-Free Work Place Requirements
2. Standard Form 424B – Non-construction Programs
3. EDGAR §76.104 – State Eligibility
4. GEPA §427 – General Education Provisions Act. Each State must also have on file with the Department a description of the steps the State proposes to take to ensure equitable access to, and participation in, activities conducted under Part C, by addressing the special needs of program beneficiaries in order to overcome barriers to equitable participation, including barriers based on gender, race, color, national origin, disability, and age, as required by §427 of the General Education Provisions Act (GEPA). This description must identify barriers and develop strategies to address the barriers. If OSEP has previously approved a State’s description under §427 and the State has not revised that description, it need not submit the description again.
5. IDEA §604 – Consistent with §604 of the IDEA, each State accepting a grant under the IDEA expressly agrees to a waiver of Eleventh Amendment immunity for violations of the IDEA.

### **B. Description of Use of Funds**

Each State’s Application must include a description of how a State proposes to use its funds under Part C. The description must be presented separately for the lead agency and the Interagency Coordinating Council. States with a fully approved FFY 2003 Application need only to submit any appropriate revisions (see Section II, Option 2) to the “Description of Use of Part C Funds.” States should follow the instructions and use the forms in Appendix A, Part II to submit the amendments. Enter total for each category in the space provided. Please include computations showing that the amounts on each page equal the total for that page, and that the totals from each section add up to the total estimated grant amount. This includes:

1. Administrative Positions

- a. Each Application must include a list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under Part C; and
- b. For each position, the percentage of salary paid with those funds.

2. Maintenance and Implementation

- a. Each Application must include a description of the nature and scope of each major activity to be carried out under Part C in maintaining and implementing the Statewide system of early intervention services. Activities could include enhancing the Comprehensive System of Personnel Development, implementing child find strategies, ensuring a timely, comprehensive, multidisciplinary evaluation for each child; and
- b. The approximate amount of funds to be spent for each activity.

3. Direct Services

- a. Each Application must include a description of any direct service that the State expects to provide to eligible children and their families with funds under this part, including a description of any services provided to at-risk infants and toddlers and their families.
- b. The description must include information about each type of service to be provided, including:
  - (i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations); and
  - (ii) The approximate amount of funds under this part to be used for the service.

4. At-Risk Infants and Toddlers

For any State that does not provide direct services for at-risk infants and toddlers, but chooses to use funds under 34 CFR §303.3(e), each Application must include a description of how these funds will be used. Specifically, a State may use Part C funds for initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purpose of:

- a. Identifying and evaluating at-risk infants and toddlers;
- b. Making referrals of at-risk infants and toddlers who are identified and evaluated; and
- c. Conducting periodic follow-up on at-risk infants and toddlers to determine if the status of the infant or toddler's eligibility for Part C services has changed.

5. Activities by Other Agencies.

If other agencies are to receive a portion of the Federal funds under Part C, the Application must include:

- a. The name of each agency expected to receive funds;
- b. The approximate amount of funds each agency will receive; and
- c. A summary of the purposes for which the funds will be used.

### **C. Restricted Indirect Cost Agreement/Cost Allocation Plan**

Because the IDEA (section 637(b)(5)(B)) has a statutory requirement that prohibits the use of Federal Part C funds to supplant non-Federal funds, the Education Department General Administration Regulations (EDGAR), at 34 CFR §§76.563-76.569, require that your agency use a restricted indirect cost rate or cost allocation plan for the Part C program. The cost principles contained in the Office of Management and Budget (OMB) Circular A-87 also apply. (Refer to OSEP Memorandum 99-2 for additional information.) If your State's FFY 2003 grant letter from the Department indicated that we had not received documentation that your Federal cognizant agency has approved your agency's restricted indirect cost rate proposal or cost allocation plan for this program, and you have not submitted such documentation covering Federal Fiscal Year 2004, please submit such documentation no later than the deadline date for this Application. Lead agencies that do not have the United States Department of Education (ED) as their cognizant Federal agency (i.e., all lead agencies that are not State educational agencies (SEAs), as well as any outlying areas that have the Department of Interior as cognizant agency, even if an SEA) must complete the requested information on indirect costs in Appendix A, Part III of the Application.

### **II. Submission Options**

A State selects the appropriate submission option on the "Submission Statement." A State selects either Option II.B. or II.C., as described below, if there have been any changes in the State's policies and procedures, assurances, methods of implementation, or State law or regulations related to Part C implementation as described below. If a State selects Option B or C, it must ensure that the public participation requirements of 34 CFR §§303.110-303.113 have been met. The public participation requirements do not have to be met for submission of use of funds information referenced in Section I.B. above (Appendix A, Part II of the Application) or the indirect cost information referenced in Section I.C. above (Appendix A, Part III of the Application).

If the State is submitting a new Application or revising substantive policies and procedures, contact your OSEP Part C State Contact for a copy of the checklist on which you indicate the areas revised and supporting documentation source. Submit the completed checklist and supporting documentation with those Application forms.

**For all options**, each State must complete the forms of the Application, Part II on "Description of Use of Part C Funds" in Appendix A. In addition, if the lead agency does not have ED as cognizant agency, the State must submit applicable indirect cost information in Appendix A, Part III of the Application.

**A. No Revisions to Application**

A State may use this option only if all previously approved policies, procedures, assurances and other information comply with Part C as amended, remain in effect in the State and have not been changed and the State received notice of an approved Application in previous years. States are not required to re-submit a policy, procedure, statute, regulation or assurance already on file with OSEP that demonstrates compliance with Part C. Such a policy, procedure, statute or regulation remains in effect under IDEA sections 637(e) and (f) unless: (1) the State modifies the policy, procedure, statute or regulation; (2) an amendment is made to IDEA, or a Federal regulation issued under IDEA; (3) a new interpretation of IDEA is made by a Federal court or the State's highest court; or (4) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

**B. Revisions**

A State must use this option if there have been any changes in the State's policies and procedures, assurances, methods of implementation, or State law or regulations related to Part C implementation as described above. States should check whether there have been any changes/amendments/expiration of interagency agreements, and send in any changes as part of this Application, using Option 2 on the "Submission Statement" (Appendix A, Part I). If a State previously submitted information related to use of funds as percentages of the total Federal allocation and makes changes in these percentages, a budget with the revised percentages must be submitted under this option. If a State previously submitted a budget with dollar amounts only (e.g., the State did not choose to submit its budget according to percentages), a revised budget in accordance with 34 CFR §303.145 must be submitted with the Application. Please submit for review and approval supporting documentation only for the revised policies and procedures or other supporting documentation of changes.

Any State that received a grant award letter conditionally approving its FFY 2003 Application must provide OSEP with appropriate documentation to demonstrate that the conditions and other criteria outlined in the FFY 2003 grant award letter have been met. It is preferable that documentation to address the FFY 2003 conditional approval be sent to OSEP prior to the FFY 2004 Application submission, to ensure timely processing of the Application. However, the documentation may be submitted with the FFY 2004 Application submission.

**C. New Application**

A State may submit a new Application. (See Section II, paragraph 2.)

### **III. Submission Procedures**

#### **A. Public Participation Requirements**

The public participation requirements in 34 CFR §§303.110-303.113 and section 441 of the General Education Provisions Act (GEPA) apply to Applications submitted under either option II.B. (Revisions to Application) or II.C. (New Application) above. In accordance with the GEPA requirement, the State must assure that it will provide reasonable opportunities for participation by local agencies, representatives of the class of individuals affected by this program and other interested institutions, organizations, and individuals in the planning for the operation of this program. (See 20 U.S.C. 1232d(b)(7).)

States are required to meet the public participation requirements under Part C and GEPA for both changes in Applications required by this Department, and relevant changes that the State makes on its own. Prior to the adoption of a new or revised policy or procedure that is not in its current Application, a State must publish the Application with the revised policy in a manner that will ensure a 60-day circulation of the Application throughout the State, provide adequate notice of the public hearings, conduct the public hearings, and provide an opportunity for at least 30 days for comment from the general public, including individuals with disabilities and parents of infants and toddlers with disabilities. The lead agency must review and consider all public comments and make any modifications it deems necessary in the Application or policy. The public participation requirements do not have to be met for submission of use of funds information referenced in Section I.B. above (Appendix A, Part II of the Application) or the indirect cost information referenced in Section I.C. above (Appendix A, Part III of the Application).

#### **B. Conditional Approval of FY 2003 Application**

As noted above, any State that received a grant award letter conditionally approving its FFY 2003 Application must provide OSEP with appropriate documentation to demonstrate that the conditions and other criteria outlined in the FFY 2003 grant award letter have been met. It is preferable that documentation to address the FFY 2003 conditional approval be sent to OSEP prior to the FFY 2004 Application submission, to ensure timely processing of the Application. However, the documentation may be submitted with the FFY 2004 Application submission. If the documentation includes any revisions in the State's policies and procedures, assurances, methods of implementation, or State law or regulations related to Part C implementation, States must comply with the public participation requirements of 34 CFR §§303.110-303.113 (as described above under section III.A.).

**C. Mailing Instructions**

Please submit an original and two copies of the State’s Application, which must be received by OSEP by April 16, 2004 to:

Gwendolyn A. Gage  
Management and Program Analyst  
Monitoring and State Improvement Planning Division  
Office of Special Education Programs  
U.S. Department of Education  
330 C Street, SW, Room 3617  
Washington, DC 20202-2640

For your convenience, the Application may be submitted to this Office electronically formatted in Microsoft Word. The Application will be available on the internet at <http://www.ed.gov/fund/grant/apply/osep/index.html>. If you wish to submit the Application by e-mail, please send it to Gwendolyn Gage at [Gwendolyn.Gage@ed.gov](mailto:Gwendolyn.Gage@ed.gov). OSEP requires an original signature on the “Submission Statement and Assurances” to be sent by mail and the Application will not be determined as received by OSEP under the Cash Management Improvement Act and EDGAR, at 34 CFR §76.703, until OSEP receives the signed “Submission Statement and Assurances.” (This document may be faxed to OSEP, at (202) 205-9179, to the attention of Gwendolyn A. Gage.)

**IV. Effect of Late Application**

Consistent with 34 CFR §76.703(a)(1), the Department has established April 16, 2004, as the submission date for all documents necessary to demonstrate eligibility for FFY 2004 grant awards under sections 611 and 619 of IDEA. As explained below, pre-award costs will only be provided consistent with the provisions of 34 CFR §76.703. See Appendix B. Therefore, the effective date of a grant to a State that does not submit substantially approvable eligibility documents to OSEP April 16, 2004, may be later than July 1, 2004.

The provisions of the Education Department General Administrative Regulations (EDGAR), at 34 CFR §76.703, apply to grant awards under Part C of the IDEA. Section 76.703 implements the requirements of the Cash Management Improvement Act (CMIA), 31 U.S.C. §6503, and its implementing regulations at 31 CFR Part 205, which provide for the timely transfer of funds between Federal agencies and States, and authorizes payment of interest where transfers are not made in a timely fashion. The following is a description of the process that OSEP will use to implement 34 CFR §76.703, with respect to processing FFY 2004 grant awards under Part C.

Section 76.703 limits the circumstances under which the Department will retroactively authorize a State to charge against the Part C grant program costs incurred before the Department determines an Application to be substantially approvable. That regulation provides that,

generally, a State may not begin to obligate funds under a program until the later of the following two dates:

- (1) the date the Secretary determines that the Application is substantially approvable; or
- (2) the date that the funds are first available for obligation by the Secretary. 34 CFR §76.703(d) and (e).

Consistent with the requirements of 34 CFR §76.703, grant award notification forms will indicate effective date of the grant award period for Applications received prior to July 1, 2004, as the later date of either: (1) the date that the Secretary determines that the State Application is substantially approvable; or (2) the date that the funds are first available for obligation by the Secretary (i.e., July 1, 2004).

If a State has submitted a substantially approvable Application by the April 16, 2004 deadline, the Federal funding period as noted in block 6 on the grant award notification will begin July 1, 2004. If the Department receives a State's substantially approvable Application after the April 16, 2004 deadline, but before July 1, 2004, the starting date for obligating funds will be July 1, 2004, provided that the Department is able to determine that the Application is substantially approvable prior to July 1, 2004. If the Department is unable to determine that the Application is substantially approvable prior to July 1, 2004, the starting obligation date will be determined in accordance with the procedures in 34 CFR §76.703(e)(2).

If the Department receives a State's Application after July 1, 2004, or the Application that the State submits is not substantially approvable, the grant award notification will indicate, as the start of the Federal funding period, the date when the Department determines that the Application is substantially approvable.

For purposes of Part C Applications for FFY 2004, an Application is "substantially approvable" when it meets, to the Department's satisfaction, the requirements in this Application package. An Application will not be "substantially approvable" until OSEP receives any clarifications, amendments or assurances requested by OSEP.

## **V. Conclusion**

As explained in this memorandum, it is important that, before submitting its eligibility documentation for FFY 2004, each State ensure that it has:

- Filed new certifications and information, listed in Section I(A) of this memorandum, if there is a change in the State's information;
- Completed, signed, and mailed in for OSEP's receipt by the Application deadline the Submission Statement for Part C of IDEA;



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- If appropriate, submitted revisions (including new interagency agreements if there have been any changes) or new Application for FFY 2004 with completed checklist;
- Completed the “Use of Funds” information in Appendix A, Part II;
- Submitted required information regarding indirect costs described in Appendix A, Part III, if the lead agency for Part C is not the SEA;
- Met the 60-day public participation requirements, if required, as described in this memorandum; and
- Provided OSEP with appropriate documentation to demonstrate that any conditions outlined in a State’s FFY 2003 grant award have been met.

Please let me know if my staff or I may assist you in implementing the requirements of IDEA and meeting the Application requirements for FFY 2004 grants under Part C of the IDEA.

Appendices: A - Federal Fiscal Year 2004 Annual State Application Under Part C of the  
Individuals with Disabilities Education Act (CFDA No. 84.181A)  
B - EDGAR 34 CFR §76.703; When A State May Begin To Obligate Funds

cc: National Early Childhood Technical Assistance Center  
Regional Resource Centers