

MEMORANDUM

To: Chief State School Officers

From: Michael Yudin
Acting Assistant Secretary for Elementary and Secondary Education

Subject: Extending the Time Period for Obligating Fiscal Year (FY) 2009 Funds for State-Administered Formula Programs Authorized under the Elementary and Secondary Education Act of 1965, as amended (ESEA)

I am writing with respect to funds made available for ESEA State-administered formula programs under Public Law (PL) 111-8, the Department of Education Appropriations Act, 2009 (the regular fiscal year (FY) 2009 appropriation), and PL 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA). As you know, combined with FY 2009 funds from the Department's annual appropriation, ARRA provided States with unprecedented amounts of funds to create jobs and augment programs for special purposes, such as serving low-achieving students in high-poverty schools and improving education technology. I appreciate your efforts to ensure that all FY 2009 funds are obligated at the recipient and sub-recipient levels by the September 30, 2011 deadline established under the Tydings Amendment (section 421(b) of the General Education Provisions Act). As you know, under normal circumstances any funds that remain unobligated after that date would lapse, and no new obligations could be charged to FY 2009 program accounts.

Although I believe it is important that each State educational agency (SEA) and its sub-recipients local educational agency (LEA) ensure that Federal funds are obligated in a timely manner, I am acutely aware of the enormous need to provide continued support for meaningful education reform across the nation and the need to offer flexibility to SEAs and LEAs to give them further time to make spending decisions wisely. For example, it would be unfortunate if grant recipients or sub-recipients terminate employees or postpone hiring when there are FY 2009 funds that could be used to keep personnel employed.

Accordingly, under the waiver authority in ESEA section 9401, I am inviting each SEA to request a waiver of the Tydings Amendment, if necessary, to extend through September 30, 2012 the period to obligate FY 2009 regular and ARRA funds under the ESEA State-administered formula programs listed in the attachment. As part of this invitation to extend the period to obligate these funds, I strongly encourage grant recipients and sub-recipients, consistent with program requirements, to use these funds to hire or retain personnel who are vital to carrying out on-going educational reform activities initiated because of the infusion of resources under ARRA.

To request a waiver of the Tydings Amendment with respect to unobligated FY 2009 funds under ESEA State-administered formula program, an SEA must:

- Identify the specific Federal programs affected by the waiver.

- Identify the statutory requirement to be waived—i.e., section 421(b) of GEPA (20 U.S.C. § 1225(b)).
- Provide an estimate of the amount of FY 2009 funds for each ESEA program for which the waiver is being requested that will remain unobligated as of September 30, 2011.
- Describe how the SEA and its sub-recipients will use the funds that are carried over after September 30, 2011 to increase the quality of instruction for students, improve their academic achievement, and continue to assist the same populations served by the programs for which the waiver is being requested in accordance with applicable program requirements.
- Hold schools and LEAs accountable based on the SEA's annual measurable objectives.
- Estimate the number of jobs created or retained with regular Federal FY 2009 funds after September 30, 2011, in a manner and format consistent with the quarterly reports required under section 1512 of ARRA and make such estimates available to the Department upon request.

If you choose to request a waiver to extend the period of availability of the FY 2009 ESEA State-administered formula funds in your State, you must submit the request no later than October 31, 2011. Please submit your request to me via email, with "FY 2009 Tydings Waiver Request" in the subject line at FY09TydingsWaivers@ed.gov. You may also send a hard copy of your request to me at the following address:

Michael Yudin
Acting Assistant Secretary for Elementary and Secondary Education
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202-6100

Note that a hard copy request must be received, not postmarked, by October 31, 2011, and that security procedures for processing Department mail often delay timely delivery.

Please note that recipients and sub-recipients do not have authority to obligate their FY 2009 funds after September 30, 2011 unless and until the Department has approved the State's waiver request. Therefore, I urge you to submit your waiver request as soon as possible. We will make every effort to respond to waiver requests as quickly as possible to minimize the period when funds are not available for obligation.

To assist you in requesting a waiver, I am attaching a template that you may wish to use. Prior to submitting a waiver request, you must provide all sub-recipients of the programs affected by the waiver with notice and a reasonable opportunity to comment on the request. Please attach copies of any comments with your request. You must also provide notice and information regarding your waiver request to the public in the manner in which your State customarily provides such notice and information to the public (e.g., by publishing a notice in newspapers or by posting information regarding the waiver request on the State's website).

This invitation to request a waiver of the Tydings Amendment with respect to FY 2009 ESEA funds does not apply to State-administered programs authorized under other laws such as the Individuals with Disabilities Education Act. In addition, receipt of this waiver does not affect

any previous Tydings Amendment waivers the Department has approved with regard to FY 2009 school improvement funds reserved under ESEA section 1003(a) or FY 2009 School Improvement Grant funds awarded under ESEA section 1003(g).

If you have any questions about this waiver invitation, please address them to FY09TydingsWaivers@ed.gov. My office will be monitoring this mailbox frequently and will get back to you as soon as possible.

Attachment

List of ESEA State-Administered ESEA Formula Grant Programs that Received FY 2009 Funds under the Regular Appropriation or ARRA

CFDA	Program
84.010A	Title I, Part A Grants to Local Educational Agencies
84.389A	Title I, Part A Grants to Local Educational Agencies (Recovery Act)
84.213A	Title I, Part B, Subpart 3 Even Start
84.011A	Title I, Part C Migrant Education State Grants
84.013A	Title I, Part D State Agency Neglected and Delinquent Program
84.367A	Title II, Part A Improving Teacher Quality State Grants
84.366A	Math Science Partnerships
84.318X	Title II, Part D Enhancing Education Through Technology (Ed-Tech) State Program
84.386A	Title II, Part D Enhancing Education Through Technology (Ed-Tech) State Program (Recovery Act)
84.365A	Title III, Part A English Language State Grants
84.186A	Title IV, Part A Safe and Drug Free Schools and Community Grants
84.287C	Title IV, Part B 21 st Century Community Learning Centers
84.369A	State Assessment Grants