



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

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OSEP 23-03

MEMORANDUM

TO: Lead Agency Directors
State Part C Coordinators

FROM: Valerie C. Williams *Valerie C. Williams*
Director
Office of Special Education Programs (OSEP)

SUBJECT: Procedures for Applying for a Federal Fiscal Year (FFY) 2023 Grant Award Under Part C of the Individuals with Disabilities Education Act (IDEA)

ACTION REQUIRED: Submission of the IDEA Part C Application Packet by May 24, 2023

The purpose of this memorandum is to inform State lead agencies of the procedures they must follow to receive a grant award under Part C of the IDEA for FFY 2023 funds, which will become available to States on July 1, 2023. There are four new areas that all States must review for the IDEA Part C FFY 2023 application:

- (1) New Required Form under General Education Provisions Act (GEPA) section 427 (see Section 4 below);
- (2) New Flexibility regarding the IDEA Part C Extension Option and the FFY 2023 appropriations language (see Section 5 below);
- (3) New Clarification under Section III (regarding use of funds for contracts For non-direct service expenses) (see Section 6 below); and
- (4) New requirement under Build America Buy America Act (BABAA) (see Section 8 below).

The enclosed packet contains instructions and forms needed for completion of the IDEA Part C State Application. The Application will also be available on the Internet at <https://sites.ed.gov/idea/grantees/#Grants>. The completed Application, with supporting information, must be **submitted on or before May 24, 2023**, to ensure that your State's FFY 2023 IDEA Part C grant funds are available for obligation on July 1, 2023.

The IDEA Part C application requires each State to submit or have on file with OSEP specific State policies, procedures, agreements, descriptions, and methods. States are required to ensure that their State policies, procedures, descriptions and methods, including statutes and regulations used to meet these requirements, are consistent with the IDEA Part C requirements in 20 U.S.C. 1401 *et seq.*, and the IDEA Part C regulations in 34 CFR Part 303. Although the majority of States received full approval of their FFY 2022 grant applications, some States need to adopt in some limited areas either new or revised policies, procedures, agreements, descriptions and methods to meet the IDEA Part C application requirements for the FFY 2023 IDEA Part C Application. We expect States to make every effort to complete the process and revise State policies, procedures, agreements, descriptions and methods to meet all IDEA Part C requirements with the FFY 2023 application.

As part of adopting a new or revised policy under IDEA Part C, States must comply with the IDEA Part C public participation requirements. Please carefully review the public participation requirements in Section 9 of this memorandum to ensure compliance with those requirements. Upon receipt and approval of the certifications and all other information required by the FFY 2023 IDEA Part C Application by May 24, 2023, the State lead agency will be eligible to receive its FFY 2023 IDEA Part C funds by July 1, 2023.

1. Procedures States Must Follow to Receive an IDEA Part C Grant Award for FFY 2023

For the FFY 2023 grant period, the U.S. Department of Education (Department) is asking each State lead agency to:

- 1) Read the Instruction Sheet.
- 2) Complete Section I and indicate in Section I.A. whether the State is requesting a full or conditional approval of its FFY 2023 IDEA Part C grant award, and, if appropriate, complete Section I.B. of the Application.
- 3) Indicate, in Section II.A. of the Application, those policies, procedures, methods, agreements, or descriptions the State can or cannot provide and, in Section II.B. of the Application, those assurances the State can or cannot provide. If your State does not have fully approved Part C policies, procedures, methods, agreements, or descriptions in Section II.A. or has not completed all assurances in Section II.B., carefully review the eligibility requirements found in the *IDEA Part C Grant Application Technical Assistance Checklists* found at: <https://sites.ed.gov/idea/grantees/#Grants> to determine whether the State can provide the requisite policies, procedures, methods, agreements, descriptions, and assurances.¹ (See memo page 3 - *Section I - Conditional Approval of FFY 2022*- for additional information.) If the State cannot provide one of these required elements, the State must indicate in the “No” column a date of not later than June 30, 2024 (unless directed otherwise by OSEP).

¹ There are four Checklists that will assist your State in determining whether its policies and procedures, methods, descriptions, and assurances meet the requirements in Sections II.A and II.B of the Application. The checklists also provide references to applicable regulatory requirements relevant to Sections II.A. and II.B. of the Application. The checklists are OSEP’s annotated checklists for reviewing: (1) Section II.A. of the IDEA Part C Grant Application; (2) System of Payments Policies under Section II.A.3.a of the IDEA Part C Grant Application; (3) Methods under Section II.A.3.b of the IDEA Part C Grant Application; and (4) Transition Documents under Section II.A.10 of the IDEA Part C Grant Application. These four Checklists are available at <https://sites.ed.gov/idea/grantees/#Grants>.

- 4) Provide the certifications found in Section II.C. of the Application and complete the certification statement in Section II.D. (For Certification 3 under Section II.C., please review OSEP’s IDEA Part C Grant Application Technical Assistance Checklist for the Fiscal Certification Required Under 34 CFR §303.202 - this Fiscal Certification relates to having in place methods and contracts that meet the applicable requirements).
- 5) Complete Section III – Use of Funds. (See memo page 6 - *Section III - Description of Use of Funds Under Part C* - for additional information.)
- 6) Complete Section IV.A. regarding system of payments and Section IV.B. regarding indirect costs. If the State lead agency proposes to charge indirect costs to its FFY 2023 IDEA Part C funds, the State must indicate the total amount to be charged in Section III.F.6 and also attach a copy of all appropriate indirect cost documents, such as a cost allocation plan that applies costs on a restricted basis for the IDEA Part C program, or a restricted indirect cost rate agreement (RICR), and any other relevant documentation (such as correspondence between the State lead agency and its cognizant Federal agency regarding approval of charging indirect costs on a restricted basis for the IDEA Part C grant funds). (See memo page 8 - *Section IV- System of Payments/Use of Insurance/Program Income; Restricted Indirect Cost Rate/Cost Allocation Plan Information* - for additional information.)
- 7) Comply with the public participation requirements. (See memo page 10 - *Public Participation Requirements* – for additional information.)

States should carefully consider who has the authority to sign the Application to provide the requisite assurances and certifications, consistent with the Federal IDEA Part C requirements, and the State’s policies, procedures, descriptions and methods, including statutes and regulations. Even if the State cannot provide all policies, procedures, methods, descriptions, and assurances found in the Application, the State is responsible for ensuring that early intervention services are available to all infants and toddlers with disabilities in the State as required by IDEA Part C (see 20 U.S.C. 1435 and 34 CFR Part 303).

By accepting a grant under Part C of the IDEA, each State expressly agrees to waive Eleventh Amendment immunity for violations of the IDEA under 20 U.S.C. 1404 and 34 CFR §303.103.

2. Section I: Conditional Approval of FFY 2022 Application

Although most States received a “full approval” of their FFY 2022 applications, some States received “conditional approval.” In almost all cases, the State’s conditional approval was based on the fact that the State was not able to provide some policies, procedures, methods, agreements, and/or descriptions required in a few of the subsections in Section II.A. of the Application or one of the assurances required in Section II.B. of the Application. If a State’s conditional approval was based on the State not being able to check ‘yes’ for all of the items in Section II.A. or II.B. of the Application, the State must complete Section I.B.1 of the Application, and update Section II.A. and II.B. of the Application to reflect the changes it has made and changes that it may need to make.

States that received a conditional approval based on other issues should complete Section I.B.2. of the Application and may need to submit specific documentation to address those conditions. (Thus, some States may need to complete both Sections I.B.1. and I.B.2. of the Application.) It is preferable that the required documentation to address such other issues be sent to OSEP prior to

the FFY 2023 Application submission deadline, to ensure timely processing of your State’s Application. However, the documentation must be submitted no later than when the State submits its FFY 2023 Application, or earlier, if a different and earlier date is specified in the State’s FFY 2022 grant letter (and Enclosure A to that grant letter). States are reminded that they must comply with applicable public participation requirements identified on page 10 of this memorandum prior to adopting new or revised policies that are to be submitted with the FFY 2023 IDEA Part C Application.

3. Section II.A.: Submission of Policies, Procedures, Methods & Descriptions

Each State must have on file with OSEP, or submit with its application, policies, procedures, methods and descriptions as well as assurances and a certification. These policies, procedures, methods and descriptions must be consistent with the IDEA Part C requirements in 20 U.S.C. 1431 *et seq.* and 34 Part 303. Some States, however, have not submitted certain policies, procedures, methods and descriptions that were required to be revised, beginning with their FFY 2012 application for IDEA Part C funds, to be consistent with the Part C regulations in 34 Part 303 that went into effect with the FFY 2012 grant period. If a State, under these circumstances, is unable to submit the necessary documents with its FFY 2023 application, it should describe the situation and indicate a date no later than June 30, 2024 by which the required policies and procedures will be finalized. States should carefully do the following:

- 1) New: Indicate in Section II.A. those policies, procedures, methods, and descriptions that the State is providing for the first time by checking “N” column for “new” in Section II.A. for those policies, procedures, methods, agreements, or descriptions that have not been previously reviewed and approved by OSEP and which must be part of the State’s Application in Section II.A.;
- 2) Revised: If OSEP previously approved a policy, procedure, method, agreement, or description, and the State is now revising it, the State must check the “R” column for “revised” in Section II.A.;
- 3) On File: If a policy, procedure, method, agreement, or description has been previously approved by OSEP and the State is not revising it, the State must check the “OF” column of Section II.A. and the State does not need to submit any additional documentation to OSEP for that requirement; and
- 4) No and a Date ASAP: If the State is unable to submit a particular policy, procedure, method, agreement or description, the State must check the “No” column and provide a date by which the State will submit that document using its best efforts as soon as possible but not later than June 30, 2024.

4. Section II.A.12: New Form Required By Section 427 of GEPA

New form for the FFY 2023 IDEA grant application -- All States must submit this year a new form under GEPA section 427.

GEPA section 427 is a longstanding requirement. Each State has had on file under Section II.A.12, as part of its application, a description that is required by section 427 of GEPA. This description includes the steps and strategies the State proposes to take to ensure equitable access to, and participation in, activities conducted under Part C by addressing the special needs of children with disabilities and their families and other program beneficiaries in order to overcome

barriers to equitable participation, including barriers based on gender, race, color, national origin, disability, and age.

For FFY 2023, the Department recently revised the GEPA section 427 form (OMB Control No. 1894-0005 2/28/2026).

- All States must submit this newly revised GEPA section 427 form (which is attached).
- The revised GEPA section 427 form replaces the description that each State has previously had on file. Therefore, each State must indicate in Section II.A.12 “N” under the yes column for “new.”
- The revised GEPA section 427 form must be included as part of the State’s FFY 2023 IDEA Part C application that must go through the public participation requirements in 34 CFR §303.208(a) as described in Section 9 below (60-day circulation/30-day comment).
- The revised GEPA section 427 form must be submitted with the FFY 2023 IDEA Part C application (electronically by May 24, 2023 and hard copy by August 1, 2023).

OSEP notes that the requirement that the State’s GEPA section 427 form contain a description of steps that would promote equitable access and participation applies only to State-level uses of funds for activities other than program administration. Given that most State lead agencies use contracts for local early intervention service (EIS) providers, the State’s GEPA section 427 form would apply to all of the State IDEA Part C funds used for any activities other than program administration. However, if the State lead agency is subgranting to local EIS providers, then, the State lead agency would be responsible for reviewing the description of activities to be undertaken at the local level as part of subgrantees’ applications to the State.

Going forward for future IDEA Part C grant applications, the State lead agency must review (and if necessary and appropriate, revise) its GEPA section 427 form given that the newly revised form is a four-part question that requires States to identify, among other information, appropriate timelines for addressing identified barriers.

5. Section II.A.13: IDEA Part C Extension Option and State Incentive Grants (SIGs)

States have the option to provide IDEA Part C services beyond age three consistent with IDEA section 635(c) and 34 CFR §303.211. If a State elects this option, it must indicate so in Section II.A.13 of its application by noting “N” for new, “R” for revised or “OF” for on file for its policy, which must be approved by OSEP. If the State is proposing to adopt a policy, then the State must indicate under the “No” column the date by which it will have an approved policy on file with OSEP. This section describes some additional information about flexibility under the new appropriations law as well as how States may indicate their interest in applying for a State Incentive Grant (SIG).

As part of the Consolidated Appropriations Act, 2023, a State may implement a policy that meets the requirements of IDEA section 635(c) and 34 CFR §303.211 without regard to the procedures required in those sections.² The Department is clarifying that under this appropriations language,

² The FFY 2023 Appropriations Act states that “notwithstanding section 638 of the IDEA, a State may use funds it receives under section 633 of the IDEA to offer continued early intervention services to a child who previously received services under Part C of the IDEA from age 3 until the beginning of the school year following the child’s third birthday with parental consent and without regard to the procedures in section 635(c) of the IDEA.”

States may offer IDEA Part C services beyond age three as long as they are offered under Section II.A.13 consistent with IDEA section 635(c) and 34 CFR §303.211. As noted under IDEA section 635(c), such IDEA Part C extension services may only be provided to children who were previously determined eligible under IDEA Part C and are eligible for Part B preschool services under IDEA section 619. See, 34 CFR §303.211(a)(1). These IDEA Part C extension services may be provided to children who meet one of the subset age ranges identified in 34 CFR §303.211(a)(2) (i.e., for a child who has turned three until the beginning of the school year following the child’s third birthday, as defined by the local educational agency or school district of that child’s residence).

This appropriations provision would permit the use of both the State’s regular IDEA Part C FFY 2023 funds as well as any FFY 2023 State incentive grant (SIG) funds towards the provision of services under a policy adopted by the State under the IDEA Part C Extension Option under Section II.A.13. A State that wishes to apply for SIG funds must indicate by the application deadline of May 24, 2023, in its cover letter to OSEP, that it is interested in receiving a SIG under IDEA section 643(e) and has adopted or is submitting an approvable policy under Section II.A.13 of the FFY 2023 IDEA Part C application. OSEP will contact those States that indicate an interest to provide targeted technical assistance.

6. Section III: Description of Use of Funds Under Part C

Each State’s Application must include a description of how the State lead agency and State Interagency Coordinating Council (SICC) propose to use the State’s allotment of FFY 2023 grant funds under IDEA Part C. States should follow the instructions found in Section III (Use of Funds) of the enclosed Instruction Sheet, including indicating whether an expenditure is for the lead agency or SICC. States must 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. All State Lead Agencies (including those that are State educational agencies (SEAs)) are required to provide detailed information regarding the use of IDEA Part C funds for the State administration (including personnel) in Section III.A.

Clarification-Section III.C: Each State must identify in Section III.C the amount of Federal IDEA Part C funds that the State expects to spend on direct costs for the provision of early intervention services. In that section, States must also report both the type of early intervention service and the estimated amount to be expended on that service. However, it has come to our attention that some States may be reporting the entire amount that the State lead agency has contracted with an early intervention service (EIS) provider for the use of IDEA Part C funds, and that entire amount may include both costs for direct services as well as other expenses. To the extent that contracts with EIS providers include amounts for costs other than direct services, the State should report the amount and type of non-service expenses in Section III.B (along with all other maintenance and implementation activities for IDEA Part C incurred by the State lead agency and/or the SICC). If the contractual amounts with local EIS providers cannot be easily disaggregated as estimates under Sections III.B and III.C, the State has the option of reporting the entire amount in Section III.C and indicating in a footnote in Section III.C that the estimated amounts listed in that section include expenses for non-direct services. For example, if the State lead agency contracts with an EIS provider to provide occupational therapy (OT) services and training, the amount of expenses for training would be listed under Section III.B and the amount of OT services would be listed under Section III.C. If the amounts are unable to be

disaggregated, then the State lead agency may list the entire amount under Section III.C and indicate in a footnote that the estimated amount also includes training expenses.

Each State must specifically identify in Section III. B. any direct costs for activities or expenses³ that require prior approval from OSEP under IDEA section 605; 2 CFR Part 200 and 34 CFR §303.225. These items include using Federal IDEA Part C funds for: (1) **equipment** (with per unit costs of \$5,000 or more); (2) **participant support costs** (such as training or travel costs for non-employees); (3) **construction** or renovation of facilities; or (4) **rent**,⁴ occupancy, or space maintenance costs.

There are two guidance documents that may be helpful to review for prior approval requests. On October 29, 2019, OSERS released [*Frequently Asked Questions \(FAQs\) Prior Approval – OSEP and RSA Formula Grants*](#) which details prior approval flexibilities for **equipment and participant support costs** and describes the parameters under which OSEP has provided prior approval for a subset of these costs. States may also find helpful [*OSEP’s Guidance for Common Prior Approval Requests under IDEA Parts B and C*](#) issued on January 3, 2023. It provides a summary of the guidance and approval process for the most common prior approval cost categories.

For any direct cost for an activity or expense listed under Section III of this application that falls outside the scope of the FAQ and requires OSEP prior approval, please include it in Section III.B. and mark an “X” in the right hand column. The State must submit with its FFY 2023 Application any additional information and documentation for any expenses that require prior approval by OSEP.

³ Each State must obtain prior approval from the Department under the IDEA and the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) for certain expenses. These expenses include: (1) equipment (tangible personal property (including information technology systems) having a useful life of more than one year and a per unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the nonfederal entity for financial statement purposes, or \$5,000); (2) participant support costs (direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees), in connection with conferences or training projects ; (3) construction/renovation of capital assets; and (4) rent (see 2 CFR §§ 200.1, 200.407, and 200.465 and; 34 CFR §303.225(c)(3)). OMB revised 2 CFR Part 200 to include the definitions for “capital assets,” “equipment,” and “participant support costs” in 2 CFR § 200.1. See, 85 Fed. Reg. 49506 (Aug. 13, 2020) (effective November 12, 2020).

⁴ If a State proposes to use FFY 2023 IDEA Part C funds to pay for as a direct cost: (1) construction or renovation of facilities which is referred to in the OMB Uniform Guidance as “additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets”; or (2) rent or space occupancy, the State must obtain prior approval from OSEP under IDEA section 605 and 34 CFR §303.225(c)(3) respectively. These direct costs are not typically charged to the IDEA Part C grant. The State must indicate in Section III.B. if the State is proposing to use any of its IDEA Part C FFY 2023 funds to pay for these costs. Given the nonsupplanting requirements in IDEA section 637(b)(5)(B) and 34 CFR §303.225, there are extremely limited circumstances in which a State may even include the cost of “rent” as a direct cost. The State must also ensure that the State does not both request to charge rent as a direct cost to its IDEA Part C FFY 2023 funds and include rent or space occupancy as an indirect cost if the State is charging indirect costs on a restricted basis to its IDEA Part C FFY 2023 funds through its restricted indirect cost rate agreement or cost allocation plan. If the State is considering this request, it must also contact the State’s OSEP State Lead, as soon as possible, but prior to the submission of the Part C FFY 2023 application to OSEP, to determine whether the cost of “rent” is allowable and consistent with IDEA section 637(b)(5)(B) and 34 CFR §303.225(c)(3) as the State will need to provide additional documentation and information.

Please note that once your State receives its FFY 2023 grant award, if your State wishes to revise the amounts it has budgeted under Section III - Use of Funds at any time throughout the FFY 2023 grant award obligation period (July 1, 2023 through September 30, 2024), **the State must submit a revised Section III/budget and obtain OSEP’s prior approval** for the following two sets of changes to its Section III/budget.

First, under 2 CFR §200.308(f), after OSEP approves the initial Section III/budget in the FFY 2023 grant letter, the State lead agency must submit a revised Section III/budget to obtain OSEP’s prior approval if the State proposes to transfer among direct cost categories a cumulative amount that exceeds ten percent (10%) of the total Section III/budget as last approved by OSEP. This would include a transfer of funds among direct cost categories or programs, functions and activities that in the aggregate would exceed 10% of the total approved grant award in Section III, provided that the Federal share in the grant exceeds the Simplified Acquisition Threshold (currently set at \$250,000).

Second, the State must obtain OSEP’s prior approval for any changes to its Section III/budget that meet the applicable conditions under 2 CFR §200.308(c). The *one* category of costs in 2 CFR §200.308(c) for which the State lead agency does not need to submit a revised Section III/budget for OSEP approval is “participant support costs” as defined in 2 CFR §200.1. This is because OSEP is exercising its authority under 2 CFR §200.308(d) to waive prior written approval for the costs under 2 CFR §200.308(c)(5) for the transfers of Federal IDEA Part C FFY 2023 funds allotted in the approved Section III budget for “participant support costs” to other categories of expenses. The Department *is not* waiving its authority to require State lead agencies to request prior written approval when the State revises its Section III/budget for the other circumstances identified in 2 CFR §200.308(c). Nor is the Department waiving the initial approval of “participant support costs” that are outside the scope of the *FAQs* when OSEP approves the Section III/budget submitted with the FFY 2023 grant application. Please contact your OSEP State Lead if you have further questions.

7. Section IV: System of Payments/Use of Insurance/Program Income Restricted Indirect Cost Rate/Cost Allocation Plan Information

Section IV.A.: System of Payments & Program Income: When completing Section IV.A. regarding system of payments, States are asked to place a check in one of the two blanks provided. By entering a check in the appropriate blank, the State is indicating whether the State is required to have a written policy that applies a system of payments for IDEA Part C services under 20 U.S.C. 1432(4)(B) and 34 CFR §§303.520 and 303.521. The IDEA Part C regulations specify in 34 CFR §§303.520 and 303.521 that a State must adopt a written system of payments policy if the State uses any of the following funding sources to pay for IDEA Part C services: (1) public insurance or benefits, (2) private insurance, or (3) family fees, such as a sliding scale. If the State uses one of these funding sources, it does have a system of payments for IDEA Part C services and must check “Yes” under Section IV.A. The State must also submit its system of payments policies and procedures under Section II.A.3.a. of the Application after subjecting such policies to the appropriate public participation requirements identified in Section 9 of this memorandum.

Additionally, the State should note that any family fees received under a State’s system of payments are treated as “program income” for purposes of 2 CFR §200.307(e) and 34 CFR

§303.520(e) and are not included in the State's determination of State and local expenditures for purposes of 20 U.S.C. 1437(b)(5)(B) and 34 CFR §303.225(a) and (b).

Section IV. B.: Restricted Indirect Costs: When completing Section IV.B. (regarding restricted indirect costs), all lead agencies, including SEAs, as well as any outlying area that has the Department of Interior as its cognizant Federal agency, must check the appropriate box in Section IV.B. of the Application. The State lead agency does not need to charge indirect costs to its IDEA Part C FFY 2023 grant funds and if such costs are not charged, the State lead agency only has to check the appropriate box (which is the first option identified in Section IV.B.). However, if the State lead agency proposes to charge indirect costs to its IDEA Part C FFY 2023 grant funds, it must check either that the State lead agency:

- (1) is an SEA and works directly with the U.S. Department of Education's Indirect Cost Unit to ensure that indirect costs are only charged on a restricted basis to the State's IDEA Part C grant; or
- (2) is not an SEA and has a final restricted indirect cost rate agreement (RICR) that has been approved by the State lead agency's cognizant Federal agency and is in effect for this Federal fiscal year (FFY) (ending on June 30, 2024); or
- (3) is not an SEA and has either a provisional or final RICR that expires on a date before June 30, 2024 and the State is in the process of negotiating a new RICR; or
- (4) is not an SEA and has a final cost allocation plan (CAP), approved by the State's cognizant Federal agency, that applies costs on a restricted basis (and is approved through a date prior to June 30, 2024).

If the State lead agency proposes to charge indirect costs to its IDEA Part C FFY 2023 grant, the lead agency must also submit, with the State's Part C Application, any indirect cost documentation including a copy of either: (1) its final RICR agreement with its cognizant federal agency (and if not approved through the end of this FFY, the most recently approved RICR and applicable dates), or (2) its CAP that applies costs on a restricted basis to the IDEA Part C program that is applicable for FFY 2023 (effective July 1, 2023 through June 30, 2024). This indirect cost documentation must be submitted with a copy of correspondence from the lead agency's cognizant Federal agency confirming approval of the RICR agreement or CAP. The State lead agency must ensure that any restricted indirect costs charged to IDEA Part C grant funds comply with the requirements in 34 CFR §303.225(c). OSEP Memorandum 99-2 regarding Restricted Indirect Cost Rate for Part C of the IDEA may be referenced at the following location on the Internet: <https://sites.ed.gov/idea/grantees/#Grants>.

8. Build America Buy America Act (BABAA)

All ED grantees must now comply with the Build America, Buy America Act (BABAA) effective with grants issued after October 1, 2022 (See, Pub. L. No. 117-58). Under BABAA, grantees may not use their Federal IDEA grant funds for infrastructure projects (e.g., construction, remodeling, and broadband infrastructure) or activities unless they comply with the following Buy America Sourcing requirements:

1. All iron and steel used in the infrastructure project or activity are produced in the United States;

2. All manufactured products used in the infrastructure project or activity are produced in the United States; and
3. All construction materials are manufactured in the United States.

This new requirement will be listed on all State IDEA Part C Grant Award Notifications (GANs) beginning with the FFY 2023 grant award. Additional information about this grant condition can be found in the attached document entitled “Build America Buy America Sourcing Requirements Grant Condition Required Domestic Sourcing Under the Build America Buy America Act (BABAA)” and at the Department’s Build America Buy America Waiver website at: <https://www2.ed.gov/policy/fund/guid/buy-america/index.html>.

9. Public Participation Requirements

Application Requirement: Before submitting its FFY 2023 IDEA Part C application to the Secretary, the State must publish its entire Part C application (including any policies, procedures, descriptions, methods, certifications, assurances, Sections III and IV, and other information required in, and that will be submitted as part of, the application) in a manner that will ensure circulation throughout the State at least 60 days prior to the date on which the State application is submitted to the Secretary with an opportunity for public comment on the application for at least 30 days during that 60-day publication period. States do not need to submit copies of the notices that provide confirmation of the public comment process, but your State will want to maintain this documentation for compliance with the requirements in 34 CFR §303.208(a).

Policies/Procedures Requirement: In addition, before a State adopts a new or revised policy needed to comply with IDEA Part C statute and regulations, the State must subject the policy to the public participation requirements in 34 CFR §303.208(b). Please note that the public participation requirement applies to all new or revised policies and not just those required to be submitted under Section II.A. of the IDEA Part C application. Specifically, the State lead agency must: (1) provide an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, early intervention service providers, and members of the State Interagency Coordinating Council, to comment on the new or revised policy for at least 30 days; and (2) hold public hearings on the new or revised policy (with a 30-day notice of the hearings to enable public participation).

Finally, please note that under 34 CFR §303.101(c), the State must also obtain approval by the Secretary before implementing the following policies that are required to be submitted as part of Section II.A. of the State’s IDEA Part C application in 34 CFR §§303.203(a) (Definition of early intervention services), 303.203(b) (System of payments policy and methods), 303.203(c) (Definition of developmental delay/Evaluation and assessment procedures), 303.204 (At-risk definition and services), 303.206 (Referral of specific children including CAPTA), 303.207 (Geographic equity), 303.208 (Public participation), 303.209 (Transition), and 303.211 (Part C extension option beyond age three).

The Department recognizes the continued need for flexibility in conducting public hearings to meet IDEA’s public participation requirements under 34 CFR §303.208(a) and (b) for the FFY 2023 IDEA Part C application. OSEP is confirming that States may use virtual hearings for the limited purpose of conducting public hearings under 34 CFR §303.208(a) and (b) for the FFY 2023 application and any amendments to the FFY 2023 application. States should consult with

their attorneys prior to conducting virtual hearings for this purpose to ensure that this practice is not prohibited under State law.

Virtual hearings must be accessible consistent with applicable federal civil rights laws, to ensure that individuals with disabilities have ample opportunities to participate. We recommend holding at least one hybrid hearing (to allow in person participation in addition to any virtual hearings) to support participation by individuals with limited access to technology.

10. Submission of Application Packet/Due Date

OSEP is providing States with the same flexibilities for submission of the FFY 2023 IDEA Part C application as it did for the FFY 2020 through 2022 IDEA Part C applications. Specifically, OSEP is providing for the FFY 2023 IDEA Part C Application, the ability of each State lead agency to submit a pdf copy of your State’s FFY 2023 IDEA grant application, with an electronic signature and date, by the application due date. This “e signature” can be a two-factor authenticated signature or an image file of the signature of the State lead agency director or his or her designee who has the authority to provide the certifications and assurances required by the application and sent from the email .gov address of the individual signing the application.

As with the FFY 2020 through 2022 IDEA Part C applications, OSEP will review the application and conduct a signature verification process. The State Lead Agency director or their designee should be prepared to provide a timely response to OSEP staff when contacted regarding any additional steps needed to authenticate and verify the signature on the State’s IDEA Part C FFY 2023 grant application.

The pdf copy of your State’s FFY 2023 grant application and supporting documents must be emailed to OSERS.capp@ed.gov by May 24, 2023. The documents must be sent from an official State Lead Agency government email address.

After submission of the pdf documents, the State Lead Agency must submit a hard copy of the application and supporting materials to OSEP by mail. However, the due date for submission of the hard copy application and supporting documents is no later than August 1, 2023. Please mail the hard copy documents to the following address:

United States Department of Education
Office of Special Education Programs
Potomac Center Plaza
Mail Stop 2600, Room 5031-A
550 12th Street, S.W.
Washington, D.C. 20202

If corrections are needed to the Assurances or other information in Section II of the Application, we will require that the revised version be appropriately signed and dated (i.e., after the revisions are made) and that we receive the revised version, including a new signature page, prior to making the grant. If your State is required to submit a revised version with a new signature, the submission date of your Application will be the date OSEP receives this revised version.

As discussed more fully in Section 11 of this memorandum, the submission date may affect the date on which OSEP determines under 34 CFR §76.703 whether a State’s application is substantially approvable and, therefore, may affect the date that funds are first available for obligation. Therefore, it is very important that States submit all documents, including any revised

documents necessary to demonstrate eligibility in the format described in this Section, no later than May 24, 2023.

11. Effective Date of Grant

The provisions of EDGAR, in 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 in 31 CFR Part 205, which together provide for the timely transfer of funds between Federal agencies and States and authorize payment of interest where transfers are not made in a timely fashion.

Consistent with 34 CFR §76.703(a)(1), the Department has established May 24, 2023, as the submission date for all documents necessary to demonstrate eligibility for FFY 2023 grant awards under 20 U.S.C. 1444 of IDEA and the IDEA Part C regulations. As provided for in 34 CFR §76.703(c)(1), the submission date is the date by which OSEP must receive all documents necessary to demonstrate eligibility.

As explained below, CMIA pre-award costs will only be available consistent with the provisions of 34 CFR §76.703 (a copy of which is attached to this memorandum). Therefore, the effective date of a grant to a State that does not submit a substantially approvable Application to OSEP by May 24, 2023, may be later than July 1, 2023.

Consistent with the requirements of 34 CFR §76.703, grant award notification forms will indicate the start of the grant award period for Applications received prior to July 1, 2023 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, 2023).

If a State has submitted a substantially approvable Application by the May 24, 2023 deadline, the Federal funding period as noted in block 6 on the grant award notification will begin July 1, 2023. If the Department receives a State's substantially approvable Application after the May 24, 2023 deadline, but before July 1, 2023, the starting date for obligating funds will be July 1, 2023, provided that the Department is able to determine that the Application is substantially approvable prior to July 1, 2023. If the Department is unable to determine that the Application is substantially approvable prior to July 1, 2023, 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, 2023, 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 2023, 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, assurances, or other information requested by OSEP.

12. Conclusion

As explained in this memorandum, it is important that, before submitting its Application for FFY 2023, each State ensures that it has:

- Provided an appropriate submission statement(s) found in Section I.A., and, if appropriate, I.B. of the Application;
- Indicated which assurances, policies, procedures, methods, agreements and/or descriptions in Section II.A. of the Application, the State can or cannot make/provide:
 - Indicate, in Section II.A.12 (GEPA), “N” under the yes column for “new” and attach the revised GEPA section 427 form to the State’s FFY 2023 IDEA Part C Application
- Provided the assurances in Section II.B. of the Application;
- Provided the certifications found in Section II.C. of the Application. For the third certification found in Section II.C., please review OSEP’s IDEA Part C Grant Application Technical Assistance Checklist for the Fiscal Certification Required Under 34 CFR §303.202. *(Note: States submitted ED Form 80-0013, Certification Regarding Lobbying, with the State’s FFY 2005 Application. Therefore, the first certification found in Section II.C of the Application, Certifications, should be marked ‘yes.’);*
- Completed and signed the Statement found in Section II.D. of the Application;
- Completed Section III of the Application regarding the State’s Use of Funds;
- Completed Section IV of the Application regarding the State’s system of payments and indirect costs;
- Attached to the Part C FFY 2023 Application a copy of the State lead agency’s Restricted Indirect Cost Rate (RICR) agreement or cost allocation plan (CAP) most recently approved by the State lead agency’s Federal cognizant agency and if a rate or plan is not approved for the period of FFY 2023, the most recently approved rate and documentations regarding the proposed rate for FFY 2023;
- Met IDEA Part C’s public participation requirements for both the Application and for any new or revised policies as described in this memorandum (including any flexibilities provided for the FFY 2023 IDEA Part C Application); and
- Prepared a pdf copy of the completed Application, with an electronic signature, to be submitted to OSEP by email from the State lead agency’s .gov email address by May 24, 2023;
- Prepared a hard copy of the fully and correctly completed FFY 2023 IDEA Part C Application, **with an original signature**, to submit to OSEP by August 1, 2023.

Should you need assistance in implementing the requirements of Part C of the IDEA and/or meeting the Application requirements for FFY 2023 grants under IDEA Part C, contact your OSEP Part C State Lead, and/or the Early Childhood Technical Assistance Center.

Attachments:

- Annual State Application Under Part C of the Individuals with Disabilities Education Act for Federal Fiscal Year 2023 (CFDA No. 84.181A; OMB No. 1820-0550)

- Instruction Sheet for Part C Annual State Application: FFY 2023
- GEPA section 427 Form
- Build America Buy America Sourcing Requirements Grant Condition Required Domestic Sourcing Under the Build America Buy America Act (BABAA)
- EDGAR 34 CFR §76.703 – When A State May Begin To Obligate Funds