

DEPARTMENT OF EDUCATION**Office of Elementary and Secondary Education****34 CFR Part 201****Funding Under Part C of Title I of the Elementary and Secondary Education Act of 1965 (ESEA); Education of Migratory Children**

AGENCY: Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) establishes an absolute priority for distribution of Migrant Education Program (MEP) funds under section 1308(a) of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Improving America's Schools Act (IASA) (Pub. L. 103-382). Under this priority the Department will make grant awards, on a one-time basis in fiscal year (FY) 1995, to provide additional resources to State educational agencies (SEAs) in order to assist them in their responsibilities, under the Migrant Education Program (MEP), to ensure the interstate and intrastate transfer of educational and health records of migratory children.

EFFECTIVE DATE: This priority takes effect on July 28, 1995.

FOR FURTHER INFORMATION CONTACT: James English, Office of Migrant Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, Room 4100, Washington, DC 20202-6135. Telephone: (202) 260-1934. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:**Background**

The MEP, authorized in Title I, Part C, of the ESEA, is a State-operated, formula grant program under which SEAs receive funds to improve the academic achievement and welfare of migratory children who reside in their States. Under section 1304(b)(3) of the ESEA, SEAs receiving MEP funds have a responsibility to carry out activities that promote the interstate and intrastate coordination of services for migratory children, and to provide for educational continuity through the timely transfer of pertinent school records, including health information, for migratory children.

In the past, the Department assisted SEAs in carrying out their responsibilities regarding the transfer of records on migratory children by contracting, using funds set aside from the overall MEP appropriation, for a national Migrant Student Record Transfer System (MSRTS). However, because the MSRTS is no longer available for records transfer and the contract for its operation will end on June 30, 1995, the SEAs are now in the process of enhancing, and in some cases reexamining, State and local recordkeeping and records transfer capabilities for migratory children. In this regard, the issue of how school records of migratory children can best be transferred after the end of MSRTS has been the subject of considerable discussion among State and local officials over the past year, and many SEAs have identified the enhancement of State and local capacities to maintain and transfer records on migratory children as a critical need that warrants further Federal assistance.

On May 4, 1995, the Department distributed a draft of a priority notice to SEAs that proposed, under the authority of section 1308(a) of the ESEA, to use \$2.2 million in available FY 1994 MEP funds for special, one-time grants to the SEAs for activities that support their records transfer responsibilities. This draft notice proposed to award the \$2.2 million in equal amounts to each SEA receiving MEP formula grant funds, except that no SEA could receive an amount that would exceed 20 percent of its FY 1995 MEP formula grant award. As of June 1, 1995, 49 of the 51 State ME Directors, as well as two other interested parties, commented on the draft priority notice.

Forty-two of the State MEP Directors expressed complete satisfaction with the proposed distribution of funds, while seven of the State MEP Directors and the two other commenters expressed some concerns about the proposal. Three State MEP Directors and the two other commenters suggested that it would be more reasonable to award additional funds for records transfer proportionally on the basis of the size of a State's MEP rather than in equal State amounts. One of the other commenters suggested a two-tiered distribution approach, with some of the funds to be distributed proportionally based on the size of the States' population of migratory children, and the remaining funds to be distributed equally. Two State MEP Directors suggested that some of the funds be reserved for new, national activities to enhance records transfer in the MEP, while a third State MEP Director noted that the Department was

already adequately supporting national activities through the establishment of a Records Exchange Task Force. Two State MEP directors suggested that the funds be clearly reserved to support interstate transfer activities; and one of the other commenters also noted the need to emphasize interstate transfer activities without restricting funds exclusively for this purpose. Finally, one commenter also suggested that SEAs applying for these funds be required to provide more narrative detail than simply an assurance that the funds would be used to support records transfer activities.

In response to the comments, this notice incorporates changes to clarify the priority's intent and encourage the use of funds especially for activities to enhance the interstate transfer of records of migratory children. In addition, the notice expands the formula for distributing funds under this priority, as a result of comments, and also because, after the draft notice was circulated for comments, the Department identified an additional \$0.5 million in funds beyond the \$2.2 million originally proposed for distribution under this priority.

Priority

Under section 1308(a) of the ESEA, the Department has the authority, after consultation with the States, to issue grants or contracts to SEAs, local educational agencies (LEAs), institutions of higher education (IHEs) and other public or private nonprofit entities to improve the interstate and intrastate coordination of those agencies' educational programs for migratory children. Under this authority, the Department is reserving \$2.7 million to be awarded, as an absolute priority in FY 1995, to SEAs for special grants to assist them in their responsibilities to ensure the maintenance and prompt transfer of pertinent educational and health records of migratory children on an interstate and intrastate basis. The Department believes that making these funds available to support SEA-sponsored interstate and intrastate records transfer activities is appropriate in view of the importance of records transfer in the educational continuity of migratory children, and the expressed needs of the SEAs for additional assistance to develop their records transfer capacity. Moreover, under this priority, the \$2.7 million to be awarded will retain its original purpose, since the Department originally had reserved this sum from the FY 1994 MEP appropriation to support the SEAs'

records transfer activities through MSRTS.

Use of Funds Under This Priority

Funds awarded under this absolute priority must be used only for activities that clearly support an SEA's responsibilities to promote educational continuity of migratory children through the timely transfer of their pertinent educational records, including health information, on an interstate and intrastate basis. Such activities may include, but are not limited to: Development and implementation of procedures that an SEA or its operating agencies will use to maintain and transfer records for migratory children; the purchase of related equipment (e.g., computers, fax machines) and material (e.g., "red bags" to be used by migratory children and their parents to hand carry records from site to site); and the training of State and local educational personnel, as well as parents of migratory children, in the use of these procedures, equipment, and material. Given that greater difficulties may be associated with the timely transfer of records on an interstate basis, the Department encourages SEAs to consider how the funds awarded under this priority can be used to address the particular problems of interstate records transfer.

Amount of the Grant

After carefully considering all the comments received on the initial proposal to award equal grant amounts to SEAs, and because of the availability of additional funds that can be used for this priority, the Department will award a total of \$2.7 million under this priority to SEAs receiving an FY 1995 MEP formula grant on the basis of the following two-tiered formula:

- \$2.2 million in equal amounts to each SEA; and
- \$0.5 million based on each State's calendar year 1994

full-time-equivalent (FTEs) count of migratory children ages 3–21 who are within three years of a qualifying move, as provided in section 1309(2) of the ESEA.

No SEA will receive an award that exceeds 20 percent of its FY 1995 MEP formula grant award. Six SEAs, those of the District of Columbia, New Hampshire, Rhode Island, Tennessee, West Virginia and Wyoming, are affected by this 20 percent limitation on the size of awards.

The Appendix to this notice contains a chart reflecting the size of each SEA's award under this priority assuming that all eligible SEAs apply. If an SEA does

not apply for these funds, its share of grant funds under this priority will be distributed to the requesting SEAs, subject to the 20 percent limitation, on the basis of the number of those States' migratory children.

The Department believes that this two-tiered formula for awarding the \$2.7 million available under this priority distributes these limited funds effectively to help promote long term benefits for the Nation's migratory children by helping all SEAs focus on the interstate and intrastate transfer of records of migratory children.

Under the first tier of the formula, the \$2.2 million originally available for this priority will continue to be distributed in equal amounts to the SEAs (subject to the 20 percent limitation). This distribution method provides like amounts to each State, irrespective of the size of its MEP or its technological sophistication, since each State is likely to encounter threshold costs related to improving its own capacity and that of its operating agencies to maintain and transfer information on eligible migratory children. Indeed, for many States, the one-time grants available under this priority represent only "seed money" for their records transfer efforts. All SEAs may reserve funds from their basic MEP formula allocations to carry out their responsibilities to ensure the transfer of records for eligible migratory children. Yet, for those SEAs with relatively small basic MEP grant allocations, and therefore less flexibility than larger allocation States to use those funds to meet records-transfer needs, the small threshold amount that would be available under the Department's initial proposal will help address some basic development and implementation issues (including staff time). In comments received on this initial proposal, only one State MEP Director suggested that the proposed threshold amount would exceed the amount that some States need to implement the records transfer activities required under the MEP statute. At the same time, other State MEP Directors from large, basic MEP allocation States supported the proposed equal allocation of funds to each State under this priority. As one such State MEP Director noted, while his large, basic MEP allocation State would benefit to a greater degree from a distribution based wholly on numbers of migratory children, the proposed distribution of equal amounts seemed reasonable "since each State has an equal responsibility [under the MEP] to develop and implement a method for transferring information on migrant children as they move." Similarly,

another State director from a large, basic MEP allocation State noted that, unless those SEAs with smaller basic MEP allocations are able to develop an adequate records transfer capacity, the larger basic MEP allocation States from which migratory children move will be unable to send to, or receive records from, these States where the children migrate.

While all SEAs that receive MEP funds could use additional funds to meet their statutory responsibilities to ensure the timely transfer of education records of migratory children within and across States, as a practical matter, SEAs with larger basic MEP grant allocations can, as one State Director commented, draw upon those funds to the degree necessary for records transfer, consistent with their other MEP responsibilities, in ways that small-allocation States cannot. For example, with the end of the MSRTS, the larger amounts of funds that these States previously spent on MSRTS terminal operations now are available to meet existing records-transfer needs.

Under the second tier of the formula, the Department will distribute an additional \$0.5 million, in excess of the \$2.2 million originally identified by the Department. Given that States with larger numbers of migratory children have more student records to transfer, the Department has decided to distribute these additional funds on the basis of the number of migratory children in each State, using the same calendar year 1994 FTE count of migratory children that the Department is using to calculate MEP allocations under the MEP State formula grant formula in section 1303 of the ESEA.

Finally, the Department will limit the amount of an award under this priority to no more than 20 percent of an SEAs' basic MEP grant award.

The Department believes that this two-tiered formula for awarding the \$2.7 million, with its 20 percent limitation, represents the most appropriate means of distributing these funds to support the development and implementation of appropriate records transfer procedures so that staff at new schools to which migratory children move, in whatever States they are located, can have the information needed to make sound educational decisions about these children.

Note: The \$2.7 million available for award under this priority was originally reserved from the FY 1994 MEP appropriation. Therefore, the Department must obligate these funds by September 30, 1995, and SEAs (and their subrecipients) must do so by September 30, 1996.

Procedure for Award

Only an SEA that receives MEP formula grant funds for FY 1995 may receive a grant under this priority. To receive funding under this priority, an SEA must submit a letter, signed by the Chief State School Officer or his or her authorized representative, requesting funds under this absolute priority and providing an assurance that these funds shall be used only for activities that clearly support the SEA's responsibilities to ensure the maintenance and prompt transfer of pertinent records, including health information, of migratory children on an interstate and intrastate basis. This letter should be received by the Office of Migrant Education contact person identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice on or before July 18, 1995.

After careful consideration of a suggestion by one commenter, the Department has decided not to require SEAs to provide either a description of the proposed use of grant funds or a budget as a condition of receiving funds under this priority. This information would be of limited use since it would reflect only a portion of a State's record transfer activities for migratory children. Instead, the Department intends to use other means of program monitoring to obtain information on the full range of records transfer activities that SEAs and their local operating agencies are conducting, including activities funded under both the MEP formula allocation and this priority.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed rulemaking documents. However, in accordance with section 437(d)(1) of the General Education Provisions Act, the Assistant Secretary has determined that it is desirable to waive formal public comment on this priority. At the same time, States were consulted as required under section 1308(a) of the ESEA. The Assistant Secretary makes this determination to waive formal public comment in order that funds under this priority may be made available to the

SEAs as quickly as possible to assist them in meeting their records transfer responsibilities, and to ensure that these funds can be distributed to SEAs on or before September 30, 1995, as required by law. This waiver applies only to this FY 1995 priority.

Applicability of 34 CFR Part 75 and 34 CFR Part 205

In view of the process that the Department will use to obtain information and make awards under this priority, the regulations in 34 CFR part 75 (Direct Grant Programs) of the Education Department General Administrative Regulations (EDGAR), and the regulations in 34 CFR part 205 (Migrant Education Coordination Program) do not apply. Instead, grants awarded under this priority will be administered, like the MEP itself, under the provisions of 34 CFR parts 76, 77, 80, 81, 85 and 86 of EDGAR. This includes, among other requirements, responsibility under 34 CFR 76.730 to maintain records, separately from the MEP formula allocation, on how the funds awarded under this priority have been used.

Intergovernmental Review

Grants to SEAs for the MEP are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Secretary's specific plans and actions for these programs.

Applicable Program Regulation: 34 CFR Part 201

(Program Authority: 20 U.S.C. 6394(d), 6398(a))

(Catalog of Federal Domestic Assistance Number 84.011, Migratory Education Basic State Formula Grant Program)

(Approved by the Office of Management and Budget under control number 1810-0584)

Dated: June 21, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

APPENDIX.—AWARD AMOUNTS UNDER SPECIAL FY 1995 MEP RECORDS TRANSFER PRIORITY

Alabama	\$50,122
Alaska	57,851
Arizona	58,137
Arkansas	51,897
California	205,815
Colorado	50,918
Connecticut	47,999
Delaware	45,798
District of Columbia	38,501
Florida	84,041
Georgia	53,742
Idaho	54,417
Illinois	47,805
Indiana	49,671
Iowa	45,767
Kansas	55,204
Kentucky	57,154
Louisiana	48,885
Maine	50,044
Maryland	45,595
Massachusetts	48,716
Michigan	60,742
Minnesota	48,846
Mississippi	47,812
Missouri	46,699
Montana	46,373
Nebraska	49,538
Nevada	46,099
New Hampshire	19,504
New Jersey	46,461
New Mexico	47,622
New York	52,493
North Carolina	52,948
North Dakota	46,240
Ohio	47,964
Oklahoma	47,706
Oregon	61,035
Pennsylvania	52,270
Rhode Island	30,598
South Carolina	46,333
South Dakota	46,407
Tennessee	19,799
Texas	124,769
Utah	47,410
Vermont	46,457
Virginia	46,598
Washington	65,270
West Virginia	19,976
Wisconsin	46,089
Wyoming	34,995
Puerto Rico	56,868
National Totals	2,700,000

[FR Doc. 95-15795 Filed 6-27-95; 8:45 am]

BILLING CODE 4000-01-P