

## DEPARTMENT OF EDUCATION

### CROSS-CUTTING SECTION

#### INTRODUCTION

This section contains compliance requirements that apply to more than one Department of Education (ED) program either because the program was authorized under the Elementary and Secondary Education Act of 1965 (ESEA), or the program is subject to the General Education Provisions Act (GEPA), or both. **Programs for which funds were appropriated under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) and still are available for obligation in Fiscal Year 2013 are included in this Cross-Cutting Section. Each ARRA program is identified by a separate CFDA number specific to the ARRA funding, and is clustered with a corresponding CFDA number for the program as operated under the regular (non-ARRA) appropriation.** The compliance requirements in this Cross-Cutting Section reference the applicable programs in Part 4, Agency Compliance Requirements. Similarly, the applicable programs in Part 4 reference this Cross-Cutting Section.

CFDA No.	Program Name	Listed as
<b>ESEA Programs</b>		
84.010	Title I Grants to Local Educational Agencies (LEAs) <b>84.389 Title I Grants to Local Educational Agencies (LEAs), Recovery Act</b>	Title I, Part A
84.011	Migrant Education—State Grant Program	MEP
84.186	Safe and Drug-Free Schools and Communities—State Grants	SDFSCA
84.282	Charter Schools	CSP
84.287	Twenty-First Century Community Learning Centers	21st CCLC
84.298	State Grants for Innovative Programs	Title V, Part A
84.318	Educational Technology State Grants <b>84.386 Educational Technology State Grants, Recovery Act</b>	Ed Tech
84.365	English Language Acquisition Grants	Title III, Part A
84.366	Mathematics and Science Partnerships	MSP
84.367	Improving Teacher Quality State Grants	Title II, Part A
84.377	School Improvement Grants <b>84.388 School Improvement Grants, Recovery Act</b>	SIG

## Other Programs

84.002 Adult Education—State Grant Program	Adult Education
84.027 Special Education—Grants to States (IDEA, Part B)	IDEA
84.173 Special Education—Preschool Grants (IDEA Preschool)	
84.042 TRIO—Student Support Services	TRIO Cluster
84.044 TRIO—Talent Search	
84.047 TRIO—Upward Bound	
84.066 TRIO—Educational Opportunity Centers	
84.217 TRIO—McNair Post-Baccalaureate Achievement	
84.048 Career and Technical Education – Basic Grants to States (Perkins IV)	CTE
84.126 Rehabilitation Services – Vocational Rehabilitation Grants to States	Vocational Rehabilitation
84.181 Special Education—Grants for Infants and Families with Disabilities	IDEA, Part C
<b>84.395 Race to the Top</b>	<b>RTT</b>
84.410 Education Jobs Fund	Ed Jobs

The ESEA was amended January 8, 2002 by the No Child Left Behind Act of 2001 (NCLB) (Pub. L. No. 107-110).

## Waivers and Expanded Flexibility

Under Title IX of the ESEA, State educational agencies (SEAs), Indian tribes, local educational agencies (LEAs), and schools through their LEA may request waivers from ED of many of the statutory and regulatory requirements of programs authorized in the ESEA. In addition, some States may have been granted authority to grant waivers of Federal requirements under the Education Flexibility Partnership Act of 1999.

## ESEA Flexibility

On September 23, 2011, ED invited States to request flexibility on behalf of the State, its LEAs, and its schools to better focus on improving student achievement and increasing the quality of instruction (ESEA flexibility). This voluntary opportunity provides SEAs and LEAs, in States whose requests for ESEA flexibility have been approved, with waivers of specific requirements of the ESEA in exchange for rigorous and comprehensive State-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. States receiving ESEA flexibility before November 1, 2012, and LEAs in those States, began implementing the plans contained in their request in the 2012–2013 school year. Those waivers apply through the end of the 2013–2014 school year. For a list

of the waivers offered, see *ESEA Flexibility*. A list of the States that have requested waivers is available at <http://www.ed.gov/esea/flexibility>.

*ESEA programs in this Supplement to which ESEA flexibility applies are: Title I, Part A (84.010 and 84.389); 21st CCLC (84.287); Title II, Part A (84.367); and SIG (84.377 and 84.388). See III.G.2.2, “Level of Effort – Supplement Not Supplant,” III.G.3.b, “Transferability,” III.N.2, “Special Tests and Provisions – Schoolwide Programs,” and the individual program supplements for testing related to ESEA flexibility.*

Auditors should ascertain from the audited SEAs and LEAs whether the SEA or the LEA or its schools are operating under ESEA flexibility or any other approved waivers.

## **I. PROGRAM OBJECTIVES**

Program objectives for programs covered by this cross-cutting section are set forth in the individual program sections of this Supplement.

## **II. PROGRAM PROCEDURES**

### **Plans for ESEA Programs**

An SEA must either develop and submit separate, program-specific individual State plans to ED for approval as provided in individual program requirements outlined in the ESEA or submit, in accordance with Section 9302 of the ESEA, a consolidated plan to ED for approval.

Consolidated plans will provide a general description of the activities to be carried out with ESEA funds. Subgrants to LEAs and other eligible entities and amounts to be used for State activities are often set by law for ESEA programs. However, SEAs have discretion in using funds available for State activities.

LEAs also have the choice in many cases of submitting individual program plans or a consolidated plan to the SEA to receive program funds. SEAs with approved consolidated State plans may require LEAs to submit consolidated plans.

### **Unique Features of ESEA Programs That May Affect the Conduct of the Audit**

*Consolidation of administrative funds* (In addition to the compliance requirement in III.A.1, see IV, “Other Information.”)

SEAs and LEAs (with SEA approval) may consolidate Federal funds received for administration under many ESEA programs, thus eliminating the need to account for these funds on a program-by-program basis. The amount from each applicable program set aside for State consolidation may not be more than the percentage, if any, authorized for State administration under that program. The amount set aside under each covered program for local consolidation may not be more than the percentage, if any, authorized for local administration under that program. Expenditures using consolidated administrative funds may be charged to the programs on a first in/first out method, in proportion to the funds provided by each program, or another reasonable manner.

*Schoolwide Programs* (In addition to the compliance requirement in III.A.2, see IV, “Other Information.”)

Eligible schools are able to use their Title I, Part A funds, in combination with other Federal, State, and local funds, in order to upgrade the entire educational program of the school and to raise academic achievement for all students. Except for some of the specific requirements of the Title I, Part A program, Federal funds that a school consolidates in a schoolwide program are not subject to most of the statutory or regulatory requirements of the programs providing the funds as long as the schoolwide program meets the intent and purpose of those programs. The Title I, Part A requirements that apply to schoolwide programs are identified in the Title I, Part A program-specific section. If a school does not consolidate Federal funds with State and local funds in its schoolwide program, the school has flexibility with respect to its use of Title I, Part A funds, consistent with Section 1114 of ESEA (20 USC 6314), but it must comply with all statutory and regulatory requirements of the other Federal funds it uses in its schoolwide program.

*Transferability* (In addition to the compliance requirement in III.A.3, see III.G.3.b, “Matching, Level of Effort, Earmarking – Earmarking,” and IV, “Other Information.”)

SEAs and LEAs (with some limitations) may transfer funds from one or more applicable programs to one or more other applicable programs, or to Title I, Part A. Transferred funds are subject to all of the requirements, set-asides, and limitations of the programs into which they are transferred, except as modified under ESEA flexibility.

*Small Rural Schools Achievement Alternative Use of Funds* (In addition to the compliance requirement in III.A.4, see IV, “Other Information.”)

Eligible LEAs may, after notifying the SEA, spend all or part of the funds they receive under four applicable programs for local activities authorized under one or more of seven applicable programs.

### **General and Program-Specific Cross-Cutting Requirements**

The requirements in this cross-cutting section can be classified as either general or program-specific. General cross-cutting requirements are those that are the same for all applicable programs but are implemented on an entity-level. These requirements need only be tested once to cover all applicable major programs. The general cross-cutting requirements that the auditor only need test once to cover all applicable major programs are: III.G.2.1, “Level of Effort-Maintenance of Effort (SEAs/LEAs);” III.L.3, “Special Reporting;” and, III.N, “Special Tests and Provisions” (III.N.2, “Schoolwide Programs;” and III.N.3, “Comparability”). Program-specific cross-cutting requirements are the same for all applicable programs, but are implemented at the individual program level. These types of requirements need to be tested separately for each applicable major program. The compliance requirement in III.N.1, “Participation of Private School Children,” may be tested on a general or program-specific basis.

Program procedures for non-ESEA programs covered by this cross-cutting section and additional information on program procedures for the ESEA programs are set forth in the individual program sections of this Supplement.

## Availability of Other Program Information

The ESEA, as reauthorized by the NCLB, is available with a hypertext index at <http://www.ed.gov/policy/elsec/leg/esea02/index.html>. A number of documents contain guidance applicable to the cross-cutting requirements in this Supplement. They include:

- Guidance on the Transferability Authority (June 8, 2004)  
(<http://www.ed.gov/programs/transferability/finalsummary04.doc>)
- Guidance on the Rural Education Achievement Program (REAP) (June 2003)  
(<http://www.ed.gov/policy/elsec/guid/reap03guidance.doc>)
- State Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Education (May 23, 2003)  
(<http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc>)
- How Does a State or Local Educational Agency Allocate Funds to Charter Schools that Are Opening for the First Time or Significantly Expanding Their Enrollment? (December 2000) (<http://www.ed.gov/policy/elsec/guid/cschoools/cguidedec2000.doc>).
- Title I Services to Eligible Private School Children (October 17, 2003)  
(<http://www.ed.gov/programs/titleiparta/psguidance.doc>)
- Title IX, Part E Uniform Provisions Subpart 1—Private Schools: Equitable Services to Eligible Private School Students, Teachers, and Other Educational Personnel (March 2009) (<http://www.ed.gov/policy/elsec/guid/equitableserguidance.doc>)
- Serving Preschool Children Through Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended (April 16, 2012)  
(<http://www2.ed.gov/policy/elsec/guid/preschoolguidance2012.pdf>)
- Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements (February 2008) (<http://www.ed.gov/programs/titleiparta/fiscalguid.doc>)
- Designing Schoolwide Programs (March 2006)  
(<http://www.ed.gov/policy/elsec/guid/designingswpguid.doc>)
- ESEA Flexibility (June 7, 2012)  
(<http://www.ed.gov/esea/flexibility/documents/esea-flexibility.doc>)
- ESEA Flexibility Frequently Asked Questions (August 3, 2012)  
(<http://www2.ed.gov/policy/eseaflex/esea-flexibility-faqs.doc>)

- Letter to Chief State School Officers on Granting Administrative Flexibility for Better Measures of Success (September 7, 2012)  
(<http://www2.ed.gov/policy/fund/guid/gposbul/time-and-effort-reporting.html?exp=3>).

**A number of documents contain guidance applicable to the cross-cutting requirements affected by ARRA. They include:**

- **American Recovery and Reinvestment Act of 2009: Title I, Part A Funds for Grants to Local Education Agencies (April 2009)**  
(<http://www.ed.gov/policy/gen/leg/recovery/factsheet/title-i.html>)
- **Guidance: Funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 Made Available Under The American Recovery and Reinvestment Act of 2009 (Revised March 2010)**  
(<http://www2.ed.gov/policy/gen/leg/recovery/guidance/title-i-rev-201003.pdf>)
- **Using Title I, Part A ARRA Funds for Grants to Local Educational Agencies to Strengthen Education, Drive Reform, and Improve Results for Students (September 2009)**  
(<http://www.ed.gov/policy/gen/leg/recovery/guidance/titlei-reform.pdf>)
- **Non-Regulatory Guidance on Title I, Part A Waivers (July 2009)**  
(<http://www.ed.gov/programs/titleiparta/title-i-waiver.doc>)
- **Final Notice of Adjustments to Title I, Part A and IDEA, Section 611 Statutory Caps on State Administration for Federal Fiscal Year (FY) 2009 (74 FR 55215 (October 27, 2009))** (<http://edocket.access.gpo.gov/2009/pdf/E9-25839.pdf>)
- **Guidance: Enhancing Education through Technology (Ed Tech) Program Funds made Available under the American Recovery and Reinvestment Act of 2009 (July 2009)** (<http://www.ed.gov/programs/edtech/guidance-arra.doc>)
- **Guidance on School Improvement Grants Under Section 1003(g) of the Elementary and Secondary Education Act of 1965 (Revised June 29, 2010)**  
(<http://www2.ed.gov/programs/sif/sigguidance05242010.pdf>)
- **Guidance on Fiscal Year 2010 School Improvement Grants Under Section 1003(g) of the Elementary and Secondary Education Act of 1965 (March 1, 2012)**  
(<http://www2.ed.gov/programs/sif/sigguidance03012012.doc>).

A number of documents contain guidance applicable to the cross-cutting requirements affected by the Education Jobs Fund program (Ed Jobs). They include:

- Initial Guidance for States on the Education Jobs Fund Program (August 13, 2010) (<http://www2.ed.gov/policy/gen/guid/secletter/100813.html>)
- Guidance – When to Treat Expenditures of Education Jobs Funds as State or Local Funds for Purposes of the Fiscal Requirements under Title I, Part A of the Elementary and Secondary Education Act of 1965 (November 2010) (<http://www2.ed.gov/programs/titleiparta/fiscalejfguidance.doc>)
- Part B IDEA MOE Guidance for States on the Education Jobs Fund Program (May 2011) ([www2.ed.gov/policy/speced/guid/idea/idea-edjobs-guidance.pdf](http://www2.ed.gov/policy/speced/guid/idea/idea-edjobs-guidance.pdf)).

### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

**Further, if there has been a transfer of funds to a consolidated administrative cost pool from a major program, in developing audit procedures to test compliance with Activities Allowed or Unallowed and Allowable Costs/Cost Principles, the auditor should include the consolidated administrative cost pool in the universe to be tested.**

#### A. Activities Allowed or Unallowed

##### 1. *Consolidation of Administrative Funds* (SEAs/LEAs)

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); MEP (84.011); SDFSCA (84.186) (except the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287 Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); MSP (84.366) (at the LEA level only); Title II, Part A (84.367); and SIG (84.377 and 84.388).*

An SEA may consolidate the amounts specifically made available to it for State administration under one or more ESEA programs (and such other programs as the ED Secretary may designate) if the SEA can demonstrate that the majority of its resources are derived from non-Federal sources. An SEA must use consolidated administrative funds for authorized administrative activities of one or more of the consolidated programs. It may also use such funds for administrative activities designed to enhance the effective and coordinated use of funds under one or more of the programs included in the consolidation, such as coordination of ESEA programs with other Federal and non-Federal programs; the establishment and operation of peer review mechanisms; the dissemination of

information regarding model programs and practices; and technical assistance (Section 9201 of ESEA (20 USC 7821)).

An LEA may, with the approval of its SEA, consolidate and use for the administration of one or more ESEA programs not more than the percentage, established in each program, of the total available under those programs. An LEA may use consolidated funds for the administration of the consolidated programs and for uses at the school district and school levels comparable to those authorized for the SEA. An LEA that consolidates administrative funds may not use any other funds under the programs included in the consolidation for administration (Section 9203 of ESEA (20 USC 7823)).

An SEA or LEA that consolidates administrative funds is not required to keep separate records of administrative costs for each individual program. Expenditures of consolidated administrative funds are allowable if they are for administrative costs that are allowable under any of the contributing programs (Sections 9201(c) and 9203(e) of ESEA (20 USC 7821(c) and 7823(e))).

See III.N.2.c, “Special Tests and Provisions – Schoolwide Programs” in this cross-cutting section for discussion of provisions relating to allowable activities for Schoolwide Programs.

See IV, “Other Information,” for guidance on the treatment of consolidated administrative funds for purposes of Type A program determination and presentation in the Schedule of Expenditures of Federal Awards (SEFA).

**An SEA may consolidate any amounts specifically made available to it for State administration under ARRA and use those consolidated administrative funds for authorized administrative activities of one or more of the consolidated programs (Section 9201 of ESEA (20 USC 7821)).**

**An LEA, with the approval of its SEA, may consolidate and use for the administration of one or more ESEA programs not more than the percentage, established in each program, of the total available under ARRA (Section 9203 of ESEA (20 USC 7823)).**

**Because ARRA funds must be accounted for separately from funds available under the regular ESEA appropriation, an SEA or LEA may use any reasonable method (e.g., proportionality) to assign expenditures of State or local consolidated administrative funds to ARRA.**

## 2. *Schoolwide Programs* (LEAs)

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); MEP (84.011); SDFSCA (84.186) (including the Governor’s Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and 84.388).*

*This section also applies to IDEA (84.027 and 84.173); CTE (84.048); and Ed Jobs (84.410).*

An eligible school participating under Title I, Part A may, in consultation with its LEA, use its Title I, Part A funds, along with funds provided from the above-identified programs, to upgrade the school's entire educational program in a schoolwide program. See III.N.2, "Special Tests and Provisions – Schoolwide Programs" in this cross-cutting section for testing related to schoolwide programs (Section 1114 of ESEA (20 USC 6314)).

See IV, "Other Information," for guidance on the treatment of consolidated schoolwide funds for purposes of Type A program determination and presentation in the SEFA.

**An eligible school participating under Title I, Part A may, in consultation with its LEA, use its Title I, Part A ARRA funds, along with ARRA funds provided from all programs identified above, to upgrade the school's entire educational program in a schoolwide program (Section 1114 of ESEA (20 USC 6314)).**

**Because ARRA funds must be accounted for separately from funds available under the regular fiscal year appropriation, an LEA may use any reasonable method (e.g., proportionality) to assign expenditures of ARRA funds consolidated in a schoolwide program to the program that contributed the funds.**

### 3. *Transferability* (SEAs and LEAs)

*ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a), with the agreement of the Governor); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); and Title II, Part A (84.367).*

Except as noted below, SEAs may transfer up to 50 percent of the non-administrative funds allocated for State-level activities from one or more listed applicable programs to one or more of the other listed applicable programs, or to Title I, Part A (CFDA 84.010). Except for 21st CCLC (CFDA 84.287), LEAs not identified for improvement or corrective action under Section 1116(c) of ESEA may also transfer up to 50 percent of the funds allocated to them from one or more of the listed applicable programs to another listed applicable program or to Title I, Part A. LEAs identified for improvement under Section 1116(c) may transfer up to 30 percent of the funds allocated to them for (a) school improvement under Section 1003, or (b) other LEA improvement activities consistent with Section 1116(c). LEAs identified for corrective action may not transfer funds (Sections 6123(a) and (b) of ESEA (20 USC 7305b(a) and (b))). Transferred funds are subject to all of the requirements, set-asides, and limitations

of the programs into which they are transferred (Section 6123(e) of ESEA (20 USC 7305b(e))).

In a State that has received ESEA flexibility, an SEA or an LEA may transfer up to 100 percent of the funds available under one or more of the authorized ESEA programs among those programs and into Title I, Part A. This authority applies to all LEAs notwithstanding the limitations on such transfers and the restrictions on the use of the transferred funds in Section 6123(b)(1) of the ESEA (20 USC 7305b(b)(1)). Funds transferred under ESEA flexibility are not subject to any set-aside requirements of the programs into which they are transferred but they are subject to all of the requirements and limitations of those programs. Moreover, an SEA is not required to notify ED, and its participating LEAs are not required to notify the SEA, prior to transferring funds (see paragraph 9 on page 2 of *ESEA Flexibility*). Note, however, that there is a limitation on the amount of Title II, Part A funds that may be transferred because of that program's equitable services requirement (see section III.G.2, "Matching, Level of Effort, Earmarking – Maintenance of Effort," in the program supplement for CFDA 84.367 for details).

See III.G.3.b, "Matching, Level of Effort, Earmarking – Earmarking," for additional testing related to transferability.

See IV, "Other Information," for guidance on the treatment of funds transferred under this provision for purposes of Type A program determination and presentation in the SEFA.

4. ***Small Rural Schools Achievement (SRSA) Alternative Uses of Funds Program***

*ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a)); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); and Title II, Part A (84.367).*

LEAs that (a) have a total average daily attendance of fewer than 600 students, or serve only schools that are located in counties with a population density of fewer than 10 persons per square mile, and (b) serve only schools that are coded by the National Center for Education Statistics (NCES) as rural (NCES code of 7 or 8), or (with the concurrence of the SEA) are located in an area defined as rural by a governmental agency of the State may, after notifying the SEA, spend all or part of the funds received under the above five programs for local activities authorized under one or more of the following nine programs:

CFDA 84.010 Title I Grants to Local Educational Agencies (LEAs) (Title I, Part A of the ESEA)

**CFDA 84.389 Title I Grants to Local Educational Agencies (LEAs), Recovery Act (Title I, Part A of the ESEA)**

CFDA 84.186 Safe and Drug-Free Schools and Communities—State Grants (SDFSCA)

CFDA 84.287 Twenty-First Century Community Learning Centers (21st CCLC)

CFDA 84.298 State Grants for Innovative Programs (Title V, Part A)

CFDA 84.318 Educational Technology State Grants (Ed Tech)

**CFDA 84.386 Educational Technology State Grants, Recovery Act (Ed Tech),**

CFDA 84.365 English Language Acquisition Grants (Title III, Part A)

CFDA 84.367 Improving Teacher Quality State Grants (Title II, Part A)

(Section 6211(a)-(c) of ESEA (20 USC 7345(a)-(c)))

See IV, “Other Information,” for guidance on the treatment of funds transferred under this provision for purposes of Type A program determination and presentation in the SEFA.

## **B. Allowable Costs/Cost Principles**

### **1. *Alternative Fiscal and Administrative Requirements* (SEAs/LEAs)**

*This section applies to all ESEA programs in this Supplement: Title I, Part A (84.010 and 84.389); MEP (84.011); SDFSCA (84.186) (including the Governor’s program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and 84.388).*

A State may adopt its own written fiscal and administrative requirements, which are consistent with the provisions of OMB Circular A-87, for expending and accounting for all funds received by SEAs and LEAs under ESEA programs. The written fiscal and administrative requirements must (a) be sufficiently specific to ensure that funds are used in compliance with all applicable statutory and regulatory provisions, including ensuring that costs are allocable to a particular cost objective; (b) ensure that funds received are spent only for reasonable and necessary costs of the program; and (c) ensure that funds are not used for general expenses required to carry out other responsibilities of State or local governments (34 CFR section 299.2(b)).

2. ***Documentation of Employee Time and Effort (Consolidated Administrative Funds and Schoolwide Programs)***

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); MEP (84.011); SDFSCA (84.186) (except the Governor’s Program authorized under Section 4112(a) with respect to consolidated administrative funds); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); MSP (84.366) (with respect to schoolwide programs and consolidation of administrative funds at the LEA level); Title II, Part A (84.367); and SIG (84.377 and 84.388).*

*This section also applies to SDFSCA (84.186) (including the Governor’s program authorized under Section 4112(a) for schoolwide programs only); IDEA (84.027 and 84.173) (schoolwide programs only); CTE (84.048) (schoolwide programs only); and Ed Jobs (84.410) (schoolwide programs only).*

- a. ***Consolidated Administrative Funds:*** An SEA or LEA that consolidates Federal administrative funds under Sections 9201 or 9203 of ESEA (20 USC 7821 or 7823) is not required to keep separate records by individual program. The SEA or LEA may treat the consolidated administrative cost objective as a “dedicated function.”

Time-and-effort requirements with respect to consolidated administrative funds vary under different circumstances.

- (1) An employee who works solely on a single cost objective (i.e., the consolidated administrative cost objective) must furnish a semi-annual certification that he/she has been engaged solely in activities that support the single cost objective. The certification must be signed by the employee or a supervisory official having first-hand knowledge of the work performed by the employee in accordance with OMB Circular A-87, Attachment B, paragraph 8.h.(3).
- (2) An employee who works in part on a single cost objective (i.e., the consolidated administrative cost objective) and in part on a Federal program whose administrative funds have not been consolidated or on activities funded from other revenue sources must maintain time and effort distribution records in accordance with OMB Circular A-87, Attachment B, paragraphs 8.h.(4), (5), and (6) documenting the portion of time and effort dedicated to:
  - (a) The single cost objective, and
  - (b) Each program or other cost objective supported by non-consolidated Federal funds or other revenue sources.

- b. *Schoolwide Programs* – A schoolwide program school is permitted to consolidate Federal funds with State and local funds to upgrade the entire educational program of the school. A school that consolidates Federal funds with State and local funds in a consolidated schoolwide pool is not required to maintain separate records by program (Section 1114(a)(3)(C) of ESEA (20 USC 6314(a)(3)(C)); 34 CFR section 200.29(d)). If a schoolwide program school does not consolidate Federal funds in a consolidated schoolwide pool, the school must keep separate records by program. (Guidance is contained in the publication entitled *Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements* (February 2008). This guidance is available at <http://www.ed.gov/programs/titleiparta/fiscalguid.doc>.)

Time-and-effort requirements in schoolwide program schools vary under different circumstances.

- (1) If a school operating a schoolwide program consolidates Federal, State, and local funds in a consolidated schoolwide pool, an employee who is paid in full with funds from that pool is not required to file a semi-annual certification because there is no distinction between staff paid with Federal funds and staff paid with State or local funds. In effect, payment from the single consolidated schoolwide pool certifies that the employee works only on activities of the schoolwide program.
- (2) If a school operating a schoolwide program does not consolidate Federal funds with State and local funds in a consolidated schoolwide pool, an employee who works, in whole or in part, on a Federal program or cost objective must document time and effort as follows:
  - (a) An employee who works solely on a single cost objective (e.g., a single Federal program whose funds have not been consolidated or Federal programs whose funds have been consolidated but not with State and local funds) must furnish a semi-annual certification that he/she has been engaged solely in activities that support the single cost objective. The certification must be signed by the employee or a supervisory official having first-hand knowledge of the work performed by the employee in accordance with OMB Circular A-87, Attachment B, paragraph 8.h.(3).

- (b) An employee who works on multiple activities or cost objectives (e.g., in part on a Federal program whose funds have not been consolidated in a consolidated schoolwide pool and in part on Federal programs supported with funds consolidated in a schoolwide pool or on activities that are not part of the same cost objective) must maintain time and effort distribution records in accordance with OMB Circular A-87, Attachment B, paragraph 8.h.(4), (5), and (6). The employee must document the portion of time and effort dedicated to:
- (i) The Federal program or cost objective; and
  - (ii) Each other program or cost objective supported by consolidated Federal funds or other revenue sources.
- (3) For the Ed Jobs Program, time-and-effort requirements apply to an LEA when an individual works part of the time on school-level activities and part of the time on district-level activities. Section 101(5)(B) of Pub. L. No. 111-226 (August 10, 2010) prohibits LEAs from using Ed Jobs funds for general administrative expenses as that term is defined by the National Center for Education Statistics in its Common Core of Data. Time-and-effort certifications are not required for an employee working 100 percent on school-level activities. For further guidance on this requirement, see the *Initial Guidance for States on the Education Jobs Fund Program* (April 2011) (<http://www2.ed.gov/programs/educationjobsfund/governors-ed-jobs-guidance-revised-4-13-11.doc>).
- c. ***Consolidated Administrative Funds (ARRA Funds)*** – An SEA or LEA that consolidates ARRA administrative funds under Sections 9201 or 9203 of ESEA (20 USC 7821 or 7823) must keep separate records by individual program of the ARRA funds (2 CFR section 176.210). The SEA or LEA may use any reasonable method (e.g., proportionality) to assign expenditures of ARRA consolidated administrative funds to the program that contributed the funds. With respect to documentation of employee time and effort, however, the SEA or LEA may treat the consolidated administrative cost objective, including ARRA funds, as a “dedicated function” and follow the requirements discussed in the corresponding provision (see III.B.2.a above) of the cross-cutting section of the Supplement.

- d. ***Schoolwide Programs (ARRA Funds)*** – A schoolwide program school is permitted to consolidate Federal funds, including Title I, Part A funds and other funds available under ARRA, with State and local funds to upgrade the entire educational program of the school. Generally, a school that consolidates Federal funds with State and local funds in a consolidated schoolwide pool is not required to maintain separate records by program (Section 1114(a)(3)(C) of ESEA (20 USC 6314(a)(3)(C)); 34 CFR section 200.29(d)). However, a school that consolidates ARRA funds in a schoolwide program must account for the ARRA funds separately (2 CFR section 176.210). An LEA may use any reasonable method (e.g., proportionality) to assign expenditures of ARRA funds consolidated in a schoolwide program to the program that contributed the funds.

Although an LEA must account for ARRA funds separately even if it consolidates those funds in a consolidated schoolwide pool, an employee who is paid in full with funds from that pool is not required to file a semi-annual certification because there is no distinction between staff paid with Federal funds and staff paid with State or local funds. In effect, payment from the single consolidated schoolwide pool certifies that the employee works only on activities of the schoolwide program.

If a schoolwide program school does not consolidate ARRA funds in a consolidated schoolwide pool, the school must keep separate records by program or cost objective, including separate records with respect to ARRA funds. (Guidance is contained in the publication entitled **Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, Not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements** (February 2008). This guidance is available at <http://www.ed.gov/programs/titleiparta/fiscalguid.doc>.)

- e. In a September 7, 2012 letter to Chief State School Officers, ED authorized SEAs to approve LEAs' use of a substitute system for time-and-effort reporting for employees whose salaries are supported by multiple cost objectives, but who work on a predetermined schedule. ED also provided guidance to clarify the meaning of a "single cost objective" under OMB Circular A-87, Attachment B, paragraph 8.h.(3). For more detail, see *Letter to Chief State School Officers on Granting Administrative Flexibility for Better Measures of Success* (Sept. 7, 2012) (<http://www2.ed.gov/policy/fund/guid/gposbul/time-and-effort-reporting.html?exp=3>).

3. **Indirect Costs** (All grantees/all subgrantees)

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and 84.388).*

*This section also applies to Adult Education (84.002); IDEA (84.027 and 84.173); CTE (84.048); IDEA, Part C (84.181); RTT (84.395); and Ed Jobs (84.410) (State administrative costs only).*

A "restricted" indirect cost rate (RICR) must be used for programs administered by State and local governments and their governmental subrecipients that have a statutory requirement prohibiting the use of Federal funds to supplant non-federal funds. Non-governmental grantees or subgrantees administering such programs have the option of using the RICR, or an indirect cost rate of 8 percent, unless ED determines that the RICR would be lower.

The formula for a restricted indirect cost rate is:

$$\text{RICR} = (\text{General management costs} + \text{Fixed costs}) / (\text{Other expenditures})$$

General management costs are costs of activities that are for the direction and control of the grantee's (or subgrantee's) affairs that are organization wide, such as central accounting services, payroll preparation and personnel management. For State and local governments, the general management indirect costs consist of (1) allocated Statewide Central Service Costs approved by the Department of Health and Human Services in a formal Statewide Cost Allocation Plan (SWCAP) as "Section I" costs and (2) departmental indirect costs. The term "general management" as it applies to departmental indirect costs does not include expenditures limited to one component or operation of the grantee. Specifically excluded from general management costs are the following costs that are reclassified and included in the "other expenditures" denominator:

- (a) Divisional administration that is limited to one component of the grantee;
- (b) The governing body of the grantee;
- (c) Compensation of the chief executive officer of the grantee;
- (d) Compensation of the chief executive officer of any component of the grantee; and
- (e) Operation of the immediate offices of these officers.

Also excluded from the SWCAP Section I indirect costs are any occupancy and maintenance type costs as described in 34 CFR section 76.568. However, because these costs are allocated and not incurred at the departmental level, they do not require reclassification to the “other expenditure” denominator.

Fixed costs are contributions to fringe benefits and similar costs associated with salaries and wages that are charged as indirect costs, including retirement, social security, pension, unemployment compensation and insurance costs.

Other expenditures are the grantee’s total expenditures for its federally and non-federally funded activities, including directly charged occupancy and space maintenance costs (as defined in 34 CFR section 76.568), and the costs related to the chief executive officer of the grantee or any component of the grantee and its offices. Excluded are general management costs, fixed costs, subgrants, capital outlays, debt service, fines and penalties, contingencies, and election expenses (except for elections required by Federal statute).

Occupancy and space maintenance costs associated with functions that are not organization-wide must be included with other expenditures in the indirect cost formula. These costs may be charged directly to affected programs only to the extent that statutory supplanting prohibitions are not violated. This reimbursement must be approved in advance by ED. Specific occupancy and space maintenance costs may be charged directly only to programs affected by the restricted rate calculation if charging for such costs is approved in advance by ED (34 CFR section 76.568(c)).

Indirect costs charged to a grant are determined by applying the RICR to total direct costs of the grant minus capital outlays, subgrants, and other distorting or unallowable items as specified in the grantee’s indirect cost rate agreement.

The other ED programs (those not having a statutory non-supplant requirement) that allow indirect costs do not require a restricted rate and should follow the applicable OMB cost principles circular (34 CFR sections 76.560 and 76.563-76.569).

#### **4. *Unallowable Direct Costs to Programs***

Officials from ED have noted that some entities have charged costs in the following areas which were determined to be unallowable as specified in the indicated references. Auditors should be alert that if any such costs are charged, charges must be consistent with provisions of OMB Circular A-87.

- a. Separation leave costs (OMB Circular A-87, Attachment B, paragraph 8.d.(3)).
- b. Severance costs (OMB Circular A-87, Attachment B, paragraph 8.g.(3)).

- c. Post-retirement health benefit (PRHB) costs (OMB Circular A-87, Attachment B, paragraph 8.f).

#### 5. *Unallowable Costs to Programs (Direct or Indirect)*

Officials from ED have noted that, in cases where grantees rent or lease buildings or equipment from an affiliate organization, the costs associated with the lease or rental agreement can be excessive. The auditor should be alert to the fact that the measure of allowability in such “less-than-arms-length-relationships” is not fair market value, but rather the “costs of ownership” standard as referenced in each OMB cost principles circular as follows:

- a. OMB Circular A-87 (2 CFR part 225), Attachment B, paragraph 37.c.
- b. OMB Circular A-21 (2 CFR part 220), Section J.43.
- c. OMB Circular A-122 (2 CFR part 230), Attachment B, Paragraph 43.c.

### C. **Cash Management**

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); MEP (84.011); SDFSCA (84.186) (including the Governor’s Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and 84.388).*

*This section also applies to Adult Education (84.002); IDEA (84.027 and 84.173); TRIO Cluster (84.042, 84.044, 84.047, 84.066 and 84.217); CTE (84.048); Vocational Rehabilitation (84.126); IDEA, Part C (84.181); RTT (84.395); and Ed Jobs (84.410).*

Note: This section applies only to Federal programs in which the entity being audited is a grantee, i.e. the entity receives grant funds directly from ED. Auditors should refer to Part 3, Section C, “Cash Management,” for any Federal program in which the entity is being audited is a subrecipient, i.e., Federal funds are received through a pass-through grant from a grantee.

Grantees draw funds via the G5 System. Grantees request funds by (1) creating a payment request using the G5 System through the Internet; (2) calling the Payee Hotline; or (3) if the grantee is placed on the reimbursement or cash monitoring payment method, submitting a Form 270, *Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2)*, (OMB No. 1845-0089), to an ED program or regional office. When creating a payment request in G5, the grantee enters the drawdown amounts, by award, directly into G5. Grantees can redistribute drawn amounts between grant awards by making adjustments in G5 to reflect actual disbursements for each award, as long as the net amount of the adjustments is zero. When requesting funds using the other two methods, grantees provide drawdown information to the hotline operator or on the Form 270, as applicable.

To assist grantees in reconciling their internal accounting records with the G5 System, using their DUNS (Data Universal Numbering System) number, grantees can obtain a G-5 External Award Activity Report (<https://www.g5.gov/>) showing cumulative and detail information for each award. The External Award Activity Report can be created with date parameters (Start and End Dates) and viewed on-line. To view each draw per award, the G5 user may click on the award number to view a display of individual draws for that award.

#### **D. Davis-Bacon Act**

Under the General Education Provisions Act, when authorized, all construction and minor remodeling projects under ED programs covered by the Cross-Cutting Section are subject to the requirements of the Davis-Bacon Act (20 USC 1232b). Additional ED programs are subject to the Davis-Bacon Act as indicated in the relevant program description.

#### **G. Matching, Level of Effort, Earmarking**

##### **1. Matching**

See individual program compliance supplement for any matching requirements.

##### **2.1 Level of Effort – Maintenance of Effort (SEAs/LEAs)**

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); SDFSCA (84.186) (including the Governor’s Program authorized under Section 4112(a) when the Governor awards subgrants to LEAs); 21st CCLC (84.287); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); and Title II, Part A (84.367).*

As described in II, “Program Procedures – General and Program-Specific Cross-Cutting Requirements,” this requirement is a general cross-cutting requirement that need only be tested once to cover all major programs to which it applies.

An LEA may receive funds under an applicable program only if the SEA finds that the combined fiscal effort per student or the aggregate expenditures of the LEA from State and local funds for free public education for the preceding year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding year, unless specifically waived by ED.

An LEA’s expenditures from State and local funds for free public education include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities. They do not include the following expenditures: (a) any expenditures for community services, capital outlay, debt service and supplementary expenses as a result of a Presidentially declared disaster and (b) any expenditures made from funds provided by the Federal Government.

If an LEA fails to maintain fiscal effort, the SEA must reduce the amount of the allocation of funds under an applicable program in any fiscal year in the exact proportion by which the LEA fails to maintain effort by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the LEA) (Section 9521 of ESEA (20 USC 7901); 34 CFR section 299.5).

In some States, the SEA prepares the calculation from information provided by the LEA. In other States, the LEAs prepare their own calculation. The audit procedures contained in III.G.2.1, “Level of Effort – Maintenance of Effort,” should be adapted to fit the circumstances. For example, if auditing the LEA and the LEA does the calculations, the auditor should perform steps a., b., and c. If auditing the LEA and the SEA does the calculation, the auditor should perform step c for the amounts reported to the SEA. If auditing the SEA and the SEA performs the calculation, the auditor should perform steps a. and b. and amend step c to trace amounts to the LEA reports. If auditing the SEA and the LEA performs the calculation, the auditor should perform step a. and, if the requirement was not met, determine if the funding was reduced appropriately.

**ARRA provides that, upon prior approval from the Secretary, an SEA or LEA may treat funds from the State Fiscal Stabilization Fund (SFSF) Program (CFDA 84.394 and CFDA 84.397) that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program that ED administers. The auditor should check whether the SEA has met ED’s requirements for prior approval to determine whether, as applicable, an SEA or LEA appropriately included expenditures of SFSF funds in maintenance of effort calculations (see ED’s guidance for Funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 Made Available Under The American Recovery and Reinvestment Act of 2009 for prior-approval criteria) (Section 14012(d) of ARRA).**

An SEA or LEA, is required to get prior approval from the Secretary, before treating Ed Jobs funds (CFDA 84.410) that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other ED program (Section 101(5) of Pub. L. No. 111-226; Guidance – When to Treat Expenditures of Education Jobs Funds as State or Local Funds for Purposes of the Fiscal Requirements under Title I, Part A of the Elementary and Secondary Education Act of 1965 (November 2010)).

## **2.2 Level of Effort – Supplement Not Supplant (SEAs/LEAs)**

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); MEP (84.011); SDFSCA (84.186) (including the Governor’s program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

*General* – Including the Safe and Drug-Free Schools Governor’s program, an SEA and LEA may use program funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of the Federal funds, be made available from non-Federal sources for the education of participating students. In no case may an LEA use Federal program funds to supplant funds from non-Federal sources (Title I, Part A, Section 1120A(b) of ESEA (20 USC 6321(b)); MEP, Section 1304(c)(2) of ESEA (20 USC 6394(c)(2)); SDFSCA, Section 4113(a)(8) of ESEA (20 USC 7113(a)(8)); 21st CLCC, Section 4204(b)(2)(G) of ESEA (20 USC 7174(b)(2)(G)); Title V, Part A, Section 5144 of ESEA (20 USC 7217c); Ed Tech, Section 2413(b)(6) of ESEA (20 USC 6763(b)(6)); Title III, Part A, Section 3115(g) (20 USC 6825(g)); MSP, Section 2202(a)(4) of ESEA (20 USC 6662(a)(4)); and Title II, Part A, Sections 2113(f) and 2123(b) of ESEA (20 USC 6613(f) and 6623(b))).

In the following instances, it is presumed that supplanting has occurred:

- a. The SEA or LEA used Federal funds to provide services that the SEA or LEA was required to make available under other Federal, State or local laws. (See note below, *ESEA Flexibility*, regarding this presumption and ESEA flexibility).
- b. The SEA or LEA used Federal funds to provide services that the SEA or LEA provided with non-Federal funds in the prior year.
- c. The SEA or LEA used Title I, Part A or MEP funds to provide services for participating children that the SEA or LEA provided with non-Federal funds for nonparticipating children.

These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal funds not been available.

*Schoolwide Programs* – In a Title I schoolwide program, a school is not required to provide supplemental services to identified children. A school operating a schoolwide program does not have to (1) show that Federal funds used within the school are paying for additional services that would not otherwise be provided; or (2) demonstrate that Federal funds are used only for specific target populations. Such a school, however, is required to use funds available under Title I and any other Federal programs to supplement the total amount of funds that would, in the absence of the Federal funds, be made available from non-Federal sources for that school, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency (Title I, Part A, Section 1114(a)(2) of ESEA (20 USC 6314(a)(2)); 34 CFR sections 200.25(c) and (d)).

*Title I, Part A and MEP* – An SEA and LEA may exclude from determinations of compliance with the supplement not supplant requirement supplemental State or local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I, Part A or the MEP, respectively, as identified in Title I of ESEA (Sections 1120A(d) and 1304(c)(2) of ESEA (20 USC 6321(d) and 6394(c)(2)); 34 CFR sections 200.79 and 200.88).

*Ed Jobs Funds (CFDA 84.410)* – Ed Jobs funds that are used by the obligation deadline of September 30, 2012, in school year 2012-2013 to pay staff in positions that would normally be supported with State or local funds should be treated as non-Federal funds for the purpose of compliance with the Title I, Part A supplement not supplant requirement. Conversely, school staff paid with Ed Jobs funds who are in a position that would otherwise be supported with other Federal funds, with the exception of the Impact Aid funds (or SFSF funds (**CFDA 84.394 and CFDA 84.397**) funds when those funds are used for activities authorized by Impact Aid), should be treated as Federal funds for the purpose of compliance with the Title I, Part A supplement not supplant requirement (see Question 2 in Guidance – When to Treat Expenditures of Education Jobs Funds as State or Local Funds for Purposes of the Fiscal Requirements under Title I, Part A of the Elementary and Secondary Education Act of 1965 (November 2010)).

*Title III, Part A* – An SEA or LEA may only use funds under Title III, Part A to supplement the level of Federal, State and local public funds that, in the absence of the Title III funds, would have been provided for programs for limited English proficient children and immigrant children and youth (Section 3115(g) of ESEA (20 USC 6825(g))).

*ESEA Flexibility* – A State that has received ESEA flexibility may have enacted laws or promulgated regulations, or incorporated existing laws and regulations, modified as necessary, to meet the principles of ESEA flexibility in its approved request. Because these State laws and regulations are critical to implementing the SEA's request, ED presumes that State laws or regulations an SEA has incorporated into its ESEA flexibility request stem from that request and would not have been required, at least in precisely that form. Thus, an SEA or LEA that uses Federal funds subject to a supplement not supplant requirement to implement elements of the SEA's flexibility request that is required by State law or regulation would not violate the "required by law" presumption of supplanting in paragraph 2.2.a above (see *ESEA Flexibility Frequently Asked Questions*, Question A-18).

### 3. Earmarking

#### a. *Administration* (SEAs)

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389) and MEP (84.011).*

An SEA may reserve for the administration of Title I programs up to one percent from each of the amounts allocated to the State under Title I, Parts A, C (MEP), and D (Subpart 1) or \$400,000, whichever is greater. However, if the sum of the amounts appropriated for Parts A, C, and D is equal to or greater than \$14 billion, as is the case for FY 2012, the amount an SEA may reserve for administration may not exceed one percent of the amount the State would receive if the Title I allocation were \$14,000,000,000 (20 USC 6304(b)). ED has provided a table to the State showing the amount that it could reserve for administration of Title I programs from FY 2012 funds if \$14 billion were appropriated for FY 2012. An SEA may reserve less than one percent from each of Parts A, C, and D. Moreover, an SEA does not need to reserve the same percentage from each part, although the SEA may not reserve more from Parts C and D than it would have reserved if it had reserved proportionate amounts from Parts A, C, and D. An SEA reserving \$400,000 must reserve proportionate amounts from each of the amounts allocated to the State under Part A, but is not required to reserve funds proportionately from each of Parts A, C, and D and may, for example, take the reservation entirely out of Part A funds. However, in reserving \$400,000, an SEA may not reserve more funds for State administration from Part C or Part D than it would have if it had reserved proportionate funds from Parts A, C, and D.

(Section 1004 of ESEA (20 USC 6304); see also 34 CFR section 200.100(b)). For more detail, see page 33 of the guidance entitled *State Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Education* (May 23, 2003) (<http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc>).

As explained in III.A.1, “Activities Allowed or Unallowed – Consolidation of administrative funds,” the amounts reserved above may be consolidated with State administrative funds available under other applicable programs (Section 9201(a) of ESEA (20 USC 7821(a))).

#### b. *Transferability* (SEAs and LEAs)

*ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor’s program authorized under Section 4112(a), with the agreement of the Governor); 21st CCLC*

*(84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); and Title II, Part A (84.367).*

Except as noted in III.A.3 above regarding ESEA flexibility, SEAs may transfer up to 50 percent of each fiscal year's base of non-administrative funds allocated for State-level activities from one or more of the listed applicable programs to one or more of the other listed applicable programs, or to Title I, Part A (CFDA 84.010 and **CFDA 84.389**). Except for 21st CCLC (CFDA 84.287), LEAs not identified for improvement or corrective action under Section 1116 of the ESEA may also transfer up to 50 percent of each fiscal year's funds from one or more of the listed applicable programs to another listed applicable program, or to Title I, Part A. LEAs identified for improvement may transfer up to 30 percent of their allocation base. LEAs identified for corrective action may not transfer funds (Sections 6123(a) and (b) of ESEA (20 USC 7305b(a) and (b))).

The allocation base for a program for a fiscal year equals that fiscal year's original funding plus funds transferred into the program for that fiscal year. Funds may be transferred during a fiscal year's carryover period, as long as the total amount transferred from the fiscal year's allocation base does not exceed the maximum percentage. Funds must be transferred to the receiving program's allocation for the same fiscal year that the funds were allocated to the transferring program (Sections 6123(a) and (b) of ESEA (20 USC 7305b(a) and (b))).

#### **H. Period of Availability of Federal Funds (All grantees)**

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); CSP (84.282); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and 84.388).*

*This section also applies to Adult Education (84.002); IDEA (84.027 and 84.173); CTE (84.048); and IDEA, Part C (84.181).*

*All ESEA and other programs listed above except CSP and subrecipients under CTE – LEAs and SEAs must obligate funds during the 27 months, extending from July 1 of the fiscal year for which the funds were appropriated through September 30 of the second following fiscal year. This maximum period includes a 15-month period of initial availability plus a 12-month period for carryover. For example, funds from the fiscal year 2012 appropriation initially became available on July 1, 2012 and may be obligated by the grantee and subgrantee through September 30, 2014 (Section 421(b) of GEPA (20 USC 1225(b)); 34 CFR sections 76.703 through 76.710).*

*Title I, Part A* – An LEA that receives \$50,000 or more in Title I, Part A funds may not carry over beyond the initial 15 months of availability more than 15 percent of its Title I, Part A funds. An SEA may grant a waiver of the percentage limitation for an LEA once every 3 years if the LEA’s request is reasonable and necessary or if supplemental appropriations for Title I, Part A become available for obligation (Section 1127 of ESEA (20 USC 6339)).

*School Improvement Grants* – Because of the large amount of supplemental FY 2009 SIG ARRA funds available and the requirement to make grant awards for 3 years, ED granted a waiver of the period of availability to each SEA through the State application process with respect to FY 2009 regular and ARRA SIG funds (75 FR 66363, October 28, 2010) (<http://www2.ed.gov/programs/sif/2010-27313.pdf>). ED has also granted a waiver to some SEAs with respect to FY 2009 regular and ARRA carryover, FY 2010 and FY 2011 SIG funds.

*SDFSCA program* – An LEA that receives SDFSCA funding may not carry over beyond the initial 15 months of availability more than 25 percent of its SDFSCA State Grant funds. An SEA may waive the percentage limitation for good cause (Section 4114(a)(3)(B) of ESEA (20 USC 7114(a)(3)(B))).

*CSP program* – The recipient must obligate funds from a grant during the period for which the funds are available for obligation as set forth in the grant award document. Recipients must maintain documentation to demonstrate that the obligation occurred during the period of availability and was charged to an appropriate year’s grant funds. If obligations occur outside of the period of availability, the funds are not timely obligated and must be returned. However, under the “expanded authorities” provisions, grantees are permitted to:

- a. Extend grants automatically at the end of a project period for up to one year without prior approval (with some exceptions);
- b. Carry funds over from one budget period to the next;
- c. Obligate funds up to 90 days before the effective date of a budget period without prior approval; and
- d. Transfer funds among budget categories without prior approval, except for a limited number of specific cases.

*CTE program* – In any academic year that a subrecipient does not obligate all of the amounts it is allocated under the Secondary and Postsecondary CTE programs for that year, it must return the unobligated amounts to the State to be reallocated under the Secondary and Postsecondary CTE Programs, as applicable (Section 133(b) of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) (Pub. L. No. 109-270) (20 USC 2353(b))).

*Consolidated Administrative Funds* – Consolidated administrative funds must be obligated within the period of availability of the program that the funds came from. Because expenditures in a consolidated administrative fund are not accounted for by specific Federal programs, an SEA or LEA may use a first-in, first-out method for determining when funds were obligated, may attribute costs in proportion to the dollars provided, or may use another reasonable method.

*Definition of Obligation* – An obligation is not necessarily a liability in accordance with generally accepted accounting principles. When an obligation occurs (is made) depends on the type of property or services that the obligation is for (34 CFR section 76.707):

<b>IF AN OBLIGATION IS FOR --</b>	<b>THE OBLIGATION IS MADE --</b>
(a) Acquisition of real or personal property.	On the date on which the State or subgrantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the State or subgrantee.	When the services are performed.
(c) Personal services by a contractor who is not an employee of the State or subgrantee.	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services.	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e) Public utility services.	When the State or subgrantee receives the services.
(f) Travel.	When the travel is taken.
(g) Rental of real or personal property.	When the State or subgrantee uses the property.
(h) A pre-agreement cost that was properly approved by the State under the applicable cost principles.	On the first day of the subgrant period.

The act of an SEA or other grantee awarding Federal funds to an LEA or other eligible entity within a State does not constitute an obligation for the purposes of this compliance requirement. An SEA or other grantee may not reallocate grant funds from one subrecipient to another after the period of availability ends.

If a grantee or subgrantee uses a different accounting system or accounting principles from one year to the next, it shall demonstrate that the system or principle was not improperly changed to avoid returning funds that were not timely obligated. A grantee or subgrantee may not make accounting adjustments after the period of availability ends in an attempt to offset audit disallowances. The disallowed costs must be refunded.

**Programs to which the rest of this section applies are: Title I, Part A (84.010 and 84.389); Ed Tech (84.318 and 84.386); IDEA (84.027 and 84.173); IDEA, Part C (84.181); and SIG (84.377 and 84.388).**

**Funds under ARRA for the programs cited above are FY 2009 funds; however, they became available for obligation beginning with the date of enactment of ARRA (February 17, 2009). Funds under the regular FY 2009 appropriation for these programs became available for obligation on July 1, 2009. Unless an SEA has received a waiver to extend the period of availability to obligate FY 2009 funds for these programs, ARRA funds were available for obligation by SEAs and LEAs until September 30, 2011, which includes the 1-year carryover period authorized under Section 421(b) of the General Education Provisions Act (Section 1603 of ARRA and 20 USC 1225(b)).**

## **L. Reporting**

### **1. Financial Reporting**

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and 84.388).*

*This section also applies to IDEA (84.027 and 84.173); and IDEA, Part C (84.181); RTT (84.395); and Ed Jobs (84.410).*

- a. SF-270, *Request for Advance or Reimbursement* – Applicable (using the G5 System)
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. SF-425, *Federal Financial Report* – Not Applicable
- d. Form 270, *Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2) (OMB No. 1845-0089)* – Applicable only to institutions placed on reimbursement payment method or Heightened Cash Monitoring 2 by ED

### **2. Performance Reporting** – Not Applicable

### **3. Special Reporting**

*State Per Pupil Expenditure (SPPE) Data (OMB No. 1850-0067) (SEAs/LEAs)*

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389) and MEP (84.011).*

As described in II, “Program Procedures – General and Program-Specific Cross-Cutting Requirements,” this requirement is a general cross-cutting requirement that need only be tested once to cover all major programs to which it applies.

Each year, an SEA must submit its average State per pupil expenditure (SPPE) data to the National Center for Education Statistics. These SPPE data are used by ED to make allocations under several ESEA programs, including Title I, Part A and MEP. SPPE data are reported on the National Public Education Finance Survey. SPPE data comprise the State’s annual current expenditures for free public education, less certain designated exclusions, divided by the State’s average daily attendance.

LEAs must submit data to the SEA for the SEA’s report. The SEA determines the format of the data submissions.

Current expenditures to be included are those for free public education, including administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities. Current expenditures to be excluded are those for community services, capital outlay, debt service, and expenditures from funds received under Title I and Title V, Part A of the ESEA. To determine its expenditures under Titles I and V, Part A of the ESEA in a schoolwide program, an LEA could calculate the percentage of funds that Title I and Title V, Part A contributed to the schoolwide program and then apply those percentages to the total expenditures in the schoolwide program. Other reasonable methods may also be used (Section 9101(14) of ESEA (20 USC 7801(14))).

Except when provided otherwise by State law, average daily attendance generally means the aggregate number of days of attendance of all students during a school year divided by the number of days that school is in session during such school year. For purposes of ESEA, average daily membership (or similar data) can be used in place of average daily attendance in States that provide State aid to LEAs on the basis of average daily membership or such other data. When an LEA in which a child resides makes a tuition or other payment for the free public education of the child in a school of another LEA, the child is considered to be in attendance at the school of the LEA making the payment, and not at the school of the LEA receiving the payment. Similarly, when an LEA makes a tuition payment to a private school or to a public school of another LEA for a child with disabilities, the child is considered to be in attendance at the school of the LEA making the payment (Section 9101(1) of ESEA (20 USC 7801(1))).

## N. Special Tests and Provisions

### 1. Participation of Private School Children (SEAs/LEAs)

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

Depending on how the SEA/LEA implements requirements for the provision of equitable participation of private school children, this requirement may be tested on a general or program-specific basis (as described in II, "Program Procedures – General and Program-Specific Cross-Cutting Requirements").

**Compliance Requirements** – For programs funded under Title I, Part A (CFDA 84.010), an LEA, after timely and meaningful consultation with private school officials, must provide equitable services to eligible private school children, their teachers, and their families. Eligible private school children are those who reside in a participating public school attendance area and have educational needs under Section 1115(b) of the ESEA (20 USC 6315(b)). Title I, Part A funds must be allocated to each participating public school attendance area on the basis of the total number of children from low-income families residing in that area. In calculating the total number of children from low-income families, an LEA must include children from low-income families who attend private schools. An LEA must use the portion of Title I, Part A funds attributable to private school children from low-income families included in the calculation to provide services to eligible private school children. For example, if \$100,000 of Title I, Part A funds are allocated based on 100 children from low-income families, 25 of whom are private school children, \$25,000 of the \$100,000 must be expended to provide equitable services to eligible private school children.

If an LEA reserves funds off the top of its Title I, Part A allocation to provide instructional and related activities for public school students at the district level, the LEA must also provide from those funds, as applicable, equitable services to eligible private school students. From applicable funds reserved for parent involvement and professional development, an LEA must ensure that teachers and families of participating private school children have an equitable opportunity to participate in professional development and parent involvement activities, respectively. The amount of funds available to provide these services must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas (Sections 1113(c) and 1120 of ESEA (20 USC 6313(c) and 6320); 34 CFR sections 200.62 through 200.67 and 200.77 through 200.78).

For all other programs, an SEA, LEA, or other eligible entity (or consortium of such entities) receiving financial assistance under an applicable program must provide eligible private school children and their teachers or other educational personnel with equitable services or other benefits under the program. Before an agency or consortium makes any decision that affects the opportunity of eligible private school children, teachers, and other educational personnel to participate, the agency or consortium must engage in timely and meaningful consultation with private school officials. Expenditures for services and benefits to eligible private school children and their teachers and other educational personnel must be equal on a per-pupil basis to the expenditures for participating public school children and their teachers and other educational personnel, taking into account the number and educational needs of the children, teachers and other educational personnel to be served (Sections 5142 and 9501 of ESEA (20 USC 7217a and 7881); 34 CFR sections 299.6 through 299.9).

The control of funds used to provide equitable services to eligible private school students, teachers and other educational personnel, and families, and title to materials, equipment, and property purchased with those funds must be in a public agency and the public agency must administer the funds, materials, equipment, and property. The provision of equitable services must be by employees of a public agency or through a contract by the public agency with an individual, association, agency, or organization that is independent of any private school or religious organization. The contract must be under the control of the public agency (Sections 1120(d), 5142(c), and 9501(d) of ESEA (20 USC 6320(d), 7217a(c) and 7881(d); 34 CFR sections 200.67 and 299.9).

This compliance requirement also applies to Transferability (See III.A.3, “Activities Allowed or Unallowed – Transferability (SEAs and LEAs)”) for transfers made by *SDFSCA* (84.186) (including the Governor’s program authorized under Section 4112(a), with the agreement of the Governor); *21st CCLC* (84.287); *Title V, Part A* (84.298); *Ed Tech* (84.318 **and** 84.386); and *Title II, Part A* (84.367) (Section 6123(e)(2) of ESEA (20 USC 7305b(e)(2))).

**Audit Objectives** – Determine whether (1) the LEA, SEA, or other agency receiving ESEA funds has conducted timely consultation with private school officials to determine the kind of educational services to provide to eligible private school children, (2) the planned services were provided, and (3) the required amount was used for private school children.

#### **Suggested Audit Procedures (LEA/SEA)**

- a. Verify, by reviewing minutes of meetings and other appropriate documents, that the SEA or LEA conducted timely consultation with private school officials in making its determinations and set aside the required amount for private school children.
- b. Review program expenditure and other records to verify that educational services that were planned were provided.

- c. For Title I, Part A, verify that:
- (1) The per pupil allocation (PPA) generated by private school children from low-income families living in participating public school attendance areas is equal to the PPA generated by public school children from low-income families living in the same attendance areas:
  - (2) Funds to provide equitable services to private school students were available, as applicable, from funds, if any, reserved off the top of the LEA's Part A allocation for instructional and related activities at the district level; and
  - (3) Funds to provide equitable services to teachers and families of participating private school students were available from reservations of funds for professional development and parent involvement.
- d. If the LEA provides services to eligible private school students under an arrangement with a third-party provider, verify that the LEA retains proper administration and control by having a written contract that:
- (1) Describes the services to be provided; and
  - (2) Provides that the LEA retains ownership of materials, equipment, and property purchased with Federal I funds.
- e. For programs other than Title I, Part A, verify that expenditures are equal on a per-pupil basis for public and private school students, teachers and other educational personnel, taking into consideration their numbers and needs as required by 34 CFR section 299.7.

## 2. Schoolwide Programs (SEAs/LEAs)

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and 84.388).*

*This section also applies to IDEA (84.027 84.173); CTE (84.048); and Ed Jobs (84.410).*

As described in II, "Program Procedures – General and Program-Specific Cross-Cutting Requirements," this requirement is a general cross-cutting requirement that only needs to be tested once to cover all major programs to which it applies.

**Compliance Requirements** – A school participating under Title I, Part A may, in consultation with its LEA, use its Title I, Part A funds, along with funds provided from the above-identified programs and other Federal, State, and local education funds, to upgrade the school's entire educational program in a schoolwide program. At least 40

percent of the children enrolled in the school or residing in the school attendance area for the initial year of the schoolwide program must be from low-income families. The LEA is required to maintain records to demonstrate compliance with this requirement. [Note: For the SIG program (CFDA 84.377 and **CFDA 84.388**), 49 SEAs were granted a waiver to allow a school with less than 40 percent low-income children to operate a schoolwide program as part of implementing one of four school intervention models. Similarly, in a State that has received ESEA flexibility, the SEA was granted a waiver to allow a Title I, Part A school with less than 40 percent low-income children to operate a schoolwide program if (a) the SEA identified the school as a priority school or a focus school and (b) the LEA is implementing interventions consistent with the turnaround principles or interventions that are based on the needs of the students in the school and designed to enhance the entire educational program in the school (see paragraph 5 on page 1 of *ESEA Flexibility*)].

- a. To operate a schoolwide program, a school must include the following three core elements:
  - (1) Comprehensive needs assessment of the entire school (34 CFR section 200.26(a)).
  - (2) Comprehensive plan based on data from the needs assessment (34 CFR section 200.26(b)).
  - (3) Annual evaluation of the results achieved by the schoolwide program and revision of the schoolwide plan based on that evaluation (34 CFR section 200.26(c)).
- b. A schoolwide plan also must include the following components:
  - (1) Schoolwide reform strategies (34 CFR section 200.28(a)).
  - (2) Instruction by highly qualified professional staff (34 CFR section 200.28(b)).
  - (3) Strategies to increase parental involvement (34 CFR section 200.28(c)).
  - (4) Additional support to students experiencing difficulty (34 CFR section 200.28(d)).
  - (5) Transition plans for assisting preschool children in the successful transition to the schoolwide program (34 CFR section 200.28(e)).
- c. A schoolwide program school that consolidates Federal, State, and local funds in a consolidated schoolwide pool may use those funds for any activity in the school. (Consolidating funds in a schoolwide program means that a school treats the funds like they are a single “pool” of funds—i.e., the funds lose their individual identity and the school has one flexible pool of funds.) The school is not required to maintain separate records that identify by program the specific activities

supported by those funds. Also, the school is not required to meet most of the statutory and regulatory requirements of the Federal programs included in the consolidation as long as it meets the intent and purposes of those programs.

If a schoolwide program school consolidates just its Federal funds in a single Federal consolidated schoolwide pool, the school must use those funds to address specific educational needs of the school identified by the needs assessment and articulated in the schoolwide plan. Although the Federal funds lose their specific program identity and may be accounted for as part of the pool, the school must keep records to demonstrate that the consolidated funds support activities that address the intent and purpose of each program. With the exception of discretionary programs as noted below, the school is not required to meet most of the statutory and regulatory requirements of the specific Federal programs included in the consolidation as long as it meets the intent and purposes of those programs.

If a schoolwide program school does not consolidate its Federal funds, the school must use Title I, Part A funds to support activities that address specific educational needs of the school identified by the needs assessment and articulated in the schoolwide plan. The school must use other Federal funds in accordance with the specific requirements of each Federal program. For more detail on consolidating funds in schoolwide program schools, see pages 49-67 in guidance entitled *Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements* (February 2008). This guidance is available at <http://www.ed.gov/programs/titleiparta/fiscalguid.doc>.

- d. If a schoolwide program school consolidates funds, the school must ensure that its schoolwide program addresses the needs of children who are members of the target population of any Federal program whose funds are consolidated. Specific requirements apply to these programs as follows:
  - (1) Before consolidating funds or services received under MEP, a schoolwide program must (a) in consultation with parents of migratory children or organizations representing those parents, first meet the identified needs of migratory children that result from the effects of their migratory lifestyle or are needed to permit migratory children to participate effectively in schools; and (b) document that services addressing those needs have been met (34 CFR section 200.29(c)(1)).
  - (2) A schoolwide program must have the approval of the Indian parent advisory committee established in Section 7114(c)(4) of ESEA (20 USC 7424(c)(4)) before funds received under the Title VII, Part A, Subpart 1 Indian Education program can be consolidated (34 CFR section 200.29(c)(2)).

- (3) A schoolwide program may consolidate funds received under IDEA, Part B. However, the amount of funds consolidated may not exceed the amount received by the LEA under IDEA, Part B for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA and multiplied by the number of children with disabilities participating in the schoolwide program. A school that consolidates IDEA, Part B funds may use those funds for any activities under the schoolwide plan but must comply with all other requirements of IDEA, Part B to the same extent it would if it did not consolidate funds under IDEA, Part B in the schoolwide program (34 CFR section 200.29(c)(3)).

In addition, a schoolwide program school may consolidate funds it receives from discretionary programs administered by the ED Secretary; however, it must carry out the activities included in its application for which those funds were awarded. For example, if an LEA consolidates SIG funds (CFDA 84.377 and **CFDA 84.388**), which are discretionary at the State level, in a schoolwide program, the LEA must carry out the activities in its SIG application and adhere to the requirements of each school intervention model it selects to implement in its Tier I and Tier II schools.

- e. An SEA must modify State fiscal and accounting procedures, if necessary, to eliminate barriers so that schools can easily consolidate funds from other Federal, State, and local sources in schoolwide programs. The SEA must also notify its LEAs of the authority to operate schoolwide programs.
- f. **A school participating under Title I, Part A may, in consultation with its LEA, use its Title I, Part A ARRA funds, along with ARRA funds provided from the programs covered by this requirement, and other Federal, State, and local education funds, to upgrade the school's entire educational program in a schoolwide program. At least 40 percent of the children enrolled in the school or residing in the school attendance area for the initial year of the schoolwide program must be from low-income families.**

**A schoolwide program school that consolidates Federal, State, and local funds in a consolidated schoolwide pool may use those funds for any activity in the school. (Consolidating funds in a schoolwide program means that a school treats the funds like they are a single "pool" of funds, i.e., the funds lose their individual identity and the school has one flexible pool of funds.) Generally, the school is not required to maintain separate records that identify by program the specific activities supported by those funds. However, a school that consolidates ARRA funds in a schoolwide program must account for the ARRA funds separately. An LEA may use any reasonable method (e.g., proportionality) to assign expenditures of ARRA funds consolidated in a schoolwide program to the program that contributed the funds.**

(Sections 1111(c)(6), (9) and (10), 1114, 1306(b)(4), and 7115(c) of ESEA (20 USC 6311(c)(6), (9) and (10), 6314, 6396(b)(4), and 7425(c)); Section 613(a)(2)(D) of IDEA (20 USC 1413(a)(2)(D)); 34 CFR sections 200.25 through 200.29).

**Audit Objectives (SEA)** – Determine whether the SEA has taken steps to (1) notify its LEAs of the authority to consolidate Federal, State, and local funds in schoolwide programs; and (2) remove fiscal and accounting barriers preventing such consolidation of funds.

**Suggested Audit Procedures (SEA)**

Review documentation to determine whether the SEA notified its LEAs of the authority to consolidate Federal, State, and local funds in schoolwide programs, and examined its fiscal and accounting procedures to remove any barriers preventing such consolidation of funds.

**Audit Objectives (LEA)** – Determine whether (1) the schools operating schoolwide programs were eligible to do so, and (2) the schoolwide programs included the core elements and components.

**Suggested Audit Procedures (LEA)**

- a. For schools operating a schoolwide program, review records and ascertain if the schools met the poverty eligibility requirements.
- b. Review the schoolwide plan and ascertain if it included the required core elements and components described above.
- c. Review documentation to support:
  - (1) Consultation with parents including, when MEP funds are consolidated, the parents of migratory children or organizations representing those parents; and, when Title VII, Part A, Subpart 1 (Indian Education) funds are consolidated, approval by the Indian parent advisory committee.
  - (2) If MEP funds are consolidated in the schoolwide program, the identified needs of migratory children were met before MEP funds were consolidated.

**3. Comparability (SEAs/LEAs)**

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389) and MEP (84.011).*

As described in II, “Program Procedures – General and Program-Specific Cross-Cutting Requirements,” this requirement is a general cross-cutting requirement that need only be tested once to cover all major programs to which it applies.

**Compliance Requirements** – An LEA may receive funds under Title I, Part A and the MEP (Title I, Part C) only if State and local funds will be used in participating schools to provide services that, taken as a whole, are at least comparable to services that the LEA is providing in schools not receiving Title I, Part A or MEP funds. An LEA is considered to have met the statutory comparability requirements if it filed with the SEA a written assurance that such LEA has implemented (1) an LEA-wide salary schedule; (2) a policy to ensure equivalence among schools in teachers, administrators, and other staff; and (3) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies. An LEA may also use other measures to determine comparability, such as comparing the average number of students per instructional staff or the average staff salary per student in each school receiving Title I, Part A or MEP funds with those in schools that do not receive Title I, Part A or MEP funds. If all schools are served by Title I, Part A or MEP, an LEA must use State and local funds to provide services that, taken as a whole, are substantially comparable in each school. Determinations may be made on either a district-wide or grade-span basis.

An LEA may exclude schools with fewer than 100 students from its comparability determinations. The comparability requirement does not apply to an LEA that has only one school for each grade span. An LEA may exclude from determinations of compliance with this requirement State and local funds expended for (1) bilingual education for children with limited English proficiency (LEP); and (2) the excess costs of providing services to children with disabilities as determined by the LEA. The LEA may also exclude supplemental State or local funds for programs that meet the intent and purposes of Title I, Part A or MEP (Sections 1120A(c)-(d) and 1304(c)(2) of ESEA (20 USC 6321(c)-(d) and 6394(c)(2)); 34 CFR sections 200.79 and 200.88).

Each LEA must develop procedures for complying with the comparability requirements and implement the procedures annually. The LEA must maintain records that are updated biennially documenting compliance with the comparability requirements. The SEA, however, is ultimately responsible for ensuring that LEAs remain in compliance with the comparability requirement (Section 1120A(c) of ESEA (20 USC 6321(c))).

School staff paid with Ed Jobs (CFDA 84.410) funds who are in a position that would ordinarily be supported with State or local funds and would ordinarily be included in comparability determinations should continue to be included in those determinations. Conversely, school staff paid with Ed Jobs funds who are in a position that would otherwise be supported with other Federal funds, with the exception of the Impact Aid funds (CFDA 84.041 and **CFDA 84.404**), would continue to be excluded from comparability determinations (Question 1, Guidance – When to Treat Expenditures of Education Jobs Funds as State or Local Funds for Purposes of the Fiscal Requirements under Title I, Part A of the Elementary and Secondary Education Act of 1965 (November 2010)).

**Audit Objective** (SEAs) – Determine whether the SEA is determining if LEAs are complying with the comparability requirements.

**Suggested Audit Procedure** (SEAs)

For a sample of LEAs, review SEA records that document SEA review of LEA compliance with the comparability requirements.

**Audit Objective** (LEAs) – Determine whether the LEA has developed procedures for complying with the comparability requirements and maintained records that are updated at least biennially documenting compliance with the comparability requirements.

**Suggested Audit Procedures** (LEAs)

- a. Through inquiry and review, ascertain if the LEA has developed procedures and measures for complying with the comparability requirements.
- b. Review LEA comparability documentation to ascertain (1) if it has been updated at least biennially and (2) that it documents compliance with the comparability requirements.
- c. Test comparability data to supporting records.

**4. Access to Federal Funds for New or Significantly Expanded Charter Schools** (SEAs/LEAs)

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); SDFSCA (84.186) (except the Governor’s Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); Title II, Part A (84.367); and SIG (84.377 and 84.388).*

*This section also applies to Adult Education (84.002); IDEA (84.027 and 84.173); CTE (84.048); and Ed Jobs (84.410).*

As described in II, “Program Procedures – General and Program-Specific Cross-Cutting Requirements,” this requirement is a program-specific cross-cutting eligibility requirement that needs to be tested separately for each covered program in the Supplement.

Note: This requirement only applies with respect to funds allocated to new, or significantly expanded, charter schools under a covered program in a State that has charter schools. A *covered program* means an elementary or secondary education program administered by ED under which the Secretary allocates funds to States on a formula basis, except that the term does not include a program or portion of a program under which an SEA awards subgrants on a discretionary, noncompetitive basis. *Charter school* has the same meaning as provided in Title V, Part B, Subpart 1 of the ESEA (Section 5210(1) of ESEA (20 USC 7221i(1))). With respect to an existing charter school LEA that has not significantly expanded its enrollment, an SEA must determine the school’s eligibility and allocate Federal funds to the school in a manner consistent with applicable Federal statutes and regulations under each covered program.

If a State considers a charter school to be an LEA under a covered program, this requirement applies to the SEA or other State agency responsible for allocating funds under that program—either by formula or through a competition—to LEAs. If a State considers a charter school to be a public school within an LEA under a covered program, this requirement applies to the LEA. The requirements in this Supplement address an SEA’s responsibilities with respect to eligible charter school LEAs. An LEA that is responsible for providing funds under a covered program to eligible charter schools must comply with these requirements on the same basis as an SEA.

**Compliance Requirements** – An SEA must ensure that a charter school LEA that opens for the first time or significantly expands its enrollment receives the funds under each covered program for which it is eligible. *Significant expansion of enrollment* means a substantial increase in the number of students attending a charter school due to a significant event that is unlikely to occur on a regular basis, such as the addition of one or more grades or educational programs in major curriculum areas. The term also includes any other expansion of enrollment that an SEA determines to be significant.

Except as noted below, if a charter school LEA opens or expands by November 1, the SEA must allocate to the school the funds for which it is eligible no later than 5 months after the school first opens or significantly expands its enrollment; if a charter school LEA opens or significantly expands after November 1 but before February 1, an SEA must allocate to the school a *pro rata* portion of the funds for which the school is eligible on or before the date the SEA makes allocations to other LEAs under that program for the succeeding academic year; if a charter school LEA opens or expands after February 1, the SEA may, but is not required to, allocate to the school a *pro rata* portion of the funds for which the school is eligible.

An SEA must determine a new or expanding charter school LEA’s eligibility based on actual enrollment or other eligibility data available on or after the date the charter school LEA opens or significantly expands. An SEA may not deny funding to a new or expanding charter school LEA due to the lack of prior-year data, even if eligibility and allocation amounts for other LEAs are based on prior-year data. An SEA may allocate funds to, or reserve funds for, an eligible charter school LEA based on reasonable estimates of projected enrollment at the charter school LEA. If an SEA allocates more or fewer funds to a charter school LEA than the amount for which the charter school LEA is eligible, based on actual enrollment or eligibility data, the SEA must make appropriate adjustments to the amount of funds allocated to the charter school LEA as well as to other LEAs under a covered program on or before the date the SEA allocates funds to LEAs for the succeeding academic year.

At least 120 days before the date a charter school LEA is scheduled to open or significantly expand its enrollment, the charter school LEA or its authorized public chartering agency must provide the SEA with written notice of that date. Upon receiving such notice, an SEA must provide the charter school LEA with timely and meaningful information about each covered program in which the charter school LEA may be eligible to participate, including notice of any upcoming competitions under the program. An SEA is not required to make allocations within 5 months of the date a charter school

LEA opens for the first time or significantly expands if the charter school LEA, or its charter authorizer, fails to provide to the SEA proper written notice of the school's opening or expansion.

For a covered program in which an SEA awards subgrants on a competitive basis, the SEA must provide an eligible charter school LEA that is scheduled to open on or before the closing date of any competition a full and fair opportunity to apply to participate in the program. However, the SEA is not required to delay the competitive process in order to allow a charter school LEA that has not yet opened or expanded to compete. (Section 5206 of ESEA (20 USC 7221e); 34 CFR sections 76.785 through 76.799).

**Audit Objective** (SEA/LEA, depending on which entity is responsible for funding charter schools) – Determine whether new or significantly expanding charter schools received the amount of Federal formula funds for which they were eligible in a timely manner.

**Suggested Audit Procedures** (SEA/LEA, depending on which entity is responsible for funding charter schools)

- a. Determine if the entity was responsible for providing Federal formula funds under the applicable covered program to any charter school LEAs/charter schools that opened for the first time or significantly expanded enrollment on or before November 1 of the academic year.
- b. Determine if the entity was responsible for providing Federal formula funds under the applicable covered program to any charter school LEAs/charter schools that opened for the first time or significantly expanded enrollment between November 1 and February 1 of the academic year.
- c. Review the entity's procedures for allocating Federal formula funds under the applicable covered program to determine whether eligibility to participate in the program was based on enrollment or eligibility data from a prior year. If prior-year data were used for allocations, determine whether the entity properly based the new or expanding charter school LEA's/charter school's eligibility and allocation amount on actual eligibility or enrollment data for the year in which the school opened or expanded.
- d. Review documentation to identify the opening or expansion date for each eligible charter school LEA/charter school that opened or significantly expanded its enrollment on or before November 1 of the academic year. Determine whether the charter school LEA/charter school was given access to all of the funds for which it was eligible, in the proper amount, within 5 months of the opening or expansion date (provided that SEA or LEA notification, data submission, and application requirements were met).

- e. Review documentation to identify the opening or expansion date for each eligible charter school LEA/charter school that opened or significantly expanded its enrollment between November 1 and February 1 of the academic year. Determine whether the charter school LEA/charter school was given access to the *pro rata* portion of the funds for which the school was eligible, in the proper amount, on or before the date the SEA or LEA made allocations to other LEAs/public schools under the program for the succeeding academic year (provided that SEA or LEA notification, data submission, and application requirements were met).
- f. Review documentation to determine whether the SEA or LEA made necessary adjustments to account for over- or under-allocations once actual eligibility and enrollment data became available.

#### IV. OTHER INFORMATION

##### *Consolidation of Administrative Funds* (SEAs and LEAs)

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); MEP (84.011); SDFSCA (84.186) (except the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); MSP (84.366) (at the LEA level only); Title II, Part A (84.367); and SIG (84.377 and 84.388).*

State and local administrative funds that are consolidated (as described in III.A.1, "Activities Allowed or Unallowed – Consolidation of Administrative Funds (SEAs and LEAs)") should be included in the audit universe and the total expenditures of the programs from which they originated for purposes of (1) determining Type A programs, and (2) completing the Schedule of Expenditures of Federal Awards (SEFA). A footnote showing, by program, amounts of administrative funds consolidated is encouraged.

##### *Schoolwide Programs* (LEAs)

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 and 84.389); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and 84.388).*

*This section also applies to IDEA (84.027 and 84.173); CTE (84.048); and Ed Jobs (84.410).*

Since schoolwide programs are not separate Federal programs, as defined in OMB Circular A-133, expenditures of Federal funds consolidated in schoolwide programs should be included in the audit universe and the total expenditures of the programs from which they originated for purposes of (1) determining Type A programs and (2) completing the SEFA. A footnote showing, by program, amounts consolidated in schoolwide programs is encouraged.

***Transferability*** (SEAs and LEAs)

*ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a), with the agreement of the Governor); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); and Title II, Part A (84.367).*

Expenditures of funds transferred from one program to another (as described in III.A.3, "Activities Allowed or Unallowed – Transferability (SEAs and LEAs)") should be included in the audit universe and total expenditures of the receiving program for purposes of (1) determining Type A programs, and (2) completing the SEFA. A footnote showing amounts transferred between programs is encouraged.

***Small Rural Schools Achievement (SRSA) Alternative Uses of Funds Program***

*ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a)); Title V, Part A (84.298); Ed Tech (84.318 and 84.386); and Title II, Part A (84.367).*

Unlike "Transferability" above, where the funds are actually transferred from one program to another, under SRSA the funds are expended from the original program but for activities allowed under another program. Funds used under the SRSA Alternative Uses of Funds program should be included in the audit universe and total expenditures of the programs from which they originated for purposes of (1) determining Type A programs, and (2) completing the SEFA.

***Prima Facie Case Requirement for Audit Findings***

Section 452(a)(2) of the General Education Provisions Act (20 USC 1234a(a)(2)) requires that ED officials establish a *prima facie* case when they seek recoveries of unallowable costs charged to ED programs. When the preliminary ED decision to seek recovery is based on an OMB Circular A-133 audit, upon request, auditors will need to provide ED program officials audit documentation. For this purpose, audit documentation (part of which is the auditor's working papers) includes information the auditor is required to report and document that is not already included in the reporting package.

The requirement to establish a *prima facie* case for the recovery of funds applies to all programs administered by ED, with the exception of Impact Aid (CFDA 84.041) and programs under the Higher Education Act, i.e., the Family Federal Education Loan Program (CFDA 84.032) and the other ED programs covered in the Student Financial Assistance Cluster in Part 5 of the Supplement.

## DEPARTMENT OF EDUCATION

### CFDA 84.002 ADULT EDUCATION – BASIC GRANTS TO STATES

#### I. PROGRAM OBJECTIVES

The Adult Education and Family Literacy State Grant program provides grants to eligible agencies to provide adult education and literacy services. These grants help adults become literate and obtain the knowledge and skills necessary for employment; obtain the educational skills necessary to become full partners in the educational development of their children; and complete a secondary school education.

#### II. PROGRAM PROCEDURES

Funds are provided to the State eligible agency each year in accordance with a statutory formula. Eligible agencies develop a 5-year State plan that is approved by the Secretary, which may be revised when substantial changes in conditions occur. Local activities include services or instruction in one or more of the following categories: adult education and literacy services, including workplace literacy services; family literacy services; and English literacy programs.

Eligible providers include a local educational agency; a community-based organization of demonstrated effectiveness; a volunteer literacy organization of demonstrated effectiveness; an institution of higher education; a public or private non-profit agency; a library; a public housing authority; any other non-profit institution that has the ability to provide literacy services to adults and families; and a consortium of the agencies, organizations, institutions, libraries, or authorities described above.

#### Source of Governing Requirements

The program is authorized by the Adult Education and Family Literacy Act (the Act), Title II of the Workforce Investment Act of 1998 (Pub. L. No. 105-220 (20 USC 9201 *et seq.*)).

#### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements that apply to multiple Department of Education (ED) programs are discussed once in the ED Cross-Cutting Section of this supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references to the Cross-Cutting Section for these requirements.

## A. Activities Allowed or Unallowed

The eligible agency shall require that each eligible provider receiving a grant or contract establish or operate one or more programs that provide services or instruction in one or more of the following categories: (1) adult education and literacy services, including workplace literacy services; (2) family literacy services; and (3) English literacy programs. Adults include individuals who are at least 16 years of age, who are not enrolled or required to be enrolled in secondary school under State law; and who lack sufficient mastery of basic educational skills, do not have a secondary school diploma or its recognized equivalent, or are unable to speak, read, or write the English language (Pub. L. No. 105-220 (sections 231 and 203 of the Act) (20 USC 9241 and 9202(1))).

1. *State-Level Activities* – State eligible agencies may use funds for the following: (see also III.G.3, “Matching, Level of Effort, Earmarking – Earmarking”)
  - a. Subgrants to eligible providers.
  - b. State administrative costs including the development, and implementation of the State plan; consultation with other appropriate agencies in the development and implementation of activities assisted under the Act; and coordination and non-duplication with related Federal and State programs (section 221 of the Act (20 USC 9221)).
  - c. State leadership activities such as professional development programs, technical assistance, support of State literacy resource centers, and monitoring and evaluation of adult education and literacy activities (section 223(a) of the Act (20 USC 9223(a))).
2. *Subrecipient Activities*

Allowable activities are described in the eligible provider’s approved application. Generally, eligible providers must establish or operate one or more programs that provide services or instruction in one or more of the following categories: (1) adult education and literacy services, including workplace literacy services; (2) family literacy services; and (3) English literacy programs. Adults include individuals who are at least 16 years of age, who are not enrolled or required to be enrolled in secondary school under State law; and who lack sufficient mastery of basic educational skills, do not have a secondary school diploma or its recognized equivalent, or are unable to speak, read, or write the English language. Funds can also be used for administrative costs (see III.G.3.b, “Matching, Level of Effort, Earmarking – Earmarking” for limitation) (Pub. L. No. 105-220 (sections 231, 232, 234 and 203 of the Act) (20 USC 9241, 9242, 9243 and 9202(1))).

## B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

**C. Cash Management**

See ED Cross-Cutting Section.

**G. Matching, Level of Effort, Earmarking****1. Matching**

- a. Each State eligible agency providing adult education and literacy services shall provide a non-Federal contribution of at least 25 percent of the total amount of funds expended for adult education and literacy activities in the State (section 222(b) of the Act (20 USC 9222(b))).
- b. An eligible agency serving an outlying area shall provide a non-Federal contribution equal to 12 percent of the total amount of funds for adult education and literacy activities in the outlying area, unless the Secretary allows a smaller non-Federal contribution (section 222(b) of the Act (20 USC 9222(b))).
- c. An eligible agency's non-Federal contribution may be provided in cash or in-kind, fairly evaluated, and shall include only non-Federal funds that are used for adult education and literacy activities in a manner that is consistent with the purpose of the Act (section 222(b) of the Act (20 USC 9222(b))).

**2.1 Level of Effort – Maintenance of Effort**

An eligible agency may receive funds for any fiscal year if the Secretary finds that the fiscal effort per student or the aggregate expenditures of such eligible agency for adult education and literacy activities, in the second preceding fiscal year, was not less than 90 percent of the fiscal effort per student or the aggregate expenditures of the eligible agency for adult education and literacy activities, in the third preceding fiscal year (section 241(b) of the Act (20 USC 9251(b))).

**2.2 Level of Effort – Supplement Not Supplant – Not Applicable****3. Earmarking**

- a. *State Eligible Agency* – The following earmarking requirements are for each yearly grant award and must be met within the period of its availability (generally 27 months) (34 CFR sections 76.703 through 76.710):
  - (1) Grants and contracts for eligible providers shall not be less than 82.5 percent of the eligible agency's grant funds (section 222(a)(1) of the Act (20 USC 9222(a)(1))).

- (2) Correction education and education for other institutionalized individuals shall not be more than 10 percent of the 82.5 percent mentioned above (section 222(a)(1) of the Act (20 USC 9222(a)(1))).
  - (3) State leadership activities under section 223 of the Act shall not exceed 12.5 percent of the grant funds (section 222(a)(2) of the Act (20 USC 9222(a)(2))).
  - (4) Necessary and reasonable administrative expenses of the eligible agency shall not be more than five percent of the grant funds, or \$65,000, whichever is greater (section 222(a)(3) of the Act (20 USC 9222(a)(3))).
- b. *Subrecipients* – Generally, subrecipients may use up to five percent of their funds for non-instructional costs, such as administration of local programs. In cases where the five percent limit is too restrictive, the eligible provider shall negotiate with the eligible agency to determine the adequate level of funds for non-instructional purposes (section 233 of the Act) (20 USC 9243).

## **H. Period of Availability of Federal Funds**

See ED Cross-Cutting Section.

## **L. Reporting**

### **1. Financial Reporting**

- a. SF-270, *Request for Advance or Reimbursement* – Only grantees placed on reimbursement are required to complete this form to request payment of grant award funds. The requirement to use this form is imposed on an individual recipient basis.
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs*- Not Applicable
- c. SF-425, *Federal Financial Report* – Not Applicable
- d. *Annual Financial Status Report (OMB No. 1830-0027)*

### **2. Performance Reporting – Not Applicable**

### **3. Special Reporting – Not Applicable**

### **4. Section 1512 ARRA Reporting – Not Applicable**

### **5. Subaward Reporting under the Transparency Act – Applicable**

**N. Special Tests and Provisions**

**Access to Federal Funds for New or Significantly Expanded Charter Schools**

See ED Cross-Cutting Section.

## DEPARTMENT OF EDUCATION

**CFDA 84.010**     **TITLE I GRANTS TO LOCAL EDUCATIONAL AGENCIES** (Title I, Part A of the ESEA)

**CFDA 84.389**     **TITLE I GRANTS TO LOCAL EDUCATIONAL AGENCIES, RECOVERY ACT**

### I.     PROGRAM OBJECTIVES

The objective of these programs is to improve the teaching and learning of children who are at risk of not meeting challenging academic standards and who reside in areas with high concentrations of children from low-income families.

### II.    PROGRAM PROCEDURES

The Department of Education (ED) provides Title I, Part A funds through each State Educational Agency (SEA) to local educational agencies (LEAs) through a statutory formula based primarily on the number of children ages 5 through 17 from low-income families. This number is augmented by annually-collected counts of children ages 5 through 17 in foster homes, locally operated institutions for neglected or delinquent children, and families above poverty that receive assistance under Temporary Assistance for Needy Families (TANF) (CFDA 93.558), adjusted to account for the cost of education in each State. To receive funds, an SEA must submit to ED for approval either (1) an individual State plan as provided in Section 1111 of the Elementary and Secondary Education Act (ESEA) (20 USC 6311), or (2) a consolidated plan that includes Part A, in accordance with Section 9302 of the ESEA (20 USC 7842). The individual or consolidated plan, after approval by ED, remains in effect for the duration of the State's participation in Title I, Part A under the current ESEA authorization. The plan must be updated to reflect substantive changes.

To receive Title I, Part A funds, LEAs must have on file with the SEA an approved plan that includes descriptions of the general nature of services to be provided, how program services will be coordinated with the LEA's regular program of instruction, additional LEA assessments, if any, used to gauge program outcomes, and strategies to be used to provide professional development. An LEA may also include Part A as part of a consolidated application submitted to the SEA under Section 9305 of the ESEA (20 USC 7845).

LEAs allocate Title I, Part A funds to eligible school attendance areas based on the number of children from low-income families residing within the attendance area. A school at or above 40 percent poverty may use its Part A funds, along with other Federal, State, and local funds, to operate a schoolwide program to upgrade the instructional program in the whole school (20 USC 6314(a)). Otherwise, a school operates a targeted assistance program in which the school identifies students who are failing, or most at risk of failing, to meet the State's challenging student academic achievement standards and who have the greatest need for assistance. The school then designs, in consultation with parents, staff, and the LEA, an instructional program to meet the needs of those students (20 USC 6315).

**For funds under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5), ED awarded each State 50 percent of the funds from its Fiscal Year (FY) 2009 Title I, Part A allocation provided through the ARRA on April 1, 2009 and the remaining 50 percent of the funds on August 31, 2009 on the basis of the State's existing approved ESEA Consolidated State Application. States were not required to submit additional documentation to receive these funds. By accepting the second half ARRA funds, States agreed to comply with all accountability and reporting requirements in Section 1512 of ARRA.**

### **ESEA Flexibility**

ED offered each SEA the opportunity to request flexibility on behalf of itself, its LEAs, and its schools with respect to waivers of specific ESEA requirements, including certain Title I, Part A requirements, in exchange for a comprehensive State-developed plan to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. This initiative, known as ESEA flexibility, includes waivers of a number of Title I, Part A requirements – for example, redefining annual measurable objectives, meeting adequate yearly progress, identifying schools for improvement, corrective action, or restructuring, and providing public school choice and supplemental educational services. States receiving ESEA flexibility before November 1, 2012, and LEAs in those States, began implementing the plans contained in their request in the 2012–2013 school year. Those waivers apply through the end of the 2013–2014 school year. For a list of the waivers offered, see *ESEA Flexibility* June 7, 2012.

See references in this program supplement and also in the ED Cross-Cutting Section.

### **Source of Governing Requirements**

This program is authorized by Title I, Part A of the ESEA, as amended (Pub. L. No. 107-110 (20 USC 6301 through 6339 and 6571 through 6578) **and ARRA**. Program regulations are found at 34 CFR part 200. The Education Department General Administrative Regulations (EDGAR) at 34 CFR parts 76, 77, 81, 82, 98, and 99 also apply to this program, as do certain requirements of 34 CFR part 299 (General Provisions).

### **Availability of Other Program Information**

A number of documents posted on ED's website contain information pertinent to the Title I, Part A requirements in this Compliance Supplement. They are:

- Local Educational Agency Identification and Selection of School Attendance Areas and Schools and Allocation of Title I Funds to Those Areas and Schools (August 2003) (<http://www.ed.gov/programs/titleiparta/wdag.doc>)
- Public School Choice (January 14, 2009) (<http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc>)
- Report Cards, Title I, Part A (September 12, 2003) (<http://www.ed.gov/programs/titleiparta/reportcardsguidance.doc>)
- Supplemental Educational Services (January 14, 2009) (<http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc>)

- Title I Paraprofessionals (March 1, 2004)  
(<http://www.ed.gov/policy/elsec/guid/paraguidance.doc>)
- Title I Services to Eligible Private School Children (October 17, 2003)  
(<http://www.ed.gov/programs/titleiparta/psguidance.doc>)
- LEA and School Improvement (July 21, 2006)  
(<http://www.ed.gov/policy/elsec/guid/schoolimprovementguid.pdf>)
- **Funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 Made Available Under the American Recovery and Reinvestment Act of 2009 (March 2010)**  
(<http://www2.ed.gov/policy/gen/leg/recovery/guidance/title-i-rev-201003.pdf>)
- **The American Recovery and Reinvestment Act of 2009 (ARRA): Using Title I, Part A ARRA Funds for Grants to Local Educational Agencies to Strengthen Education, Drive Reform, and Improve Results for Students (September 2, 2009)**  
(<http://www.ed.gov/policy/gen/leg/recovery/guidance/titlei-reform.doc>)
- **When to Treat Expenditures of Education Jobs Funds as State or Local Funds for Purposes of the Fiscal Requirements under Title I, Part A of the Elementary and Secondary Education Act of 1965** (November 2010)  
(<http://www2.ed.gov/programs/titleiparta/fiscalejfguidance.pdf>)
- Non-Regulatory Guidance on Title I, Part A Waivers (July 2009)  
(<http://www.ed.gov/programs/titleiparta/title-i-waiver.doc>)
- Implementing Response to Intervention (RTI) using Title I, Title III, and CEIS (Coordinated Early Intervening Services) Funds  
(<http://www.ed.gov/programs/titleiparta/rti.html>)
- Final Notice of Adjustments to Title I, Part A and IDEA, Section 611 Statutory Caps on State Administration for Federal Fiscal Year (FY) 2009 (October 27, 2009)  
(<http://edocket.access.gpo.gov/2009/pdf/E9-25839.pdf>)
- High School Graduation Rate Non-Regulatory Guidance (December 22, 2008)  
(<http://www2.ed.gov/policy/elsec/guid/hsgrguidance.pdf>)
- Serving Preschool Children Through Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended (April 16, 2012)  
(<http://www2.ed.gov/policy/elsec/guid/preschoolguidance2012.pdf>)
- ESEA Flexibility (June 7, 2012)  
(<http://www.ed.gov/esea/flexibility/documents/esea-flexibility.doc>)
- ESEA Flexibility Frequently Asked Questions (August 3, 2012)  
(<http://www2.ed.gov/policy/eseaflex/esea-flexibility-faqs.doc>)
- Approved ESEA Flexibility Requests  
(<http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>).

Additional information is provided in the “Availability of Other Program Information” part of the ED Cross-Cutting Section.

### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements that apply to multiple programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements. For several specific requirements covered in this Supplement, the Secretary specifically invited SEAs to apply for a waiver with respect to ARRA funds. A reference to those waivers follows the discussion of each requirement.

Auditors should ascertain from the audited SEAs and LEAs whether the SEA or the LEA or its schools are operating under ESEA flexibility or any other approved waivers.

#### A. Activities Allowed or Unallowed

See also ED Cross-Cutting Section.

1. *LEAs* (Targeted assistance programs only. See III.N, “Special Tests and Provisions,” for schoolwide programs.)

In a targeted assistance school, **both ARRA and non-ARRA** funds available under Part A may be used only for programs that are designed to help participating children meet the State’s student academic achievement standards expected of all children. Allowable activities in these schools include, but are not limited to, instructional programs, counseling, mentoring, other pupil services, college and career awareness and preparation, services to prepare students for the transition from school to work, services to assist preschool children in the transition to elementary school, parental involvement activities, and professional staff development. If health, nutrition, and other social services are not otherwise available from other sources to participating children, Part A funds may be used as a last resort to provide such services. The LEA’s plan will provide a description of the general nature of the services to be provided with Part A funds. However, each Title I, Part A school determines the actual program it will provide (Title I, Section 1115 of ESEA (20 USC 6315)).

## 2. SEAs

SEAs must use regular FY 2012 funds to provide subgrants to LEAs through their FY 2012 LEA allocation process. (SEAs allocated ARRA funds to LEAs as part of their FY 2009 LEA allocation process.) SEAs may use **both ARRA and non-ARRA** funds for State administration and for school improvement activities in accordance with the State plan and statutory requirements (Title I, Sections 1003(a)-(e), 1004, 1111, and 1117 of ESEA (20 USC 6303(a)-(e), 6304, 6311, and 6317)). (See also III.G.3.a below and ED Cross-Cutting Section, 84.000, III.G.3.a)

### **B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section.

### **C. Cash Management**

See ED Cross-Cutting Section.

### **E. Eligibility**

#### **1. Eligibility for Individuals**

*Eligible Children* (LEA targeted assistance programs only)

Title I, Part A funds are to be used to provide services and benefits to eligible children residing or enrolled in eligible school attendance areas. Once funds are allocated to eligible school attendance areas (see E.2.a and E.2.b below), a school operating a targeted assistance program must use Title I, Part A funds only for programs that are designed to meet the needs of children identified by the school as failing, or most at risk of failing, to meet the State's challenging student academic achievement standards. In general, eligible children are identified on the basis of multiple, educationally related, objective criteria established by the LEA and supplemented by the school. Children who are economically disadvantaged, children with disabilities, migrant children, and limited English proficient (LEP) children are eligible for Part A services on the same basis as other children who are selected for services. In addition, certain categories of children are considered at risk of failing to meet the State's student academic achievement standards and are thus eligible for Part A services because of their status. Such children include: children who are homeless; children who participated in a Head Start, Even Start, Early Reading First, or Title I, Part A preschool program at any time in the 2 preceding years; children who received services under the Migrant Education Program under Title I, Part C at any time in the 2 preceding years; and children who are in a local institution for neglected or delinquent children or attending a community day program. From the pool of eligible children, a targeted assistance school selects those children who have the greatest need for special assistance to receive Part A services (Title I, Section 1115 of ESEA (20 USC 6315)).

## 2. Eligibility for Group of Individuals or Area of Service Delivery

- a. *School Attendance Areas or Schools* (LEAs with either schoolwide programs or targeted assistance programs)

An LEA must determine which school attendance areas are eligible to participate in Part A. A school attendance area is generally eligible to participate if the percentage of children from low-income families is at least as high as the percentage of children from low-income families in the LEA as a whole or at least 35 percent. An LEA may also designate and serve a school in an ineligible attendance area if the percentage of children from low-income families enrolled in that school is equal to or greater than the percentage of such children in a participating school attendance area. When determining eligibility, an LEA must select a poverty measure from among the following data sources: (1) the number of children ages 5–17 in poverty counted in the most recent census; (2) the number of children eligible for free and reduced price lunches; (3) the number of children in families receiving TANF; (4) the number of children eligible to receive Medicaid assistance; or (5) a composite of these data sources. The LEA must use that measure consistently across the district to rank all its school attendance areas according to their percentage of poverty.

An LEA must serve eligible schools or attendance areas in rank order according to their percentage of poverty. An LEA must serve those areas or schools above 75 percent poverty, including any middle or high schools, before it serves any with a poverty-percentage at or below 75 percent. After an LEA has served all areas and schools with a poverty rate above 75 percent, the LEA may serve lower-poverty areas and schools either by continuing with the district-wide ranking or by ranking its schools at or below 75 percent poverty according to grade-span grouping (e.g., K-6, 7-9, 10-12). If an LEA ranks by grade span, the LEA may use the district-wide poverty average or the poverty average for the respective grade-span grouping. An LEA may serve, for one additional year, an attendance area that is not currently eligible but that was eligible and served in the preceding year.

An LEA may elect not to serve an eligible area or school that has a higher percentage of children from low-income families only if (1) the school meets the Title I, Part A comparability requirements; (2) the school is receiving supplemental State or local funds that are spent according to the requirements in Sections 1114 or 1115 of Title I; and (3) the supplemental State and local funds expended in the area or school equal or exceed the amount that would be provided under Part A. An LEA with an enrollment of fewer than 1,000 students or with only one school per grade span is not required to rank its school attendance areas (Title I, Section 1113(a)-(b) of ESEA (20 USC 6313(a)-(b)); 34 CFR section 200.78(a)).

Some States that have received ESEA flexibility have requested an optional waiver to permit their LEAs to serve a Title I-eligible high school with a graduation rate below 60 percent that the SEA has identified as a priority school even if that school does not rank sufficiently high to be served based on the school's poverty rate. See page 3, paragraph 13, and page 17 of *ESEA Flexibility* (June 7, 2012).

- b. *Allocating funds to eligible school attendance areas and schools* (LEAs with either schoolwide programs or targeted assistance programs)

Except as noted below, an LEA must allocate Part A funds to each participating school attendance area or school, in rank order, on the basis of the **total** number of children from low-income families residing in the area or attending the school. In calculating the total number of children from low-income families, the LEA must include children from low-income families who reside in a participating area and attend private schools, using the same poverty data, if available, as the LEA uses to count public school children. If the same data are not available, the LEA may use comparable data. If an LEA uses a survey of families of private school children, the LEA may extrapolate, from actual data on a representative sample of private school children, the number of children from low-income families who attend private schools. An LEA may also correlate sources of data, or apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that area. If an LEA selects a public school to participate on the basis of enrollment, rather than because it serves an eligible school attendance area, the LEA must, in consultation with private school officials, determine an equitable way to count private school children from low-income families in order to calculate the amount of Title I, Part A funds available to serve private school children. An LEA may count private school children from low-income families every year or every 2 years.

If an LEA serves any attendance area with less than a 35 percent poverty rate, the LEA must allocate to all its participating areas an amount per child from a low-income family that equals at least 125 percent of the LEA's Part A allocation per child from a low-income family. (An LEA's allocation per child from a low-income family is the total LEA allocation under subpart 2 of Part A divided by the number of children from low-income families in the LEA according to the poverty measure selected by the LEA to identify eligible school attendance areas. The LEA then multiplies this per-child amount by 125 percent.) If an LEA serves only areas with a poverty rate greater than 35 percent, the LEA must allocate funds, in rank order, on the basis of the total number of children from low-income families in each area or school, but is not required to allocate a per-pupil amount of at least 125 percent. With the possible exception of a school in corrective action or restructuring, an LEA may not allocate a

higher amount per child from a low-income family to areas or schools with lower percentages of poverty than to areas or schools with higher percentages. Because an LEA may not reduce the allocation of a school identified for corrective action or restructuring by more than 15 percent in order to reserve Title I, Part A funds for choice-related transportation and supplemental educational services, the final allocation per child from a low-income family of such a school after application of this rule may be higher than a higher-poverty school. If an LEA serves areas or schools below 75 percent poverty by grade-span groupings, the LEA may allocate different amounts per child from a low-income family for different grade-span groupings as long as those amounts do not exceed the amount per child from a low-income family allocated to any area or school above 75 percent poverty. Amounts per child from a low-income family within grade spans may also vary as long as the LEA allocates higher amounts per child from a low-income family to higher-poverty areas or schools within the grade span than it allocates to lower-poverty areas or schools.

In a State that has received ESEA flexibility and has requested the optional waiver to serve a Title I-eligible high school with a graduation rate below 60 percent that the SEA has identified as a priority school, an LEA may allocate funds to that school out of rank order of poverty and based on the needs of the school. See page 3, paragraph 13, and page 17 of *ESEA Flexibility* (June 7, 2012).

The LEA must reserve the amounts generated by private school children from low-income families who reside in participating public school attendance areas to provide services to eligible private school children (Title I, Section 1113(c) of ESEA (20 USC 6313(c)), Title I, Section 1116(b)(10)(D) of ESEA (20 USC 6316(b)(10)(D)), and Title I, Section 1120(a)(4) and (c) of ESEA (20 USC 6320(a)(4) and (c)); 34 CFR sections 200.77 and 200.78).

- c. *Serving homeless children in non-participating schools and children in local institutions for neglected or delinquent children*
- (1) Before allocating Title I, Part A funds to school attendance areas and schools, an LEA must reserve funds to provide services comparable to those provided to children in participating school attendance areas and schools to serve:
    - Children in local institutions for neglected children; and
    - Homeless children who do not attend participating schools, including providing educationally related support services to children in shelters and other locations where homeless children may live.

- (2) An LEA may reserve funds to provide services comparable to those provided to children in participating school attendance areas and schools to serve:
- Children in local institutions for delinquent children; and
  - Neglected and delinquent children in community day school programs.

(Title I, Section 1113(c) of ESEA (20 USC 6313(c)); 34 CFR section 200.77).

**3. Eligibility for Subrecipients – Not Applicable**

**G. Matching, Level of Effort, Earmarking**

**1. Matching – Not Applicable**

**2.1 Level of Effort – *Maintenance of Effort***

See ED Cross-Cutting Section.

**2.2 Level of Effort – *Supplement Not Supplant***

See ED Cross-Cutting Section.

**3. Earmarking**

See ED Cross-Cutting Section and the following:

a. *Targeting School Improvement Funds (SEAs)*

Each SEA must reserve 4 percent of the amount the State receives under subpart 2 of Part A for school improvement activities under Sections 1116 and 1117 of Title I. Of the amount reserved, the SEA must allocate not less than 95 percent directly to LEAs for activities under Section 1116 in schools identified for school improvement, corrective action, or restructuring. However, the SEA may, with the approval of its LEAs, provide directly for these activities or arrange for them to be provided by other entities such as school support teams or educational service agencies. In allocating these funds to LEAs, the SEA must give priority to LEAs that (1) serve the lowest-achieving students; (2) demonstrate the greatest need for the funds; and (3) demonstrate the strongest commitment to ensuring that the funds will be used to enable the lowest-achieving schools to meet their progress goals.

An SEA in a State that has received ESEA flexibility may allocate school improvement funds it reserved under Section 1003(a) of the ESEA (20 USC 6303(a)) to an LEA to serve a priority school or a focus school if the SEA determines such school is most in need of additional support (See page 2, paragraph 6, and page 18 of *ESEA Flexibility* (June 7, 2012)). (See discussion of priority and focus schools under III.N.5, “Special Tests and Provisions - Identifying Schools and LEAs Needing Improvement.”)

In reserving these funds, an SEA may not reduce the sum of the allocations an LEA receives under subpart 2 of Part A below the sum of the allocations the LEA received for the preceding fiscal year. For this calculation, the FY 2010 appropriations act (Pub. L. No. 111-117) excluded the portion of an LEA’s FY 2009 allocation provided through ARRA. If funds are insufficient to reserve 4 percent and meet this provision, the SEA is not required to reserve the full amount.

If, after consulting with LEAs, the SEA determines that the amount of funds reserved is greater than needed, the SEA must allocate the excess amount to LEAs (1) in proportion to their allocations under subpart 2 of Part A, or (2) in accordance with the SEA’s reallocation procedures under Section 1126(c) of the ESEA (Title I, Section 1003(a)-(e) of ESEA (20 USC 6303(a)-(e)); 34 CFR section 200.100(a)).

b. *Targeting Funds for Choice-Related Transportation and Supplemental Educational Services (LEAs)*

*LEAs in a State that has not received ESEA flexibility.* In a school in its first year of school improvement under Section 1116(b)(1)(A) of the ESEA, the LEA is required to provide choice-related transportation under Section 1116(b)(9). In a school in its second year of school improvement under Section 1116(b)(5), corrective action under Section 1116(b)(7), or restructuring under Section 1116(b)(8), the LEA is required to provide choice-related transportation under Section 1116(b)(9) and supplemental educational services under Section 1116(e). (Note that a State may have received a waiver to permit its LEAs to offer supplemental educational services to students enrolled in schools in the first year of school improvement.) An LEA that is obligated to provide choice-related transportation or choice-related transportation and supplemental educational services must spend an amount equal to at least 20 percent of its allocation under subpart 2 of Part A (“20 percent obligation”) to provide such transportation and supplemental educational services, unless a lesser amount is needed to satisfy all requests (Title I, Section 1116(b)(10)(A) of ESEA (20 USC 6316(b)(10)(A))). Of this amount, the LEA must spend a minimum of an amount equal to 5 percent on choice-related transportation (Title I, Section 1116(b)(10)(A)(i) of ESEA (20 USC 6316(b)(10)(A)(i))), and a minimum of an amount equal to 5 percent for supplemental educational services (Title I, Section 1116(b)(10)(A)(ii)

of ESEA (20 USC 6316(b)(10)(A)(ii)). The LEA may spend the remaining 10 percent for either or both of these activities (Title I, Section 1116(b)(10)(A)(iii) of ESEA (20 USC 6316(b)(10)(A)(iii))). The LEA may count its costs for outreach and assistance to parents concerning their choice to transfer their child to another public school served by the LEA or to request supplemental educational services, up to an amount equal to 0.2 percent of its subpart 2 allocation, toward its obligation to spend an amount equal to at least 20 percent of its subpart 2 of Part A allocation to provide such transportation and supplemental educational services (34 CFR section 200.48(a)(2)(iii)(C)). The LEA may not include other costs for administration or costs for transportation related to supplemental educational services, if any, toward meeting these percentage requirements. In applying this provision, an LEA may not reduce by more than 15 percent the total amount it makes available under Part A to a school it has identified for corrective action or restructuring (Title I, Section 1116(b)(1)(D) of ESEA (20 USC 6316(b)(1)(D))).

Unless it meets the criteria listed below, if an LEA does not meet its 20 percent obligation in a given school year, the LEA must spend the unexpended amount in the subsequent school year on choice-related transportation costs, supplemental educational services, or parent outreach and assistance. To spend less than the amount needed to meet its 20 percent obligation, at a minimum, an LEA must meet the following criteria: (1) partner, to the extent practicable, with outside groups to help inform eligible students and their families of the opportunities to transfer or to receive supplemental educational services; (2) ensure that eligible students and their parents have a genuine opportunity to sign up to transfer or obtain supplemental educational services, including by providing timely, accurate notice; ensuring that sign-up forms for supplemental educational services are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means; and providing a minimum of two enrollment “windows,” at separate points in the school year, that are of sufficient length to enable parents of eligible students to make informed decisions about requesting supplemental educational services and selecting a provider; and (3) ensure that eligible supplemental educational services providers are given access to school facilities, using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities.

An LEA that does not meet its 20 percent obligation in a given school year must notify the SEA that it has met the criteria listed above and intends to spend the remainder of its 20 percent obligation on other allowable activities, specifying the amount of that remainder. The LEA must maintain records that demonstrate it has met these criteria. If an SEA determines, through monitoring, that an LEA has failed to meet any of the criteria listed above, the LEA must spend an amount equal to the

remainder of its 20 percent obligation in the subsequent school year, in addition to its 20 percent obligation for that year, on choice-related transportation costs, supplemental educational services, or parent outreach and assistance, or meet the criteria listed above and obtain permission from the SEA before spending less in the subsequent school year (34 CFR section 200.48(d)).

For each student receiving supplemental educational services, the LEA must make available the lesser of (1) the amount of its allocation under subpart 2 of Part A divided by the number of students in the LEA from families below the poverty level as determined by the U.S. Bureau of the Census; or (2) the actual cost of the services received by the student (Title I, Sections 1116(b)(10) and (e)(6) of ESEA (20 USC 6316(b)(10), (e)(6)); 34 CFR section 200.48(c)).

*LEAs in a State that has received ESEA flexibility.* In a State that has received ESEA flexibility, an LEA has a waiver of the requirement to identify Title I, Part A schools for improvement, corrective action, or restructuring, and identified schools do not need to take improvement actions required under Section 1116(b) of the ESEA, including the requirements to provide public school choice and supplemental educational services to eligible students. (See III.N.5, “Special Tests and Provisions - Identifying Schools and LEAs Needing Improvement.”) Accordingly, in a State that has received ESEA flexibility, beginning with the 2012–2013 school year, an LEA is not required by Federal law to use an amount equal to 20 percent of its allocation under subpart 2 of Part A to provide choice-related transportation or supplemental educational services. Some SEAs receiving ESEA flexibility may continue to require their LEAs to provide one or both of these services; other LEAs may do so voluntarily. Moreover, some SEAs receiving ESEA flexibility require their LEAs to set aside a specific amount of funds to provide these services or to provide interventions in priority or focus schools (See page 1, paragraph 2, and pages 5 and 22 of *ESEA Flexibility* (June 7, 2012)).

## H. Period of Availability of Federal Funds

See ED Cross-Cutting Section and the following.

**Title I, Part A ARRA funds were available for obligation beginning with the date of enactment of ARRA, February 17, 2009. Title I, Part A ARRA funds remained available for obligation by SEAs and LEAs until September 30, 2011, which included the one-year carryover period authorized under Section 421(b) of the General Education Provisions Act, unless an SEA received a waiver from ED to extend the period of availability to obligate funds through September 30, 2012 (ED invited SEAs to apply for this waiver in September 2011). An LEA was permitted to carry over to the next fiscal year no more than 15 percent of its FY 2009 Title I, Part A allocation unless it received a waiver from the SEA. Ordinarily, an SEA may**

**provide this waiver no more than once every 3 years. However, this 3-year limitation may have been waived by ED due to the availability of ARRA funds (20 USC 1225(b); Section 1603 of ARRA; Section 1127 of ESEA (20 USC 6339)).**

## **L. Reporting**

### **1. Financial Reporting**

See ED Cross-Cutting Section.

### **2. Performance Reporting**

#### **Annual Report Card, High School Graduation Rate - (OMB No. 1810-0581) (SEAs/LEAs)**

Key Line Item – Beginning with annual report cards providing assessment results for the 2010–2011 school year, an SEA and its LEAs must report graduation rate data for all public high schools at the school, LEA, and State levels using the 4-year adjusted cohort rate under 34 CFR section 200.19(b)(1)(i)-(iv)). Additionally, SEAs and LEAs must include the 4-year adjusted cohort graduation rate (which may be combined with an extended-year adjusted cohort graduation rate or rates) in adequate yearly progress determinations beginning with determinations based on assessments administered in the 2011–2012 school year. Graduation rate data must be reported both in the aggregate and disaggregated by each subgroup described in 34 CFR section 200.13(b)(7)(ii) using a 4-year adjusted cohort graduation rate. To remove a student from the cohort, a school or LEA must confirm in writing that the student transferred out, emigrated to another country, or is deceased. To confirm that a student transferred out, the school or LEA must have official written documentation that the student enrolled in another school or in an educational program that culminates in the award of a regular high school diploma. A student who is retained in grade, enrolls in a General Educational Development (GED) program, or leaves school for any other reason may not be counted as having transferred out for the purpose of calculating graduation rate and must remain in the adjusted cohort (Title I, Sections 1111(b)(2) and (h) of ESEA (20 USC 6311(b)(2) and (h)); 34 CFR section 200.19(b)).

Note: Some States may have received an extension of the deadlines for using the 4-year adjusted cohort graduation rate in AYP determinations by 2011–2012 and for reporting graduation rates by 2010–2011 as provided for in 34 CFR section 200.19(b)(7). Additionally, in a State that has received ESEA flexibility that includes a waiver from making AYP determinations, the SEA and its LEAs must continue to calculate and report on the 4-year adjusted cohort graduation rate.

### **3. Special Reporting**

See ED Cross-Cutting Section.

4. **Section 1512 ARRA Reporting** – Applicable
5. **Subaward Reporting under the Transparency Act** – Applicable

## **N. Special Tests and Provisions**

### **1. Participation of Private School Children**

See ED Cross-Cutting Section.

### **2. Schoolwide Programs (LEAs)**

See ED Cross-Cutting Section.

### **3. Comparability**

See ED Cross-Cutting Section.

### **4. Access to Federal Funds for New or Significantly Expanded Charter Schools**

See ED Cross-Cutting Section.

### **5. Identifying Schools and LEAs Needing Improvement**

## **Compliance Requirements**

### *SEAs*

*States that have not received ESEA flexibility.* An SEA must annually review the progress of each LEA that receives funds under subpart 2 of Part A of Title I to determine whether the LEA made adequate yearly progress as defined by the State. The SEA must identify for improvement any LEA that fails to make adequate yearly progress, as defined by the State, for 2 consecutive years. In identifying an LEA for improvement, an SEA may base identification on whether the LEA did not make adequate yearly progress because it did not meet (a) the State's annual measurable objectives for the same subject or (b) the same other academic indicator for 2 consecutive years. But the SEA may not limit identification to an LEA that did not make adequate yearly progress only because it did not meet (a) the State's annual measurable objectives for the same subject or (b) the same other academic indicator for the same subgroup for 2 consecutive years. The SEA must identify the LEA for corrective action if it continues to fail to make adequate yearly progress at the end of its second full year in improvement (subject to the delay provision discussed in the next paragraph) (Title I, Sections 1116(c)(1), (3), and (10) of ESEA (20 USC 6316(c)(1), (3), and (10)); 34 CFR sections 200.32 and 200.50 through 200.53).

The SEA may delay implementation of corrective action for a period not to exceed one year if the LEA makes adequate yearly progress for one year or its failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA (Title I, Section 1116(c)(10)(F) of ESEA (20 USC 6316(c)(10)(F)); 34 CFR section 200.50(f)).

Each SEA must report annually to the Secretary (*OMB No. 1810-0581*), and make certain information available within the State, including the number and names of each school and LEA identified for improvement, corrective action, or restructuring, as applicable, under Section 1116, the reason why each school and LEA was so identified, and the measures taken to address the achievement problems in general of such schools and LEAs. In addition, the SEA must prepare and disseminate an annual State report card that contains, among other things, information on the performance of each LEA regarding adequate yearly progress, including the number and names of each school and LEA identified for improvement, corrective action, or restructuring, as applicable, under Section 1116. Moreover, the SEA must ensure that each LEA collects the data necessary to prepare its annual report card (Title I, Sections 1111(h)(1) and (4) of ESEA (20 USC 6311(h)(1) and (4))).

*States that have received ESEA flexibility.* An SEA that received ESEA flexibility for the 2012–2013 school year does not need to identify an LEA as in need of improvement or corrective action and neither the LEA nor the SEA need to take the required steps that accompany such identification. Moreover, an SEA is not required to report an LEA’s improvement status on its State report card, nor is an LEA required to report improvement status on its district report card (See B-12, ESEA Flexibility FAQs (August 3, 2012)).

The SEA must identify and report on at least three categories of schools: (1) reward schools; (2) priority schools; and (3) focus schools (See pages 1 and 2 of *ESEA Flexibility* (June 7, 2012), and C-20, ESEA Flexibility FAQs (August 3, 2012)).

#### *LEAs*

*LEAs in a State that has not received ESEA flexibility.* An LEA must annually review the progress of each school served under Title I, Part A to determine whether the school has made adequate yearly progress. The LEA must identify for school improvement any school that fails to make adequate yearly progress, as defined by the SEA, for 2 consecutive school years. In identifying a school for improvement, an LEA may base identification on whether the school did not make adequate yearly progress because it did not meet (a) the State’s annual measurable objectives for the same subject or (2) the same other academic indicator for 2 consecutive years. But the LEA may not limit identification to a school that did not make adequate yearly progress only because it did not meet (a) the State’s annual measurable objectives for the same subject or (b) the same other academic indicator for the same subgroup for 2 consecutive years. After a school has been identified for improvement for 2 school years (subject to the delay provision discussed in the next paragraph), the LEA must identify that school for corrective action

if it continues to fail to make adequate yearly progress. After a school has been in corrective action for a full school year (subject to the delay provision discussed in the next paragraph), the LEA must identify it for restructuring if it continues to fail to make adequate yearly progress (Title I, Sections 1116(a) and (b)(1), (7), and (8) of ESEA (20 USC 6316(a) and (b)(1), (7), and (8)); 34 CFR sections 200.30 through 200.34).

The LEA may delay, for a period not to exceed one year, implementation of requirements under the second year of school improvement, corrective action, or restructuring if the school makes adequate yearly progress for one year or the failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the school or LEA (Title I, Section 1116(b)(7)(D) of ESEA (20 USC 6316(b)(7)(D)); 34 CFR section 200.35).

Each LEA that receives Title I, Part A funds must prepare and disseminate to all schools in the LEA—and to all parents of students attending those schools—an annual LEA report card that, among other things, includes the number, names, and percentage of schools identified for school improvement and how long the schools have been so identified. The LEA must also publicize and disseminate the results of its annual progress review to parents, teachers, principals, schools, and the community. The LEA should use broad means of communication, such as the Internet and publicly available media, to disseminate and publicize this information (Title I, Sections 1111(h)(2) and 1116(a)(1)(C) of ESEA (20 USC 6311(h)(2) and 6316(a)(1)(C)); 34 CFR sections 200.36 through 200.38).

Note: In many states, the SEA conducts the review of progress of schools within LEAs and sends the results of that review to the LEAs.

*LEAs in a State that has received ESEA flexibility.* An LEA in a State that has received ESEA flexibility does not need to identify a Title I, Part A school as in need of improvement, corrective action, or restructuring. Accordingly, neither the LEA nor the school need to take the required steps that accompany such identification, including developing and implementing a school improvement plan, reserving funds for professional development, or providing public school choice and supplemental educational services, nor are they required to spend the requisite amount of funds on these activities. Moreover, an SEA and its LEAs are not required to report the improvement status of schools on State and local report cards; the SEA and LEAs, however, are required to report schools the SEA has identified as reward, priority, and focus schools (See B-9 of ESEA Flexibility FAQs (August 3, 2012)).

**Audit Objective** – Determine whether, in collecting, compiling, and reporting progress of LEAs and schools that receive funds under subpart 2 of Part A of Title I, the SEA and LEA complied with the above requirements.

## **Suggested Audit Procedures**

### *SEAs*

- a. Review how the SEA collects, compiles, and determines the accuracy of information obtained about the number and names of schools and LEAs in need of improvement or identified as priority or focus schools and reports these data to ED and the public.
- b. Review data received about schools and LEAs to ascertain that those data were included and correctly reflected in the SEA's submission to ED and the information disseminated to the public.

### *LEAs*

- a. Review how the LEA determines the schools in need of improvement if the LEA is in a State that has not received ESEA flexibility.
- b. Trace the data about the LEA to source records to determine its accuracy, reliability, and completeness.
- c. Determine whether the LEA disseminated information to all schools in the LEA and to all parents of students attending those schools and made the information widely available through public means, such as the Internet and the media.

## **6. Highly Qualified Teachers and Paraprofessionals**

### **Compliance Requirements**

#### *Highly qualified teachers.*

Beginning after the first day of the 2002–2003 school year, an LEA had to ensure that any teacher whom it hired to teach a core academic subject and who worked in a program supported with Title I, Part A funds was highly qualified as defined in 34 CFR section 200.56. This requirement applied to teachers in Title I, Part A targeted assistance programs who taught a core academic subject and were paid with Title I, Part A funds and to all teachers who taught a core academic subject in a Title I, Part A schoolwide program school. By the end of the 2005–2006 school year, the LEA had to ensure that all teachers of core academic subjects, whether or not they work in a program supported with Title I, Part A funds, are highly qualified. “Core academic subjects” means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. A special education teacher is a “highly qualified teacher” under the ESEA if the teacher meets the requirements for a “highly qualified special education teacher” in 34 CFR section 300.18 (Title I, Section 1119(a) of ESEA (20 USC 6319(a)); 34 CFR sections 200.55 and 200.56 (34 CFR section 200.56(d)).

Note: As provided in letters from the Secretary or the Assistant Secretary for Elementary and Secondary Education, dated October 21, 2005, March 21, 2006, and July 23, 2007 (see below), States that did not reach the goal of having all teachers of core academic subjects be highly qualified by the end of the 2005–2006 school year will not lose Federal funds if they are implementing the law and making a good-faith effort to reach that goal as quickly as possible. All States have negotiated a plan to come into compliance with the highly qualified teacher requirements. In accordance with the July 23, 2007 policy letter, schools should hire the most qualified teachers available; States must annually report to the Federal Government information on the quality of teachers and the percentage of classes being taught by highly qualified teachers in the State, LEA, and school (Section 1111(h)(4)(G) of ESEA (20 USC 6311(h)(4)(G))); and LEAs must annually inform parents that they may request, and that the LEA will provide on request, information regarding the professional qualifications of classroom teachers (Section 1111(h)(6) of ESEA (20 USC 6311(h)(6))).

*Qualifications of paraprofessionals.*

- a. An LEA must ensure that each paraprofessional who is hired by the LEA after January 8, 2002 and who works in a program supported with Title I, Part A funds meets specific qualification requirements. Paraprofessionals who work in a program supported with Title I, Part A funds and who were hired by an LEA prior to January 8, 2002, had to meet these requirements by the end of the 2005–2006 school year. The term “paraprofessional” means an individual who provides instructional support; it does not include individuals who have only non-instructional duties (such as providing technical support for computers, providing personal care services, or performing clerical duties). A paraprofessional works in a program supported with Title I, Part A funds if the paraprofessional is paid with Title I, Part A funds in a Title I, Part A targeted assistance school or works as a paraprofessional in a schoolwide program school.
- b. A paraprofessional must hold a high-school diploma or its recognized equivalent and meet one of the following requirements:
  - (1) Have completed at least 2 years of study at an institution of higher education.
  - (2) Have obtained an associate’s or higher degree.
  - (3) Have met a rigorous standard of quality, and can demonstrate through a formal State or local academic assessment knowledge of, and the ability to assist in instructing, reading/language arts, writing, and mathematics, or reading readiness, writing readiness, and mathematics readiness.

- c. A paraprofessional who is proficient in English and a language other than English and acts as a translator or who has duties that consist solely of conducting parental involvement activities need only have a high-school diploma or its recognized equivalent.

(Title I, Section 1119(c)-(f) of ESEA (20 USC 6319(c)-(f)); 34 CFR section 200.58)

A number of documents posted on ED's website contain information pertinent to the Title I, Part A requirements regarding highly qualified teachers and paraprofessionals. They are:

- Key Policy Letters Signed by the Education Secretary or Deputy Secretary (March 31, 2004) (<http://www.ed.gov/policy/elsec/guid/secletter/040331.html>)
- Key Policy Letters Signed by the Education Secretary or Deputy Secretary (October 21, 2005) (<http://www.ed.gov/policy/elsec/guid/secletter/051021.html>)
- Statement Regarding No Child Left Behind Requirements for Paraprofessionals (June 17, 2005) (<http://www.ed.gov/news/pressreleases/2005/06/06172005a.html>)
- Key Policy Letter Signed by the Assistant Secretary for Elementary and Secondary Education (March 21, 2006) (<http://www.ed.gov/programs/teacherqual/cssoltr.doc>)
- Key Policy Letters Signed by the Education Secretary or Deputy Secretary (September 5, 2006) (<http://www.ed.gov/policy/elsec/guid/secletter/060905.html>)
- Key Policy Letters Signed by the Education Secretary or Deputy Secretary (July 23, 2007) (<http://www.ed.gov/policy/elsec/guid/secletter/070723.html>)
- Approved State plans for coming into compliance with highly qualified teacher requirements, and related materials (<http://www.ed.gov/programs/teacherqual/hqtplans/index.html>).

**Audit Objectives** – Determine whether the LEA is hiring only highly qualified teachers to teach core academic subjects in general and is hiring only qualified paraprofessionals in programs supported with Title I, Part A funds. If the LEA is not hiring only highly qualified teachers, determine whether the LEA's hiring of teachers of core academic subjects who are not highly qualified is consistent with the approved State plan.

### **Suggested Audit Procedures**

- a. Review LEA procedures for hiring highly qualified teachers of core academic subjects in general and for hiring qualified paraprofessionals in programs supported with Title I, Part A funds.

- b. Trace the data to source records to determine if teachers of core academic subjects in general and paraprofessionals working in programs supported with Title I, Part A funds who were hired during the year covered by the audit met the criteria in 34 CFR sections 200.55, 200.56, and 200.58.
- c. Ascertain that, during the year covered by the audit, the hiring of teachers of core academic subjects who are not highly qualified was consistent with the approved State plan.

## DEPARTMENT OF EDUCATION

### CFDA 84.011 MIGRANT EDUCATION - STATE GRANT PROGRAM (Title I, Part C of ESEA)

#### I. PROGRAM OBJECTIVES

The objectives of the Migrant Education - State Grant Program (Migrant Education Program or MEP) are to (1) support high-quality and comprehensive educational programs for migratory children to help reduce the educational disruptions and other problems that result from repeated moves; (2) ensure that migratory children who move among the States are not penalized in any manner by disparities among the States in curriculum, graduation requirements, and State academic content and student academic achievement standards; (3) ensure that migratory children are provided with appropriate educational services (including support services) that address their special needs in a coordinated and efficient manner; (4) ensure that migratory children receive full and appropriate opportunities to meet the same challenging State student academic content standards and student academic achievement standards that all children are expected to meet; (5) design programs to help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors which inhibit the ability of migrant children to do well in school, and to prepare such children to make a successful transition to postsecondary education or employment; and (6) ensure that migratory children benefit from State and local systemic reforms.

#### II. PROGRAM PROCEDURES

MEP funds are allocated to a State educational agency (SEA), under either an approved consolidated application or an approved individual program application, in order for the SEA to provide MEP services and activities either directly, or through subgrants to local operating agencies. The amount of funding an SEA receives annually depends, in part, on the number of eligible migrant children that the SEA determined reside within the State. Local operating agencies can be either local educational agencies (LEAs) or other public or non-profit private agencies. Because an SEA may choose to provide MEP services directly or through a local operating agency, some of the suggested audit procedures will apply for an SEA or local operating agency, depending on which agency provides the services and where the records are maintained.

#### Source of Governing Requirements

This program is authorized by Title I, Part C of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 USC 6391 through 6399). The Education Department (ED) General Administrative Regulations at 34 CFR parts 76, 77, 80, and 82 apply to this program. Other requirements in 34 CFR part 200, subparts C (34 CFR sections 200.81 through 200.89) and E (34 CFR sections 200.100 through 200.103), and 34 CFR part 299 also apply.

### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references to the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

#### A. Activities Allowed or Unallowed

See also ED Cross-Cutting Section.

1. *SEAs* – SEAs may use funds to operate the program (directly or through contracts), make subgrants to LEAs or other local operating agencies, and pay for State administration. In general, funds available under the MEP may be used only to (a) identify eligible migratory children and their needs; and (b) provide educational and support services (including, but not limited to, preschool services, professional development, advocacy and outreach, parental involvement activities and the acquisition of equipment) that address the identified needs of the eligible children.

An SEA may also use MEP funds to carry out administrative activities that are unique to the program. These activities include, but are not limited to, Statewide identification and recruitment of migratory children, interstate and intrastate program coordination, transfer of student records, collecting and using information to make subgrants, and direct supervision of instructional or support staff (Title I, Part C, Sections 1301, 1304(c) and 1306(b) of ESEA (20 USC 6392, 6394(c), and 6396(b)); 34 CFR section 200.82).

2. *LEAs or Other Local Operating Agencies* – LEAs or other local operating agencies use funds in accordance with the agreement with the SEA to (a) identify eligible migratory children and their needs; and (b) provide educational and support services that address the identified needs of the eligible children.

#### B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

#### C. Cash Management

See ED Cross-Cutting Section.

## **E. Eligibility**

### **1. Eligibility for Individuals**

Only eligible migratory children may receive MEP services. A “migratory child” means a child who is, or the child’s parent or child’s spouse is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany a parent or spouse, in order to obtain, temporary or seasonal employment in agriculture or fishing work (a) has moved from one school district to another, (b) in a State that is comprised of a single school district, has moved from one administrative area to another within such district, or (c) resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity. (Title I, Part C, Section 1309(2)(20 USC 6399(2)). On July 29, 2008, ED issued revised implementing regulations (effective August 28, 2008) in 34 CFR section 200.81 that further define a “migratory child” as well as the following key terms: “migratory agricultural worker,” “migratory fisher,” “agricultural work,” “fishing work,” “move” or “moved,” “in order to obtain,” “temporary employment,” “seasonal employment,” “personal subsistence,” and “qualifying work.” An SEA and its local operating agencies are required to use the National Certificate of Eligibility (COE) form (*OMB No. 1810-0662*) to document the SEA’s determination of a child’s eligibility for the program. ED has identified Required Data Elements and Required Data Sections and provided Instructions and Questions & Answers for the National COE at <http://www2.ed.gov/programs/mep/coe-instructions-template.doc> (Title I, Part C, Sections 1302 and 1304(b)(1) of ESEA (20 USC 6392 and 6394(b)(1)); 34 CFR section 200.81 and 200.89(c)).

See IV.L.6. **Child Counts – Quality Control Process**, for testing controls related to compliance with eligibility requirements.

**2. Eligibility of Group of Individuals or Area of Service Delivery – Not Applicable**

**3. Eligibility for Subrecipients – Not Applicable**

## **G. Matching, Level of Effort, Earmarking**

**1. Matching – Not Applicable**

**2.1 Level of Effort – *Maintenance of Effort* – Not Applicable**

**2.2 Level of Effort – *Supplement Not Supplant***

See ED Cross-Cutting Section.

**3. Earmarking (SEAs)**

See ED Cross-Cutting Section.

**H. Period of Availability of Federal Funds**

See ED Cross-Cutting Section.

**L. Reporting****1. Financial Reporting**

See ED Cross-Cutting Section.

**2. Performance Reporting – Not Applicable****3. Special Reporting**

- a. *State Per Pupil Expenditure (SPPE) Data (OMB No 1850-0067)*  
(SEAs/LEAs)

See ED Cross-Cutting Section.

- b. *Consolidated State Performance Report, Part I, Migrant Child Counts*  
(OMB No. 1810-0614)

(1) **Counts of Migrant Children Eligible for Funding Purposes (SEAs)**

The SEA is required—for allocation purposes—to assist ED in determining the number of eligible migratory children who reside in the State, using such procedures as ED requires. Each SEA annually provides unduplicated Statewide counts (and the procedures used to develop these counts) of eligible migratory children in each of two categories: (a) children ages 3 through 21 who resided in the State for one or more days during the preceding September 1-August 31; and (b) such children who were served one or more days in a migrant-funded project conducted either during the summer term or an intersession period (i.e., when a year-round school is not in session). The SEA's report of State child counts is based on data submitted to it by the LEAs or other local operating agencies in the State, and is prepared based on data for the school year prior to the year that is subject to audit. For example, for the audit covering school year 2009-2010, the migrant child count data to be audited is in section 1.10 of the Consolidated State Performance Report, Part I on school year 2008-2009 submitted to ED in December 2009.

SEAs provide an assurance that they will assist ED in determining the number of migratory children in the State so that ED may determine the correct size of the State's annual MEP allocation. The statute and MEP regulations define who is a migrant (or migratory) child (Title I, Part C, Section 1309(2) (20 USC 6399(2)); 34 CFR section 200.81). ED's regulations also specify minimum requirements for quality control systems relative to the determination of a child's program eligibility (see also III.N.6, "Special Tests and Provisions – Child Counts – Quality Control Process") (34 CFR section 200.89(d)).

- (2) Reporting the number of eligible migrant children to the SEA (LEAs or other local operating agencies, and SEAs providing direct services)

LEAs or other local operating agencies, and SEAs providing direct services, must implement procedures, based on the eligibility documentation they are required to collect and maintain under 34 CFR section 200.89(c), to count and report eligible children in the two categories specified in III.L.3.b(1) Reporting - Special Reporting (Title I, Part C, Section 1304(c)(7) of ESEA (20 USC 6394(c)(7)); 34 CFR sections 76.730 and 76.731).

- c. *Consolidated State Performance Report, Part II, Education of Migrant Children (Title I, Part C) (OMB No. 1810-0614) (SEAs)*

An SEA must annually report population and program performance data that includes the unduplicated number of migrant children who were identified within the State as eligible to be served by the MEP, and who were identified within the State as having priority for services as defined in Title I, Part C, Section 1304(d) of ESEA (20 USC 6394(d)). ED offers further explanations of priority for services in non-binding guidance; i.e., guidance that represents an acceptable, but not necessarily the only, way to meet the legal requirements (Chapter V of *Title I, Part C, Education of Migratory Children: Draft Non-Regulatory Guidance*, available at <http://www2.ed.gov/programs/mep/mepguidance2010.doc>.) The reported data are for the school year prior to the year that is subject to audit. For example, for the audit covering school year 2009-2010, the Consolidated State Performance Report, Part II to be audited would be in section 2.3 of the report on school year 2008-2009 submitted to ED in February 2009.

*Key Line Items* – The follow line item contains critical information:

Part II, Section 2.3 , Education of Migratory Children (Title I, Part C), Table 2.3.1.1, Eligible Migrant Children, the line titled “Total,” and Table 2.3.1.2, Priority for Service, the line titled “Total.” (Information by age/grade level does not need to be tested.)

4. **Section 1512 ARRA Reporting** – Not Applicable
5. **Subaward Reporting under the Transparency Act** –Applicable

**N. Special Tests and Provisions**

**1. Participation of Private School Children (SEAs/LEAs)**

See ED Cross-Cutting Section.

**2. Schoolwide Programs (LEAs)**

See ED Cross-Cutting Section.

**3. Comparability (SEAs/LEAs)**

See ED Cross-Cutting Section.

**4. Priority for Services**

**Compliance Requirement** – SEAs and LEAs or other local operating agencies must give priority for MEP services to migratory children who are failing, or most at risk of failing, to meet the State’s challenging content and performance standards, and whose education has been interrupted in the regular school year (Title I, Part C, Section 1304(d) of ESEA (20 USC 6394(d)).

**Audit Objective** – (*SEAs providing services directly and LEAs or other local operating agencies*) – Determine whether the SEA or LEA or other local operating agency is defining, and properly identifying and counting, “priority-for-services” migratory children so that priority in the provision of MEP services is given to those migratory children identified as failing, or most at risk of failing, to meet the State’s challenging content and performance standards, and whose education has been interrupted in the regular school year (priority children).

**Suggested Audit Procedures** – (*SEAs providing services directly and LEAs or other local operating agencies*)

- a. Review the SEA’s or LEA’s or other local operating agency’s definition of what constitutes failing, or most at risk of failing, to meet the State’s challenging content and performance standards, and whose education has been interrupted in the regular school year.

- b. Review the SEA's or LEA's or other local operating agency's procedures to identify those individual migrant children who meet the applicable definition of failing, or most at risk of failing, to meet the State's challenging content and performance standards, and whose education has been interrupted in the regular school year (i.e., migrant children who meet the "priority-for-services" criteria).
- c. Review the SEA's or LEA's or other local operating agency's procedures to accurately count and report the unduplicated number of migrant children with "priority-for-services" who were identified and served. See the *Consolidated State Performance Report: Part II, Section 2.3, Education of Migratory Children (Title I, Part C), Table 2.3.1.2.*
- d. Review the SEA or LEA's or other local operating agency's process for selecting children to receive MEP services.
- e. Select a sample of migratory children who were identified as priority children. Review program records to determine if these children were provided MEP services. (In rare instances, a local project may not have any "priority-for-services" children in its service area, in which case the suggested audit procedures would not apply.)

## 5. Subgrant Process (SEAs)

**Compliance Requirement** – SEAs may provide MEP services either directly, or through subgrants to LEAs or other local operating agencies. Where the SEA awards subgrants, in order to target program funds appropriately, the SEA is required determine the amount of the subgrants by taking into account (a) the numbers of migratory children, (b) the needs of migratory children, (c) the "priority-for services" requirement in section 1304 (d) of ESEA (20 USC 6394(d)), and (4) the availability of funds from other Federal, State, and local programs. How the SEA takes into consideration the availability of funds is left to SEA discretion (Title I, Part C, Sections 1301 and 1304(b)(5) of the ESEA (20 USC 6391 and 6394(b)(5))).

**Audit Objective** – Determine whether the SEA's process to determine the amount of MEP subgrants takes into account current information on numbers of migratory children, needs of migratory children, need to serve priority children, and the availability of funds from other Federal, State, and local programs.

### Suggested Audit Procedures

Review the SEA's process for awarding MEP funds to subgrantees to ascertain if the process:

- a. Uses current information.
- b. Takes into account the (1) the numbers of migratory children, (2) the needs of migratory children, (3) the "priority-for services" requirement in Section 1304(d)

of ESEA, and (4) the availability of funds from other Federal, State, and local programs.

## 6. Child Counts – Quality Control Process

**Compliance Requirement** – In section 1.10.3 of the Consolidated State Performance Report, Part I (See III.L.3.b., “Reporting – Special Reporting - Consolidated State Performance Report, Part I, Migrant Child Counts”), SEAs are required to describe their quality control process for ensuring that the SEA properly determines and documents the eligibility of each child in the reported count of eligible children. In preparing section 1.10, SEAs may require LEAs and other local operating agencies to submit information to the SEA and comply with specified procedures concerning the child count. The quality control process is described in section 1.10.3.4 of the Consolidated State Performance Report, Part I. This process includes requirements for prospective re-interviewing to validate current-year child eligibility determinations through the re-interview of a randomly selected sample of children previously identified as migratory (34 CFR section 200.89(b)(2)) and other required components, including training recruiters on eligibility requirements; supervision and annual review and evaluation of identification and recruitment practices; resolving eligibility questions raised by recruiters and communicating this information to all local operating agencies; examining each COE by qualified personnel to verify eligibility; validating that eligibility determinations were made properly; and implementing corrective action if the SEA, internal auditors, or other auditors for the Secretary identify COEs that do not sufficiently document a child’s eligibility. (20 USC 6394(c)(7); 34 CFR sections 200.89(c) and (d); ED has identified Required Data Elements and Required Data Sections and provided Instructions and Questions & Answers for the National COE at <http://www2.ed.gov/programs/mep/coe-instructions-template.doc>).

**Audit Objectives** – Determine whether the SEA and LEAs and other local operating agencies (1) established, (2) implemented, and (3) accurately reported in the Consolidated State Performance Report, Part I a quality control process that ensures an accurate eligible-child count and meets the requirements of ED regulations.

### Suggested Audit Procedures

#### *SEAs*

- a. Verify that the SEA established a quality control process that ensures an accurate count of eligible children.
- b. Verify that the SEA’s quality control process meets the requirements of ED regulations, including processes for prospective re-interviewing of a sample of children.
- c. Ascertain whether the quality control process was actually conducted in the manner described.

- d. Verify that the SEA accurately reported the quality control process over the count of eligible children in section 1.10.3.4 of the Consolidated State Performance Report, Part I.

*LEAs and Other Local Operating Agencies*

- a. Determine if the LEAs and other local operating agencies were required to submit information to the SEA relating to section 1.10 of the Consolidated State Performance Report, Part I, and if so, what information was required, the processes for obtaining it, and how quality was ensured.
- b. Ascertain whether the LEAs and other local operating agencies complied with the SEA's requirements relating to obtaining, processing, and submitting accurate data required for section 1.10 of the Consolidated State Performance Report, Part I.

## DEPARTMENT OF EDUCATION

**CFDA 84.027 SPECIAL EDUCATION—GRANTS TO STATES (IDEA, Part B)**  
**CFDA 84.173 SPECIAL EDUCATION—PRESCHOOL GRANTS (IDEA Preschool)**

### I. PROGRAM OBJECTIVES

The purposes of the Individuals with Disabilities Education Act (IDEA) are to (1) ensure that all children with disabilities have available to them a free appropriate public education (FAPE) which emphasizes special education and related services designed to meet their unique needs; (2) ensure that the rights of children with disabilities and their parents or guardians are protected; (3) assist States, localities, educational service agencies and Federal agencies to provide for the education of all children with disabilities; and (4) assess and ensure the effectiveness of efforts to educate children with disabilities. The Assistance for Education of All Children with Disabilities Program (IDEA, Part B) provides grants to States to assist them in meeting these purposes (20 USC 1400 *et seq.*).

IDEA's Special Education—Preschool Grants Program, (Preschool Grants for Children with Disabilities Program), also known as the "619 Program," provides grants to States, and through them to LEAs, to assist them in providing special education and related services to children with disabilities ages three through five and, at a State's discretion, to two-year-old children with disabilities who will turn three during the school year (20 USC 1419).

### II. PROGRAM PROCEDURES

A State applying through its State Education Agency (SEA) for assistance under IDEA, Part B must, among other things, submit a plan to the Department of Education (ED) that provides assurances that the SEA has in effect policies and procedures that ensure that all children with disabilities have the right to a FAPE (20 USC 1412(a)).

States that receive assistance under IDEA, Part B, may receive additional assistance under the Preschool Grants Program. A State is eligible to receive a grant under the Preschool Grants Program if (1) the State is eligible under 20 USC 1412 and (2) the State demonstrates to the Secretary that it has in effect policies and procedures that ensure the provision of FAPE to all children with disabilities aged 3 through 5 years residing in the State. However, a State that provides early intervention services in accordance with Part C of the IDEA to a child who is eligible for services under Section 1419 is not required to provide that child with FAPE (20 USC 1412(a)(1)(C) and 20 USC 1419(b) and (c)).

#### Source of Governing Requirements

These programs are authorized under the Individuals with Disabilities Education Act, Part B (IDEA-B) as amended on December 3, 2004 (Pub. L. No. 108-446; 20 USC 1400 *et seq.*). Implementing regulations for these programs are 34 CFR part 300.

### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements that apply to multiple ED programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements.

#### A. Activities Allowed or Unallowed

See also ED Cross-Cutting Section.

1. *SEAs* – Allowable activities for SEAs are subgranting funds to LEAs and State administration, and other State-level activities (See “III.G.3, Earmarking,” for a further description of these activities).
2. *LEAs*
  - a. *IDEA, Part B* – An LEA may only use Federal funds under IDEA, Part B for the excess costs of providing special education and related services to children with disabilities. Special education includes specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings, and instruction in physical education. Related services include transportation and such developmental, corrective and other supportive services as may be required to assist a child with a disability to benefit from special education. Related services do not include a medical device that is surgically implanted or the replacement of such device. A portion of these funds, under conditions specified in the law, may also be used by the LEA (1) for services and aids that also benefit non-disabled children; (2) for early intervening services; (3) to establish and implement high-cost or risk-sharing funds; and (4) for administrative case management. Excess costs are those costs for the education of an elementary school or secondary school student with a disability that are in excess of the average annual per student expenditure in an LEA during the preceding school-year. LEAs are required to compute the minimum average amount of per pupil expenditure separately for children with disabilities in its elementary schools and for children with disabilities in its secondary schools, and not on a combination of the enrollments in both. Appendix A to 34 CFR part 300 provides detailed guidance and an example for calculating the average per pupil expenditures and the minimum average amounts that the LEA must spend before using IDEA funds (20 USC 1401(8), (26) and (29));

20 USC 1413(a)(2) and (4); 34 CFR sections 300.16, 300.34, 300.39, 300.202, and 300.208).

- b. *IDEA Preschool* – A LEA may use Federal funds under the Preschool Grants Program only for the costs of providing special education and related services (as described above) to children with disabilities ages three through five and, at a State’s discretion, providing a free appropriate public education to two-year-old children with disabilities who will turn three during the school year (20 USC 1419(a); 34 CFR section 300.800).

## **B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section.

The use of IDEA funds by a State, for the acquisition of equipment, or the construction or alteration of facilities must be approved by ED based on a determination by ED that the program would be improved by allowing funds to be used for these purposes (20 USC 1404).

## **C. Cash Management**

See ED Cross-Cutting Section.

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching – Not Applicable**

- 2.1 **Level of Effort – *Maintenance of Effort* (SEAs/LEAs)** **The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) provides that, upon prior approval from the Secretary, a State or LEA may treat State Fiscal Stabilization Funds (CFDAs 84.394 and 84.397) that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any program that ED administers. See ED guidance for Funds for Part B of the Individuals with Disabilities Education Act Made Available under the American Recovery and Reinvestment Act of 2009 (April 2009, revised July 2009) for prior approval criteria. The Education Jobs Fund program (CFDA 84.410) provided funds to States to save or create education jobs. A State or LEA may use Ed Jobs funds to meet its IDEA, Part B MOE requirements under the circumstances described in the Part B IDEA MOE Guidance for States on the Education Jobs Fund Program (May 2011) which is available at <http://www2.ed.gov/policy/speced/guid/idea/idea-edjobs-guidance.pdf> (Section 14012(d) of ARRA).**

## a. SEAs

- (1) A State may not reduce the amount of State financial support for special education and related services for children with disabilities (or State financial support otherwise made available because of the excess costs of educating those children) below the amount of State financial support provided for the preceding fiscal year. The Secretary reduces the allocation of funds under 20 USC 1411 for any fiscal year following the fiscal year in which the State fails to comply with this requirement by the amount by which the State failed to meet the requirement.

If, for any fiscal year, a State fails to meet the State-level maintenance of effort requirement (or is granted a waiver from this requirement), the financial support required of the State in future years for maintenance of effort must be the amount that would have been required in the absence of that failure (or waiver) and not the reduced level of the State's support (20 USC 1412(a)(18); 34 CFR section 300.163).

- (2) For any fiscal year for which the Federal allocation received by a State exceeds the amount received for the previous fiscal year and if the State pays or reimburses all LEAs within the State from State revenue 100 percent of the non-federal share of the costs of special education and related services, the SEA may reduce its level of expenditure from State sources by not more than 50 percent of the amount of such excess (20 USC 1413(j)(1); 34 CFR section 300.230).

## b. LEAs

- (1) IDEA, Part B funds received by an LEA cannot be used, except under certain limited circumstances, to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds, or a combination of State and local funds, below the level of those expenditures for the preceding fiscal year. To meet this requirement, an LEA must expend, in any particular fiscal year, an amount of local funds, or a combination of State and local funds, for the education of children with disabilities that is at least equal, on either an aggregate or per capita basis, to the amount of local funds, or a combination of State and local funds, expended for this purpose by the LEA in the prior fiscal year. Allowances may be made for (a) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel; (b) a decrease in the enrollment of children with disabilities; (c) the termination of the obligation of the agency, consistent with this part, to provide a

program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child has left the jurisdiction of the agency, has reached the age at which the obligation of the agency to provide a FAPE has terminated or no longer needs such program of special education; (d) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment and the construction of school facilities; or (e) the assumption of costs by the high cost fund operated by the SEA under 34 CFR section 300.704 (20 USC 1413(a)(2); 34 CFR sections 300.203 and 300.204).

- (2) For any fiscal year for which the federal allocation received by a LEA exceeds the amount received for the previous fiscal year, the LEA may reduce the level of local or State and local expenditures by not more than 50 percent of the excess (20 USC 1413(a)(2)(C)(i)). If an LEA exercises this authority, it must use an amount of local funds equal to the reduction in expenditures under Section 1413(a)(2)(C)(i) to carry out activities authorized under the Elementary and Secondary Education Act (ESEA) of 1965. The amount of funds expended by the LEA for early intervening services counts toward the maximum amount of State and local expenditures that the LEA may reduce. However, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of Section 1413(a) or the SEA has taken action against the LEA under Section 1416, the SEA shall prohibit the LEA from reducing its local or State and local expenditures for that fiscal year. If, in making its annual determinations, an SEA determines that an LEA is not meeting the requirements of Part B of the IDEA, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing its maintenance of effort under 20 USC 1413(a)(2)(C) for any fiscal year (20 USC 1413(a)(2)(C) and 1416(f); 34 CFR sections 300.205 and 300.608(a)).

## **2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable**

## **3. Earmarking**

Individual State grant award documents identify the amount of funds a State must distribute to its LEAs on a formula basis and the amount it can set aside for administration and other State-level activities.

a. **IDEA, Part B (SEAs)**

- (1) *Administration:* Each State may reserve, for each fiscal year, not more than the maximum amount the State was eligible to reserve for State administration under 20 USC 1411 for FY 2004, or \$800,000 (adjusted for inflation in accordance with 20 USC 1411(e)(1)(B)), whichever is greater. Administration includes the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities. These funds may also be used for the administration of Part C of the IDEA if the SEA is the lead agency (20 USC 1411(e)(1)A; 34 CFR section 300.704(a)).
- (2) *State-level activities:* The maximum amount a State may reserve for State-level activities in fiscal year 2007 and subsequent fiscal years is as follows: States, for which the amount reserved for State administration is greater than \$850,000 and the State reserves funds for the LEA risk pool, may reserve an amount equal to 10 percent of the State's allocation for fiscal year 2006 under 20 USC 1411(d), adjusted cumulatively for inflation. States, for which the amount reserved for administration is greater than \$850,000 and the State does not reserve funds for the LEA risk pool, may reserve an amount equal to 9 percent of the State's allocation for fiscal year 2006 under 20 USC 1411(d), adjusted cumulatively for inflation. States for which the amount reserved for State administration is less than or equal to \$850,000 and the State reserves funds for the LEA risk pool may reserve an amount equal to 10.5 percent of the State's allocation for fiscal year 2006 under 20 USC 1411(d), adjusted cumulatively for inflation. States for which the amount reserved for administration is less than or equal to \$850,000 and the State does not reserve funds for the LEA risk pool may reserve an amount equal to 9.5 percent of the State's allocation for fiscal year 2006 under 20 USC 1411(d), adjusted cumulatively for inflation. (20 USC 1411(e)(2) and 34 CFR section 300.704(b)). SEAs must use some portion of State-level activity funds for monitoring, enforcement, and complaint investigation, and to establish and implement the mediation process, including providing for the costs of mediators and support personnel. (20 USC 1411(e)(2)(B); 34 CFR section 300.704(b)(3)).

These funds may also be used

- (a) for support and direct services, including technical assistance and personnel preparation and professional development and training;

- (b) to support paperwork reduction activities, including expanding the use of technology in the individualized education plan (IEP) process;
- (c) to assist LEAs in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities;
- (d) to improve the use of technology in the classroom to enhance learning by children with disabilities;
- (e) to support the use of technology, including technology with universal design principals and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;
- (f) for development and implementation of transition programs;
- (g) for assistance to LEAs in meeting personnel shortages;
- (h) to support capacity-building activities and improve the delivery of services by LEAs to improve results for children with disabilities;
- (i) for alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools;
- (j) to support the development of and provision of appropriate accommodations for children with disabilities, or the development and provision of alternative assessments that are valid and reliable for assessing the performance of children with disabilities; and
- (k) to provide technical assistance to schools and LEAs and direct services, including supplemental educational services as defined in section 1116(e)(12)(C) of the ESEA (20 USC 6316(e)(12)(C)), in schools or LEAs identified for improvement solely on the basis of the assessment results of the disaggregated group of children with disabilities (20 USC 1411(e)(2); 34 CFR section 300.704(b)).

- (3) *LEA Risk Pool:* Each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities: (a) to establish and make disbursements from the high-cost fund to LEAs; and (b) to support innovative and effective ways of cost-sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs. For purposes of this provision, the term “LEA” includes a charter school that is an LEA, or a consortium of LEAs (20 USC 1411(e)(3); 34 CFR section 300.704(c)).
- (4) *Formula Subgrants to LEAs:* Any funds under this program that the SEA does not retain for administration and other State-level activities shall be distributed to eligible LEAs in the State. An SEA must distribute to each eligible LEA the amount that LEA would have received, from the fiscal year 1999 appropriation, if the State had distributed 75 percent of its grant for that year to LEAs. (This amount is based on the IDEA-B child count conducted on December 1, 1998.) The SEA must then distribute 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the LEA’s jurisdiction; and then distribute 15 percent of any remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the State educational agency (20 USC 1411(f)(1) and (2); 34 CFR sections 300.705(a) and (b)).

b. ***IDEA, Preschool Grants Program*** (SEAs)

- (1) *Reservation for State Activities.* For each fiscal year, the Secretary shall determine and report to the SEA an amount that is 25 percent of the amount the State received under this program for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year. These funds may be retained by the State for administration and other State level activities (20 USC 1419(d); 34 CFR section 300.812).
  - (a) *State Activities (Administration):* An SEA may use up to 20 percent of the funds it is allowed to retain for State activities under 20 USC 1419(d) for the purposes of administering this program, including the coordination of activities under Part B of the IDEA with, and providing technical assistance to, other programs that provide services to children with disabilities. These funds may also be used for the administration of Part C of the IDEA (20 USC 1419(e); 34 CFR section 300.813).

- (b) *State Activities (Other State level activities):* SEAs shall use funds reserved for State level activities that are not used for administration for: (a) support services (including establishing and implementing the mediation process required by section 20 USC 1415(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5; (b) direct services for children eligible for services under this program; (c) activities at the State and local levels to meet the performance goals established by the State under 20 USC 1412(a)(15); (d) supplementing other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this program for a fiscal year; (e) providing early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the IDEA to children with disabilities who are eligible for services under section 619 of the IDEA until such children enter, or are eligible under State law to enter, kindergarten; or (f) at the State's discretion, to continue service coordination or case management for families who receive services under Part C of the IDEA, consistent with 34 CFR section 300.814 (20 USC 1419(f); 34 CFR section 300.814).
- (2) *Formula Subgrants to LEAs.* Any funds under this program that the SEA does not retain for administration and other State-level activities shall be distributed to eligible LEAs in the State. An SEA must distribute to each eligible LEA the amount the LEA would have received from the fiscal year 1997 appropriation if the State had distributed 75 percent of its grant for that year to LEAs. (This amount is based on the IDEA-B child count conducted on December 1, 1996.) The SEA must then distribute 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and then distribute 15 percent of any remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the SEA. (If an SEA determines that an LEA is adequately providing a FAPE to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this program that are not needed by that LEA to provide a FAPE to other LEAs in the State that are not

adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas they serve. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities under 34 CFR section 300.812) (20 USC 1419(g); 34 CFR sections 300.815 through 300.817).

**c. *Schoolwide Programs (LEAs)***

The amount of IDEA- B funds used in a schoolwide program, may not exceed the amount received by the LEA under IDEA-B for that fiscal year divided by the number of children with disabilities in the jurisdiction of the LEA multiplied by the number of children with disabilities participating in the schoolwide program (20 USC 1413(a)(2)(D); 34 CFR section 300.206).

**d. *Redistribution of Formula Funds to LEAs***

If a new LEA is created within a State, the State shall divide the base allocation for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA among the new LEA and affected LEAs based on the relative numbers of children with disabilities currently provided special education by each of the LEAs. If one or more LEAs are combined into a single LEA, the State shall combine the base allocation of the merged LEAs. If, for two or more LEAs, geographic boundaries or administrative responsibilities for providing services to children with disabilities ages 3 through 21 change, the base allocation of affected LEAs shall be redistributed among affected LEAs based on the relative numbers of children with disabilities currently provided special education by each affected LEA. If an LEA received a base payment of zero in its first year of operation, the State shall adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State shall divide the base allocation for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA among the LEA and affected LEAs based on the relative numbers of children with disabilities currently provided special education by each of the LEAs (34 CFR section 300.705(b)(2)).

e. ***Early Intervening Services***

An LEA can use not more than 15 percent of the amount of Federal funds (less any amount by which it reduces State and local expenditures under 20 USC 1413(a)(2)(C)) (See G.2.1.b. in this section), in combination with other funds for early intervening services for children in kindergarten through grade 12 who have not been identified under IDEA but need additional academic and behavioral support to succeed in the general education environment (20 USC 1413(f); 34 CFR section 300.226).

**H. Period of Availability of Federal Funds**

See ED Cross-Cutting Section.

**L. Reporting**

**1. Financial Reporting**

See ED Cross-Cutting Section.

**2. Performance Reporting – Not Applicable**

**3. Special Reporting**

*Report of Children and Youth with Disabilities Receiving Special Education Under Part B of the Individuals With Disabilities Education Act, as amended (OMB Nos. 1820-0030, 1820-0043, 1820-0517, 1820-0521, and 1820-0621) –* Each SEA is required to report to the Secretary an unduplicated count of children with disabilities receiving special education and related services.

The SEA may include in this count children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that: (1) provides them with both special education and related services that meet State standards; (2) provides them only with special education, if a related service is not required, that meets State standards; or (3) in the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under IDEA-B and receive special education or related services or both that meet State standards under 34 CFR sections 300.132 through 300.144 (34 CFR sections 300.640, 300.643, and 300.644).

Each SEA must (1) establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services; (2) obtain certification from each agency and institution that an unduplicated and accurate count has been made; and (3) ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count (34 CFR sections 300.645(a), (c), and (e)).

LEAs must report to the SEA in accordance with the SEA-established procedure.

4. **Section 1512 ARRA Reporting** – Not Applicable
5. **Subaward Reporting under the Transparency Act** – Applicable

**N. Special Tests and Provisions**

**1. Schoolwide Programs**

See ED Cross-Cutting Section.

**2. Access to Federal Funds for New or Significantly Expanded Charter Schools**

See ED Cross-Cutting Section.

## DEPARTMENT OF EDUCATION

### CFDA 84.032 FEDERAL FAMILY EDUCATION LOANS (Guaranty Agencies)

#### I. PROGRAM OBJECTIVES

Non-profit and State guaranty agencies are established to guarantee student loans made by lenders and perform certain administrative and oversight functions under the Federal Family Education Loans (FFEL) program. FFEL program loans include Federal Stafford Loans (both subsidized and unsubsidized), Federal PLUS loans, and Federal Consolidation loans. The Department of Education (ED) provides reinsurance to the guaranty agency.

#### II. PROGRAM PROCEDURES

To participate in the FFEL programs and to receive various payments and benefits incident to that participation, a guaranty agency enters into agreements with ED under which the guaranty agency agrees to comply with the applicable law and regulations. In general, guaranty agencies (1) establish and maintain a Federal Fund and the Agency Operating Fund; (2) collect on defaulted loans on which they have paid claims; (3) make timely claim payments to lenders; (4) make timely reinsurance filings with ED; (5) provide accurate and reliable reports to ED; (6) apply proper charges to defaulted borrowers; and (7) take proper enforcement measures with respect to lenders, lender servicers, and defaulted borrowers.

Section 428A of the Higher Education Act, as amended (HEA), allows ED to enter into Voluntary Flexible Agreements (VFA) with guaranty agencies to pilot alternatives to the current guaranty agency financing model or structure. Any guaranty agency or consortium of agencies may apply to enter into a VFA with ED (Section 428A(a)(3) of the HEA (20 USC 1078-1(a)(3))). VFA pilots are uniquely designed by each guaranty agency and may waive some of the compliance requirements. If a VFA exists, the auditor should review the VFA and determine (1) which of the III, Compliance Requirements, below are applicable, and (2) what, if any, additional or alternative audit procedures should be performed to test compliance with the terms of the VFA.

The Student Aid and Fiscal Recovery Act of 2009, Title II of the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, provides that, after June 30, 2010, no new student loans will be made under the FFEL program. Therefore, beginning July 1, 2010, all new subsidized and unsubsidized Stafford Loans made to students, PLUS loans made to parents and to graduate/professional students, and consolidation loans made to borrowers, can only be made under the Federal Direct Student Loans (Direct Loan) program (CFDA 84.268) and will not be handled by guaranty agencies.

#### Source of Governing Requirements

The FFEL program is authorized by the Higher Education Act (HEA) of 1965, as amended (20 USC 1071 to 1087-2). Program regulations are located at 34 CFR part 682.

### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

#### A. Activities Allowed or Unallowed

The compliance requirements and suggested audit procedures for allowed and unallowed services are presented separately in III. N.9, “Special Tests and Provisions - Federal Fund and Agency Operating Fund.”

#### L. Reporting

1. **Financial Reporting** – Not Applicable
2. **Performance Reporting** – Not Applicable
3. **Special Reporting**

ED Form 2000, *Guaranty Agency Financial Report (OMB No. 1845-0026)* – Guaranty agencies submit this form monthly, monthly/quarterly, and annually. Instructions for this report are available at [http://www.fp.ed.gov/attachments/fms\\_data\\_nsls/GAFR\\_Guide06\\_2011.pdf](http://www.fp.ed.gov/attachments/fms_data_nsls/GAFR_Guide06_2011.pdf)

In determining which amounts to test on ED Form 2000, particular attention should be given to the September 30 amounts for current year defaults, current year collections, loans receivable and the sources and uses of funds in the Federal Fund (or equivalent line items pertaining to the Federal/Operating Funds for the September 30 report). Also, guaranty agencies are required to submit loan level detail information to the National Student Loan Data System (NSLDS) (*OMB No. 1845-0035*). When reviewing support for the above reports, the auditor should consider whether the relevant amounts in these reports reconcile with the NSLDS Extract submitted by the guaranty agency. (Note: There may be some differences between the ED Form 2000 and the NSLDS Extracts due to timing factors (e.g., pulling of NSLDS Extract in third week vs. month end). Finally, ED may send edits back to the guaranty agency to be entered.)

The guaranty agency is required to submit loan-level detail data to the NSLDS. The NSLDS Enrollment Reporting Guide that describes this level of detail is available at <http://ifap.ed.gov/nslsmaterials/attachments/NSLDSEnrollmentReportingGuide.pdf>. The following are identified as key data elements:

- a. Social security number;
- b. First name;

- c. Date of birth;
- d. Original school code;
- e. Academic level;
- f. Current school code;
- g. Enrollment status code;
- h. Enrollment status date;
- i. Originating lender code;
- j. Loan guarantee date;
- k. Amount of guarantee;
- l. Current holder lender code;
- m. Date repayment entered;
- n. Loan status code;
- o. Loan status date;
- p. Outstanding principal;
- q. Amount of claim paid to lenders (principal and interest); and
- r. Interest and fee amounts for loans in defaulted status.

ED sends edits back to the guaranty agency for disposition. Samples should be selected from the guaranty agency's NSLDS Extracts (Note: Guaranty Agencies may have changed to automated exchanges of data with schools and lenders; thus, hard copy documents may not exist. In this instance, auditors may only be able to trace to system information and not to supporting records.) (34 CFR section 682.414(b))

In addition to providing ED with information it needs to maintain its accounting and loan database records, data in the ED Form 2000 report are used for various purposes by ED. The use of this data is the subject of several other compliance requirements cited in III.N, "Special Tests and Provisions," which identify the need to test specific items in these reports. For audit efficiency, the auditor may want to test those requirements at the same time as this compliance requirement. The other compliance requirements are III.N.2, "Federal Reinsurance Rate," III.N.3, "Conditions of Reinsurance Coverage," III.N.4, "Death, Disability, Closed Schools, False Certifications, Unpaid Refunds, Bankruptcy, and Teacher

Loan Forgiveness Claims,” and III.N.9, “Federal Fund and Agency Operating Fund.”

**4. Section 1512 ARRA Reporting – Not Applicable**

**5. Subaward Reporting under the Transparency Act – Not Applicable**

**N. Special Tests and Provisions**

**1. Current Records**

**Compliance Requirement** – The guaranty agency shall maintain current, complete records for each loan that it holds. The records must be maintained in a system that allows ready identification of each loan’s current status, updated at least once every 10 business days (34 CFR section 682.414(a)).

**Audit Objective** – Determine whether the guaranty agency’s records are updated for information received from lenders, schools, borrowers, others, and NSLDS on a timely basis.

**Suggested Audit Procedures**

- a. For a sample of loans, compare dates transactions or information was posted to the guaranty agency’s system to the dates the source information was received.
- b. Identify whether any backlog exists that is over 10 days old.

**2. Federal Reinsurance Rate**

**Compliance Requirement** – The applicable Federal reinsurance rate for a loan depends on the amount of reinsurance claims paid to the guaranty agency during the year and the date the loan was made (34 CFR sections 682.404(a) and (b)).

In most cases, for loans made prior to October 1, 1993, when the total amount of reinsurance claims paid to the guaranty agency during a fiscal year is less than five percent of the amount of loans in repayment at the end of the preceding fiscal year, reinsurance is paid for 100 percent of the guaranty agency’s losses. When the total amount of reinsurance claims paid to the guaranty agency during a fiscal year reaches five percent of the amount of loans in repayment at the end of the preceding fiscal year, the reinsurance subsequently paid to the guaranty agency during that fiscal year, drops to 90 percent. When the amount of claims reaches nine percent, the reinsurance drops to 80 percent. The reinsurance rate is 100 percent for loans: (1) made under an approved lender-of-last resort program, (2) transferred under a plan to transfer guarantees from an insolvent guaranty agency approved by ED, or (3) meeting the definition of exempt claims (34 CFR sections 682.404(a)(1)(iii) and (a)(2)(iii)).

For loans made from October 1, 1993 to September 30, 1998, the regular reinsurance rates drop to 98/88/78 percent, respectively. For loans made on or after October 1, 1998 the respective rates are 95/85/75 percent (Section 428(c)(1) of the HEA (20 USC 1078(c)(1))).

The Secretary uses the annual ED Form 2000 report for the previous September 30 to calculate the amount of loans in repayment at the end of the preceding fiscal year (34 CFR sections 682.404(a), (b), and (c)).

Past problem areas have been:

Guaranty agencies have:

- Not established systems to verify a student's loan status with lender and school data through a reliable audit trail.
- Established systems to determine loan status that rely on loan characteristic analysis or assumptions that are not adequately tested or verified.
- Not established adequate procedures to ensure that lenders report and agencies properly record loans paid in full.
- Not established adequate procedures to ensure that there is a system to reconcile the guaranty agency's repayment conversion dates to the lender's repayment conversion dates.

**Audit Objective** – Determine whether the data submitted to ED in the September 30 annual Form 2000 used to calculate loans in repayment is materially correct and supported by the books and records.

#### **Suggested Audit Procedures**

- a. Compare the amounts of loans in repayment in the guaranty agency system at September 30 to the amount of loans in repayment derived from the September 30 ED Form 2000. Determine the propriety of any difference.
- b. Select a sample of loans in in-school, deferment, forbearance, and repayment status from the guaranty agency's system. Verify the loan amount and loan status by contacting the current holder of the loan or schools to confirm the authenticity and status of the loans.

### 3. Conditions of Reinsurance Coverage

**Compliance Requirement** – A guaranty agency may make a payment from the Federal Fund and receive a reinsurance payment on a loan only if the requirements in 34 CFR sections 682.406 and 682.414 are met. The lender must provide the guaranty agency with documentation, as described in 34 CFR sections 682.406 and 682.414. Key items in that documentation include:

- a. Evidence that the lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the guaranty agency, including documentation of:
  - (1) Timely conversion to repayment;
  - (2) Collection and payment histories;
  - (3) Beginning and ending dates of borrower deferments/forbearances;
  - (4) Required skip-tracing activities; and
  - (5) No 45-day gaps in collection activities (34 CFR sections 682.406, 682.411, and 682.414).
- b. Evidence that the loan was actually in default before the guaranty agency paid a default claim (34 CFR section 682.406(a)(4)).
- c. Evidence that the lender filed a default claim with the guaranty agency within 90 days of default (34 CFR section 682.406(a)(5)).
- d. Evidence that the loan was legally enforceable by the lender when the guaranty agency paid the claim on the loan to the lender (34 CFR section 682.406(a)(10)).
- e. Evidence that the lender provided an accurate collection history and an accurate payment history with the default claim showing that the lender exercised due diligence in collecting the loan (34 CFR section 682.406(a)(3)).
- f. Evidence that the lender satisfied all conditions of guarantee coverage set by the guaranty agency (34 CFR section 682.406(a)(7)).
- g. Evidence that the guaranty agency submitted a request for payment to ED within 30 days of lender payment (34 CFR section 682.406(a)(9)).

The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender or the guaranty agency failed to meet these requirements (34 CFR sections 682.406 and 682.414).

Past problem areas have been:

The lender:

- Did not exercise due diligence in collecting the loan in accordance with 34 CFR section 682.411 (34 CFR section 682.406(a)(3)).
- Did not include adequate documentation evidencing: timely conversion to repayment, a detailed collection and detailed payment history, beginning or ending dates of borrowers' deferments/forbearances, performance of required skip-tracing activities, and no 45-day gaps in collection activities to support claim eligibility and the claim amount (34 CFR section 682.406(a)(3)).
- Did not file a default claim with the guaranty agency within 90 days of default (34 CFR section 682.406(a)(5)).

(Note: The guaranty agency shall reject the claim based on due diligence (34 CFR section 682.406(a)(3)) or timely filing violations (34 CFR section 682.406(a)(5)), unless it was cured by the lender in accordance with 34 CFR part 682, Appendix D (34 CFR section 682.406(b))).

- Was paid interest beyond 30 days after a claim was returned for inadequate documentation for claims returned on or after July 1, 1996 (34 CFR section 682.406(a)(6)).

The guaranty agency:

- Filed a request for payment of reinsurance later than 30 days following payment of a default claim to the lender (34 CFR section 682.406(a)(9)).
- Did not pay the lender within 90 days of the date the lender filed the claim (34 CFR section 682.406(a)(8)).

**Audit Objective** – Determine whether loans for which reinsurance was paid met the requirements for reinsurance.

**Suggested Audit Procedures**

- a. Select a sample of defaulted loans from the guaranty agency's ED Form 2000 reports.
- b. Ascertain if, prior to paying claims, the guaranty agency determined that:
  - (1) The lender exercised due diligence in making, disbursing, and servicing the loan;
  - (2) The loan was legally enforceable;

- (3) The loan was in default;
  - (4) The claim was timely filed;
  - (5) The lender provided an accurate collection and payment history showing that the lender exercised due diligence in collecting the loan; and
  - (6) The lender satisfied conditions of guaranty coverage set by the guaranty agency.
- c. Ascertain that the guaranty agency:
- (1) Filed a request for payment of reinsurance no later than 30 days following payment of a default claim to the lender; and
  - (2) Paid the lender or returned the claim to the lender for additional documentation within 90 days of the date the lender submitted the claim.

#### **4. Death, Disability, Closed Schools, False Certification, Unpaid Refunds, Bankruptcy, and Teacher Loan Forgiveness Claims**

**Compliance Requirements** – If an individual borrower dies or the student for whom a parent received a PLUS loan dies, the obligation of the borrower and any endorser to make any further payments on the loan is canceled, in accordance with 34 CFR section 682.402(b). A borrower may file an application for discharge due to total and permanent disability. Total and permanent disability discharges are approved in accordance with 34 CFR section 682.402(c). If a borrower files an application for discharge due to a closed school, the Secretary reimburses the holder of the loan in accordance with 34 CFR section 682.402(d). If a borrower's eligibility to receive a loan was falsely certified by an eligible school, the Secretary reimburses the holder of the loan and discharges the loan in accordance with 34 CFR section 682.402(e). The Secretary reimburses the holder of a loan for the amount of unpaid refunds under certain circumstances in accordance with 34 CFR sections 682.402(l) through (p). If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan, in accordance with 34 CFR section 682.402(f). The rules applicable to joint consolidation loans to married borrowers and co-makers on a PLUS loan are in 34 CFR sections 682.402(a)(2) and (3).

A lender must file a death, disability, closed school, false certification, or bankruptcy claim within the period prescribed in 34 CFR section 682.402(g)(2). The guaranty agency shall review a death, disability, closed school, false certification, or bankruptcy claim promptly and shall pay the lender in accordance with 34 CFR section 682.402(h). Guaranty agencies are required to take specific actions in bankruptcy proceedings in accordance with 34 CFR section 682.402(i). In accordance with 34 CFR section 682.402, the guaranty agency shall not request payment from ED until the lender's claim has been paid. A borrower or lender must file an unpaid refund application within the period prescribed in 34 CFR section 682.402(l). The guaranty agency shall review an

unpaid refund claim promptly in accordance with 34 CFR section 682.402(l) and shall pay the lender in accordance with 34 CFR section 682.402(n).

If, after being employed full-time as a teacher for 5 consecutive academic years, a borrower applies for teacher loan forgiveness through the loan holder, the guaranty agency must determine if the borrower meets the eligibility requirements and pay the loan holder within 45 days (34 CFR sections 682.216(a) and (f)).

**Audit Objectives** – Determine whether death, disability, closed school, false certification, unpaid refund, bankruptcy, and teacher loan forgiveness claims met the requirements for the payment of such claims.

### **Suggested Audit Procedures**

- a. Select a sample of death, disability, closed school, false certification, unpaid refund, bankruptcy, and teacher loan forgiveness claims from the guaranty agency's ED Form 2000 reports.
- b. Review claim documentation that supports the eligibility of the claims for payment.

## **5. Default Aversion Assistance**

**Compliance Requirements** – Upon receipt of a complete request from a lender, received no earlier than day 60 and no later than day 120 of delinquency, a guaranty agency shall engage in default aversion activities designed to prevent the default by a borrower. Default aversion activities are activities of a guaranty agency that are directly related to providing collection assistance to the lender on a delinquent loan prior to the loan being legally in a default status (34 CFR section 682.404(a)(2)(ii)). In consideration of such efforts, the guaranty agency receives a default aversion fee (34 CFR section 682.404(k)).

*Calculating the Fee* – A guaranty agency may transfer a default aversion fee from its Federal Fund to its Operating Fund equal to 1 percent of the total unpaid principal and accrued interest owed on loans on which the lender requests default aversion assistance. However, if a loan on which the guaranty agency has received the default aversion fee is subsequently paid as a default claim, the guaranty agency must rebate funds to the Federal Fund by deducting the rebate funds from the default aversion fee calculation. The fees may be transferred from the Federal Fund to the Operating Fund no more frequently than monthly and may not be paid more than once on any loan (34 CFR section 682.404(k)).

**Audit Objectives** – Determine whether the guaranty agency performed default aversion activities in accordance with the requirements, whether loans on which the default aversion fee was received were qualified, and whether the fees were calculated accurately.

**Suggested Audit Procedures**

- a. For a sample of loans, review documentation supporting that the loans qualified for and the guaranty agency performed the default aversion activities.
- b. For a sample of default aversion fee transfers:
  - (1) Verify that the default aversion fee was calculated accurately.
  - (2) Verify that default aversion fees were not paid more than once on the same loan.
- c. For a sample of defaulted loans, verify that the appropriate default aversion fees are returned to the Federal Fund.

**6. Collection Efforts**

**Compliance Requirements** – The guaranty agency must engage in certain collection activities within certain time frames as prescribed by 34 CFR section 682.410(b)(6) on a loan for which it pays a default claim filed by a lender. These collection activities include written notices, contacts with borrowers, wage garnishments, etc. If a guaranty agency contracts with another party to perform default aversion assistance activities and collect defaulted loans, the party that provides default aversion assistance on a loan may not perform collection activity on that loan within 3 years of the date the default claim is paid (34 CFR sections 682.404(k) and 682.410(b)(6)).

**Audit Objectives** – Determine whether the guaranty agency performed required collection procedures on defaulted loans and that the collection contractor did not perform collection activities within 3 years of the default claim payment on loans for which it performed default aversion assistance.

**Suggested Audit Procedures**

- a. If the guaranty agency uses a collection contractor, review the contract to ascertain if the contract specified the required collection procedures to be followed for defaulted loans.
- b. For a sample of defaulted loan accounts, review documentation that supports that prescribed collection activities were followed.
- c. Verify that the collection contractor did not perform collection activity within the three-year period on loans for which it performed default aversion assistance.

## 7. Federal Share of Borrower Payments

**Compliance Requirement** – If the borrower makes payments on a loan after the guaranty agency has paid a claim on that loan, the guaranty agency must pay the Secretary an equitable share of those payments.

The Secretary’s equitable share is the portion of payments that remains after deducting:

- a. The complement of the reinsurance percentage in effect when reinsurance was paid on the loan (See III.N.2, “Federal Reinsurance Rate,” above for the applicable reinsurance rate. The complement of the reinsurance percentage equals 100 minus the Federal reinsurance rate), and
- b. 16 percent of borrower payments (34 CFR section 682.404(g)(1)(ii)).

A guaranty agency may not retain the equitable share on loans that have been repaid by a Federal Consolidation Loan.

For defaulted loans, which are repaid by a consolidation loan, under separate authority, agencies are allowed to retain only the amount of collection costs charged to the borrower and paid off by the consolidation loan. The amount that may be retained is as follows–

The guaranty agency can charge up to 18.5 percent of the outstanding principal and interest on the defaulted loan; however, the Secretary is entitled to the lesser of actual collection costs charged or 8.5 percent of principal and interest outstanding on the defaulted loan, except that the guaranty agency may not retain any portion of the collection costs paid by a consolidation loan that exceed 45 percent of the agency’s total collections on defaulted loans that year (34 CFR sections 682.401(b)(27) and 685.220(f)).

A guaranty agency is required to deposit into its Federal Fund all funds received on loans on which a claim has been paid, including default collections, within 48 hours (2 business days) of receipt of those funds, minus any portion that the agency is authorized to deposit into the Operating Fund. “Receipt of Funds” means actual receipt of funds by the guaranty agency or its agent, whichever is earlier (34 CFR section 682.419(b)(6)).

**Audit Objective** – Determine whether the Secretary’s equitable share of borrower payments on defaulted loans is properly computed and deposited into the Federal Fund in a timely manner.

### Suggested Audit Procedures

Test a sample of borrower payments on defaulted loans at the loan level to ascertain if the equitable share due ED was deposited into the Federal Fund in a timely manner.

## 8. Assignment of Defaulted Loans to ED

**Compliance Requirement** – Unless the Secretary notifies a guaranty agency in writing that other loans must be assigned to the Secretary, a guaranty agency must assign any loan that meets all of the following criteria as of April 15 of each year: (a) the unpaid principal balance is at least \$100; (b) the loan, and any other loans held by the guaranty agency for that borrower, have been held by the agency for at least 5 years; (c) a payment has not been received on the loan in the last year; and (d) a judgment has not been entered on the loan against the borrower. The Secretary may also direct a guaranty agency to assign to ED certain categories of defaulted loans held by the guaranty agency as described in 34 CFR section 682.409. In determining whether mandatory assignment from a guaranty agency is required, the Secretary will review the adequacy of collection efforts. ED considers the guaranty agency’s record of success in collecting its defaulted loans, the age of the loans, and the amount of any recent payments on the loans (Section 428(c)(8) of the HEA (20 USC 1078(c)(8)); 34 CFR section 682.409).

**Audit Objective** – Determine whether the guaranty agency assigned to ED all loans that meet the criteria.

### Suggested Audit Procedures

Review the guaranty agency’s aging of loans to ascertain if the guaranty agency is holding loans that should be assigned to ED.

## 9. Federal Fund and Agency Operating Fund

### Compliance Requirements

#### *Federal Fund*

A guaranty agency shall deposit in the Federal Fund the following:

- a. All amounts received from ED as payment of reinsurance or other claims on loans.
- b. All funds received by the guaranty agency from any source on FFEL loans on which a claim has been paid minus the portion the agency is authorized to deposit in its Operating Fund (must be deposited within 48 hours of receipt).
- c. Insurance premiums or federal default fees.
- d. Amounts received for Supplemental Preclaim Assistance (SPA) activity performed prior to October 1, 1998.
- e. Earnings from investments of the Federal Fund.
- f. Other receipts as specified in regulations (34 CFR section 682.419).

The Federal Fund may only be used for the following purposes:

- a. To pay lender insurance claims.
- b. To transfer default aversion fees into the Agency Operating Fund.
- c. For other purposes listed in the regulations (34 CFR section 682.419(c)).

*Agency Operating Fund*

The guaranty agency shall deposit into the Operating Fund:

- a. Account maintenance fees.
- b. Default aversion fees.
- c. The portion of the amounts collected on defaulted loans that remains after the Secretary's share of collections has been paid and the complement of the reinsurance percentage has been deposited into the Federal Fund (34 CFR section 682.423).
- d. Other receipts as specified in regulations (34 CFR section 682.423).

Funds in the Operating Fund may only be used for application processing, loan disbursement, enrollment and repayment status management, default aversion activities, default collection activities, school and lender training, financial aid awareness and related outreach activities, compliance monitoring, and other SFA-related activities for the benefit of students. During any period in which the Operating Fund contains money transferred in from the Federal Fund, the entire Operating Fund is subject to the restrictions in 34 CFR sections 682.410 and 682.418 (Sections 422B(a)-(e) of the HEA (20 USC 1072b(a)-(e))). The authority to transfer money from the Federal Fund to the Operating Fund expired in 1998 and all funds should have been repaid to the Federal Fund by 2003 (34 CFR sections 682.421 and 682.422).

Past problem areas concerning fund revenue and expense have included:

- Failure to credit funds received into the Federal Fund, including lock-box operations, within the specified period.
- Unauthorized expenses paid from the Federal Fund assets.
- Failure to report all credits to the Federal Fund on ED Form 2000.
- Use of the Federal Funds for other programs (e.g., Leveraging Educational Assistance Partnerships (LEAP) and other State programs).
- Commingling of funds.

**Audit Objectives** – Determine whether the guaranty agency credited the required amounts to the Federal and Operating Funds, and used the resources of each fund solely for authorized purposes.

### **Suggested Audit Procedures**

- a. Review revenue records to assure that amounts required to be credited to the Federal and Operating Funds were so credited. Review revenues and receipts that were not credited to the Federal or Operating Funds to assure that they were not inappropriately omitted.
- b. Test expenditures to ascertain if they were made for allowable purposes.
- c. Examine the general journal for unusual entries that impact the Federal or Operating funds.

## **10. Investments – Federal Fund**

**Compliance Requirement** – Funds transferred to the Federal Fund shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities selected by the guaranty agency, with the approval of the Secretary (such as pooled investments as part of a State investment program). Earnings from the Federal Fund shall be the sole property of the Federal Government (Section 422A(b) of the HEA (20 USC 1072a(b)); DCLID: 99-G-316 which is available at [http://www.ifap.ed.gov/dpccletters/doc0515\\_bodyoftext.htm](http://www.ifap.ed.gov/dpccletters/doc0515_bodyoftext.htm)).

**Audit Objectives** – Determine whether the agency invested Federal funds only in approved securities or other instruments and properly accounted for investment earnings.

### **Suggested Audit Procedures**

- a. Review investment activity during the period to ascertain that Federal Fund assets were invested in approved securities or other instruments.
- b. Ascertain that earnings were deposited in the Federal Fund.

## **11. Collection Charges**

**Compliance Requirement** – The guaranty agency must charge each defaulted borrower reasonable costs incurred by the agency for its default collection activities. The agency must charge these costs on defaulted loans whether acquired by a default or bankruptcy claim (34 CFR section 682.410(b)(2)). Costs of collection on defaulted loans include those direct costs of collection activities conducted after default on loans held by the agency, and indirect costs that are properly allocated to those same activities. Direct costs include the expenses listed in 34 CFR section 30.60(a), such as collection agency charges, court costs, and attorney fees.

Because HEA section 484A(b) makes the defaulter liable only for reasonable collection costs, and costs are reasonable only if they are based on actual collection expenses being incurred by the guaranty agency, the agency must ensure that the estimate is based on reliable data. A charge based on expense and recovery data incurred in the most recently completed and audited fiscal year of the guaranty agency can be reasonably expected to predict actual costs being incurred in the year for which the charge is assessed. However, when changes that will affect that rate are reasonably expected in expenses or recoveries during the year for which the charge is computed, adjustments may be warranted.

The rate or amount to be charged the borrower to satisfy collection costs is the least of the following three rates:

- a. The amount or rate, if any, specified in the borrower's note;
- b. The rate determined by dividing the agency's expected expenses by its expected recoveries for the period at issue; or
- c. The rate that would be charged if the loan were held by ED (through March 1, 2007—25 percent of the amount of principal and interest satisfied from a payment; thereafter, 24 percent of the amount. See <http://www.fsacollections.ed.gov/contractors/ga/>).

An agency that is limited to the amount charged by ED must conform its charges to the limits in c. above no later than the date on which it ordinarily implements any adjustment based on its annual assessment of costs and recoveries.

There are instances when collection charges may not be assessed to the borrower at the rate determined as specified above:

- a. A guaranty agency may charge collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest on a defaulted FFELP loan that is paid off by a Federal Consolidation Loan. The guaranty agency must remit to the Secretary a portion of the collection charge equal to the lesser of the amount charged the borrower or 8.5 percent of the outstanding principal and interest of the loan. On or after October 1, 2009, a guaranty agency must remit directly to the Secretary the entire amount of the collection charge with respect to each defaulted loan that is paid off with excess consolidation proceeds, as defined in 34 CFR section 682.401(b)(27)(v) (34 CFR section 682.401(b)(27)). (See III.N.7, "Federal Share of Borrower Payments.")
- b. Borrowers who make the required nine voluntary and on-time payments within 10 months and whose loans are then rehabilitated by sale to an eligible lender may not be charged more than 18.5 percent of the outstanding principal and interest on the loans being rehabilitated (34 CFR section 682.405(b)(1)(vi)).

- c. A guaranty agency may choose not to charge collection costs to a borrower who enters into a voluntary repayment agreement with the guaranty agency during the 60-day period after notice from the guaranty agency that the guaranty agency has paid a default claim and will report default status on the loan to national credit bureaus (34 CFR section 682.410(b)(5)(ii)).

**Audit Objective** – To determine whether the guaranty agency charged appropriate costs for its default collection activities to borrowers on defaulted loans acquired by the guaranty agency either by payment of a default or bankruptcy claim.

### **Suggested Audit Procedures**

- a. Test a sample of defaulted loan accounts to determine whether the guaranty agency charged only for reasonable costs of collection.
- b. Ascertain if the method used to calculate the amount charged (1) included only appropriate expenses of default collection activities, and (2) was limited to the amount prescribed by regulation.

## **12. Enforcement Action**

**Compliance Requirement** – The guaranty agency shall take measures to ensure enforcement of all Federal, State and guaranty agency requirements and at a minimum, conduct biennial on-site program reviews of lenders and schools that meet criteria specified in 34 CFR section 682.410(c)(1) or are selected using an alternative methodology approved by the Secretary. The guaranty agency is required to use statistically valid techniques to calculate liabilities owed the Secretary that the review indicates may exist; demand prompt payment from the responsible party; and refer to the Secretary any case in which the payment of funds is not made within 60 days. A guaranty agency also is required to undertake or arrange for the prompt and thorough investigation of criminal or other programmatic misconduct by its program participants. It is responsible also for promptly reporting all of the allegations and indications of fraud or misconduct having a substantial basis in fact, and the scope, progress, and results of the agency's investigations (34 CFR section 682.410(c)).

**Audit Objective** – Determine whether the guaranty agency is carrying out program reviews and related enforcement activity in accordance with the above requirements.

### **Suggested Audit Procedures**

- a. Review the guaranty agency's procedures for selecting lenders and schools to review to ascertain if they meet the regulatory criteria or an alternative methodology approved by the Secretary.
- b. Review the guaranty agency's program review guidance to ascertain if it is up-to-date and includes, when problems are found, a statistically valid method for determining liabilities due the Secretary.

- c. Review program review reports to ascertain if amounts due the Secretary were identified and, if so, whether appropriate demand for payment and follow-up was conducted.
- d. Through inquiry and review, determine whether the guaranty agency adopted procedures for reporting all allegations of misconduct having a substantial basis to ED. Review guaranty agency records on the follow-up of misconduct to determine whether ED was notified when appropriate.

### 13. Access to National Student Loan Data System (NSLDS)

**Compliance Requirement** – The Higher Education Opportunity Act (HEOA) (Pub. L. No. 110-315) amended Section 485B of HEA (20 USC 1092b) to establish principles for administering the NSLDS. The Secretary is required to ensure that the primary purpose of access to the system by guaranty agencies is for legitimate program operations and to take actions to maintain confidence in the NSLDS, including, at a minimum, developing standardized protocols for limiting access to the data system. NSLDS access and use requirements were issued by ED in Dear Colleague Letter GEN-05-06/FP-05-04 (<http://www.ifap.ed.gov/dpccletters/GEN0506.html>), *Access To and Use of NSLDS Information*, dated April 8, 2005 and expanded July 2009, in NSLDS Organization Access Process located at <http://www.fp.ed.gov/nslds.html> under NSLDS Access.

Each organization using the NSDLS is required to establish a Destination Point Administrator (DPA). The roles and responsibilities of the DPA are to ensure that authorized personnel use the NSLDS only for official government business. The responsibilities of the DPA include the following:

- a. Ensuring that all users are aware of their responsibilities regarding access to NSLDS.
- b. Monitoring the use and access of NSLDS data by all of the organization’s users.
- c. De-activating a User ID when the person to whom it was assigned is no longer with the organization or otherwise is no longer eligible to have access to NSLDS.
- d. Ensuring that information in or received from the NSLDS is protected from access by or disclosure to unauthorized personnel.

**Audit Objective** – Determine whether the guaranty agency has established required controls and oversight regarding NSLDS access.

#### **Suggested Audit Procedures**

- a. Review and evaluate the guaranty agency’s established and documented controls over access to the NSLDS.
- b. Verify that the entity removes NSLDS access when an employee terminates or is reassigned to a position not requiring NSLDS access.

#### 14. Correct Handling of Loans Sold to the U.S. Department of Education

**Compliance Requirement** – The HEOA amended Section 459A of the HEA (20 USC 1087i-1) to provide that, once a loan is purchased by the Secretary, under the Secretary’s temporary authority to purchase student loans (which expired July 1, 2010), the guaranty agency shall cease to have any obligations, responsibilities, or rights (including any rights to any payment) for the loan. The guaranty agency must update the NSLDS to report that the ED is now the holder of the loan (20 USC 1092b(a)(7)) and that no additional fees are requested. Guaranty agencies annually submit to ED Form 2000, *Guarantee Agency Financial Report*, (OMB Number 1845-0026). Line AR-7, Loans Transferred Out on that report shows the loans sold to ED. Also, line MR-15 shows the Secretary’s fee for defaulted FFEL loans consolidated with Direct Loans and line MR-27 is the total receivable on these loans (see [http://www.fp.ed.gov/attachments/fms\\_data\\_nsls/GAFR\\_Guide06\\_2011.pdf](http://www.fp.ed.gov/attachments/fms_data_nsls/GAFR_Guide06_2011.pdf)) (Section 459A of the HEA (20 USC 1087i-1); 34 CFR section 682.414(b)(4)).

**Audit Objective** – Determine whether the guaranty agency/servicer has established and implemented controls and processes over loans that have been sold to ED.

##### Suggested Audit Procedures

- a. Review and evaluate the guaranty agency’s controls to ensure that, for loans purchased by ED, the NSLDS is updated and the entity no longer bills ED for any fees.
- b. Select a sample of loans purchased by ED and trace to ensure the NSLDS was updated and the guaranty agency no longer billed ED for any fees. In doing this, the auditor should verify that the effective date that the loan was transferred out in the guarantor’s system matches the loan purchase date.
- c. Request the guaranty agency to provide the monthly totals of loan transfers to ED due to loans purchased by ED and verify that these were reflected in line AR-7 of Form 2000.
- d. Review/verify amounts reported in lines MR-15 and MR-27 of ED Form 2000 to determine that the Secretary’s share was accurately collected and reported.

#### IV. OTHER INFORMATION

Some “statewide” entities are defined to include a guaranty agency under the FFEL Program (CFDA 84.032). For such entities, this Part 4 section should be used to identify pertinent compliance requirements. Auditors for “statewide” entities that incorporate a guaranty agency must consider the provisions of OMB Circular A-133, paragraph 520(b)(3) in determining major programs. When those provisions apply, coverage of the FFEL Program for a guaranty agency as a major program must be identified and reported on separately as a major program in the Summary of Auditor’s Results Section of the Schedule of Findings and Questioned Costs, referring to the program as “CFDA 84.032 (FFEL - Guaranty Agencies).”

## DEPARTMENT OF EDUCATION

### CFDA 84.032 FEDERAL FAMILY EDUCATION LOANS (Lenders)

#### I. PROGRAM OBJECTIVES

Banks, schools, other financial institutions, governmental entities, or nonprofit organizations that meet the definition of an eligible lender in Section 435(d) of the Higher Education Act of 1965, as amended (HEA) (20 USC 1085(d)) may function as lenders under the Federal Family Education Loans (FFEL) program. All of these types of lenders must comply with the requirements generally applicable to lenders. However, there are additional compliance requirements that apply to schools as lenders.

#### II. PROGRAM PROCEDURES

Prior to July 1, 2010, eligible banks, savings and loan associations, credit unions, pension funds, insurance companies, and schools could make loans under the FFEL program (34 CFR section 682.101(a)). Under Section 435(d)(1) of the HEA (20 USC 1085(d)(1)), State agencies and nonprofit organizations may also qualify as eligible lenders under certain conditions and for certain purposes. Schools that meet the requirements of 34 CFR section 682.601(a) could also make loans under the FFEL program. An eligible lender that holds loans as an eligible lender trustee for a school, or an organization affiliated with a school, and the school involved in such an arrangement are subject to certain restrictions on lending under Section 435(d)(7) of the HEA (20 USC 1085(d)(7)). These entities may continue to hold FFEL program loans until they are repaid or a claim is paid on the loan.

A lender (other than a school lender) holding more than \$5 million in FFEL loans during its fiscal year, and a school lender under 34 CFR section 682.601 that holds any FFEL loans during its fiscal year, must submit an independent annual compliance audit for that year conducted by a qualified independent organization or person (34 CFR section 682.305(c)(1)). Governmental entities or nonprofit organizations that function as lenders under the FFEL program must meet this requirement by auditing the school lender activity as a major program (or, if applicable, as part of the Student Financial Aid (SFA) Cluster) as part of the entity's single audit under OMB Circular A-133. (For Schools that are Lenders, see guidance in IV, "Other Information," at the end of this section.)

The Student Aid and Fiscal Recovery Act of 2009 (SAFRA Act), Title II of the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, provides that, after June 30, 2010, no new student loans will be made under the Federal Family Education Loan (FFEL) Program. Therefore, beginning July 1, 2010, all new subsidized and unsubsidized Stafford Loans made to students, PLUS loans made to parents and to graduate/professional students, and consolidation loans made to borrowers, will be made under the Federal Direct Student Loans (Direct Loan) program (CFDA 84.268).

#### Source of Governing Requirements

The FFEL program is authorized by Title IV, Part B, of the HEA, as amended (20 USC 1071 through 1087-4). Program regulations are located at 34 CFR part 682.

## Availability of Other Program Information

A number of documents contain guidance applicable to FFEL program lenders. They include:

- Dear Partner (Colleague) Letters (<http://ifap.ed.gov/ifap/byYear.jsp?type=dpclletters>)
- FFEL Special Allowance Rates (<http://ifap.ed.gov/ifap/byYear.jsp?type=ffelspebrates>)
- [FFEL Variable Interest Rates](http://ifap.ed.gov/ifap/byYear.jsp?type=ffelvarrates) (<http://ifap.ed.gov/ifap/byYear.jsp?type=ffelvarrates>)
- Dear Colleague Letter FP-07-01 FFELP Loans Eligible for 9.5 Percent Minimum Special Allowance Rate (<http://ifap.ed.gov/dpclletters/FP0701.html>)
- Dear Colleague Letter FP-07-06 Audit Requirements for 9.5 Percent Minimum Special Allowance Payment Rate (<http://www.ifap.ed.gov/dpclletters/FP0706.html>)
- Dear Colleague Letter FP 07-12 -Determination of Not-For-Profit Holder Status for SAP Billing (<http://www.ifap.ed.gov/dpclletters/FP0712.html>)
- FFEL Prohibited Inducement Guidance (for activities undertaken by a lender prior to July 1, 2008) (<http://ifap.ed.gov/eannouncements/0914FFELProhibitedInducementGuidance.html>)
- Dear Colleague Letter FP 08-07 Ensuring Continued Access To Student Loans Act of 2008 (<http://www.ifap.ed.gov/dpclletters/061908GEN0808.html>)
- Dear Colleague Letter FP 08-10 The Higher Education Opportunity Act (<http://www.ifap.ed.gov/dpclletters/GEN0812FP0810.html>)
- Dear Colleague Letter FP 12-01 Loan Verification Certificate for Special Direct Consolidation Loans (<http://www.ifap.ed.gov/dpclletters/FP1201.html>)
- Dear Colleague Letter FP 12-02 LIBOR-Based SAP under the Consolidated Appropriations Act, 2012 (<http://www.ifap.ed.gov/dpclletters/FP1202.html>)
- Dear Colleague Letter FP 12-03 Corrections to GEN-11-19/FP-11-01 Revised Loan Discharge Application: Unpaid Refund (<http://www.ifap.ed.gov/dpclletters/GEN1205.html>)
- Dear Colleague Letter GEN-12-01 Changes Made To The Title IV Student Aid Programs By The Recently Enacted Consolidated Appropriations Act, 2012 (<http://www.ifap.ed.gov/dpclletters/GEN1201.html>).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

#### G. Matching, Level of Effort, Earmarking

1. **Matching** – Not Applicable
- 2.1 **Level of Effort** – *Maintenance of Effort* – Not Applicable
- 2.2 **Level of Effort** – *Supplement not Supplant*

For schools that are lenders (See III.N.14, Schools as Lenders Eligibility), proceeds from special allowance payments and interest payments from borrowers, interest subsidies received from the U.S. Department of Education (ED), and any other proceeds from the sale of or other disposition of loans (exclusive of return of principal, any financing costs incurred by the school to acquire funds to make the loans, and the cost of charging origination fees or interest rates at less than the fees or rates authorized by the HEA) must be used to supplement, not to supplant, non-Federal funds that would otherwise be used for need-based grant programs (Section 435(d)(2)(C) of the HEA (20 USC 1085(d)(2)(C)); 34 CFR section 682.601(c)).

3. **Earmarking** – Not Applicable

#### I. Procurement and Suspension and Debarment

For schools that are lenders (See III.N.13, Special Tests and Provisions – Making or Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization), any contract awarded for financing, servicing, or administration of FFEL loans must be awarded on a competitive basis (Section 435(d)(2)(A)(iv) of the HEA (20 USC 1085(d)(2)(A)(iv)); 34 CFR section 682.601(a)(4)).

#### L. Reporting

1. **Financial Reporting**
  - a. SF-270, *Request for Advance or Reimbursement* – Not Applicable
  - b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
  - c. SF-425, *Federal Financial Report* – Not Applicable

- d. *Lender's Interest and Special Allowance Request and Report (LaRS)* (OMB No. 1845-0013) – The LaRS is used by ED to calculate interest subsidies, special allowance payments due to lenders, and excess interest owed ED. It is also used to obtain information about the lender's FFEL program portfolio. For lenders to receive payments of interest benefits and special allowance payments, quarterly reports must be submitted to ED on the LaRS. The lender must submit fully completed quarterly LaRS to ED even if the lender is not owed, or does not wish to receive interest benefits or special allowance payments from ED.

The LaRS must be submitted within 90 days after the end of the quarter to be considered timely. Where testing of LaRS information is requested later in this program supplement, that testing can be done concurrently with this testing. See 34 CFR section 682.414(a)(4)(ii) for more information.

The LaRS is a five-part form with a cover page.

**Page 1** – The first page of the form identifies the lender by name and identification number and, if the lender uses a servicer to prepare the form, the servicer's name and identification number. It also requires that an official representative of the lender certify that the data reported is correct and that it conforms to the laws, regulations, and policies applicable to the FFEL Program.

**Part I – Lender Origination and Lender Loan Fees** – This part contains information on the amount of funds disbursed during the quarter and the amount of loan origination and lender loan fees due to ED. (As there are no new loans originated under the FFEL program, this part is limited to adjustments and cancellations of previously disbursed loans.)

**Part II – Interest Benefits** – This part contains information on the amount of interest benefits due to the lender on eligible loans.

**Part III – Special Allowance** – This part contains information for the lender to request special allowance payments from ED. The loan information must be separated according to loan type, applicable interest rate, and special allowance categories. ED calculates the amount of special allowance payments due to the lender based on this data.

**Part IV – Loan Activity** – This part contains information regarding any changes in principal amounts for each type of FFEL program loan in the lender's portfolio during the quarter.

**Part V – Loan Portfolio Status** – This part contains information regarding the status of the outstanding loan principal for each type of FFEL program loan in the lender's portfolio at the end of the quarter.

The information reported on the LaRS is subject to levels of edit checks for data reasonability during ED's processing of the payment request. In some cases, the form will be rejected and returned to the lender for correction. In other cases, ED notifies the lender that its submission failed to pass certain reasonability edits and instructs the lender to determine if the errors resulted in an incorrect payment of interest benefits or special allowance. The lender is further instructed by ED to make applicable adjustments to the affected loan balances on the next quarterly report. The lender is required to keep records necessary to support the amounts reported on the LaRS (34 CFR section 682.305(a)).

2. **Performance Reporting** – Not Applicable
3. **Special Reporting** – Not Applicable
4. **Section 1512 ARRA Reporting** – Not Applicable
5. **Subaward Reporting under the Transparency Act** – Not Applicable

## N. **Special Tests and Provisions**

### 1. **Individual Record Review**

**Compliance Requirement** – A lender is required to maintain current, complete, and accurate records of each loan that it holds. These loan records (files) form the basis for the information contained in the LaRS. The records must be maintained in a system that allows ready identification of each loan's status. Except for the loan application and the promissory note, these records may be stored in microform, computer file, optical disk, CD-ROM, or other media formats provided that the means of storage meets the requirements in 34 CFR sections 668.24(d)(3)(i) through (iv) (34 CFR section 682.414(a)).

The required records are identified in 34 CFR section 682.414(a)(4)(ii) and are listed below.

- A copy of the loan application, if a separate application was provided to the lender
- A copy of the signed promissory note
- The repayment schedule
- A record of each disbursement of loan proceeds
- Notices of changes in a borrower's address and status as at least a half-time student
- Evidence of the borrower's eligibility for a deferment

- The documents required for the exercise of forbearance
- Documentation of the assignment of the loan
- A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs
- A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan; each communication (other than regular reports by the lender showing that an account is current) between the lender and a credit bureau regarding the loan; each effort to locate a borrower whose address is unknown at any time; and each request by the lender for default aversion assistance on the loan
- Documentation of any Master Promissory Note confirmation process or processes
- Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted.

**Note: *Original Loan Applications and Promissory Notes.*** If the audit sample includes loans that the lender no longer owns, such as loans that the lender sold to another party, loans that were repaid by a consolidation loan or loans, or assigned to a guaranty agency, the auditor may perform alternative procedures to obtain access to and review the original documents. The alternative procedures could include, but are not necessarily limited to, the review of (1) a copy or image maintained by the lender or servicer of the original document; or (2) a certified true copy, obtained from the entity that currently holds the original loan document, that may be compared to the lender's document.

**Audit Objective** – Determine whether the lender maintained current, complete and accurate loan records.

#### **Suggested Audit Procedures**

- a. Trace loan information from the lender's summary records/ledgers to detailed loan records.
- b. Test a sample of individual loan files and determine if the lender maintained the required documents and the information recorded in the detailed loan record agrees with the information in these documents and the summary records.

## **2. Interest Benefits**

### **Compliance Requirements**

#### ***Payment of Interest Benefits***

ED pays the lender interest benefits (see 34 CFR section 682.202(a) for applicable FFEL interest rates) on eligible FFEL program loans (subsidized Stafford and certain consolidated loans) on behalf of a qualified borrower during certain loan statuses including:

- All periods prior to the beginning of the repayment period;
- Any period when the borrower has an authorized deferment (34 CFR section 682.300); and
- During a period that does not exceed 3 consecutive years from the established repayment period start date on each loan under the income-based repayment plan and that excludes any period during which the borrower receives an economic hardship deferment, if the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's loan or on the qualifying portion of the borrower's Consolidation Loan.

#### ***Payment of Interest Benefits on Consolidated Loans***

Consolidation loan borrowers qualify for interest benefits during authorized periods of deferment on the portion of the loan that does not represent Health Education Assistance Loans (HEAL) if the loan application was received by the lender on or after:

- January 1, 1993, but prior to August 10, 1993;
- August 10, 1993, but prior to November 13, 1997, if the loan consolidates only subsidized Stafford loans; or
- November 13, 1997 but prior to July 1, 2010, for the portion of the loan that repaid subsidized FFEL loans and Direct Subsidized Loans (34 CFR section 682.301(a)(3)).

#### ***Termination of Interest Benefits***

Generally, ED's obligation to pay interest benefits to a lender ceases when the eligible borrower enters repayment status and does not qualify for a deferment. Interest benefits to the lender also begin or terminate with certain other date-specific events enumerated in 34 CFR sections 682.300(b)(2) and (c).

### ***Reporting of Interest Benefits***

The information needed for ED to calculate interest benefits is reported in Part II of the LaRS. See 34 CFR section 682.202(a) for applicable interest rates for FFEL program loans. The Service members Civil Relief Act (50 USC App. 527) (SCRA), which limits the interest rate on a borrower's loan to 6 percent during the borrower's active duty military service, applies to FFEL loans. This limitation applies to borrowers who were in military service as of August 14, 2008, but a borrower is not entitled to a refund of interest paid above the 6 percent rate prior to that date. The SCRA interest rate limit does not apply to an endorser to a PLUS loan made to a parent or graduate/professional student unless that individual is also performing eligible military service (50 USC App. 527). For any FFEL loan that is subject to the SCRA six percent interest rate limit, for those FFEL loans first disbursed on or after July 1, 2008, the applicable interest rate used in calculating the lender's special allowance payment is the SCRA-determined rate. Interest benefits due the lender may be calculated by using either the average daily balance or actual accrual methods in 34 CFR sections 682.304(b) and (c).

### ***Consolidation Loan Interest Payment Rebate Fee***

Consolidation loan interest payment rebate fees are required on a monthly basis from lenders that hold Federal consolidation loans with first disbursements after October 1, 1993. The monthly rebate fee is .0875 percent (1.05 percent annualized) of the unpaid balance of the principal and the accrued unpaid interest on all Federal consolidation loans disbursed after October 1, 1993, and held by the lender on the last day of the month. For loans based on applications received during the period October 1, 1998 through January 31, 1999, inclusive, the monthly rebate fee is .05167 percent (0.62 percent annualized) of the unpaid balance of principal and accrued unpaid interest. Consolidation loan rebate fees (CLRF) are reported monthly using the FFEL Consolidation Loan Rebate Fee Report and Remittance Form (*OMB No. 1845-0046*) (Section 428C(f) of the HEA (20 USC 1078-3(f))).

**Audit Objectives** – Determine whether interest benefits were accurately calculated and billed to ED and that the CLRF were submitted on a monthly basis to ED.

### **Suggested Audit Procedures**

- a. Test that the loans are assigned the correct interest rate in accordance with 34 CFR section 682.202(a) and 50 USC App. 527, and are reported in the correct interest rate category in the LaRS.
- b. Test that the lender begins and ends billings to ED for interest benefits on the appropriate day for loans in an in-school, grace, or authorized deferment period.
- c. Review loan records, disbursement records, or other documentation to verify that interest is billed only for periods specified in 34 CFR section 682.300(b)(2) and is not billed for interest covered under 34 CFR section 682.300(c).

- d. For consolidated loans on which the lender has claimed interest benefits, review the history files, and verify that the loans qualified for interest payments.
- e. For consolidated loans subject to the consolidation loan interest payment rebate fee, verify that fees were calculated accurately and submitted on a monthly basis.
- f. Test the accuracy of the average daily balance or actual accrual calculations by recalculating amounts or by reasonableness tests.

### **3. Special Allowance Payments**

#### **Compliance Requirement**

##### ***Special Allowance Payments/Return of Excess Interest***

In addition to interest benefits, ED pays a special allowance to the lender on the average daily outstanding balance of eligible FFEL loans. ED computes the special allowance payable to the lender based upon the average daily balance computed by the lender. The amount of each quarterly special allowance payment on a loan will vary according to the type of FFEL program loan, the date the loan was disbursed, the loan period, and the loan status. The lender reports in Part III of the LaRS the average daily principal balance of those loans in each category qualifying for the payment. In addition ED will calculate the amount of excess interest or negative special allowance owed to ED. ED computes the special allowance payment due to the lender during processing of the LaRS (34 CFR sections 682.304 through 682.305).

##### ***Loans Eligible for Special Allowance Payments***

See 34 CFR section 682.302(b) for details on loans eligible for special allowance payments. Limitations on the payment of a special allowance for PLUS loans were eliminated by the Higher Education Reconciliation Act (HERA), (Pub. L. No. 109-171). Lenders may receive special allowance payments on PLUS loans that were first disbursed on or after January 1, 2000 and before July 1, 2006, for periods beginning April 1, 2006 (Section 438(b)(2)(I) of the HEA (20 USC 1087-1(b)(2)(I)). The average loan principal, including capitalized interest, is to be calculated using the average daily balance method defined in 34 CFR section 682.304(d).

##### ***Special Allowance Rates for Loans Made On or After October 1, 2007 but Prior to July 1, 2010***

Except for certain loans made from funds derived from tax-exempt sources, the special allowance rate for any eligible loan, for which the first disbursement of principal was made on or after October 1, 2007, is to be calculated according to the formulas described in:

- a. Section 438(b)(2)(I)(vi)(I) of the HEA (20 USC 1087-1(b)(2)(I)(vi)(I)) (34 CFR section 682.302(f)(1)) for a loan that is held by an entity that does not qualify as an “eligible not-for-profit holder,” or

- b. Section 438(b)(2)(I)(vi)(II) of the HEA (20 USC 1087-1(b)(2)(I)(vi)(II)) (34 CFR section 682.302(f)(2)) for a loan that is held by an entity that qualifies as an “eligible not-for-profit holder.”

An “eligible not-for-profit holder” is an eligible lender under Section 435(d) of the HEA (20 USC 1085(d)), other than a school lender, that is—

- A State, or a political subdivision, agency, authority or instrumentality of a State, including an entity eligible to issue bonds described in section 144(b) of the Internal Revenue Code (Code), or in 26 CFR section 1.103-1;
- A not-for-profit entity described in section 150(d)(2) of the Code that has not made the election described in section 150(d)(3) of the Code to relinquish that status;
- A not-for-profit entity described in section 501(c)(3) of the Code; or
- A trustee acting on behalf of a governmental or non-profit entity listed above, without regard to whether that entity qualifies as an eligible lender under Section 435(d) in its own right (Section 435(p) of the HEA (20 USC 1085(p); 34 CFR section 682.302(f)(3)).

Loans that are held by a governmental or non-profit entity that is an eligible lender under Section 435(d) of the HEA may qualify for the higher special allowance rate, as may loans held by an eligible lender trustee on behalf of such an entity. Loans held by the entity or eligible lender trustee qualify for the higher rate only if the governmental or non-profit entity –

- On September 27, 2007, either acted as an eligible lender under Section 435(d) of the HEA (other than as a school lender), or was the sole beneficial owner of a FFEL program loan that was eligible for special allowance payments;
- Is neither owned nor controlled, even in part, by a for-profit entity; and
- Remains the sole beneficial owner of such loans and the income from such loans (Section 435(p)(2) of the HEA (20 USC 1085(p)(2))).

The grant of a security interest in a loan or its income, or the pledge of the loan or income as collateral, in order to secure a debt obligation issued by a governmental or non-profit entity, does not affect the not-for-profit eligibility status of that entity or of an eligible lender trustee to the extent acting on its behalf (Section 435(p)(2)(E) of the HEA (20 USC 1085(p)(2)(E))).

An eligible lender trustee may not receive compensation in excess of reasonable and customary rates for serving as a trustee for a governmental or non-profit entity (Section 435(p)(2)(D) of the HEA (20 USC 1085(p)(2)(D))).

Note that a State is permitted to designate a not-for-profit entity that was not acting as an eligible lender under Section 435(d) of HEA on September 27, 2007, as a new “eligible not-for-profit holder” (34 CFR section 682.302(f)(3)).

### ***Loans Made or Purchased with Funds from the Issuance of Tax-Exempt Obligations***

The special allowance rate payable on loans made or purchased from funds derived from tax-exempt obligations depends on the specific source of funds used to acquire the loan, whether specified events occurred after its acquisition, the date the loan was acquired, the rate payable on the loan when it was acquired, and the characteristics of the lender that acquired the loan (Section 438 of the HEA (20 USC 1087-1)).

With limited exceptions, for HERA small lenders (see below), the special allowance rates for loans made on or after October 1, 2007, are the same for all loans, regardless of the source of funding, and differ only with respect to the status of the holder of the loan. Loans made before October 1, 2007, that were acquired with funds from tax-exempt obligations originally issued prior to October 1, 1993 receive a special allowance at one-half the rate otherwise payable, but not less than needed to provide, including the interest on the loan, an annualized return of 9.5 percent. (Sections 438(b)(2)(B)(i), (ii), and (iv) of the HEA (20 USC 1087-1(b)(2)(B)(i), (ii), and (iv))). This separate rate is referred to as the “9.5 percent floor.”

Loans acquired with funds from tax-exempt obligations originally issued on or after October 1, 1993 receive the same special allowance rate as loans acquired with funds from sources other than tax-exempt obligations. An obligation that was issued to obtain funds to make loans, or to acquire an interest in a loan (including an interest by pledge of the loan as collateral), is considered to have been originally issued on the date it was issued. A tax-exempt obligation that refunds, or is one of a series of tax-exempt refunding obligations, is considered to have been originally issued when the initial obligation was issued (Section 438(b)(2)(B)(iv) of the HEA (20 USC 1087-1(b)(2)(B)(iv))).

Only loans made or purchased from an eligible funding source specified in 34 CFR section 682.302(c)(3)(i) may qualify for the 9.5 percent floor. Those sources are funds obtained from:

- The proceeds of a tax-exempt obligation originally issued prior to October 1, 1993;
- Collections or default payments by a guarantor on a loan acquired with the proceeds of such an obligation;
- Interest benefits or special allowance payments received on a loan acquired with the proceeds of such an obligation;
- The sale of a loan acquired with the proceeds of such an obligation; or

- The investment of the proceeds of such an obligation.

Special allowance at the 9.5 percent floor may be received on claims submitted for the quarter ending December 31, 2006 and thereafter only if the lender has submitted, and ED has accepted, a report of an audit conducted under a methodology prescribed for this purpose that identifies those loans that have been acquired from the eligible sources in the previous paragraph, and the lender has submitted, for each such claim, a management certification that SAP is claimed at that rate only on loans determined through that process to be eligible. (See Dear Colleague Letters FP-07-01 and FP-07-06.)

However, loans made from or purchased using these eligible sources do not qualify for the 9.5 percent floor if the loans were made or purchased after February 7, 2006 or, for loans made before that date and purchased after that date, did not qualify on that date for special allowance at the 9.5 percent floor. (Section 438(b)(2)(B)(vi) of the HEA (20 USC 1087-1(b)(2)(B)(vi)); 34 CFR section 682.302(e)(4)).

These deadlines were deferred until December 31, 2010 with respect to a “HERA small lender,” a loan holder that on February 8, 2006, and during the quarter for which the special allowance is paid:

- Was a unit of state or local government or a private nonprofit entity;
- Was not owned or controlled by, or under common ownership with, a for-profit entity; and
- Held directly or through any subsidiary, affiliate, or trustee, a total unpaid balance of principal equal to or less than \$100 million on loans for which special allowances were paid under section 438(b)(2)(B) in the most recent quarterly payment prior to September 30, 2005 (Section 438(b)(2)(B)(vii) of the HEA (20 USC 1087-1(b)(2)(B)(vii)); 34 CFR section 682.302(e)(5)).

Loans that are eligible for the 9.5 percent floor may lose eligibility for that rate and revert to the usual rates for any loan that is:

- Pledged or otherwise transferred prior to October 1, 2004 from the tax-exempt obligation used to acquire the loan, unless either of the following applies –
  - The loan is pledged or transferred in consideration of funds listed in 34 CFR section 682.302(c)(3)(i) or from a tax-exempt refunding obligation, or
  - The prior tax-exempt obligation used to acquire the loan is neither retired nor defeased with yield-restricted obligations;
- Financed by a tax-exempt obligation that, after September 30, 2004, has matured, been refunded, or is retired or defeased;

- Refinanced after September 30, 2004 with funds obtained from a source other than the funds listed in 34 CFR section 682.302(c)(3)(i);
- Sold or transferred to any other holder after September 30, 2004.

Section 438(b)(2)(B) of the HEA (20 USC 1087-1(b)(2)(B)); 34 CFR sections 682.302(e)(2) and (3)).

### ***Termination of Special Allowance Payments on a Loan***

Special allowance payments on loan balances terminate when a date-specific event occurs and the loan is no longer eligible for the payment. These date-specific events are described in detail in 34 CFR section 682.302(d) and include the following:

- The date a borrower's loan is repaid;
- The date a borrower's loan check is returned uncashed to the lender;
- The date the lender receives payment on a claim for loss on the loan;
- The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;
- The 60<sup>th</sup> day after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all the required documentation on or before the 60<sup>th</sup> day;
- The 120<sup>th</sup> day after disbursement if the loan check has not been cashed on or before that date or if the loan proceeds disbursed by EFT have not been released from the restricted account maintained by the school on or before that date;
- The 30<sup>th</sup> day after the date the lender received a returned claim from the guaranty agency due solely to inadequate documentation on a loan submitted by the regulatory deadline for loss on the loan (unless the lender files a claim for loss on the loan with the guarantor, together with the required documentation prior to the 30<sup>th</sup> day); and
- The date on which the lender determines the loan is legally unenforceable based on receipt of an identity theft report under 34 CFR section 682.208(b)(3).

### ***Loss of Interest and Special Allowance Payment Benefits***

A lender can lose reinsurance coverage and interest and special allowance payment benefits due to *violations of due diligence requirements on a loan* (See N.8 below). To reinstate reinsurance and other Federal payments on the loan, the violation has to be "cured" (See N.10 below). See Appendix D of 34 CFR part 682 for more information.

**Audit Objective** – Determine whether special allowance payments were earned and reported properly.

**Suggested Audit Procedures**

- a. Test that the lender is reporting all eligible loans in its portfolio in Part III of the LaRS by the proper year, quarter, interest rate, and special allowance category.
- b. Using the results of any audit conducted by or for the lender under Dear Colleague Letter FP-07-06 and accepted by ED, test that the lender is accurately reporting for the 9.5 percent floor only those loans that—
  - (1) were identified as a result of the audit as made or purchased with eligible sources of funds, or
  - (2) if made or acquired by the lender after December 31, 2006, were made or purchased with funds obtained from repayments, sales, or interest or special allowance payments on loans that were established by such audit to be first-generation loans, as that term is used in Dear Colleague Letter FP 07-01, and
  - (3) unless held by a lender that qualified for deferral until December 30, 2010,
    - (a) were made or purchased prior to February 8, 2006, and
    - (b) were eligible for 9.5 percent floor on February 8, 2006.
- c. Test that the lender is terminating special allowance requests on loan balances when a date-specific event specified in 34 CFR section 682.302(d) occurs, as documented in the borrower's file.
- d. Test that the lender is terminating billing under the 9.5 percent floor when disqualifying events specified in HEA and 34 CFR sections 682.302(e)(2) and (3) occur.
- e. Test the accuracy of the average daily balance calculations as defined in 34 CFR section 682.304(d) by recalculating amounts or by reasonableness tests.
- f. Test a sample of loans included in the average daily balances to determine that the average daily balances do not include loans that are not eligible for special allowance payments.

- g. For loans made on or after October 1, 2007 through June 30, 2010, for which the lender claimed special allowance as an “eligible not-for-profit holder,” examine if the lender claimed special allowance on loans held as a trustee on behalf of another entity —
- (1) the claim was limited to loans to which a governmental or non-profit entity listed above held full beneficial ownership; and
  - (2) the lender was compensated by the governmental or non-profit entity at a rate in excess of that paid other eligible lender trustees holding FFEL program loans, and if so, by what amount.

#### **4. Loan Sales, Purchases, and Transfers Compliance Requirements**

**Compliance Requirement** - Loan sales, purchases, and transfers between eligible lenders entail special portfolio management risks and, therefore, require special controls. The lender must exercise due care in ensuring that gaps in servicing do not occur, possibly affecting the reinsurance of the loan. The lender must notify the borrower, either jointly with the other party or separately, of the transfer of the loan and the purchasing lender must notify the guaranty agency of the loan transfer (34 CFR section 682.208(e)). Within 90 days of its acquisition of the loan, the purchasing lender shall report to at least one national credit bureau the information required in 34 CFR section 682.208(b)(2). In addition, the HEOA amended Section 428 (b)(2)(F) of the HEA (20 USC 1078(b)(2)(F)), which requires that a borrower be notified if the transfer, sale, or assignment of the borrower’s loan will result in a change in the identity of the party to whom the borrower must send payments or direct any communications. After August 13, 2008, the borrower also must be advised of the effective date of the transfer of the loan, the date on which the current loan servicer (as of the date of the notice) will stop accepting payments, and the date on which the new loan servicer will begin accepting payments (20 USC 1078(b)(2)(F)). If an originating lender sells or otherwise transfers a loan to a new holder, ED will hold the originating lender liable for the payment of the origination and lender fees and will not pay interest benefits or a special allowance to the new holder or pay reinsurance to the guaranty agency until the origination fees are paid to ED (34 CFR section 682.305(a)(4)).

**Audit Objectives** – Determine whether loan sales, purchases, and transfers were made in accordance with ED requirements and that accurate records of such transactions were maintained.

#### **Suggested Audit Procedures**

- a. For a sample of loans, trace the principal amount of loans sold as reported on the LaRS to the bills of sale.

- b. Review a sample of the loan purchase/sales agreements and ascertain the terms of the agreements as to the day of sale, transfer of funds, and responsibility for loan origination and lender fees. Test that the sale/purchase was conducted in accordance with these terms and the date-specific event was properly noted in the lender's records as to the start/end date of eligibility for interest benefits and special allowance.
- c. Select a sample of loans that were transferred to the lender during the audit period and verify that all applicable LaRS loan data, including beginning balances, was entered completely and accurately into the lender's system. Verify that all required supporting loan documentation was obtained and maintained.
- d. Select a sample of loans that were transferred, sold, or assigned on or after August 14, 2008, and determine if the borrower was notified with the required information.

## 5. Enrollment Reports

**Compliance Requirement** – Schools are required to confirm and report to the National Student Loan Data System (NSLDS) the enrollment status of students who receive Federal student loans. This process is called Enrollment Reporting. Enrollment information is used to determine the borrower's eligibility for in-school status, deferment, interest subsidy, and grace period. Enrollment changes, such as a change from full-time to half-time status, graduation, withdrawal, or an approved leave of absence, are changes that need to be reported. The enrollment information is merged into the NSLDS database and reported to guarantors, lenders, and servicers of student loans.

Lenders must use the NSLDS data to make adjustments for interest and special allowance billings on each loan. The billing for interest benefits and special allowance payments relies on the timely and proper processing of student enrollment information, including timely conversion to repayment status. The conversion of a loan to repayment status is subject to a number of conditions as defined in 34 CFR section 682.209. Typically, Stafford loan borrowers begin repayment 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at a school. PLUS and consolidation loans go into repayment on the day the loan is disbursed, or if disbursed in multiple installments, on the date the loan is fully disbursed. The first payment is due within 60 days of the date the loan is fully disbursed (34 CFR section 682.209).

**Audit Objective** – Determine whether, upon receipt of Enrollment Reports or other notification of change information, the lender accurately and timely updated loan records for changes to student status, including conversion to repayment status.

### Suggested Audit Procedures

- a. Trace a sample of loans from the Enrollment Reports received during the period to loan records to determine if changes to student enrollment status were made accurately.

- b. Determine whether conversions to repayment status were made within required time limits.
- c. Obtain and review the error reports (manifests, in-school discrepancy reports, or out-of-school status reports), if any, generated by the lender that identify discrepancies between the Enrollment Reports and the lender's records.
- d. For a sample of loans, trace student enrollment data to any interim status reports or other notification of change information that may have been received directly from the school.

## **6. Payment Processing**

### **Compliance Requirement**

Except in the case of payments made under an income-based repayment plan, the lender may credit the entire payment amount first to any late charges accrued or collection costs, then to any outstanding interest, and then to any outstanding principal. A borrower may prepay all or part of a loan at any time without a penalty. Unless the borrower requests otherwise, if a prepayment equals or exceeds the established monthly payment amount, the lender shall apply the prepayment to future installments and advance the next payment due date. The lender must (1) inform the borrower in advance that any additional full payment amounts submitted without instructions as to their handling will be applied to future scheduled payments with the borrower's next scheduled payment due date advanced, or (2) provide a notification after the payment is received stating that the payment has been so applied and the due date of the borrower's next scheduled payment. Information related to the next scheduled payment due date need not be provided to a borrower making prepayments while in an in-school, grace, deferment, or forbearance period when payments are not due (34 CFR section 682.209(b)). Interest must be charged in accordance with 34 CFR sections 682.202(a) and (b).

### ***Income-Based Repayment) Plan***

Beginning July 1, 2009, the HEA provides an income-based repayment (IBR) plan that enables a borrower who has had a partial financial hardship to make a lower monthly payment with certain exceptions. The IBR plan has different rules for applying payments. For loans repaid under the IBR plan, the lender must apply payments in the order of (1) accrued interest, (2) collection costs, (3) late charges, and (4) loan principal (Section 428(b)(9)(A)(v) of the HEA (20 USC 1078(b)(9)(A)(v))).

**Audit Objectives** – Determine whether the lender (1) calculated interest and principal in accordance with 34 CFR sections 682.202 (a) and (b), and (2) applied loan payments and prepayments in accordance with 34 CFR section 682.209(b), or in the case of prepayments, with the documented specific request of the borrower.

## Suggested Audit Procedures

- a. Test whether the lender applied the borrower payments and prepayments to loan records in accordance with payment application requirements.
- b. Test that application of principal and interest were appropriately calculated and that the correct amount was applied to the individual borrower's loan balance.
- c. Test if prepayments were allocated in accordance with ED regulatory requirements or, if applicable, borrower instructions.

## 7. Due Diligence by Lenders in the Collection of Delinquent Loans

**Compliance Requirement** – Lenders are required to engage in specific collection activities and meet specific claim-filing deadlines on delinquent loans. In the case of a loan made to a borrower who is incarcerated, residing outside the United States or its territories, Mexico, or Canada, or whose telephone number is unknown, the lender may send a forceful collection letter instead of each telephone effort described below. There are also specific collection activities that must be performed before a lender can file a default claim on a loan with an endorser. The due diligence provisions preempt any State law, including State statutes, regulations, or rules that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of that section (34 CFR section 682.411).

**Definition of Delinquency** – Delinquency on a loan begins on the first day after the due date of the first missed payment. The due date of the first payment is established by the lender but must follow the deadlines specified in 34 CFR section 682.209(a). If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment. A payment that is within \$5.00 of the amount normally required to advance the due date may advance the due date if the lender's procedures allow for that advancement (34 CFR section 682.411(b)).

**Definition of Collection Activity** – Collection activity with respect to a loan is defined as:

- Mailing or otherwise transmitting to the borrower at an address that the lender reasonably believes to be the borrower's current address, a collection letter or final demand letter that satisfies the timing and content requirements of 34 CFR sections 682.411(c), (d), (e), or (f);
- Attempting telephone contact with the borrower;
- Conducting skip-tracing efforts, in accordance with 34 CFR sections 682.411(h)(1) or (m)(1)(iii) to locate a borrower whose correct address or telephone number is unknown to the lender;
- Mailing or otherwise transmitting to the guaranty agency a request for default aversion assistance available from the agency on the loan at the time the request is transmitted; or

- Any telephone discussion or personal contact with the borrower as long as the borrower is apprised of the account's past-due status (34 CFR section 682.411(1)(5)).

### ***Gaps in Collection Activity***

A lender/servicer may not permit the occurrence of a gap of more than 45 days (or 60 days in the case of a transfer) in collection activity on a loan (34 CFR section 682.411(j)).

### ***Due Diligence Documentation***

A lender is required to maintain complete and accurate records of each loan that it holds. In determining whether the lender met the due diligence compliance requirements pertaining to collection of delinquent loans, the documentation maintained must include a collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan; each communication (other than regular reports by the lender showing that an account is current) between the lender and a credit bureau regarding the loan; each effort to locate a borrower whose address is unknown at any time; and each request by the lender for default aversion assistance on the loan (34 CFR section 682.414(a)(4)).

### ***Failure to Comply with Due-Diligence Regulations***

Failure to comply with the Federal due-diligence regulations will result in the loss of reinsurance for the guaranty agency, the loss of a lender's right to receive an insurance payment from the guaranty agency's Federal Fund, and the lender's right to receive interest and special allowance (34 CFR part 682, Appendix D, paragraph I.B.3).

### ***Due-Diligence Requirements for Loans with Monthly and Less-than-Monthly Repayment Obligations***

The required collection activities are described below. As part of one of the collection activities, the lender must provide the borrower with information on the availability of the Student Loan Ombudsman's office (34 CFR section 682.411).

**1 to 15 Days Delinquent:** One written notice or collection letter should be sent to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency (except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan.) The notice or collection letter sent during this period must include, at a minimum, a lender contact, a telephone number, and a prominent statement informing the borrower that assistance may be available if he or she is experiencing difficulty in making a scheduled repayment.

16 to 180 Days Delinquent (16-240 days delinquent for a loan repayable in installments less frequently than monthly): Unless exempted as set forth in 34 CFR section 682.411(d)(4), during this period the lender shall engage in the following:

- At least four diligent telephone contacts (See definition of a “diligent telephone contact” below) urging the borrower to make the required payments on the loan. At least one of the telephone contacts must occur on or before the 90th day of delinquency and another one must occur after the 90th day of delinquency.
- At least four collection letters – at least two of which must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may institute proceedings to offset the borrower’s State and Federal income tax refunds and other payments made by the Federal Government to the borrower, or to garnish the borrower’s wages, or assign the loan to the Federal Government for litigation against the borrower.

#### ***Diligent Efforts for Telephone Contact***

Diligent efforts for telephone contact are defined in 34 CFR section 682.411(m) as:

- A successful effort to contact the borrower by telephone;
- At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower’s correct telephone number; or
- An unsuccessful effort to ascertain the borrower’s correct telephone number, including but not limited to, a directory assistance inquiry as to the borrower’s telephone number and sending a letter to or making a diligent effort to contact each reference, relative, and individual identified in the most recent loan application or most recent school certification for that borrower that the lender holds. The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower’s address.

### ***Subsequent Payment or Information Obtained***

Following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, the lender's receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage only in the following activities (34 CFR section 682.411):

- *For loans less than 91 days delinquent (121 days for a loan repayable in installments less frequently than monthly)* – Two diligent efforts to contact the borrower by telephone.
- *For loans 91-120 days delinquent (121-180 days for a loan repayable in installments less frequently than monthly)* – One diligent effort to contact the borrower by telephone.
- *For loans more than 120 days delinquent (180 days for a loan repayable in installments less frequently than monthly)* – No additional diligent efforts to contact the borrower by telephone are required.
- *181-270 days delinquent (241-330 days for loans payable in installments less frequent than monthly)* – During this period the lender must engage in efforts to urge the borrower to make the required payments on the loan. These efforts must, at a minimum, provide information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.
- *Final demand on or after the 241st day of delinquency (the 301st day for loans payable in installments less frequent than monthly)* – The lender must send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender must allow the borrower at least 30 days after the date the letter is mailed to respond and bring the loan out of default before filing a default claim on the loan.

### ***Default Aversion Assistance***

Default aversion assistance is collection assistance that a guarantor provides to supplement a lender's efforts to prevent default on a borrower's loan; however, it does not replace the lender's responsibility to perform due diligence. Not earlier than the 60<sup>th</sup> day and no later than the 120<sup>th</sup> day of delinquency, a lender must request default aversion assistance from the guaranty agency that guarantees the loan (34 CFR section 682.411(i)).

### ***Skip-Tracing Requirements***

Skip tracing is the process by which lenders attempt to obtain corrected address or telephone information for borrowers for whom the lender does not have accurate information. Skip-tracing processes must meet regulatory time frames and minimum standards as outlined in 34 CFR section 682.411(h).

Unless the final demand letter (as specified in the Subsequent Payment or Information Obtained section above) has already been sent, the lender shall begin to diligently attempt to locate the borrower through the use of effective commercial skip-tracing techniques within 10 days of its receipt of information indicating that it does not know the borrower's current address. These efforts must include, but are not limited to, sending a letter to or making a diligent effort to contact each endorser, relative, reference, individual, and entity identified in the borrower's loan file, including the schools the student attended. For this purpose, a lender's contact with a school official that might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator, and may be in writing or by telephone.

These efforts must be completed by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities. Upon receipt of information indicating that it does not know the borrower's current address, the lender shall discontinue the collection efforts described in the Subsequent Payment or Information Obtained section.

If the lender is unable to ascertain the borrower's current address despite its performance of the activities described in the Subsequent Payment or Information Obtained section, the lender is excused thereafter from performance of the collection activities (with the exception of a request for default aversion assistance) unless it receives a communication indicating the borrower's address prior to the 241st day of delinquency (the 301st day for loans payable in less frequent installments than monthly).

### ***Requirements for Loan Endorsers***

Loan endorsers are required for PLUS loans for borrowers with an adverse credit history (34 CFR sections 682.201(b)(4) and 682.201(c)(1)(vii)).

Before filing a default claim on a loan with an endorser, the lender must:

- Make a diligent effort to contact the endorser by telephone and send the endorser two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan.
- At least one letter must warn the endorser that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus.

- On or after the 241st day of delinquency (the 301st day for loans payable in installments less frequent than monthly) send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to a national credit bureau. The lender shall allow the endorser at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan (34 CFR section 682.411(n)).

### ***Skip Tracing for Loan Endorsers***

Unless the final demand letter specified in the paragraph above has already been sent, upon receiving information indicating that it does not know the endorser's current address or telephone number, the lender must diligently attempt to locate the endorser through the use of normal commercial skip-tracing techniques. This effort must include an inquiry to directory assistance (34 CFR section 682.411(n)(3)).

**Audit Objective** – Determine if the lender complied with the due-diligence requirements for collection of delinquent loans, including the requirements for skip tracing or default aversion assistance.

### **Suggested Audit Procedures**

- a. Test a sample of loans that were delinquent from 1 to 15 days, verify that the lender's records document that the required written notice or collection letter was sent to the borrower. Verify that the letter contained the required information.
- b. Test a sample of loans that were delinquent between 16 to 180 days (16 to 240 days for loans repayable in installments less frequently than monthly) verify that the lender's records document that the required telephone efforts were made and that the required collection letters were sent to the borrower. Verify that at least two of the letters warned the borrower of possible assignment of the loan to the guaranty agency, reporting the default to all national credit bureaus, offset of income tax refunds to garnish wages, and litigation against the borrower.
- c. Test a sample of loans that were delinquent from 181 to 270 days (241 to 331 days for loans payable in installments less frequently than monthly) verify that the lender's records document the lender's efforts to urge the borrower to make the required payments on the loan and that the efforts, at a minimum, provided information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.
- d. Test a sample of loans that are 241 days delinquent (the 301<sup>st</sup> day for loans payable in installments less than monthly), verify that the lender sent the required final demand letter to the borrower.
- e. *Loan Endorser Procedures:* Test a sample of the lender's records to verify that they document that the lender made a diligent effort to contact the endorser by

phone, sent the required letters and final demand letter, if applicable, in accordance with requirements.

- f. *Skip-Tracing Procedures:* From the sample of delinquent loans where a final demand letter was not sent to the borrower, verify that the lender’s records document that the lender attempted to contact each endorser, relative, reference, individual and entity identified in the borrower’s loan file within 10 days of receipt of information indicating that the lender did not know the borrower’s current address. Verify that these efforts were completed by the date of default with no gap of more than 45 days between attempts. Verify that the lender’s efforts for loan endorsers included an inquiry to directory assistance.
- g. *Default Aversion Assistance:* Obtain and review the agreement the guaranty agency has with the lender that establishes the time period for default aversion assistance. From the population of delinquent or defaulted loans determine the loans where required default aversion assistance from the loan guaranty agency should have been requested by the lender. For a sample of the loans, verify that the lender’s records document that default aversion assistance was requested within the required timeframes.

**8. Timely Claim Filings by Lenders or Servicers**

**Compliance Requirement** – Lenders are required to timely file claims with the guaranty agency for payment of death, disability, closed schools, false certification, bankruptcy and default claims. Each type of claim has a separate timely filing requirement (34 CFR sections 682.402(g)(2) and 682.406(a)(5)). A lender has up to 3 years after the default claim filing deadline to successfully cure due-diligence violations that have rendered a loan un-reinsured (34 CFR part 682, Appendix D). The lender is also required to maintain records to document the validity of a claim against a loan guaranty (34 CFR sections 682.402(g)(1) and 682.414(a)(4)(iii)).

<b>TYPE OF CLAIM</b>	<b>TIMELY FILING REQUIREMENTS</b>
<b>Default</b>	A lender must submit default claims to the guaranty agency within 90 days of the default.
<b>Death</b>	A lender must submit a claim within 60 days of the date that the lender determines that a borrower (or the student on whose behalf a parent obtained a PLUS loan) has died.
<b>Total and Permanent Disability</b>	A lender must submit a claim within 60 days of the date that the lender determines that a borrower is totally and permanently disabled as described in 34 CFR section 682.200(b) (34 CFR Section 682.402(c)(1)). Effective July 1, 2010, for a borrower who is not a veteran, the lender must submit a disability claim to the guaranty agency within 60 days after the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower is totally and permanently disabled as described in 34 CFR section 682.200(b) (34 CFR sections 682.402(c)(2) through (7); (See October 29, 2009, <i>Federal Register</i> (74 FR 55997)).

<b>TYPE OF CLAIM</b>	<b>TIMELY FILING REQUIREMENTS</b>
	Effective July 1, 2010, for borrower that is a veteran, the lender must submit a disability claim to the guaranty agency within 60 days after the veteran or veteran's representative submits a discharge application (on a form approved by the Secretary) along with documentation from the Department of Veterans Affairs (VA) showing that the VA has determined that the veteran is unemployable due to a service-connected disability and the lender makes a determination that the documentation supports the conclusion that the borrower is totally and permanently disabled as described in 34 CFR section 682.200(b) (34 CFR section 682.402(c)(8); (See October 29, 2009, <i>Federal Register</i> (74 FR 55997)).
<b>Closed School</b>	The lender shall file a claim within 60 days after the borrower submits to the lender the written request and sworn statement described in 34 CFR section 682.402(d)(3) or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.
<b>False Certification</b>	The lender shall file a claim with the guaranty agency within 60 days after the borrower submits to the lender the written and sworn statement described in 34 CFR section 683.402(e)(3) or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.
<b>Bankruptcy</b>	A lender shall file a bankruptcy claim by the earlier of: (1) 30 days after the date on which the lender receives notice of the first meeting of creditors or other information described in 34 CFR section 682.402(f)(3); or (2) 15 days after the lender is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship, or if the lender secures an extension of time within which an answer may be filed, 25 days before the expiration of that period, whichever is later.

### ***Records to Support a Claim***

The lender is required to maintain records necessary to document the validity of a claim against a loan guaranty (34 CFR section 682.414(a)(4)(ii)). Items to be filed by the lender when making a claim to the guaranty agency include (34 CFR section 682.402):

- The original or a true and exact copy of the promissory note.
- The loan application, if a separate loan application was provided to the lender.
- In the case of a death claim, an original or certified copy of the death certificate or other documentation supporting the discharge request that formed the basis for the determination of death.
- In the case of a disability claim, a copy of the certification of disability described in 34 CFR section 682.402(c)(2).
- In the case of a closed school claim, the documentation described in 34 CFR section 682.402(d)(3) or any other documentation as the Secretary may require.

- In the case of a false certification claim, the documentation described in 34 CFR section 682.402(e)(3).
- In the case of a bankruptcy claim:
  - Evidence that a bankruptcy petition has been filed and all pertinent documents sent to or received from the bankruptcy court by the lender;
  - An assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and
  - A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy and all documents supporting those facts (34 CFR section 682.402(g)(1)(v)).

**Audit Objective** – Determine whether the lender complied with the documentation requirements and deadlines for timely filing of claims with the guaranty agency concerning death, disability, false certification, closed schools, bankruptcy, or default claims.

### **Suggested Audit Procedures**

- a. Select a sample from all loans on which a claim was filed and verify that the lender's records document that a claim was filed with accurate claim payment information and in a timely manner with the guaranty agency.
- b. Using the same sample of claims, verify that the lender maintained the required documentation to support the particular type of claim.

## **9. Curing Due-Diligence and Timely Filing Violations**

**Compliance Requirement** – A due-diligence violation occurs when a lender does not perform a requirement (See III.N.9, “Special Tests and Provisions – Timely Claim Filings by Lenders or Servicers”) within the time frame specified. The time interval between collection activities is called a “gap.” If the gap between collection activities exceeds that permitted a due diligence violation has occurred and the lender may incur penalties, including loss of insurance and reinsurance on the loan (34 CFR section 682.411 and 34 CFR part 682, Appendix D).

Some examples of due-diligence violations include the lender's failure to perform the following functions in a timely manner:

- Sending the required collection letter(s), including the required final demand letter;
- Making the required telephone contact or diligent effort to contact the borrower;

- Requesting default aversion assistance from the guarantor;
- Conducting skip tracing activity.

A timely filing violation occurs when a lender fails to submit default, death, disability, closed school, or false certification claims within the prescribed time frames prescribed. See III.N.9 above for timely filing requirements.

### ***Cures for Due-Diligence Violations***

*Violations of 6 days or less (21 days or less for a transfer)* – There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer).

*Two or fewer violations of 6 days or more (21 days or more for a transfer) and no gap of 46 days or more (61 days for a transfer)* – Principal will be reinsured, but accrued interest, interest benefits, and special allowance payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default. However, the lender must complete all required activities before the claim filing deadline, except that a default aversion assistance request must be made before the 330<sup>th</sup> day of delinquency. If the lender fails to make the default aversion assistance request by the 330<sup>th</sup> day, the Secretary will not pay any accrued interest, interest benefits and special allowance for the most recent 270 days prior to the default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90<sup>th</sup> day before default.

*Three violations of 6 days or more (21 days or more for a transfer) and no gap of 46 days or more (61 days for a transfer)* – The lender must satisfy the requirements in 34 CFR part 682, Appendix D, I.E.1. or receive a full payment or a new, signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary will not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

*More than three violations of 6 days or more (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation* – The lender must satisfy the requirement outlined in 34 CFR part 682, Appendix D, I.D.1, for the reinsurance on the loan to be reinstated. The Secretary will not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated (34 CFR part 682, Appendix D, I.C.3).

***Cures for Timely Filing Violations*** – When a lender has a timely filing violation on a default claim, the guarantee on the loan may be reinstated through one of the following (34 CFR part 682, Appendix D, I.E.1):

- The receipt of one full payment as defined in 34 CFR part 682, Appendix D, I.A,
- The receipt of a new repayment agreement signed by the borrower, or
- Successful completion of the requirements in 34 CFR part 682, Appendix D, I.E.1.

**Audit Objectives** – Determine whether the lender complied with the cure procedures in 34 CFR part 682, Appendix D for loans with due-diligence or timely filing violations. Determine whether the information for cures was accurately reported on the LaRS.

### **Suggested Audit Procedures**

- a. Select a sample of cured loans identified on the LaRS and verify that the lender’s records document that it performed the required cure procedures.
- b. For cured loans for which the lender obtained a new repayment agreement, verify that the agreement meets the repayment period limitations of 34 CFR sections 682.209(a)(8) and 682.209(h)(2).
- c. For cured loans for which the lender obtained one full payment, obtain documentation of the payment and verify that the payment complied with the terms of the most current repayment schedule and was valid in accordance with 34 CFR part 682, Appendix D, I.A.

## **10. Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization**

**Compliance Requirement** – Section 435(d) of the HEA (20 USC 1087(d)) was revised by the Third Higher Education Extension Act of 2006 (Pub. L. No. 109-292) so that, effective September 30, 2006, except as noted below, an eligible lender in the FFEL program may not make or hold a FFEL program loan as a trustee for an institution of higher education or for an organization affiliated with an institution of higher education. An “institution of higher education” is any institution that meets the definition of that term in Sections 101 or 102 of the HEA (20 USC 1001 or 1002). The term “school-affiliated organization” is defined in section 34 CFR section 682.200, as any organization that is directly or indirectly related to a school, including alumni organizations, foundations, athletic organizations, and social, academic and professional organizations (34 CFR section 682.602).

The prohibition on holding or making loans described above does not apply to an eligible lender that was serving as an Eligible Lender Trustee (ELT) for an institution or affiliated organization on September 30, 2006. For the purposes of implementing this restriction, serving as an ELT means that:

- a. A formal contract between the lender and institution or organization had been entered into by the ELT and the institution or affiliated organization for this

purpose before September 30, 2006, and continues in effect or has been or is renewed after that date; and

- b. At least one loan was held in trust by the lender on behalf of the institution or the affiliated organization on September 30, 2006 ((Section 435(d)(7) of the HEA (20 USC 1085(d)(7)); 34 CFR section 682.602).

### ***Restrictions on Existing Eligible Lender Trustee Relationships***

Effective January 1, 2007, and for loans first disbursed on or after that date, any eligible lender, institution, or affiliated organization operating under a previously established ELT relationship that continues in effect, must comply with Section 435(d)(2) of the HEA, which includes special requirements for FFEL program school lenders, as specified below:

- a. The institution, whether directly involved in an ELT relationship or affiliated with an organization directly involved in an ELT relationship:
  - (1) Must employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending the institution.
  - (2) Must not have a cohort default rate greater than 10 percent.
  - (3) Must use any proceeds from interest payments from borrowers, interest subsidy payments, and special allowance payments on the loans made and held in trust, and any proceeds from the sale or other disposition of those loans for need-based grants if the institution receives any these proceeds directly or indirectly.
  - (4) Must ensure that the loans previously made or held by the eligible lender trustee for the institution are included in the required annual FFEL program lender compliance audit.
- b. An organization affiliated with the institution must comply with all of the requirements applicable to the institution as noted above except for requirements a.(1), (2), and (3).
- c. The eligible lender acting as trustee must comply with all of the requirements applicable to the institution as noted above except for requirements in a.(1), (2), (3), and (4) (Section 435(d) of the HEA (20 USC 1087(d); 34 CFR sections 682.601 and 682.602).

ED has issued a Dear Colleague letter, GEN-06-21, which is available at <http://www.ifap.ed.gov/dpccletters/attachments/GEN0621.pdf>, that provides guidance on this requirement.

**Audit Objective** – Determine whether the lender complied with the ELT provisions.

**Suggested Audit Procedures**

- a. Obtain written representation from management as to whether it has made or held loans, as a trustee, for an institution of higher education or for an organization affiliated with an institution of higher education, except as permitted by law.
- b. If the representation provided by management indicates that it made or held loans for an institution of higher education, as a trustee, obtain relevant agreements/contracts, and through review of these and the loan portfolio, determine if the exceptions provided for in the law apply.
- c. In auditing the lender and in performing tests relating to other compliance, the auditor should be alert for information that indicates an inaccurate representation by management concerning this compliance requirement. Such indications should be reviewed to determine whether there is an issue of noncompliance.
- d. For eligible lenders acting as trustees, test a sample of loans disbursed after January 1, 2007 but prior to July 1, 2010, for compliance with the ELT provisions.

**IV. OTHER INFORMATION**

*Selection of Major Programs When the Entity is a School that is a Lender under the FFEL Program*

Some schools hold loans under the FFEL program. Under the HEA and 34 CFR section 682.601(a)(7), for any fiscal year beginning on or after July 1, 2006, in which a school engages in activities as an eligible lender, the school must submit a compliance audit covering its activities as a lender. An audit conducted in accordance with OMB Circular A-133, that treats the lender function as a major program, will satisfy that requirement.

If the SFA Cluster (see Part 5) was selected as a major program for a school that is also a lender under the FFEL program, the auditor must also include in the audit coverage, work sufficient to render an opinion, as part of an opinion on the SFA Cluster, on the school's compliance with the requirements set forth in this program supplement. Audit documentation must demonstrate sufficient audit coverage of the above compliance requirements to support that opinion, as well as the compliance requirements set forth in the SFA Cluster. When the SFA Cluster is audited as a major program for a school that is a lender, the program should be listed in the Summary of Auditor's Results Section of the Schedule of Findings and Questioned Costs as "SFA Cluster (including CFDA 84.032 FFEL - Lenders)."

For schools that are lenders, if the SFA Cluster is not selected as a major program, CFDA 84.032 must be covered as a separate major program using this program supplement. In such cases, the program should be listed in the Summary of Auditor's Results Section of the Schedule of Findings and Questioned Costs as "CFDA 84.032 - FFEL – Lenders."

### *Governmental Lenders Covered as Part of a Statewide Single Audit*

Some “statewide” entities are defined to include a governmental lender under the FFEL program. For such entities, this program supplement should be used to identify pertinent compliance requirements. Auditors for such entities with large FFEL lending programs must consider the provisions of OMB Circular A-133, paragraph \_\_.520(b)(3) in determining major programs. When those provisions apply, coverage of the FFEL program for a lender should be identified and reported on separately and listed as a major program in the Summary of Auditor’s Results Section of the Schedule of Findings and Questioned Costs as “CFDA 84.032 - FFEL – Lenders.”

### *Use of Third-Party Servicers*

Some lenders (including schools that are lenders in the FFEL program) use third-party servicer organizations to perform some or many lender functions. Third-party servicer organizations are required to obtain a financial statement audit and compliance attestation engagement under the January 2011 *Lender Servicer Financial Statement Audit and Compliance Attestation Guide* (Lender Servicer Audit Guide), issued by ED. Auditors of lenders (including school lenders) may exclude coverage of compliance requirements performed by a third-party servicer, provided the auditor has determined that the third-party servicer has obtained an audit under the Lender Servicer Audit Guide for the entire audit period of the lender. If the third-party servicer has a different audit period, the auditor of the lender must determine that the most recently required audit of the third-party servicer under the Lender Servicer Audit Guide has been completed timely, and must obtain a representation from the third-party servicer that it has engaged (or will engage) an auditor to perform the required audit under the Lender Servicer Audit Guide for the immediate subsequent audit period. The auditor of the lender must confirm that the audit period of the prior third-party servicer audit, together with the audit period for the subsequent third-party servicer audit, covers the entire audit period of the lender/school lender audit. If the auditor excludes coverage of compliance requirements performed for a third-party servicer, the *Report on Compliance With Requirements Applicable to Each Major Program and on Internal Control Over Compliance in Accordance with OMB Circular A-133* must clearly describe the compliance requirements for which coverage has been excluded, name the third-party servicer that performed those compliance requirements, state that the third-party servicer has obtained an audit performed under the January 2011 Lender Servicer Audit Guide issued by ED, and specify the period of that audit. Alternatively, the auditor may decide to use a third-party servicer’s audit (attestation engagement) and rely on it in rendering an opinion on compliance. In such cases, the auditor should obtain the servicer’s most recent compliance audit report and any other reports regarding servicer compliance. If the servicer’s compliance audit report or other reports contain findings of noncompliance, the auditor should assess the effect of that noncompliance on the nature, timing, or extent of substantive tests to be conducted at the lender and/or the servicer organization, as well as reporting that information. The auditor must also adhere to pertinent generally accepted auditing standards relating to use of servicer organization audits and reliance on the work of other auditors.

## DEPARTMENT OF EDUCATION

**CFDA 84.041**    **IMPACT AID (Title VIII of ESEA)**  
**CFDA 84.401**    **IMPACT AID – SCHOOL CONSTRUCTION, RECOVERY ACT**  
**CFDA 84.404**    **IMPACT AID – SCHOOL CONSTRUCTION FORMULA GRANT,  
RECOVERY ACT**

### I.     **PROGRAM OBJECTIVES**

The objective of the Impact Aid Program (IAP) under Title VIII of the Elementary and Secondary Education Act (ESEA) is to provide financial assistance to local educational agencies (LEAs) whose local revenues or enrollments are adversely affected by Federal activities. These activities include the Federal acquisition of real property (Section 8002) or the presence of children residing on tax-exempt Federal property or residing with a parent employed on tax-exempt Federal property (“federally connected” children) (Section 8003).

### II.    **PROGRAM PROCEDURES**

Funds are provided on the basis of statutory criteria and data supplied by LEAs in applications submitted to the Department of Education (ED), with copies provided simultaneously to the State Educational Agency (SEA). ED makes payments directly to the LEA. Generally, payments under Section 8003 of the ESEA are based on membership and attendance counts of federally connected children, with additional funds provided for certain federally connected children with disabilities and children residing on Indian lands. Payments under Section 8002 of the ESEA are based on the estimated assessed value of eligible Federal property and the applicable tax rate, and, in case of insufficient funds, upon a statutory formula that considers past year payments. Except for the additional funds provided for federally connected children with disabilities under Section 8003(d) of the ESEA, funds provided under Sections 8002 and 8003 are considered general aid and generally have no restrictions on their expenditure. Any formula funds that are provided under Section 8007(a) of the ESEA to certain LEAs that received Section 8003 payments must be used for construction, as defined in the statute. Any discretionary construction grant funds that are provided under Section 8007(b) of the ESEA to certain LEAs that received Section 8002 or 8003 payments must be used for emergency repairs or modernization, as defined in the statute and regulations.

**The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) provides for formula grant awards to certain LEAs under Section 8007(a) of ESEA and discretionary grant awards to certain LEAs under Section 8007(b), as modified by ARRA, that must be used for construction, as defined in Section 8013(3) of the ESEA (ARRA, 123 Stat. 181 and Section 805(b) of ARRA, 123 Stat. 189).**

#### **Source of Governing Requirements**

This program is authorized by Sections 8001-8014 of the ESEA, which is codified at 20 USC 7701 through 7714 **and ARRA**. Implementing regulations are 34 CFR part 222.

## Availability of Other Program Information

Additional information on this program (including the Impact Aid statute) may be found at <http://www.ed.gov/about/offices/list/oese/programs.html>.

### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

#### A. Activities Allowed or Unallowed

1. *Section 8003(d) – Federally connected children with disabilities – (Allowable under CFDA 84.041 only)*

LEAs must use the payments provided under Section 8003(d) of the ESEA to conduct programs or projects for the free, appropriate public education of the federally connected children with disabilities who generated those funds. Allowable costs include expenditures reasonably related to the conduct of programs or projects for the free, appropriate public education of children with disabilities, including program planning and evaluation and acquisition costs of equipment, except when the title to that equipment would not be held by the LEA. Costs for school construction are not allowable (Section 8003 of ESEA; 34 CFR section 222.53(c)).

2. *Section 8007 – Construction – (CFDA 84.041, 84.401 and 84.404)*

LEAs that receive payments under Section 8003 of the ESEA and that meet certain other statutory criteria may receive formula assistance under Section 8007(a) of the ESEA in any fiscal year that the Congress appropriates funds under that Section. LEAs must use the payments provided under Section 8007(a) **and Section 8007(a) funds provided under ARRA** for construction, as defined in Section 8013(3) of the ESEA. Under Section 8013(3), the term “construction” includes: (a) the preparation of drawings and specifications for school facilities; (b) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities; (c) inspecting and supervising the construction of school facilities; and (d) debt service for such activities (Sections 8007 and 8013(3) of ESEA). Certain LEAs that receive payments under section 8002 or 8003 of the ESEA and that meet other statutory and regulatory criteria may receive discretionary grant assistance under Section 8007(b) of the ESEA **and Section 8007(b) funds provided under ARRA**. Selected grantees must use these funds for emergency or modernization construction grant expenditures, as specified in their grant award documents. Emergency and modernization are defined in 34 CFR section 222.176 and the allowable and unallowable uses of these funds are detailed in 34 CFR sections 222.172 through 222.174.

3. *Section 8002 – Federal property payments and Section 8003(b) – Basic support payments – (Allowable under CFDA 84.041 only)*

Funds made available under Sections 8002 and 8003(b) of the ESEA usually become part of the general operating fund of the LEAs. These funds are available as general aid for free public education and may be used for current operating expenditures or capital outlays in accordance with State laws. The auditor is not expected to perform any tests with respect to the expenditure of these funds.

**B. Allowable Costs/Cost Principles**

Sections 8002 (Federal property payments) and 8003(b) (Basic support payments) are not subject to the A-102 Common Rule (See Appendix I) or OMB Circular A-87.

**D. Davis-Bacon Act**

Section 8007 construction funds, **including those funds provided under ARRA**, as well as any Section 8002 or 8003(b) funds spent for construction or minor remodeling, are subject to Davis-Bacon prevailing wage requirements (20 USC 1232b and **Section 1606 of ARRA**).

**G. Matching, Level of Effort, Earmarking**

1. **Matching** – Not Applicable

2.1 **Level of Effort – Maintenance of Effort** – Not Applicable

2.2 **Level of Effort – Supplement Not Supplant**

Section 8003(d) funds may not supplant any State funds (either general or special education State aid) that were or would have been available to the LEA for the free, appropriate public education of federally connected children with disabilities counted under Section 8003(d). A reduction in the per-pupil amount of State aid for children with disabilities, including children counted under Section 8003(d), from that received in the previous year raises a presumption that supplanting has occurred. An LEA can rebut this presumption by demonstrating that the reduction was unrelated to the receipt of Section 8003(d) funds (Section 8003(d) of ESEA; 34 CFR section 222.54).

3. **Earmarking** – Not Applicable

**H. Period of Availability of Federal Funds**

**Section 8007(a) formula funds appropriated by ARRA (CFDA 84.404) are available for obligation beginning with the date of enactment of ARRA (February 17, 2009) and remain available for obligation by LEAs until September 30, 2011 (Section 1603 of the ARRA and 20 USC 1225(b)(1)).**

**L. Reporting**

1. **Financial Reporting** – Not Applicable
2. **Performance Reporting** – Not Applicable
3. **Special Reporting**

*Application for Impact Aid – Section 8003 (OMB No. 1810-0687)* – Each year an LEA must submit this application, which provides the following information: counts of federally connected children in various categories, membership and average daily attendance data, and information on expenditures for children with disabilities. Membership and average attendance data should be tested. The auditor should use professional judgment when determining which tables to test, taking into account the relative materiality of the number of children reported in other tables. (Note: Eligible LEAs submit a separate application for Section 8002 or Section 8007(b) funding. The auditor is not expected to perform any tests with respect to the Section 8002 or Section 8007(b), **including Section 8007(b) funds from ARRA**, applications.)

4. **Section 1512 ARRA Reporting** – Applicable
5. **Subaward Reporting under the Transparency Act** – Not Applicable

**N. Special Tests and Provisions****Required Level of Expenditure**

**Compliance Requirement** – For each fiscal year, the amount of expenditures for special education and related services provided to federally connected children with disabilities must be at least equal to the amount of funds received or credited under Section 8003(d) of the ESEA for that fiscal year. This is demonstrated by comparing the amount of Section 8003(d) funds received or credited with the result of the following calculation:

- a. Divide total LEA expenditures for special education and related services for all children with disabilities by the average daily attendance (ADA) of all children with disabilities served during the year.
- b. Multiply the amount determined in a. above by the ADA of the federally connected children with disabilities claimed by the LEA for the year.

If the amount of section 8003(d) funds received or credited is greater than the amount calculated above, an overpayment equal to the excess section 8003(d) funds exists. This overpayment may be reduced or eliminated to the extent that the LEA can demonstrate that the average per pupil expenditure for special education and related services provided to federally connected children with disabilities exceeded its average per pupil expenditure for serving non-federally connected children with disabilities (Section 8003(d) of ESEA; 34 CFR section 222.53(d)).

**Audit Objective** – Determine whether the LEA met the required level of expenditure for providing special education and related services to federally connected children with disabilities.

**Suggested Audit Procedures**

- a. Review the LEA's calculation to ascertain if it shows that the required level of expenditure for federally connected children was met. Check accuracy of calculation.
- b. Trace amounts used in the calculation to supporting records.
- c. If the LEA's calculation shows that an overpayment was made, verify that the average per pupil expenditure for federally connected children with disabilities exceeded the average per pupil expenditure for non-federally connected children to the extent of the overpayment.

## DEPARTMENT OF EDUCATION

<b>CFDA 84.042</b>	<b>TRIO—STUDENT SUPPORT SERVICES</b>
<b>CFDA 84.044</b>	<b>TRIO—TALENT SEARCH</b>
<b>CFDA 84.047</b>	<b>TRIO—UPWARD BOUND</b>
<b>CFDA 84.066</b>	<b>TRIO—EDUCATIONAL OPPORTUNITY CENTERS</b>
<b>CFDA 84.217</b>	<b>TRIO—MCNAIR POST-BACCALAUREATE ACHIEVEMENT</b>

### I. PROGRAM OBJECTIVES

The Federal TRIO programs are authorized by Title IV of the Higher Education Act of 1965, as amended, and now consist of seven programs. These programs are designed to help first-generation college and economically disadvantaged students achieve success at the postsecondary level by facilitating high school completion and entry, retention, and completion of postsecondary education. Five of these programs are included in the TRIO single audit cluster. The remaining two TRIO programs do not meet the funding threshold to be included in the Compliance Supplement. The five included programs are:

**Student Support Services (SSS)** program provides academic support services to low-income, first-generation, and individuals with disabilities to enable them to be retained in and graduate from institutions of higher education. The program assists participants in making the transition from one level of higher education to the next. The program also fosters an institutional climate supportive of the success of students who are limited English proficient and students from groups that are traditionally underrepresented in postsecondary education, and improves the financial literacy and economic literacy of students.

**Talent Search (TS)** program identifies qualified youth with the potential for education at the postsecondary level and encourages them to complete or reenter secondary school and undertake a program of postsecondary education. Talent Search program also publicizes the availability of student financial assistance for persons who seek to pursue a postsecondary education. Talent Search also encourages persons who have not completed education programs at the secondary or postsecondary level to enter or reenter and complete these programs.

**Upward Bound (UB)** program targets low-income and potential first-generation college students who are enrolled in high school, or veterans seeking to prepare themselves for success in postsecondary education. The program provides opportunities for participants to succeed in pre-college performance and ultimately in higher education pursuits.

**Educational Opportunity Centers (EOC)** program provides information regarding financial and academic assistance available to individuals who desire to pursue a program of postsecondary education. EOC projects provide assistance to individuals in applying to admission to institutions that offer programs of postsecondary education, including assistance in preparing necessary applications for use by admissions and financial aid officers. EOC projects also provide information to improve financial and economic literacy of participants.

**Ronald E. McNair Post-Baccalaureate Achievement** (McNair) program provides low-income, first-generation college students and students from groups underrepresented in graduate education with effective preparation for doctoral study through involvement in research and other scholarly activities.

## **II. PROGRAM PROCEDURES**

All TRIO grants are competitive discretionary grants and are awarded for 5 years.

Eligible applicants for SSS and McNair grants are institutions of higher education or combinations of such institutions.

Eligible applicants for TS and EOC grants are institutions of higher education, public or private agencies or organizations, including community-based organizations with experience in serving disadvantaged youth, secondary schools, and combinations of institutions and agencies.

Eligible applicants for UB grants are institutions of higher education, public and private agencies or organizations, including community based organizations with experience in serving disadvantaged youth, secondary schools, and combinations of institutions, agencies and organizations. The UB program has three types of projects: regular, veterans, and math/science.

### **Source of Governing Requirements**

The Federal TRIO programs are authorized by the Higher Education Act of 1965, as amended (20 USC 1070a *et seq.*). The applicable regulations are at 34 CFR parts 643 (TS); 644 (EOC); 645 (UB); 646 (SSS); and 647 (McNair).

### **Availability of Other Program Information**

Other program information is available at <http://www.ed.gov/about/offices/list/ope/trio/index.html>.

## **III. COMPLIANCE REQUIREMENTS**

**In developing the audit procedures to test compliance with the requirements of a Federal program, the auditor should first look at Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for details of the requirements.**

**A. Activities Allowed or Unallowed**1. *Activities Allowed*a. *UB Program*

- (1) Services and activities a UB project must provide (see III.N.1, “Special Test and Provisions - Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide,” below) include the following:
  - (a) Academic tutoring to enable students to complete secondary or postsecondary courses;
  - (b) Advice and assistance in secondary and postsecondary course selection;
  - (c) Assistance in preparing for college entrance exams and completing college admissions applications;
  - (d) Providing information on the full range of Federal student financial aid programs and benefits and resources for locating public and private scholarships;
  - (e) Providing guidance on reentering secondary school, alternative education programs for secondary school students, or general educational development (GED) programs or postsecondary education;
  - (f) Education or counseling services designed to improve the financial and economic literacy of students or the student’s parents; and
  - (g) Core curriculum instruction in mathematics through calculus, laboratory science, foreign language, composition, and literature (required for projects that have received funds for at least 2 years, see III.N.2, “Special Test and Provisions - Core Curriculum Instruction in the Upward Bound Program,” below) (34 CFR section 645.11).
- (2) Services and activities a UB project may provide include the following:
  - (a) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

- (b) Information, activities, and instruction designed to acquaint youth participating in the project with the range of career options available to the youth;
- (c) On-campus residential programs;
- (d) Mentoring programs involving elementary school or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons;
- (e) Work-study positions where youth participating in the project are exposed to careers requiring a postsecondary degree;
- (f) Programs and activities for participants who are limited-English proficient, from groups traditionally underrepresented in higher education, individuals with disabilities, homeless children or youths, participants in foster care or aging out of foster care or other disconnected participants; and
- (g) Other activities designed to meet the purposes of the Upward Bound program in Math-Science or Veterans Programs services to their participants as discussed in 34 CFR section 645.1 (34 CFR section 645.12).

b. *SSS Program*

- (1) Services and activities an SSS project must provide (see III.N.1, “Special Test and Provisions - Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide,” below) include the following:
  - (a) Academic tutoring, directly or through other services provided by the institution, to enable students to complete postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science and other subjects;
  - (b) Advice and assistance in postsecondary course selection;
  - (c) Information on the full range of Federal student financial aid programs and benefits and resources for locating public and private scholarships;
  - (d) Education or counseling services designed to improve the financial and economic literacy of students;

- (e) Activities designed to assist participants enrolled in 4-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs; and
  - (f) Activities designed to assist students enrolled in 2-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, a 4-year program of postsecondary education (34 CFR section 646.4(a)).
- (2) Services and activities an SSS project may provide include:
- (a) Individualized counseling for personal, career, and academic matters provided by assigned counselors;
  - (b) Information activities and instruction designed to acquaint students with the range of career options available to the students;
  - (c) Exposure to cultural events and academic programs not usually available to disadvantaged students;
  - (d) Mentoring programs involving faculty or upper class students, or a combination thereof;
  - (e) Securing temporary housing during breaks in the academic year for students who are or were formerly homeless children and youths and foster care youths;
  - (f) Programs and activities that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth or other disconnected students;
  - (g) Other activities designed to meet the purposes of the SSS program (34 CFR section 646.4(b)); and
  - (h) The following cost items are allowable if reasonably related to allowed project activities: (a) cost of remedial and special classes and courses in English language instruction for students of limited English proficiency, under certain circumstances; (b) in-service training of project staff; (c) activities of an academic or cultural nature; (d) transportation of participants and staff to and from

approved educational and cultural activities sponsored by the project; (e) purchase, lease, or rental of computer hardware, computer software, or other equipment to be used for student development, student records and project administration; professional development travel for staff; and (g) project evaluation (34 CFR section 646.30).

c. *TS Program*

- (1) Services and activities a Talent Search project must provide (see III.N.1, “Special Test and Provisions - Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide,” below) include the following:
  - (a) Connections for participants to high-quality tutoring services to enable the participants to complete secondary or postsecondary courses;
  - (b) Advice and assistance in secondary school course selection and, if applicable, initial postsecondary course selection;
  - (c) Assistance in preparing for college entrance examinations and completing college admission applications;
  - (d) Information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and on resources for locating public and private scholarships, and assistance in completing financial aid applications, including the Free Application for Federal Student Aid (FAFSA);
  - (e) Guidance and assistance in secondary school reentry, alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma, entry into GED programs, or entry into postsecondary education; and
  - (f) Connections for participants to education or counseling services designed to improve the financial and economic literacy of the participants or the participants’ parents, including financial planning for postsecondary education (34 CFR section 643.4(a)).

- (2) Services and activities a Talent Search project may provide include the following:
- (a) Academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;
  - (b) Personal and career counseling or activities;
  - (c) Information and activities designed to acquaint youth with the range of career options available to them;
  - (d) Exposure to the campuses of institutions of higher education, as well as to cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth;
  - (e) Workshops and counseling for families of participants served;
  - (f) Mentoring programs involving elementary or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons;
  - (g) Programs and activities that are specially designed for participants who are limited English proficient, from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youths, foster care youth, or other disconnected participants;
  - (h) Other activities designed to meet the purposes of the TS program (34 CFR section 643.4(b)); and
  - (i) Specific activities may include the following, if reasonably related to the objectives of the TS project:
    - (i) transportation, meals, and lodging with prior approval for visits to postsecondary educational institutions, participation in “College Day” activities, and career field trips;
    - (ii) purchase of testing materials;
    - (iii) fees for college admissions applications and entrance examinations with the exceptions noted in 34 CFR section 643.30(c);
    - (iv) in-service staff training;
    - (v) rental of space, if space is not owned by the grantee;
    - (vi) purchase of computer hardware, computer software, and other equipment for students development, project administration, and recordkeeping;
    - and (vii) tuition for a course that is part of a rigorous

secondary school program of study (as defined in 34 CFR section 643.7, and recognized by ED) if the conditions of 34 CFR section 643.30(h) are met (34 CFR section 643.30).

d. *EOC Program*

Allowable services and activities under the EOC program include the following:

- (1) Public information campaigns designed to inform the community about opportunities for postsecondary education and training;
- (2) Academic advice and assistance in course selection;
- (3) Assistance in completing college admission and financial aid applications;
- (4) Assistance in preparing for college entrance examinations;
- (5) Education or counseling services designed to improve the financial and economic literacy of participants;
- (6) Guidance on secondary school reentry or entry to a GED program or other alternative education program for secondary school dropouts;
- (7) Individualized personal, career, and academic counseling; (h) tutorial services;
- (8) Career workshops and counseling;
- (9) Mentoring programs involving elementary or secondary school teachers, faculty members at institutions of higher education, students, or any combinations of these persons;
- (10) Programs and activities that are specifically designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youth, participants who are foster care youth, or other disconnected participants;
- (11) Other activities designed to meet the purposes of the EOC program (34 CFR section 644.4); and

- (12) Specific activities may include the following, if reasonably related to the objectives of the EOC project: (a) transportation, meals, and lodging with prior approval for visits to postsecondary educational institutions, participation in “College Day” activities, and career field trips; (b) purchase of testing materials; (c) fees for college admissions applications and entrance examinations with the exceptions noted in 34 CFR section 644.30(c); (d) in-service staff training; (e) rental of space, if space is not owned by the grantee; and (f) purchase of computer hardware, computer software, and other equipment for students development, project administration, and recordkeeping (34 CFR section 644.30).

e. *McNair Program*

- (1) Services and activities a McNair project must provide (see III.N.1, “Special Test and Provisions - Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide,” below) include the following:
  - (a) Opportunities for research and other scholarly activities at the grantee institution or at graduate centers that are designed to provide students with effective preparation for doctoral study;
  - (b) Summer internships;
  - (c) Seminars and other educational activities designed to prepare students for doctoral study;
  - (d) Tutoring;
  - (e) Academic counseling; and
  - (f) Assistance to students in securing admission to and financial aid for enrollment in graduate programs (34 CFR section 647.4(a)).
- (2) Services and activities a McNair project may provide include the following:
  - (a) Education or counseling services designed to improve the financial and economic literacy of students, including financial planning for postsecondary education;
  - (b) Mentoring programs involving faculty members at institutions of higher education, students, or a combination of faculty members and students;

- (c) Exposure to cultural events and academic programs not usually available to project participants;
- (d) Activities of an academic or scholarly nature, such as trips to institutions of higher education offering doctoral programs and special lectures, symposia, and professional conferences, which have as their purpose the encouragement and preparation for project participants for doctoral study;
- (e) Stipends of up to \$2,800 per year for students engaged in research internships, provided that the student has completed the sophomore year of study at an eligible institution before the internship begins (see III.E.1.e, “Eligibility – Eligibility – Eligibility for Individuals”);
- (f) Necessary tuition, room and board, and transportation for students engaged in research internships during the summer;
- (g) Purchase of computer hardware, computer software, or other equipment for student development, project administration, and recordkeeping; and
- (h) Other activities designed to meet the purposes of the McNair program (34 CFR sections 647.4(b) and 647.30).

## 2. *Activities Unallowed*

- a. *All Programs* – The following cost items can never be charged to any TRIO program: (1) tuition, fees, stipends, and other forms of direct financial support for employees; (2) research not directly related to the evaluation or improvement of the project (except for the research activities of McNair participants); and (3) construction, renovation, and remodeling of any facilities (34 CFR sections 643.31, 644.31, 645.41, 646.31, and 647.31).
- b. *SSS Program* – SSS funds cannot be used for activities involved in recruiting students for enrollment at the grantee institution or for tuition, fees, stipends, and other forms of direct financial support for staff or participants, except for grant aid for participants (34 CFR sections 646.30 and 646.31).
- c. *UB Program* – The cost of room and board for the following persons may not be charged to the program: (1) administrative and instructional staff personnel who do not have responsibility for dormitory supervision of project participants; and (2) participants in Veterans UB projects (34 CFR section 645.41).

- d. *TS Program* – TS funds cannot be used for (1) stipends and other forms of direct financial support for participants or (2) application fees for financial aid (34 CFR section 643.31).
- e. *EOC Program* – EOC funds cannot be used for tuition, fees, stipends, and other forms of direct financial support for project participants (34 CFR section 644.31).

### C. Cash Management

See ED Cross-Cutting Section.

### E. Eligibility

#### 1. Eligibility for Individuals

- a. *SSS Program*
  - (1) *Eligible Participants* – A student is eligible to participate in a SSS project if the student meets all of the following requirements:
    - (a) is a citizen or national of the United States or meets the residency requirements for Federal student financial assistance;
    - (b) is enrolled at the grantee institution or accepted for enrollment in the next academic term at that institution;
    - (c) has a need for academic support as determined by the grantee in order to pursue successfully a postsecondary educational program; and
    - (d) is a low-income individual, a first-generation college student, or an individual with disabilities (34 CFR sections 646.3 and 646.7).
  - (2) *Grant Aid to SSS Students* – Grant aid to students is restricted to students who meet all the following criteria: (a) participating in the SSS project, undergoing their first 2 years of postsecondary education; and (b) receiving Federal Pell Grants. In exceptional cases, grant aid may be offered to students who have completed their first 2 years of postsecondary education and are receiving Federal Pell Grants (34 CFR section 646.30(i)).

The amount of grant aid awarded to an SSS student may not exceed the maximum appropriated Pell Grant (\$5,550 for the 2011-2012 academic year) or be less than the minimum appropriated Pell Grant (\$555 for the 2011-2012 academic year) (20 USC 1070a-14(c)(1)).

- b. *TS Program – Eligible Participants* – An individual is eligible to participant in a TS project if the individual meets all the following requirements: (1) is a citizen, national, or permanent resident of the United States or is in the United States for other than a temporary purpose; (2) has completed 5 years of elementary education or is at least 11 years of

age but not more than 27 years of age (an individual more than 27 years of age and a veteran regardless of age may participate in a TS project if there is no EOC in the area); and (3) is enrolled in or has dropped out of any grade from 6 through 12 or has graduated from secondary school or dropped out of the postsecondary education and needs one or more of the services provided by the project (34 CFR section 643.3).

c. *UB Program*

(1) *Eligible Participants* – An individual is eligible to participate in a Regular, Veterans, or Math-Science UB project if the individual meets all the following requirements: (a) is a citizen, national, or permanent resident of the United States, or is in the United States for other than a temporary purpose; (b) is a potential first-generation college student, a low-income individual, or an individual who has a high risk for academic failure; (c) has a need for academic support in order to pursue successfully a program of education beyond high school; and (d) at the time of initial selection has completed the 8th grade but has not entered the 12th grade and is at least 13 years old but not older than 19. A veteran, regardless of age, who meets all other criteria is eligible to participate (34 CFR sections 645.3 and 645.6).

(2) *Stipends* – Stipends for regular and math-science projects may not exceed \$40 per month from September to May of the academic year and \$60 for each of the summer months (June, July, and August). Youth participating in a work-study position may be paid a stipend of \$300 per month during June, July and August. Stipends for participants in veterans' projects may not exceed \$40 per month. To be eligible for a stipend, participants must show evidence of satisfactory participation in project activities, including regular attendance and performance in accordance with the number of sessions in which a student participated (20 USC 1070a-13(e); 34 CFR section 645.42).

d. *EOC Program – Eligible Participants* – An individual is eligible to participate in an EOC project if the individual meets all of the following requirements: (1) is a citizen, national, or permanent resident of the United States or is in the United States for other than a temporary purpose; (2) is at least 19 years of age (an individual less than 19 years of age can be served by the EOC project if TS services are not available); and (3) expresses a desire to enroll or is enrolled in a program of postsecondary education and requests information or assistance in applying for admission or financial aid for such a program. A veteran, regardless of age, is eligible to participate in an EOC project if he or she meets eligibility requirements (34 CFR section 644.3).

e. *McNair Program*

- (1) *Eligible Participants* – A student is eligible to participate in a McNair project if the student meets all the following requirements: (a) is a citizen, national, or permanent resident of the United States or is in the United States for other than a temporary purpose; (b) is currently enrolled in a degree program at an institution of higher education that participates in the student financial assistance programs; (c) is a low-income individual who is a first-generation college student or a member of a group that is underrepresented in graduate education or, under certain circumstances, underrepresented in certain academic disciplines; and (d) has not enrolled in doctoral level study (34 CFR sections 647.3 and 647.7).
- (2) *McNair Stipends* – Stipends of up to \$2,800 per year for students engaged in approved research internships, provided that the student has completed the sophomore year of study at an eligible institution before the internship begins (20 USC 1070a-15(e); 34 CFR section 647.30).

**2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable**

**3. Eligibility for Subrecipients – Not Applicable**

**G. Matching. Level of Effort, Earmarking**

**1. Matching**

An institution that operates an SSS project and uses any portion of its SSS program grant for grant aid to students must furnish 33 percent of the total funds it uses for that purpose in cash, from non-federal sources. However, institutions eligible to receive funds under Title III, Part A or B, or Title V of the Higher Education Act, as amended, are not required to provide such matching funds (34 CFR section 646.33(a)).

**2. Level of Effort – Not Applicable**

**3. Earmarking**

a. *SSS Program*

- (1) For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the *Federal Register* notice inviting applications for a competition (34 CFR section 646.32(a)).

- (2) At least two-thirds of the students served by an SSS project must be low-income individuals who are the first generation college students or individuals with disabilities. Not less than one-third of the individuals with disabilities must also be low-income individuals. The remaining students served must be low-income individuals, first generation college students, or individuals with disabilities (34 CFR sections 646.7 and 646.11).
  - (3) An institution operating an SSS project may not award more than 20 percent of its Federal SSS Program funds as grant aid to students (34 CFR section 646.33(a)).
- b. *TS Program* –
- (1) For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the *Federal Register* notice inviting applications for a competition (34 CFR section 643.32(b)).
  - (2) At least two-thirds of the individuals served by a TS project must be low-income individuals who are potential first-generation college students (34 CFR sections 643.11 and 643.7).
- c. *UB Program* – Not less than two-thirds of the project’s participants must be low-income individuals who are potential first-generation college students. The remaining participants must be either low-income individuals or potential first-generation college students (34 CFR sections 645.21 and 645.6).
- d. *EOC Program*
- (1) For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the *Federal Register* notice inviting applications for a competition (34 CFR section 644.32 (b)).
  - (2) At least two-thirds of the individuals served by an EOC project must be low-income individuals who are potential first-generation college students (34 CFR sections 644.11 and 644.7).
- e. *McNair Program* – At least two-thirds of the students served by a McNair project must be low-income individuals who are first-generation college students. The remaining students must be members of groups underrepresented in graduate education (34 CFR sections 647.10 and 647.7).

## L. Reporting

### 1. Financial Reporting

- a. SF-270, *Request for Advance or Reimbursement* – Applicable
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. SF-425, *Federal Financial Report* – Not Applicable

### 2. Performance Reporting

- a. *Student Support Services Program Annual Performance Report (OMB No. 1840-0525)* – Grantees must submit an annual performance report to ED each year of the project period.

*Key Line Items* – The following line items contain critical information:

Section II, *Record Structure for Participant List*, fields:

15	Eligibility
17	First Enrollment Date
18	Date of First Project Service
19	College Grade Level (Entry into project)
22	Participant Status
23	Enrollment Status (at end of the academic year)
24	Academic Standing
27	College Grade Level (at the end of the academic reporting year)
31	Undergraduate Degree/Certificate Completed at Grantee Institution

- b. *Upward Bound, Upward Bound Math-Science, and Veterans Upward Bound Programs Annual Performance Report (OMB No. 1840-0762)* – Grantees must submit an annual performance report to ED each year of the project period.

*Key Line Items* – The following line items contain critical information:

(1) Section II-A, *Record Structure for Participant List for Upward Bound and Upward Bound Math-Science Projects*, fields:

17	Eligibility at first entry into project
18	Academic Need
21	Date of First Project Service
22	Grade Level at First Service
24	Participant Status for reporting year

- 25 Participation Level for reporting period only
  - 26 Grade Level at the *beginning* of Academic Year being reported
  - 33 Participant Retention in Project
  - 36 Date of Last Project Service
- (2) Section II-B, *Record Structure for Participant List for Veterans Upward Bound Projects*, fields:
- 16 Eligibility at first entry into project
  - 18 Educational Status (at the date of first project service)
  - 23 Date of First Project Service
  - 26 Participant Status for reporting year
  - 29 Date of Last Project Service in VUB
- c. *Talent Search Annual Performance Report (OMB No. 1840-0826)* – Grantees must submit an annual performance report to ED each year of the project periods.

*Key Line Items* – The following line items and sections contain critical information:

- (1) Section II, *Demographic Profile of Project Participants and Listing of Target School*, subsections:
- A. *Types of Participants Assisted*
  - B. *Participant Distribution by Eligibility*
  - F. *Veterans Served*
  - G. *Participants with Limited English Proficiency*
  - L. *Target Schools*
- (2) Section IV, *Educational Status of Talent Search Participants (at end of the reporting period or the following fall)*, lines:
- A1. Persisted in school for the next academic year at the next grade level or graduated high school
  - B1. Received regular secondary school diploma within standard number of years but did not complete a rigorous program of study
  - C1. Enrolled in postsecondary education or notified of deferred enrollment columns (b) and (c)

- d. *Educational Opportunity Centers Program Annual Performance Report For Program Year (OMB Number 1840–0561)*

*Key Line Items* – The following line items contain critical information:

Section IV, *Educational Status of EOC Participants (at the end of the reporting period or for the following fall)*, lines:

- A1. Received a secondary school diploma or its equivalent
- B1. Completed a financial aid application
- D1. Enrolled in a postsecondary education program (first-time enrollment or reentry)

- e. *Ronald E. McNair Post-Baccalaureate Achievement Program Performance Report (OMB No. 1840-0640)* – Grantees must submit an annual performance report to the Department each year of the project period.

*Key Line Items* – The following items contain critical information:

- (1) Section II, *Record Structure for Participant List*, fields:

- 11-13 Eligibility
- 14 First School Enrollment Date
- 15 Project Entry Date
- 16 Participant Status
- 17 College Grade Level (entry into project)
- 18 College Grade Level (Current - at the end of the spring/summer term)
- 19 Enrollment Status (for the academic year being reported)
- 21 Highest Degree Earned

- 3. **Special Reporting** – Not Applicable
- 4. **Section 1512 ARRA Reporting** – Not Applicable
- 5. **Subaward Reporting under the Transparency Act** – Not Applicable

## N. Special Tests and Provisions

### 1. Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide

*The Federal TRIO Programs to which this section applies are: Student Support Services (SSS), (CFDA 84.042); Talent Search (TS), (CFDA 84.044); Upward Bound, (84.047); and McNair Post-Baccalaureate Achievement (McNair), (CFDA 84.217).*

**Compliance Requirement** – Recipients of TRIO Programs funded under SSS, TS, UB and McNair programs must provide specific services and activities. The services activities that each program must provide are listed in III.A.1, “Allowable Activities,” above, and are as follows:

- UB Program (34 CFR section 645.11), see III.A.1.a.(1) above.
- SSS Program (34 CFR section 646.4(a)), see III.A.1.b.(1) above.
- TS Program (34 CFR section 643.4(a)), see III.A.1.c.(1) above.
- McNair Program (34 CFR section 647.4(a)), see III.A.1.e.(1) above.

A grantee must provide all of the required services in the applicable SSS, TS, UB or McNair program regulations to its participants. However, not all participants may need all of the required services or may choose not to take advantage of them.

**Audit Objective** - Determine whether the required services were provided to SSS, TS, UB or McNair participants.

#### **Audit Procedure**

Review records of services received by participants, calendars or logs of service providers (i.e. counselors or tutors) and expenditure records, to verify that the required services and activities were provided to participants.

### 2. Core Curriculum Instruction in the Upward Bound Program (CFDA 84.066)

**Compliance Requirement** – UB projects that have received funding for a least 2 years must provide core curriculum instruction in mathematics through pre-calculus, laboratory science, foreign language, composition and literature to its participants in the next and succeeding years. However, not all participants may need instruction in mathematics through pre-calculus, laboratory science, foreign language, composition and literature, or may choose not to take advantage of this instruction (34 CFR section 645.11 (b)).

**Audit Objective** – Determine whether UB projects that have received funding for at least 2 years provided instruction in mathematics through pre-calculus, laboratory science, foreign language, composition and literature in its core curriculum in the next and succeeding years.

**Audit Procedures**

- a. Ascertain if the UB project has received funding for at least 2 years.
- b. Verify by reviewing participant files, records of services received by participants, expenditure records and class rosters or enrollment records that project participants have available core curriculum instruction in mathematics through pre-calculus, laboratory science, foreign language, composition and literature in the next and succeeding years.

## DEPARTMENT OF EDUCATION

### CFDA 84.048 CAREER AND TECHNICAL EDUCATION—BASIC GRANTS TO STATES (Perkins IV)

#### I. PROGRAM OBJECTIVES

Career and Technical Education (Perkins IV) (formerly Vocational and Technical Education—Basic Grants to States (Perkins III)) provides grants to States and outlying areas to develop the career, technical, vocational, and academic skills of secondary students and postsecondary students by (1) promoting the integration of career, academic, and technical instruction; (2) developing challenging academic and technical standards; (3) increasing State and local flexibility in providing services and activities designed to develop, implement and improve career and technical education, including tech-prep education; (4) conducting and disseminating national research; (5) providing technical assistance; (6) supporting partnerships among secondary schools, postsecondary institutions, baccalaureate degree-granting institutions, area career and technical education schools, local workforce investment boards, business and industry, and intermediaries; and (7) providing individuals with opportunities to develop, in conjunction with other educational and training programs, the knowledge and skills needed to keep the United States competitive.

#### II. PROGRAM PROCEDURES

Participating States must designate or establish a State board of career and technical education (referred to in Perkins IV as the “eligible agency”) to administer and supervise State career and technical education programs. In order to receive funds for program year (PY) 2009 (July 1, 2009 – June 30, 2010), the State must have an approved 5-year State plan for career and technical education or a unified plan.

The Department of Education (ED) allocates funds to the State based on a statutory formula. The State must allocate and use funds for the following statutorily prescribed activities or programs (referred to as the “basic programs”):

1. Secondary and postsecondary career and technical education programs (Section 135 of Perkins IV (20 USC 2355));
2. State leadership activities (Section 124 of Perkins IV (20 USC 2344));
3. State administration (Section 121 of Perkins IV (20 USC 2341)).

The grantee may transfer funds to other State agencies to administer one or more of these programs. A State makes grants to subrecipients (referred to in Perkins IV as the “eligible recipients”), operates programs directly, or contracts for services. Subrecipients submit plans or applications to the State in order to receive funds.

## Source of Governing Requirements

This program is authorized by the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) (20 USC 2301 *et seq.*, as amended by Pub. L. No. 109-270). Certain requirements applicable to the Perkins IV grants are contained in the Workforce Investment Act (29 USC 2801 *et seq.*), as amended, (Pub. L. No. 105-220).

## Availability of Other Program Information

Program and policy guidance applicable to the Career and Technical Education—Basic Grants To States (Perkins IV) requirements in this program supplement are available on the Perkins Collaborative Resource Network (PCRN) at <http://cte.ed.gov/>. The *Legislation & Policy Guidance* section on the PCRN provides access to all relevant *Program Memoranda and Non-Regulatory Guidance* pertaining to Perkins IV, including:

- State allocations under Perkins IV;
- Guidance for the submission of State Plan revisions, budgets, and performance levels for Perkins IV Grants; and additional non-regulatory guidance regarding the consolidation of Title II Tech Prep funds into Title I Basic Grant funds, and non-regulatory guidance regarding student definitions and measurement approaches for the core indicators of performance under Perkins IV;
- Consolidated Annual Report (CAR) for the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV); and
- Other guidance in Q&A format to help states effectively implement Perkins IV.

## III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements that apply to multiple ED programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements.

### A. Activities Allowed or Unallowed

See ED Cross-Cutting Section.

1. *State-Level Activities* – The State plan describes the specific activities to be carried out. A State must use funds for State leadership activities as described in a, b, and c below and State administration as described in 1.d. below.

- a. *State Leadership Activities – Required Uses.* A State must use State leadership funds for:
- (1) Assessing programs conducted with assistance under Perkins IV;
  - (2) Developing, improving, or expanding the use of technology in career and technical education;
  - (3) Professional development activities that, among other things:
    - (a) Provide in-service and pre-service training in career and technical education programs; and
    - (b) Are high-quality, sustained, intensive, and classroom-focused and are not 1-day or short-term workshops or conferences;
  - (4) Support for strengthening the academic and career and technical education skills of students;
  - (5) Providing preparation for nontraditional fields;
  - (6) Supporting partnerships among local educational agencies and other education and business entities assisting students to achieve state academic standards and career and technical skills, or complete career and technical programs of study;
  - (7) Serving students in State institutions;
  - (8) Support for programs for special populations that lead to high-skill, high-wage, high-demand careers; and
  - (9) Technical assistance for eligible recipients (Section 124(b) of Perkins IV (20 USC 2344(b))).
- b. *State Leadership Activities – Other Uses.* A State may use State leadership funds for (1) improvement of career guidance and academic counseling programs; (2) establishment of agreements, including articulation agreements, between secondary and postsecondary career and technical education programs; (3) support of initiatives to facilitate the transition of subbaccalaureate career and technical education students into baccalaureate degree programs; (4) support for career and technical education students' organizations; (5) support for public charter schools operating career and technical education programs; (6) support for career and technical education programs that offer experience in all aspects of an industry; (7) support for family and consumer sciences programs; (8) support for partnerships between education and business or business intermediaries; (9) support to improve or develop new career and technical

education courses and initiatives; (10) awarding incentive grants to eligible recipients; (11) providing for activities to support entrepreneurship education and training; (12) providing career and technical education programs for adults and school dropouts; (13) providing assistance to individuals who participate in career and technical education programs and services under Perkins IV to continue their education and training or to find appropriate jobs; (14) developing valid and reliable assessments of technical skills; (15) developing and enhancing data systems to collect and analyze data on secondary and postsecondary academic and employment outcomes; (16) improving recruitment and retention for career and technical education programs and the transition of individuals to teaching from business and industry; and (17) support for occupational and employment information resources such as described in Section 118 of Perkins IV (Section 124(c) of Perkins IV (20 USC 2344(c))).

- c. *State Leadership Activities – Unallowed Uses.* A State may not use State leadership funds for administrative costs (Section 124(d) of Perkins IV (20 USC 2344(d))).
- d. *State Administration –* A State may use funds reserved for State administration for (1) developing the State plan; (2) reviewing local applications; (3) monitoring and evaluating program effectiveness; (4) assuring compliance with all applicable Federal laws; (5) providing technical assistance; and (6) supporting and developing State data systems relevant to the provisions of Perkins IV (Section 112(a)(3) of Perkins IV (20 USC 2322(a)(3))).

- 2. *Subrecipient Activities – Secondary and Postsecondary Career and Technical Education Programs –* Funds must be used to improve career and technical education programs. The subrecipient plan or approved application describes the specific activities to be carried out. Required uses of funds are identified in Section 135(b) of Perkins IV. Examples of other allowable activities are identified in Section 135(c) of Perkins IV (Sections 135(a), (b), and (c) of Perkins IV (20 USC 2355(a), (b), and (c))).

**B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section.

**C. Cash Management**

See ED Cross-Cutting Section.

**E. Eligibility**

- 1. Eligibility for Individuals – Not Applicable**
- 2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable**
- 3. Eligibility for Subrecipients**
  - a. *Secondary Career and Technical Education Programs* – A subrecipient must be (1) a local educational agency (LEA), including a public charter school, that is eligible to receive \$15,000 or more under Section 131(a) of Perkins IV; (2) an area career and technical education school or an educational service agency that meets the requirements in Section 131(e) of Perkins IV; or (3) a consortium of LEAs that meets the requirements in Section 131(f) of Perkins IV (Section 3(14)(A) of Perkins IV (20 USC 2302(14)(A)) and Sections 131(a), (e), and (f) of Perkins IV (20 USC 2351(a), (e), and (f))).

The State must treat a secondary school funded by the Bureau of Indian Affairs (BIA) within the State as if such school were an LEA within the State for the purpose of receiving a distribution under Section 131 of Perkins IV (Section 131(h) of Perkins IV (20 USC 2351(h))). Except as noted below, the State must provide funds to public charter schools offering a career and technical education program in the same manner as it provides those funds to other schools; career and technical education programs within a charter school must be of sufficient size, scope, and quality to be effective (Section 133(d) of Perkins IV (20 USC 2353(d))). For the definition of “charter school” applicable to Perkins IV, see Section 5210 (20 USC 7221i) of the No Child Left Behind Act of 2001 at <http://www.ed.gov/legislation/ESEA02/pg62.html>.

For the program year beginning July 1, 2007, and subsequent program years, unless a State has an approved alternative formula, a State must distribute the amount reserved for the secondary school career and technical education programs as follows:

- (1) 30 percent to each LEA in proportion to the number of individuals aged 5 through 17, inclusive, who reside in the school district served by such LEA for the preceding fiscal year compared to the total number of such individuals who reside in the school districts served by all LEAs in the State for such preceding fiscal year, as determined on the basis of the most recent satisfactory data provided to the Secretary by the Bureau of the Census for the purpose of determining eligibility under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA); or student membership data collected by the National Center for

Educational Statistics through the Common Core of Data survey system; and

- (2) 70 percent to each LEA in proportion to the number of individuals aged 5 through 17, inclusive, who reside in the school district served by such LEA and are from families with incomes below the poverty level for the preceding fiscal year, as determined on the basis of the most recent satisfactory data used under Section 1124(c)(1)(A) of the ESEA (20 USC 6333(c)(1)A)), compared to the total number of such individuals who reside in the school districts served by all the LEAs in the State for such preceding fiscal year (Section 131(a) of Perkins IV (20 USC 2351(a))).

An LEA that does not meet the minimum grant requirement of \$15,000 can form a consortium with one or more LEAs to meet the minimum grant requirement (Section 131(f) of Perkins IV (20 USC 2351(f))). The State must waive the minimum grant requirement for an LEA that is in a rural, sparsely populated area or that is a public charter school operating a secondary school career and technical education program if the LEA demonstrates that the LEA is unable to enter into a consortium for purposes of providing activities under Title I, Part C of Perkins IV (Section 131(c)(2) of Perkins VI (20 USC 2351(c)(2))).

If the State reserves 15 percent or less for this program, it may distribute funds on a competitive basis or through any alternative method (Section 133(a) of Perkins IV (20 USC 2353(a))).

- b. *Postsecondary Career and Technical Education Programs* – A subrecipient must be an eligible institution, which is (1) a public or nonprofit private institution of higher education that offers career and technical education courses that lead to technical skill proficiency, an industry-recognized credential, a certificate, or a degree; (2) an LEA providing education at the postsecondary level; (3) an area career technical educational school providing education at the postsecondary level; (4) a postsecondary education institution controlled by BIA or operated by or on behalf of any Indian tribe that is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*); (5) an educational service agency; or (6) a consortium of two or more of these entities (Section 3(13) of Perkins IV (20 USC 2302(13))).

Unless a State has an approved alternative formula, the State must distribute the amounts reserved for the postsecondary career and technical education programs to each eligible institution in proportion to the number of Pell grant recipients and recipients of assistance from BIA enrolled in programs meeting the requirements of Section 135 of Perkins IV at that institution in the preceding year compared to the total of such recipients

enrolled in those programs in the State in the preceding year (Section 132(a) of Perkins IV (20 USC 2352(a))). The minimum grant is \$50,000; a State must reallocate amounts allocated to recipients that are less than \$50,000 to other eligible recipients except as provided below (Section 132(c) of Perkins IV (20 USC 2352(c))).

An eligible institution that does not meet the minimum grant requirement of \$50,000 may form a consortium with one or more eligible institutions to meet the minimum grant requirement (Section 132(a)(3) of Perkins IV (20 USC 2352(a)(3))). The State may waive the minimum grant requirement for eligible institutions in rural, sparsely populated areas (Section 132(a)(4) of Perkins IV (20 USC 2352(a)(4))).

If the State reserves 15 percent or less for its postsecondary program, it may distribute these funds on a competitive basis or through any alternative method (Section 133(a) of Perkins IV (20 USC 2353(a))).

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

*State Administration* – A State must match, from non-Federal sources and on a dollar-for-dollar basis, the funds reserved for administration of the State plan. The matching requirement may be applied overall, rather than line-by-line, to State administrative expenditures (Section 112(b) of Perkins IV (20 USC 2322 (b))).

### **2.1 Level of Effort – Maintenance of Effort**

#### *a. General*

- (1) A State must maintain its fiscal effort in the preceding year from State sources for career and technical education on **either** an aggregate **or** a per-student basis when compared with such effort in the second preceding year, unless this requirement is specifically waived by the Secretary of Education. For example, to receive its PY 2009 grant award, a State must maintain its level of fiscal effort on either an aggregate or per-student basis in PY 2008 (July 1, 2008–June 30, 2009) at the level of its fiscal effort in PY 2007 (July 1, 2007–June 30, 2008). An example of how a State may maintain effort on a per-student basis, but not in the aggregate, is as follows:

In PY 2007, a State spends \$50 million from State funds to provide career and technical education to 300,000 students. In PY 2008, the State spends only \$49 million to provide career and technical education to 290,000 students. Even though the State's aggregate effort decreased by \$1 million, the State's per-student effort

increased from \$166.67 per student to \$168.97 per student. Thus, the State met the maintenance-of-effort requirement for its fiscal year 2009 grant (Section 311(b)(1)(A) of Perkins IV (20 USC 2391(b)(1)(A))).

If a State has been granted a waiver of the maintenance-of-effort requirement that allows it to receive a grant for a program year, the maintenance-of-effort requirement for the year after the year of the waiver is determined by comparing the amount spent for career and technical education from non-Federal sources in the first preceding program year with the amount spent in the third preceding program year (Section 311(b)(2) of Perkins IV (20 USC 2391(b)(2))).

In computing the fiscal effort or aggregate expenditures, a State must exclude capital expenditures, special one-time project costs, and the cost of pilot programs (Section 311(b)(1)(B) of Perkins IV (20 USC 2391(b)(1)(B))).

- (2) *Decrease in Federal Support* – If the amount made available for career and technical education programs under Perkins IV for a fiscal year is less than the amount made available for career and technical education programs under Perkins IV for the preceding fiscal year, then the fiscal effort per student or the aggregate expenditures of a State for such preceding fiscal year shall be decreased by the same percentage as the percentage decrease in the amount so made available (Section 311(b)(1)(C) of Perkins IV (20 USC 2391(b)(1)(C))).

b. *Administration*

- (1) A State must provide from non-Federal sources for State administration under the Perkins Act an amount that is not less than the amount provided by the State from non-Federal sources for State administrative costs for the preceding fiscal or program year (Section 323(a) of Perkins IV (20 USC 2413(a))).
- (2) *Decrease in Federal Support* – If the amount made available for administration of programs under Perkins IV for a fiscal year is less than the amount made available for administration of programs under the Perkins Act for the preceding fiscal year, the amount the State is required to provide from non-Federal sources for costs the State incurs for administration of programs shall be decreased by the same percentage (Section 323(b) of Perkins IV (20 USC 2413(b))).

## 2.2 Level of Effort – *Supplement Not Supplant*

The State and its subrecipients may use funds for career and technical education activities that shall supplement, and shall not supplant, non-Federal funds expended to carry out career and technical education activities and tech-prep activities (Section 311(a) of Perkins IV (20 USC 2391(a))). The examples of instances where supplanting is presumed to have occurred described in III.G.2.2 of the ED Cross-Cutting Section (84.000) also apply to the career and technical education program.

Notwithstanding the above paragraph, funds made available under Perkins IV may be used to pay for the costs of career and technical education services required in an individualized education plan (IEP) developed pursuant to Section 614(d) of the Individuals with Disabilities Education Act (IDEA) and services necessary to meet the requirements of Section 504 of the Rehabilitation Act of 1973 with respect to ensuring equal access to career and technical education (Section 324(c) of Perkins IV (20 USC 2414(c))).

## 3. Earmarking

- a. *States* – Subject to the requirements discussed below regarding the minimum amount for State administration, a State must reserve the following percentages:
  - (1) *Secondary and postsecondary career and technical education programs* – not less than 85 percent. A State must distribute all of these funds to its subrecipients. A State may reserve no more than 10 percent of the 85 percent of funds to make grants for activities described in Section 135 of Perkins IV (20 USC 2355) to eligible subrecipients in (a) rural areas; (b) areas with high percentages of career and technical education students; and (c) areas with high numbers of career and technical education students (Sections 112(a)(1) and (c) of Perkins IV (20 USC 2322(a)(1) and (c))).
  - (2) *State Leadership Activities* – not more than 10 percent. Within the State leadership activities not more than 1 percent of the amount allocated to each State in Section 111 of Perkins IV (20 USC 2321) shall be allotted to activities that serve individuals in State institutions. Also, not less than \$60,000 and not more than \$150,000 of the amount allocated to each State in Section 111 of Perkins IV shall be made available for services that prepare individuals for nontraditional fields (Section 112(a)(2) of Perkins IV (20 USC 2322(a)(2))).

- (3) *State Administration* – not more than 5 percent or \$250,000, whichever is greater, for administration of the State plan (Section 112(a)(3) of Perkins IV (20 USC 2322 (a)(3))).

A State must consider any tech-prep-education grant funds that it consolidates, as approved in its State plan submitted under Section 122 of Perkins IV (20 USC 2342), as funds allotted under Section 111 of Perkins IV (20 USC 2321) and must distribute these funds in accordance with Section 112 of Perkins IV (20 USC 2322) requirements as described above in paragraphs (1) – (3) (Section 202 of Perkins IV (20 USC 2372)).

- b. *Subrecipients* – Subrecipients under the secondary and postsecondary career and technical education programs may use no more than 5 percent of those funds for administrative costs (Section 135(d) of Perkins IV (20 USC 2355(d))).

## **H. Period of Availability of Federal Funds**

See ED Cross-Cutting Section.

## **L. Reporting**

### **1. Financial Reporting**

- a. SF-270, *Request for Advance or Reimbursement* – Only grantees placed on reimbursement are required to complete this form to request payment of grant award funds. The requirement to use this form is imposed on an individual recipient basis.
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. SF-425, *Federal Financial Report* – Not Applicable
- d. *Financial Status Report (Part C) for the Consolidated Annual Report for the Carl D. Perkins Career and Technical Education Act of 2006 (CAR) (OMB No. 1830-0569)* – This form is a web-based format entitled “*Financial Status Report*” (FSR). Each State files two “FSR” forms each December for two distinct grant periods: (1) an interim FSR that reports the expenditure of those Federal funds available to a State on or after July 1 of the preceding year during the first 12 to 15 months of availability, and (2) a final FSR that reports the expenditure of those Federal funds available to the State on or after July 1 of the second preceding year for the full 27 months of availability.

### **2. Performance Reporting – Not Applicable**

### 3. Special Reporting

*Annual Accountability Report (Part D) for the Consolidated Annual Report for the Carl D. Perkins Career and Technical Education Act of 2006 (CAR) (OMB No. 1830-0569).* A sample of cells on the CAR should be tested (in a similar manner that is done for a financial report) to ensure that the State has data that supports the numbers in the report. The measures and levels are defined in the Final Agreed Upon Performance Levels form that is incorporated in a State plan and attached to the grant award.

- a. *States* – Each State must annually report to the Secretary the progress of the State in achieving the State-adjusted levels of performance on the core indicators of performance, including the levels of performance achieved by the special population categories described in Section 3(29) of Perkins IV and other student categories described in Section 1111(h)(1)(C)(i) of ESEA (20 USC 6311(h)(1)(C)(i)) (Section 113(c) of Perkins IV (20 USC 2323(c))). This report must be provided as part of each State’s December 31 CAR submission.

The Perkins IV core indicators on which States must report aggregate data are:

#### Secondary Level:

- Attainment of academic skills – reading/language arts
- Attainment of academic skills – mathematics
- Technical skill attainment
- School completion
- Student graduation rates
- Placement
- Nontraditional participation
- Nontraditional completion

#### Postsecondary Level:

- Technical skill attainment
- Credential, certificate, degree
- Student retention or transfer
- Student placement
- Nontraditional participation
- Nontraditional completion

States are also required to report disaggregated data on the performance of students by gender, race, ethnicity, migrant status, and the following special population categories described in Section 3(29) of Perkins IV (20 USC 2302 (29))(Section 113(c)(2)(A) of Perkins IV (20 USC 2323(c)(2)(A))):

- Individuals with disabilities
- Individuals from economically disadvantaged families, including foster children
- Individuals preparing for non-traditional fields
- Single parents, including pregnant women
- displaced homemakers
- Individuals with limited English proficiency

Each State negotiates with ED adjusted performance levels (i.e., targets) for each core indicator for each program year (Sections 113(b)(3)(A)(iii) and (iv) of Perkins IV (20 USC 2323 (b)(3)(A)(iii) and (iv))). Each State's adjusted performance levels are contained in a "Final Agreed-Upon Performance Level (FAUPL) Form," which is incorporated by reference into the State plan and grant award (*OMB Number 1830-0029*) (Sections 113(b)(3)(A)(iii) and (v) of Perkins IV (20 USC 2323(b)(3)(A)(iii) and (v))).

A State that retains all, or a portion, of its tech prep grant (Title II) for purposes authorized under Title II of Perkins IV must report its tech prep students as a disaggregated population for each of the section 113 indicators in its *CAR* (Sections 113(c) and 203(e) of Perkins IV (20 USC 2323(c) and 2373(e))).

Each State must review the accountability data submitted by its subrecipients and, in the State's annual *CAR* submission, (1) indicate the total number of subrecipients that failed to meet at least 90 percent of an agreed upon local adjusted level of performance and that will be required to implement a local program improvement plan for the succeeding program year, and (2) note trends, if any, in the performance of these subrecipients (i.e., core indicators that were most commonly missed, including those for which less than 90 percent was commonly achieved; disaggregated categories of students for whom there were disparities or gaps in performance compared to all students) (Section 113(c) of Perkins IV (20 USC 2323(c))).

- b. *Subrecipients* – Each LEA and other subrecipients must annually report to the State the progress of the LEA or other subrecipient in achieving its local adjusted levels of performance on the core indicators of performance, including the levels of performance achieved by the special population categories described in Section 3(29) of Perkins IV and other student categories described in Section 1111(h)(1)(C)(i) of ESEA (20 USC 6311(h)(1)(C)(i)) (Section 113(b)(4)(C) of Perkins IV (20 USC 2323(b)(4)(C))).

The LEA or other subrecipient reports on the Perkins IV core indicators described in paragraph a. above (Section 113(b)(4)(C) of Perkins IV (20 USC 2323(b)(4)(C))). The LEA or other subrecipient is also required to report disaggregated data on the performance of students by gender, race, ethnicity, migrant status, and the special population categories described in Section 3(29) of Perkins IV (20 USC 2302 (29)) (Section 113(b)(4)(C)(ii) of Perkins IV (20 USC 2323(b)(4)(C)(ii))).

Each LEA or other subrecipient negotiates with the State local adjusted performance levels (i.e. targets) for each core indicator for each program year (Sections 113(b)(4)(A)(iii) and (iv) of Perkins IV (20 USC 2323(b)(4)(A)(iii) and (iv))). Each LEA's or other subrecipient's local adjusted performance levels are incorporated into the local plan required by Section 134 before approval by the State.

4. **Section 1512 ARRA Reporting** – Not Applicable
5. **Subaward Reporting under the Transparency Act** – Applicable

#### **M. Subrecipient Monitoring**

Each State must evaluate annually, using the local adjusted levels of performance described in Section 113(b)(4) of Perkins IV (20 USC 2323(b)(4)), the career and technical education activities of each subrecipient receiving funds under the basic grant program (Title I of Perkins IV) (Section 123(b)(1) of Perkins IV (20 USC 2343(b)(1))). The State determines whether a subrecipient failed to meet at least 90 percent of an agreed upon local adjusted level of performance for any of the core indicators of performance described in Section 113(b)(4) of Perkins IV and, if so, the State must work with the subrecipient to implement the improvement plan required by Section 123(b)(2) (Section 123(b)(2) and (3) of Perkins IV (20 USC 2343(b)(2) and (3))) (See III.N.3, "Special Tests and Provisions – Developing and Implementing Improvement Plans.")

#### **N. Special Tests and Provisions**

##### **1. Schoolwide Programs**

See ED Cross-Cutting Section.

##### **2. Access to Federal Funds for New or Significantly Expanded Charter Schools**

See ED Cross-Cutting Section.

##### **3. Developing and Implementing Improvement Plans**

- a. *States* – Any State that fails to meet at least 90 percent of an agreed upon State adjusted level of performance for any of the core indicators of performance described in Section 113(b)(3) of Perkins IV must develop and implement a program improvement plan, with special consideration

given to performance gaps identified under Section 113(c)(2) of Perkins IV. The determination of 90 percent is based on the data submitted to the State. The State must develop and implement its improvement plan in consultation with appropriate agencies, individuals, and organizations during the first program year succeeding the program year for which the State failed to meet its State adjusted levels of performance for any of the core indicators of performance (Section 123(a)(1) of Perkins IV (20 USC 2323(a)(1))).

A State's program improvement plan, which is included in its CAR submission to ED, must address, at a minimum, the following items.

- The core indicator(s) that the State failed to meet at the 90 percent threshold.
  - The disaggregated categories of students for which there were quantifiable disparities or gaps in performance compared to all students or any other category of students.
  - The action steps which will be implemented, beginning in the current program year, to improve the State's performance on the core indicator(s) and for the categories of students for which disparities or gaps in performance were identified.
  - The staff member(s) in the State who are responsible for each action step.
  - The timeline for completing each action step.
- b. *Subrecipients* – Each LEA or other subrecipient for which the State determines that the LEA or other subrecipient failed to meet at least 90 percent of an agreed upon local adjusted level of performance for any of the core indicators of performance described in Section 113(b)(4) of Perkins IV must develop and implement a program improvement plan with special consideration given to performance gaps identified under Section 113(b)(4)(C)(ii)(II) of Perkins IV (20 USC 2323(b)(4)(C)(ii)(II)) (Section 123(b)(2) of Perkins IV; 20 USC 2343(b)(2)). The subrecipient must develop and implement the local improvement plan – in consultation with the State, appropriate agencies, individuals, and organizations – during the first program year succeeding the program year for which the LEA or other subrecipient failed to meet any of its local adjusted levels of performance for any of the core indicators of performance (Section 123(b)(2) of Perkins IV (20 USC 2343(b)(2))). The LEA's or other subrecipient's data on each local adjusted level of performance for any of the core indicators of performance described in Section 113(b)(4) of Perkins IV must be available to the general public through a variety of

formats, including electronically through the Internet (Section 113(b)(4)(C)(v) of Perkins IV (20 USC 2323(b)(4)(C)(v))).

**Audit Objective** – (*States*) Determine whether the State developed and implemented a program improvement plan, as required, if it failed to meet at least 90 percent of an agreed upon State adjusted level of performance for any of the core indicators of performance described in Section 113(b)(3) of Perkins IV.

**Suggested Audit Procedures** (*States*)

- a. Ascertain if the State failed to meet at least 90 percent of an agreed upon State adjusted level of performance for any of the core indicators of performance by reviewing data in the CAR.
- b. If so, verify that the State developed and implemented a program improvement plan in a manner consistent with the above requirements.

**Audit Objectives** (*Subrecipients*) – Determine whether (1) a subrecipient's data are publicly available; and (2) the subrecipient developed and implemented a program improvement plan, as required, if the State determined that it failed to meet at least 90 percent of an agreed upon local adjusted level of performance.

**Suggested Audit Procedures** (*Subrecipients*)

Verify that the LEAs or other subrecipients:

- a. Developed and implemented a program improvement plan in a manner consistent with the above requirements, if the State determined that the LEA or other subrecipient failed to meet at least 90 percent of an agreed upon local adjusted level of performance for any of the core indicators of performance.
- b. Provided data on each local adjusted level of performance for the core indicators of performance to the general public through a variety of formats, including electronically through the Internet.

## DEPARTMENT OF EDUCATION

### CFDA 84.126 REHABILITATION SERVICES--VOCATIONAL REHABILITATION GRANTS TO STATES

#### I. PROGRAM OBJECTIVES

The purpose of Title I of the Rehabilitation Act of 1973, as amended (Act), which authorizes the State Vocational Rehabilitation (VR) Services Program, is to assist States in operating statewide comprehensive, coordinated, effective, efficient, and accountable VR programs, each of which is (1) an integral part of a statewide workforce investment system; and (2) designed to assess, plan, develop, and provide VR services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individuals may prepare for and engage in gainful employment (Section 100(a)(2) of the Act (29 USC 720(a)(2))).

#### II. PROGRAM PROCEDURES

Federal funds are distributed to the States on a formula basis with the States required to provide a 21.3 percent match. The program is administered by an agency designated by the State as having overall administrative responsibility for the VR program. If the designated State agency is not an agency primarily concerned with VR, or vocational and other rehabilitation of individuals with disabilities, it must include a designated State unit within the agency that is responsible for the designated State agency's VR program (State VR Agency).

The States must submit to the Rehabilitation Services Administration (RSA) a State Plan that provides both assurances and descriptions that are required by Title I of the Act and the implementing regulations (34 CFR part 361). The State Plan is one of the key bases of RSA's monitoring of the State's administration of the VR program.

Services are provided either directly by State VR Agency staff or purchased from community-based vendors. Services, except those of an assessment nature, are provided under the Individualized Plan for Employment (IPE), as determined by the individual, which can be developed by the individual, or with assistance provided by others, including a qualified VR counselor employed by the State VR Agency, to achieve an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities and informed choice.

The Workforce Investment Act of 1998, as amended (WIA), requires the VR program to collaborate with other workforce development, educational, and human resource programs in a one-stop service delivery system. The WIA's objective is to create a seamless delivery system by linking the agencies operating these programs in order to provide universal access to the programs operated by each agency. While the one-stop system operates as a common portal for gaining access to these programs, each program provides its respective services to persons meeting its respective eligibility criteria.

Agencies responsible for administering the programs whose services are delivered in a one-stop system are known as “partners;” those whose participation is mandated by the WIA, including the State VR agency, are “required partners.” Each partner must enter into a Memorandum of Understanding (MOU) with the Local Workforce Investment Board regarding the operation of the one-stop system. The MOU covers the services to be provided through the one-stop system, funding for those services and for the system’s administrative costs, and the methods for referring individuals between one-stop operators and partners. It establishes how each partner will participate in the one-stop system and share in the cost of operating it. Each partner’s resources may be used only for (1) services that are authorized under that partner’s program and delivered to clients eligible for those services; and (2) administrative costs allocable to the partner’s program.

In addition to the MOU required by the WIA, the Rehabilitation Act requires that a State VR agency’s State Plan provide for a network of cooperative agreements binding that agency’s central and local offices to the central and local offices, respectively, of the other partners in the one-stop service delivery system. States can choose to use the same document to meet the requirements for both the MOU and the cooperative agreements. As used henceforth in this discussion, “MOU” refers to whatever document(s) a State agency uses to meet these requirements.

### **Source of Governing Requirements**

The VR program is authorized by Title I of the Rehabilitation Act of 1973, as amended (29 USC 701 *et seq.*). The Rehabilitation Act Amendments of 1998 are found in Title IV of the WIA. Program regulations are found at 34 CFR part 361. In addition, the Education Department General Administrative Regulations (EDGAR) at 34 CFR parts 74, 76, 77, 79, 80, 81, 82, and 86 apply to this program. Requirements in 20 CFR part 662 (Description of the One-Stop Service Delivery System) also apply to the extent that VR activities are being conducted as part of a one-stop service delivery system.

## **III. COMPLIANCE REQUIREMENTS**

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

### **A. Activities Allowed or Unallowed**

#### *1. Services to Individuals*

Services provided under the VR programs are any services described in an IPE necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. Section 103(a) of the Act (29 USC 723(a)) contains examples of the types of services that can be provided.

## 2. *Services to Groups*

The State VR Agency may provide other services to groups of individuals with disabilities (Section 103(b) of the Act (29 USC 723(b))):

- a. In the case of any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by the designated State agency, the provision of such services and supervision, along or together with the acquisition by the designated State agency of vending facilities or other equipment and initial stocks and supplies.
- b. *Community Rehabilitation Programs* – The establishment, development, or improvement of a public or other non-profit community rehabilitation program including, under special circumstances, the construction of a facility for a public or non-profit community rehabilitation program.
- c. The provision of other services, that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any one individual with a disability.
- d. Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities.
- e. Special services to provide non-visual access to information for individuals who are blind, including telecommunications, Braille, sound recordings or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.
- f. Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990, and that are seeking to employ individuals with disabilities.
- g. Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

### 3. *Participation in a One-Stop Service Delivery System*

Any service or administrative cost charged to the VR programs through participation in the one-stop service delivery system must be (a) allowable under the program's authorizing statute and regulations; (b) allocable to the program under the State VR agency's cost allocation plan; and (c) consistent with the MOU between the State VR agency and the Local Workforce Investment Board. The MOU is the primary vehicle by which the State VR agency sets forth how it will participate in the one-stop service delivery system and how it will share in the cost of operating the system (29 USC 2841(b)(1)(B)(iv); 34 CFR section 361.4; 20 CFR part 662; Notice: *Resource Sharing for Workforce Investment Act One-Stop Centers: Methodologies for Paying or Funding Each Partner Program's Fair Share of Allocable One-Stop Costs*, issued May 31, 2001 (66 FR 29637)).

The MOU identifies the resources the State VR agency will provide for compliance with 20 CFR section 662.270, which requires the VR program to support a fair share of the one-stop system's common administrative costs. The amount provided must be proportionate to the use of the system by individuals attributable to this program. The MOU may provide for cash payments of billings from the one-stop operator, or for providing goods and services that benefit the system's operation. Examples of goods and services that the VR agency may provide for this purpose include: (a) making VR staff available to provide training or technical assistance to other partners in such areas as disability, accessibility, adaptive equipment, and rehabilitation engineering; (b) VR staff participation in cooperative efforts with employers to promote job placement (such as job analysis and employer visits); and (c) applying VR staff and other resources to the VR program's participation in information and financial management systems that link all partners to one another.

## **C. Cash Management**

See ED Cross-Cutting Section.

## **E. Eligibility**

### **1. Eligibility for Individuals**

An individual is eligible for VR services if the individual (a) has a physical or mental impairment that, for the individual, constitutes or results in a substantial impediment to employment; (b) can benefit in terms of an employment outcome from VR services; and (c) requires VR services to prepare for, secure, retain, or regain employment (Section 102(a)(1) of the Act (29 USC 722(a)(1))).

An individual who is a beneficiary of Social Security Disability Insurance or a recipient of Supplemental Security Income is presumed to be eligible for VR services (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless the State VR

Agency can demonstrate by clear and convincing evidence that such individual is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the disability of the individual (Section 102(a)(3) of the Act (29 USC 722(a)(3))).

An individual is presumed to be able to benefit in terms of an employment outcome from VR services unless the State VR Agency can demonstrate by clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the individual's disability. This determination must be made through the use of trial work experiences with appropriate supports provided by the State VR Agency, except under limited circumstances when the individual cannot take advantage of such experiences (Section 102(a)(2) of the Act (29 USC 722(a)(2))).

The State VR Agency must determine whether an individual is eligible for VR services within a reasonable period of time, not to exceed 60 days, after the individual has submitted an application for the services unless (Section 102(a)(6) of the Act (29 USC 722(a)(6)):

- a. Exceptional and unforeseen circumstances beyond the control of the State VR agency preclude making an eligibility determination within 60 days and the State agency and the individual agree to a specific extension of time; or
- b. The State VR Agency is exploring an individual's abilities, capabilities, and capacity to perform in work situations through trial work experiences in order to determine the eligibility of the individual or the existence of clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from VR services.

The State may choose to consider the financial need of eligible individuals, or individuals who are receiving services during a trial work experience or an extended evaluation, for the purpose of determining the extent of their participation in the cost of VR services. The State may not consider financial need when providing services described in 34 CFR section 361.54(b)(3). If the State indicates in its State Plan that it will use financial need tests for one or more types of VR services, it must apply such tests in accordance with its written policies uniformly to all individuals under similar circumstances. The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region (34 CFR section 361.54).

2. **Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable**
3. **Eligibility for Subrecipients – Not Applicable**

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

- a. The State share of expenditures made by the State VR Agency under the State Plan, including expenditures for the provision of VR services and the administration of the State Plan, is 21.3 percent (Sections 7(14) and 111(a)(1) of the Act (29 USC 705(14) and 731(a)(1))).
- b. The Federal share of expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project (34 CFR section 361.60(a)(2)).

### **2.1 Level of Effort – Maintenance of Effort**

- a. The amount otherwise payable to a State for a fiscal year under this section shall be reduced by the amount by which expenditures from non-Federal sources under the State Plan for the previous fiscal year are less than the total of such expenditures for the fiscal year 2 years prior to the previous fiscal year. For example, for fiscal year 2001, a State's maintenance-of-effort level is based on the amount of its expenditures from non-Federal sources for fiscal year 1999. Thus, if the State's non-Federal expenditures in fiscal year 2001 are less than they were in fiscal year 1999, the State has a maintenance of effort deficit, and the Secretary reduces the State's allotment for fiscal year 2002 by the amount of that deficit (Section 111(a)(2)(B) of the Act (29 USC 731(a)(2)(B)); 34 CFR section 361.62).
- b. If the State Plan provides for the construction of a facility for community rehabilitation program purposes, the amount of the State's share of expenditures for a fiscal year for VR services under the Plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at least equal to the State's share of those expenditures for the second prior fiscal year (34 CFR section 361.62).

### **2.2 Level of Effort – Supplement Not Supplant – Not Applicable**

### **3. Earmarking – Not Applicable**

## **H. Period of Availability of Federal Funds**

Federal funds appropriated for a fiscal year **under the VR State Grants program** remain available for obligation in the succeeding fiscal year only to the extent that the State VR Agency met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR section 76.707, the non-Federal share in the fiscal year for which the funds were appropriated. Any program income received during a fiscal year that is not obligated by the State VR Agency by the end of that fiscal year will remain

available for obligation by the State VR Agency during the succeeding fiscal year (Section 19 of the Act (29 USC 716); 34 CFR section 361.64).

## **J. Program Income**

Sources of program income include, but are not limited to, payments from the Social Security Administration for rehabilitating Social Security beneficiaries, payments received from workers' compensation funds, fees for services to defray part or all of the costs of services provided to particular individuals, and income generated by a State-operated community rehabilitation program.

Except as indicated below, program income, whenever earned, must be used for the provision of VR services and the administration of the State Plan under the State VR Services Program. Program income is considered earned when it is received (Section 108 of the Act (29 USC 728); 34 CFR section 361.63).

The State VR Agency is authorized to treat program income as a deduction from total allowable costs or as an addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR sections 80.25(g)(1) or (2) (34 CFR section 361.63).

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Only grantees placed on reimbursement are required to complete this form to request payment of grant award funds. The requirement to use this form is imposed on an individual recipient basis.
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable
- d. *RSA-2, Program Cost Report (OMB No. 1820-0017)*. State VR agencies submit the RSA-2 annually.

### **2. Performance Reporting** – Not Applicable

### **3. Special Reporting** – Not Applicable

### **4. Section 1512 ARRA Reporting** – Not Applicable

### **5. Subaward Reporting under the Transparency Act** – Not Applicable

## DEPARTMENT OF EDUCATION

### CFDA 84.181 SPECIAL EDUCATION—GRANTS FOR INFANTS AND FAMILIES

#### I. PROGRAM OBJECTIVES

The purposes of the Individuals with Disabilities Education Act (IDEA), Part C (Part C) State formula grant program are to: (1) develop and implement a statewide, comprehensive, coordinated, multi-disciplinary interagency system that provides early intervention services for infants and toddlers with disabilities and their families; (2) facilitate the coordination of payment for early intervention services from Federal, State, local and private sources (including public and private insurance coverage); (3) enhance the State's capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; (4) enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care; and (5) encourage States to expand opportunities for children under the age of 3 years who would be at risk of having substantial developmental delay if they did not receive early intervention services (20 USC 1431(b); 34 CFR section 303.1).

#### II. PROGRAM PROCEDURES

Generally, the State is responsible for maintaining and implementing a statewide system to identify, evaluate, and provide early intervention services to eligible children and their families. Such a system includes a public awareness and child find system, development and implementation of an individualized family service plan for eligible children, maintenance of a central directory of information about early intervention services, personnel development and contracting for or otherwise providing services to eligible children and their families.

The State designates a State lead agency that is responsible for administering, and supervising activities funded by this program. Program services may be carried out by the lead agency, other State agencies, or by public or private organizations either under contract to the State or through other arrangements with such agencies. The lead agency also monitors activities that are covered by the program, whether or not this program funds them. The State also must establish a State Interagency Coordinating Council that, among other things, advises and assists the lead agency in the development and implementation of policies and achieving participation, cooperation, and coordination of all appropriate public agencies in the State.

The amount of a State's allocation under Part C for a fiscal year is based on its proportion of the general population of infants and toddlers, from birth through 2 years, in the State (i.e., the ratio of the number of infants and toddlers in the State compared to the number of infants and toddlers in all the States).

#### Source of Governing Requirements

These programs are authorized under 20 USC 1431 through 1445. Implementing regulations specific to this program are in 34 CFR part 303.

### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for details of the requirements.**

Certain compliance requirements that apply to multiple Department of Education (ED) programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references to the Cross-Cutting Section for these requirements.

#### A. Activities Allowed or Unallowed

The approved application describes the activities to be carried out. Generally, allowable activities for a State include:

1. Maintaining a statewide, comprehensive, coordinated, multi-disciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.
2. Providing direct early intervention services for infants and toddlers with disabilities and their families, which are otherwise not funded through other public or private sources.
3. Expanding and improving on services under Part C that are otherwise available for infants and toddlers and their families.
4. Providing a free appropriate public education, in accordance with Part B of the IDEA, to children with disabilities from their third birthday to the beginning of the following school year.
5. With the written consent of the parents, continuing to provide early intervention services under this part to children with disabilities from their third birthday (in accordance with 34 CFR section 303.211) until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with Part B.
6. In any State that does not provide services for at risk infants and toddlers, to strengthen the statewide system by 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 the infants and toddlers identified and evaluated; and (c) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant and toddler for services.

7. The use of IDEA Part C funds for the acquisition of equipment or construction or alteration of facilities must be approved by ED based on a determination by ED that the program would be improved by allowing funds to be used for these purposes (20 USC 1404, 1433 and 1438; 34 CFR sections 303.104 and 303.501).
8. Subject to approval by the Governor, the State Interagency Coordinating Council may use IDEA Part C funds to (1) conduct hearings and forums; (2) reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives); (3) pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business (otherwise Council members must serve without compensation from IDEA Part C funds); (4) hire staff; and (5) obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under Part C of the Act (20 USC 1441(d); 34 CFR section 303.603).

## **B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section (84.000, Section III, B.3), which explains that a Restricted Indirect Cost Rate (RICR) must be applied. For States, when ED is the cognizant agency for indirect costs under OMB Circular A-87, RICRs are incorporated into indirect cost rate agreements approved by ED.

However, Part C is often administered by State public agencies for which ED is not the cognizant Federal agency for indirect costs. For these State public agencies, the provisions of ED regulations pertaining to RICRs may not be reflected in the indirect cost rate charged to Part C. However, indirect costs charged to Part C must conform to the RICR regulations (20 USC 1437(b)(5)(B); 34 CFR sections 76.560 through 34 CFR 76.580; 34 CFR section 303.225(c).

## **C. Cash Management**

See ED Cross-Cutting Section.

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching - Not Applicable**

#### **2.1 Level of Effort - *Maintenance of Effort***

The total amount of State and local funds budgeted for expenditure in the current fiscal year for early intervention services for children eligible under Part C and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowances may be made for: (a) decreases in the number of children who are eligible to receive Part C early intervention services and (b) unusually

large amounts of funds expended for such long-term purposes such as the acquisition of equipment and the construction of facilities (20 USC 1437(b)(5)(B); 34 CFR section 303.225(a)(2) and (b)).

Although this requirement is identified as a supplement not supplant requirement in the law and regulation, this Supplement classifies this type of requirement as maintenance of effort.

Monies received from Medicaid reimbursements attributable to Federal funds, a parent's private health insurance, or a parent or family fees paid under the State's system of payments are not included in "State and local funds" under the State's calculation of the level of effort under 34 CFR section 303.225(b) (34 CFR sections 303.520(d)(2), (d)(3), and (e)(3)).

If a State has enacted a State statute that meets the requirements in 34 CFR section 303.520(b)(2) regarding the use of private health insurance coverage to pay for early intervention services under Part C of the Act, the State may reestablish a new baseline of State and local expenditures under 34 CFR section 303.225(b) in the next Federal fiscal year following the effective date of the statute (34 CFR section 303.520(b)(3)).

**2.2 Level of Effort - *Supplement Not Supplant* - Not Applicable**

**3. Earmarking - Not Applicable**

**H. Period of Availability of Federal Funds**

See ED Cross-Cutting Section.

**L. Reporting**

**1. Financial Reporting**

See ED Cross-Cutting Section.

**2. Performance Reporting – Not Applicable**

**3. Special Reporting – Not Applicable**

**4. Section 1512 ARRA Reporting – Not Applicable**

**5. Subaward Reporting under the Transparency Act – Not Applicable**

## DEPARTMENT OF EDUCATION

### CFDA 84.186 SAFE AND DRUG-FREE SCHOOLS AND COMMUNITIES -- STATE GRANTS (Title IV, Part A, Subpart 1 of ESEA)

#### I. PROGRAM OBJECTIVES

The objective of the Safe and Drug-Free School and Communities program authorized by the Safe and Drug-Free Schools and Communities Act (SDFSCA), contained in Title IV of the ESEA, is to support programs that prevent violence in and around schools and by strengthening programs that prevent the illegal use of alcohol, tobacco, and drugs, involve parents, and are coordinated with related Federal, State, and community efforts and resources.

#### II. PROGRAM PROCEDURES

In general, SDFSCA funds are allocated to States based on their relative share of school-aged population and Title I Concentration Grant funds. Of each State's annual allocation amount, at least 80 percent is awarded to the State Educational Agency (SEA) for programs described in Section 4112(b) of the SDFSCA and no more than 20 percent may be awarded to the Governor for programs described in Section 4112(a) of the SDFSCA. On the grant documents the Department of Education (ED) codes these programs with an "A" following the CFDA number to indicate a grant to the SEA program and a "B" following the CFDA number to indicate a grant to the Governor's program. However, these are treated as one program under OMB Circular A-133.

SEAs may use a portion of the funds they receive for administrative activities and to carry out State-level program activities. The majority of the funds received by an SEA must be distributed to local educational agencies (LEAs) for drug and violence prevention activities. LEAs must submit an application that includes, among other things, how it will use the funds.

Governors also may use a portion of the funds they receive for administration. Excluding the percentage of funds reserved for administration, Governors must make grants to, or enter into contracts with eligible entities for drug and violence prevention activities. Governors may have another State agency, including an SEA, administer the program on their behalf. No matter which agency administers the program, the program remains the responsibility of the Governor's office (Sections 4112 and 4113 of the SDFSCA (20 USC 7112 and 7113)).

#### Source of Governing Requirements

This program is authorized by Title IV, Part A, Subpart 1 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (Pub. L. No. 107-110), which is codified at 20 USC 7101 through 7117 and 7161 through 7165. There are no program regulations. However, this program is subject to the Education Department General Administrative Regulations (EDGAR) at 34 CFR parts 76, 77, 79, 80, 81, and 82.

## Availability of Other Program Information

ED issued non-regulatory guidance to assist in the administration of this program. That guidance and other program information are available at <http://www2.ed.gov/about/offices/list/oese/index.html>.

### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the Department of Education (ED) Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references to the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

#### A. Activities Allowed or Unallowed

See also ED Cross-Cutting Section.

##### 1. *Activities Allowed*

###### a. *Use of Funds by State*

A State may use SDFSCA funds to carry out various activities including:

(1) *Administration Costs* (Sections 4112(a)(6) and (b)(2)(A) of the SDFSCA (20 USC 7112(a)(6) and (b)(2)(A))).

###### (2) *State-Level Activities*

A State may use a portion of its SDFSCA funds for grants and contracts to plan, develop, and implement capacity building, technical assistance and training, evaluation, program improvement services, and coordination activities for local educational agencies, community-based organizations, and other public and private entities (Section 4112(c)(2) of the SDFSCA (20 USC 7112(c)(2))).

###### b. *Use of Funds by the Governor*

A Governor must use a competitive process to award grants or contracts for programs or activities that complement and support the activities of LEAs. Grants or contracts may be awarded to LEAs, community-based organizations (including community anti-drug coalitions) other public

entities and private organizations and consortia of these agencies. Grants or contracts awarded under Section 4112(a)(1) shall be subject to a peer review process (Section 4112(a) of the SDFSCA (20 USC 7112(a))).

c. *Use of Funds by LEAs*

- (1) LEAs may use funds for drug and violence prevention activities as listed in Section 4115(b)(2) of the SDFSCA (20 USC 7115(b)(2)). (This Section may be found at <http://www.ed.gov/legislation/ESEA02/pg52.html>)
- (2) An LEA may apply to the SEA for a waiver of the requirement found in Section 4115(a)(1)(C) that the program or activity be based on scientifically based research that provides evidence that it will reduce violence and illegal drug use (Section 4115(a)(3) of the SDFSCA (20 USC 7115(a)(3))).

d. *Rural Education Achievement Program (REAP) (LEAs)*

REAP provides authorization to spend all or part of funds under certain programs for activities authorized in other programs. After notification to the SEA, an LEA that meets both of the following requirements may spend all or part of this program's funds for activities authorized in Title I Grants to Local Educational Agencies (LEAs) (84.010); Eisenhower Professional Development State Grants (84.281); and Education Technology Grants (84.318):

- (1) Have an Average Daily Attendance of less than 600 students; and
- (2) All of the schools in the LEA have been coded as rural schools by the National Center for Educational Statistics (NCES code 7 or 8) (Title III of the Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, 114 Stat. 2763A-89, December 21, 2000).

See the program sections of III.A, "Activities Allowed or Unallowed," in this program supplement for the respective compliance requirements.

e. *Transferability*

See ED Cross-Cutting Section.

2. ***Activities Unallowed*** (Governors/SEAs/LEAs) – SDFSCA funds may not be used for construction, or to provide medical services, drug treatment, or rehabilitation. Pupil services or referral to treatment for students who are victims of or witnesses to crime or who use alcohol, tobacco, or drugs are not included in the prohibition (Section 4154 of the SDFSCA (20 USC 7164)).

**B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section.

**C. Cash Management**

See ED Cross-Cutting Section.

**G. Matching, Level of Effort, Earmarking****1. Matching – Not Applicable****2.1 Level of Effort – *Maintenance of Effort* (SEAs/LEAs)**

See ED Cross-Cutting Section.

**2.2 Level of Effort – *Supplement Not Supplant***

See ED Cross-Cutting Section.

**3. Earmarking**

See also ED Cross-Cutting Section.

**a. *State-level programs, administrative costs, initial allocations to LEAs (SEAs)***

(1) A minimum of 93 percent of the SEA's total allocation must be distributed to its LEAs. Of the amount made available for distribution to LEAs, an SEA must allocate (a) 60 percent based on the relative amount LEAs received under Part A of Title 1 for the preceding fiscal year; and (b) 40 percent to LEAs based on their relative share of enrolled students in public and private non-profit elementary and secondary schools (Sections 4112(b)(1) and 4114(a)(1) of the SDFSCA (20 USC 7112(b)(1) and 7114(a)(1))).

(2) An SEA may reserve not more than five percent of its total allocation for State-level activities authorized under Section 4112(c)(1) of the SDFSCA (20 USC 7112(c)(1)).

**b. *Administrative Cost*****(1) *Governor's Program***

A Governor may use no more than three percent of its total allocation for administrative activities (Section 4112(a)(6) of the SDFSCA (20 USC 7112(a)(6))).

(2) *SEA*

An SEA may also reserve not more than three percent of its total allocation for administrative costs, including the implementation of the Uniform Management Information and Reporting System. However, in fiscal year 2002, the SEA may reserve up to an additional one percent of its total allocation for administrative costs, provided that the additional reservation is used to support the Uniform Management Information and Reporting System (Section 4112(b)(2) of the SDFSCA (20 USC 7112(b)(2))).

(3) *LEA*

An LEA may use no more than two percent of its total allocation for administrative activities (Section 4114(a)(2) of the SDFSCA (20 USC 7114(a)(2))).

c. *Cap on Security Devices and Security Personnel (LEAs)*

An LEA may use not more than 40 percent of its allocation to support the following activities (a) through (e) but not more than half of that amount or a maximum of 20 percent to support the following activities (a) through (d). An LEA may use the entire 40 percent to support the following activity (5). However, the LEA may use funds for the following activities (a) through (d) only if funding for these activities was not received from other Federal agencies (Section 4115(c) of the SDFSCA (20 USC 7115(c))).

- (1) Acquiring and installing metal detectors, electronic locks, surveillance cameras, or other related equipment and technologies (20 USC 7115(b)(2)(E)(ii)).
- (2) Reporting criminal offenses committed on school property (20 USC 7115(b)(2)(E)(iii)).
- (3) Developing and implementing comprehensive school security plans or obtaining technical assistance concerning those plans (20 USC 7115(b)(2)(E)(iv)).
- (4) Supporting safe zones of passage activities, including bicycle and pedestrian safety programs, which ensure that students can travel safely to and from school (20 USC 7115(b)(2)(E)(v)).
- (5) Hiring and mandatory training of school security personnel who interact with students in support of youth drug and violence prevention activities implemented in schools (20 USC 7115(b)(2)(E)(vi)).

## **H. Period of Availability of Federal Funds (SEAs/LEAs Programs)**

See also ED Cross-Cutting Section.

### **1. *Return and Reallocation of Funds (SEA/LEA)***

- a. Except as stated in III.H.2, “Period of Availability of Federal Funds – Carryover of Funds (LEA)” below, an LEA must return to the SEA any funds that remain unobligated after a period of one-year beginning on the date the LEA receives its original allocation. The SEA must reallocate the funds to LEAs that have submitted plans for using the funds for SDFSCA programs and activities on a timely basis (Section 4114(a)(3)(A) of the SDFSCA (20 USC 7114(a)(3)(A))).
- b. If an LEA does not apply for SDFSCA funds or if an LEA is disapproved for funding, the SEA must reallocate that amount to one or more of its other LEAs (Section 4114(a)(3)(C) of the SDFSCA (20 USC 7114(a)(3)(C))).

### **2. *Carryover of Funds (LEA)***

An LEA may retain up to 25 percent of its fiscal year allocation for obligation in the next Federal fiscal year. If an LEA wishes to retain an amount greater than 25 percent of its fiscal year allocation for use in a succeeding year, it must demonstrate good cause for such a carryover to its SEA, and the SEA must approve the request for additional carryover (Section 4114(a)(3)(B) of the SDFSCA (20 USC 7114(a)(3)(B))).

## **L. Reporting**

### **1. Financial Reporting (SEAs/LEAs/Governor’s Programs)**

See ED Cross-Cutting Section.

### **2. Performance Reporting – Not Applicable**

### **3. Special Reporting – Not Applicable**

### **4. Section 1512 ARRA Reporting – Not Applicable**

### **5. Subaward Reporting under the Transparency Act –Applicable**

## **N. Special Tests and Provisions**

### **1. Participation of Private School Children (SEAs/LEAs)**

See ED Cross-Cutting Section.

**2. Schoolwide Programs (LEAs)**

See ED Cross-Cutting Section.

**3. Access to Federal Funds for New or Significantly Expanded Charter Schools**

See ED Cross-Cutting Section.

## DEPARTMENT OF EDUCATION

### CFDA 84.282 CHARTER SCHOOLS

#### I. PROGRAM OBJECTIVES

The objective of the Charter Schools Program (CSP), authorized under Title V, Part B, Subpart 1 of the Elementary and Secondary Education Act, is to increase national understanding of the charter schools model by (1) providing financial assistance for the planning, program design, and initial implementation of charter schools; (2) expanding the number of high-quality charter schools available to students across the Nation; (3) evaluating the effects of charter schools; and (4) encouraging States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount States typically have provided for traditional public schools.

#### II. PROGRAM PROCEDURES

Generally, CSP funds are awarded on a competitive basis to State educational agencies (SEAs) in States with statutes specifically authorizing charter schools. SEAs use their CSP funds to award subgrants to eligible applicants for planning, program design, and initial implementation of charter schools; and to support the dissemination of information about, and successful practices in, charter schools. If an eligible SEA elects not to participate in this program, or its application is not approved, non-SEA eligible applicants, including charter schools that operate in the State may apply directly to the Secretary.

A charter school is limited to receiving not more than one grant or subgrant for planning and initial implementation activities and not more than one grant or subgrant for dissemination activities, unless the charter school is granted a waiver. A charter school may apply to the SEA for funds to carry out dissemination activities if the charter school has been in operation for at least 3 consecutive years and has demonstrated overall success, including substantial progress in improving student achievement; high levels of parent satisfaction; and the management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school. A charter school may receive a dissemination grant, whether or not the charter school has applied for or received funds under the CSP for planning or implementation.

Planning and initial implementation grants awarded to non-SEA eligible applicants by the Secretary and subgrants awarded by SEAs are awarded for a period not to exceed 3 years, of which not more than 18 months may be used for planning and not more than 2 years may be used for implementation. Grants or subgrants to charter schools for dissemination activities are made for a period not to exceed 2 years.

The Consolidated Appropriations Act, Fiscal Year 2010 (Pub. L. No. 111-117, 123 Stat. 3264, December 16, 2009) authorized the Secretary of Education to make awards to non-profit charter management organizations and other not-for-profit entities for the replication and expansion of successful charter school models.

## Source of Governing Requirements

This program is authorized by Title V, Part B, Subpart 1 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (20 USC 7221-7221j). This program is subject to the Education Department (ED) General Administrative Regulations at 34 CFR parts 75, 76, 77, 79, 80, 81, 82, 86, and 99. There are no program specific regulations. However, 34 CFR sections 76.785 through 76.799 prescribe administrative requirements that States and local educational agencies must follow when allocating funds to new or expanding charter schools under ED's formula grant programs.

### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

#### A. Activities Allowed or Unallowed

See also ED Cross-Cutting Section.

1. *Use of Funds by SEAs*

Funds must be used to award subgrants to eligible applicants. Funds may also be used to establish a revolving loan fund for eligible applicants that have received implementation subgrants, for State dissemination activities, and for administrative costs of the program. See "III.G.3., Matching, Level of Effort, Earmarking – Earmarking," for limitations on amounts that can be used for these activities (20 USC 7221c(f)(1), (4), and (5)).

2. *Use of Funds by Eligible Applicants*

- a. Each eligible applicant may use these funds in accordance with its approved application to plan and implement a charter school, or to disseminate information about the charter school and successful practices in charter schools (20 USC 7221c(f)(2)).
- b. An eligible applicant receiving a CSP grant or subgrant may use funds for (1) post-award planning and design of the educational program, which may include (a) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (b) professional development of teachers and other staff who will work in

the charter school; and (2) initial implementation of the charter school, which may include (a) informing the community about the school; (b) acquiring necessary equipment and educational materials and supplies; (c) acquiring or developing curriculum materials; and (d) other initial operational costs that cannot be met from State or local sources (20 USC 7221c(f)(3)).

- c. A charter school receiving funds for dissemination activities may use funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school, through such activities as (1) assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers, and that agree to be held to at least as high a level of accountability as the assisting charter school; (2) developing partnerships with other public schools, including charter schools, designed to improve student performance in each of the schools participating in the partnership; (3) developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and (4) conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools (20 USC 7221c(f)(6)).

### 3. *Grants for the Replication and Expansion of High-Quality Charter Schools*

- a. Grant funds may be used to replicate or expand a high-quality charter school. Specifically, funds may be used for (i) post-award planning and design of the educational program; and (ii) initial implementation of the charter school (see paragraph 2.b. above).
- b. Grant funds may be used for initial operational costs associated with the expansion or improvement of the entity's oversight or management of its schools (see III.G.3.c. below), provided that the specific schools being created or expanded under the grant are beneficiaries of such expansion or improvement.
- c. A charter school that has received replication and expansion of high-quality charter schools funds is not eligible to receive funds for the same purpose under section 5202(c)(2) of the ESEA (i.e., other funding under this program), including for planning and program design or the initial implementation of a charter school (20 USC 7221c(f)(3); Program Announcement issued May 24, 2010, *Federal Register* (75 FR 28789-28795)).

**B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section.

**C. Cash Management**

See ED Cross-Cutting Section.

**E. Eligibility****1. Eligibility for Individuals – Not Applicable****2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable****3. Eligibility for Subrecipients**

A non-SEA eligible applicant for planning and initial implementation funds is a charter school developer that has applied to an authorized public chartering authority to operate a charter school, and has provided that authority with adequate and timely notice of its application for funding under the CSP. A charter school is a public school that provides a program of elementary or secondary education, or both; is nonsectarian and does not charge tuition; complies with Federal and State civil rights laws; is a school to which parents choose to send their children; and that admits students on the basis of a lottery, if more students apply than can be accommodated. The term “developer” means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators, and other school staff, parents, or other members of the local community in which a charter school project will be carried out. A for-profit entity does not qualify as an eligible applicant for purposes of the CSP. However, a CSP grant recipient may enter into a contract with a for-profit entity for the day-to-day management of the charter school (20 USC 7221i).

**G. Matching, Level of Effort, Earmarking****1. Matching – Not Applicable****2. Level of Effort – Not Applicable****3. Earmarking**

- a. Each SEA receiving a grant may reserve not more than 5 percent of these funds for administrative expenses associated with the charter school grant program (20 USC 7221c(f)(4)).

- b. The SEA must provide at least 95 percent of the grant funds to eligible applicants in the State for planning and initial implementation activities or for State dissemination activities. Not more than 10 percent of the grant amount may be used to establish a revolving loan fund for eligible applicants that have received a CSP grant and not more than 10 percent of the grant amount may be reserved for dissemination activities (20 USC 7221c(f)(1) and (5)).
- c. Grantees that received FY 2010 awards for replication and expansion of high-quality charter schools may not expend more than 15 percent of grant funds for initial operational costs associated with the expansion or improvement of the eligible entity's oversight or management of its schools (see A.3.b. above) (Program Announcement issued May 24, 2010, *Federal Register* (75 FR 28789-28795)). This initial operational costs amount limitation was increased to 20 percent for replication and expansion grants awarded in FY 2011 (Program Announcement issued July 12, 2011, *Federal Register* (76 FR 40890-40898)).

#### **H. Period of Availability of Federal Funds**

See ED Cross-Cutting Section.

#### **L. Reporting**

##### **1. Financial Reporting**

See ED Cross-Cutting Section.

##### **2. Performance Reporting – Not Applicable**

##### **3. Special Reporting – Not Applicable**

##### **4. Section 1512 ARRA Reporting – Not Applicable**

##### **5. Subaward Reporting under the Transparency Act – Applicable**

## DEPARTMENT OF EDUCATION

### CFDA 84.287 TWENTY-FIRST CENTURY COMMUNITY LEARNING CENTERS

#### I. PROGRAM OBJECTIVES

The objective of this program is to establish or expand community learning centers that provide students with academic enrichment opportunities along with activities designed to complement the students' regular academic program. Community learning centers must also offer families of these students literacy and related educational development. Centers, which can be located in elementary or secondary schools or other similarly accessible facilities, provide a range of high-quality services to support student learning and development, including tutoring and mentoring, homework help, academic enrichment (such as hands-on science or technology programs), and community service opportunities, as well as music, arts, sports and cultural activities. At the same time, centers help working parents by providing a safe environment for students during non-school hours or periods when school is not in session.

#### II. PROGRAM PROCEDURES

With enactment of the No Child Left Behind Act of 2001 (NCLB), the requirements for this program were modified from those previously established under the Improving America's Schools Act (IASA). The NCLB converted the 21st Century Community Learning Centers (CCLC) authority to a State formula grant program. In past years, the U. S. Department of Education (ED) made competitive awards directly to local education agencies (LEAs). Under the reauthorized authority, funds flow to States based on their share of Title I, Part A funds. States, in turn, use their allocations to make competitive awards to eligible entities. The Secretary of Education awards 21st CCLC grants through a formula grant process to States; the States then award, through a competitive process, subgrants to LEAs, community-based organizations (CBOs), other public or private entities, or consortia of two or more of such agencies, organizations, or entities.

#### ESEA Flexibility

See also ED Cross-Cutting Section.

Under ESEA flexibility, an SEA may request flexibility to permit an eligible entity to use funds under the 21st CCLC program to provide activities that support high-quality expanded learning time during an expanded school day, week, or year in addition to activities during non-school hours or periods when school is not in session (*i.e.*, before and after school or during summer recess). ESEA Flexibility would not affect current 21st CCLC subgrantees. Rather, this flexibility would take effect for local competitions conducted after an SEA receives ESEA Flexibility. Thus, when an SEA runs its next 21st CCLC competition following the receipt of ESEA Flexibility, it may solicit applications from eligible entities to provide activities that support high-quality expanded learning time in addition to activities conducted during non-school hours or periods when school is not in session. With the exception of carrying out 21st CCLC activities during an expanded school day, week, or year, an eligible entity in a State that receives a waiver must comply with all other 21st CCLC requirements. In other words, other provisions of the 21st CCLC program remain unchanged, including the allocation of funds to

SEAs by formula, the requirement that SEAs use 95 percent of their State formula grants to make competitive subgrants, and the entities eligible to compete for those subgrants (which consist of LEAs, community-based organizations, other public or private entities, and consortia of those entities) (see page 2, paragraph 11, of *ESEA Flexibility* (June 7, 2012)).

### Source of Governing Requirements

This program is authorized under Title IV, Part B of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the NCLB (20 USC 7171 *et seq.*; Section 4201 *et seq.* of Pub. L. No. 107-110, 115 Stat. 1765, January 8, 2002) and is subject to the Education Department General Administrative Regulations in 34 CFR parts 74, 76, 77, 79, 80, 81, 82, and 86.

### Availability of Other Program Information

Information on this program can be found in Non-Regulatory Guidance on the 21<sup>st</sup> Century Learning Centers (February 2003) at <http://www.ed.gov/programs/21stcelc/guidance2003.pdf>.

## III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements that apply to multiple ED programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements.

### A. Activities Allowed or Unallowed

See also ED Cross-Cutting Section.

#### 1. SEAs

- a. *Awards to subrecipients* (20 USC 7172(c)(1)).
- b. *State Administration*
  - (1) The administrative costs of carrying out its responsibilities under Title IV, Part B of the ESEA.
  - (2) Establishing and implementing a peer review process for grant applications; and
  - (3) Supervising the awarding of funds to eligible entities (20 USC 7172(c)(2)).

c. *State Activities*

- (1) Monitoring and evaluation of programs and activities.
- (2) Providing capacity building, training, and technical assistance.
- (3) Conducting a comprehensive evaluation (directly, or through a grant or contract) of the effectiveness of programs and activities.
- (4) Providing training and technical assistance to eligible entities who are applicants for or recipients of this program (20 USC 7172(c)(3)).
- (5) Developing guidance for preparing requests for proposals for LEAs that, for those State that have received an ESEA flexibility waiver for the 21st CCLC, includes guidance on activities that support high-quality expanded learning time. Expanded learning time is the time that an LEA or school extends its normal school day, week, or year to provide additional instruction or educational programs for all students beyond the State-mandated requirements for the minimum number of hours in a school day, days in a school week, or days or weeks in a school year. Because the 21st CCLC statute restricts the use of program funds to support a broad range of academic enrichment and other activities during “non-school hours or periods when school is not in session,” and expanded learning time is, by definition, an extension of the normal school day, week, or year, an SEA would need the optional ESEA flexibility waiver to allow a 21st CCLC subgrantee to use 21st CCLC funds for activities that support expanded learning time (see page 2, paragraph 11, of *ESEA Flexibility* (June 7, 2012)).

2. *LEAs, CBOs, and Other Public or Private Entities*

Grant awards may be used to carry out a broad array of before- and after-school activities (including summer recess periods) that advance student academic achievement including:

- a. Remedial education activities and academic enrichment learning programs, including providing additional assistance to students to allow the students to improve their academic achievement.
- b. Mathematics and science education activities.
- c. Arts and music education activities.
- d. Entrepreneurial education programs.

- e. Tutoring services (including those provided by senior citizen volunteers) and mentoring programs.
- f. Programs that provide after school activities for limited English proficient students that emphasize language skills and academic achievement.
- g. Recreational activities.
- h. Telecommunications and technology education programs.
- i. Expanded library service hours.
- j. Programs that promote parental involvement and family literacy.
- k. Programs that provide assistance to students who have been truant, suspended, or expelled to allow the students to improve their academic achievement.
- l. Drug and violence prevention programs, counseling programs, and character education programs (20 USC 7175(a)).
- m. If an SEA requests and is approved for a waiver of ESEA Sections 4201(b)(1)(A) and 4204(b)(2)(A) (ESEA Flexibility), an LEA may use 21st CCLC funds to support expanded learning time during the school day in addition to activities during non-school hours or periods when school is not in session such as
  - (1) adding significantly more time by expanding the school day, school week, or school year to increase learning time for all students;
  - (2) using the additional time to support a well-rounded education that includes time for academics and enrichment activities;
  - (3) providing additional time for teacher collaboration and common planning; and
  - (4) partnering with one or more outside organizations, such as a nonprofit organization, with demonstrated experience in improving student achievement.

Note that an LEA may use any one or more of these types of activities, consistent with the SEA's approved flexibility application.

## **B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section.

**C. Cash Management**

See ED Cross-Cutting Section.

**E. Eligibility****1. Eligibility for Individuals – Not Applicable****2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable****3. Eligibility for Subrecipients**

SEAs make awards to eligible entities that propose to serve:

- a. Students who primarily attend (1) schools eligible for schoolwide programs under section 1114 of the ESEA; or (2) schools that serve a high percentage of students from low-income families; and
- b. The families of such students (20 USC 7173(a)(3)).

**G. Matching, Level of Effort, Earmarking****1. Matching – LEAs, CBOs, and Other Public or Private Entities**

An SEA may require matching funds on a sliding scale based on the relative poverty of the population to be targeted and the ability of the grantee to obtain such matching funds. The match may not exceed the amount of the grant award and may not be derived from other Federal or State funds. Each State educational agency that requires an entity to match funds shall permit the entity to provide all or any portion of such match in the form of in-kind contributions (20 USC 7174(d)).

**2.1 Level of Effort – *Maintenance of Effort***

See ED Cross-Cutting Section.

**2.2 Level of Effort – *Supplement Not Supplant***

See also ED Cross-Cutting Section

The 21st CCLC supplement not supplant provision applies to the use of 21st CCLC funds to support expanded learning time under ESEA Flexibility. Thus, an SEA receiving a waiver to permit an eligible entity to use 21st CCLC funds to provide activities that support expanded learning time programs must ensure that the 21st CCLC funds are used to supplement, and not supplant, Federal, State, local, or other non-Federal funds that, in the absence of the 21st CCLC funds, would be made available for programs and activities authorized under the 21st CCLC program (ESEA 4203(a)(9) and 4204(b)(2)(G)).

### **3. Earmarking**

See also ED Cross-Cutting Section

- a. *General* – A State shall reserve not less than 95 percent of the State allotments for each fiscal year for awards to eligible entities under 20 USC 7174 (20 USC 7172(c)(1)).
- b. *State Administration* – A SEA may use not more than two percent of the State allotment for State administration (20 USC 7172(c)(2)). (See III.A.1.b, “Activities Allowed or Unallowed – State Administration.”)
- c. *State Activities* – A State educational agency may use not more than three percent of the State allotment for State-level activities (20 USC 7172(c)(3)). (See III.A.1.c, “Activities Allowed or Unallowed – State Activities.”)

### **H. Period of Availability of Federal Funds**

Funds not obligated by the end of the Federal fiscal year for which they were appropriated may be obligated for one additional Federal fiscal year. For example, funds appropriated for the Federal fiscal year 2008 are available from October 1, 2007 (the beginning of Federal fiscal year 2008) until September 30, 2009 (Title III of Pub. L. No. 107-116, School Improvement Programs, 115 Stat. 2202) plus an additional 12 months (34 CFR sections 76.707 through 76.709).

### **L. Reporting**

#### **1. Financial Reporting**

See ED Cross-Cutting Section.

#### **2. Performance Reporting – Not Applicable**

#### **3. Special Reporting – Not Applicable**

#### **4. Section 1512 ARRA Reporting – Not Applicable**

#### **5. Subaward Reporting under the Transparency Act – Applicable**

### **N. Special Tests and Provisions**

#### **1. Participation of Private School Children**

See ED Cross-Cutting Section.

#### **2. Schoolwide Programs**

See ED Cross-Cutting Section.

**3. Access to Federal Funds for New or Significantly Expanded Charter Schools**

See ED Cross-Cutting Section.

## DEPARTMENT OF EDUCATION

### CFDA 84.298 STATE GRANTS FOR INNOVATIVE PROGRAMS

#### I. PROGRAM OBJECTIVES

This former Title VI program was reauthorized by the No Child Left Behind Act (NCLB Act), Pub. L. No. 107-110, as Title V, Part A of the Elementary and Secondary Education Act (ESEA). The objectives of Title V, Part A are to (1) support local educational reform efforts that are consistent with and support statewide education reform efforts; (2) provide funding to enable State Educational Agencies (SEAs) and Local Educational Agencies (LEAs) to implement promising educational reform programs and school improvement programs based on scientifically based research; (3) provide a continuing source of innovation, and educational improvement, including support programs to provide library services and instructional and media materials; (4) meet the educational needs of all students, including at-risk youth; and (5) develop and implement education programs to improve school, student, and teacher performance, including professional development activities and class size reduction programs (Title V, Part A, Section 5101(a) of the ESEA (20 USC 7201(a))).

#### II. PROGRAM PROCEDURES

Title V, Part A funds are obtained by a State following submission of an application or consolidated plan to the Secretary of Education that satisfies the application requirements as stipulated in the statute. The SEA distributes at least 85 percent of the funds to its LEAs that have filed an application that meets certain requirements. These funds are distributed to LEAs according to the relative enrollments in public and private, nonprofit schools within the school districts of the LEAs, adjusted to provide higher per pupil allocations to those LEAs with children whose education imposes a higher than average cost per child. The criteria for making these adjustments must be approved by the Secretary of Education. LEAs have complete discretion, subject only to legal requirements, in determining the allocation of expenditures of Title V, Part A funds among the allowable program activities (Title V, Part A, Sections 5112 and 5133(d) of the ESEA (20 USC 7211a and 7215b(d))).

#### Source of Governing Requirements

This program is authorized by Title V, Part A of the ESEA, as amended by the No Child Left Behind Act of 2001 (20 USC 7201 *et seq.*). There are no program regulations. However, the following parts of the Education (ED) Department General Administrative Regulations (EDGAR) apply to this program: 34 CFR parts 76, 77, 80, 81, and 82.

#### Availability of Other Program Information

Other program information is available at <http://www.ed.gov/programs/innovative/titlevguidance2002.doc>.

### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the Department of Education (ED) Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references to the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

#### A. Activities Allowed or Unallowed

See also ED Cross-Cutting Section.

##### 1. SEAs

Funds may be used for:

- a. One or more program areas, including:
  - (1) Support for the planning, design, and initial implementation of charter schools under Title V, Part B.
  - (2) Statewide education reform, school improvement programs and technical assistance and direct grants to LEAs which assist LEAs in providing innovative assistance programs under section 5131 of Title V, Part A.
  - (3) Support for the design and implementation of high-quality yearly student assessments.
  - (4) Support for implementation of challenging State and local academic achievement standards.
  - (5) Support for arrangements that provide for independent analysis to measure and report on school district achievement.
  - (6) Support for the school renovation, Individuals with Disabilities Education Act, and technology program described in section 321 of the 2001 Department of Education Appropriations Act, Pub. L. No. 106-554.

- (7) Support for programs to assist in the implementation of the unsafe school choice policy described in section 9532 of the ESEA (20 USC 7912), which may include payment of reasonable transportation and tuition costs (Title V, Part A, Sections 5121(2) through (8) of the ESEA (20 USC 7213(2) through (8))).
- b. To support the provision of supplemental educational services by LEAs to students under Title I, Part A, section 1116(e)(7) of the ESEA (20 USC 6316(e)(7))).
- c. State administration, which includes
  - (1) allocating funds to LEAs,
  - (2) planning, supervising and processing SEA funds, and
  - (3) monitoring and evaluating programs and activities (Title V, Part A, section 5121(1) of the ESEA (20 USC 7213(1))).
- d. Subgrants to LEAs (Title V, Part A, section 5112(a) of the ESEA (20 USC 7211a(a))).

## 2. *LEAs*

LEAs must use Title V, Part A funds for programs, projects and activities under one or more of the 27 innovative assistance program areas described in Title V, Part A, section 5131(a) of the ESEA (20 USC 7215(a)). The innovative assistance program areas are:

- (i) Programs to recruit, train, and hire highly qualified teachers to reduce class size, especially in the early grades, and professional development activities carried out in accordance with Title II of the ESEA, as amended.
- (ii) Technology activities related to the implementation of school-based reform efforts, including professional development to assist teachers and other school personnel (including school library media personnel) regarding how to use technology effectively.
- (iii) Programs for the development or acquisition and use of instructional and educational materials, including library services and materials (including media materials), academic assessments, reference materials, computer software and hardware for instructional use, and other curricular materials that are tied to high academic standards, that will be used to improve student achievement, and that are part of an overall education reform program.
- (iv) Promising education reform projects, including effective schools and magnet schools.

- (v) Programs to improve the academic achievement of disadvantaged elementary and secondary school students, including activities to prevent students from dropping out of school.
- (vi) Programs to improve the literacy skills of adults, especially the parents of children served by the LEA, including adult education and family literacy programs.
- (vii) Programs to provide for the educational needs of gifted and talented children.
- (viii) Planning, design and initial implementation of charter schools as described in Title V, Part B of the ESEA.
- (ix) School improvement programs or activities under sections 1116 and 1117 of the ESEA.
- (x) Community service programs that use qualified school personnel to train and mobilize young people to measurably strengthen their communities through nonviolence, responsibility, compassion, respect, and moral courage.
- (xi) Activities to promote consumer, economic, and personal finance education, such as disseminating information on and encouraging use of the best practices for teaching the basic principles of economics and promoting the concept of achieving financial literacy through the teaching of personal financial management skills.
- (xii) Activities to promote, implement, or expand public school choice.
- (xiii) Programs to hire and support school nurses.
- (xiv) Expansion and improvement of school-based mental health services, including early identification of drug use and violence, assessment, and direct individual or group counseling services provided to students, parents, and school personnel by qualified school-based mental health services personnel.
- (xv) Alternative educational programs for those students who have been expelled or suspended from their regular educational setting, including programs to assist students to reenter the regular educational setting upon return from treatment or alternative educational programs.
- (xvi) Programs to establish or enhance prekindergarten programs for children.
- (xvii) Academic intervention programs that are operated jointly with community-based organizations and that support academic enrichment, and counseling programs conducted during the school day (including

during extended school day or extended school year programs), for students most at risk of not meeting challenging State academic achievement standards or not completing secondary school.

- (xviii) Programs for cardiopulmonary resuscitation (CPR) training in schools.
- (xix) Programs to establish smaller learning communities.
- (xx) Activities that encourage and expand improvements throughout the area served by the LEA that are designed to advance student academic achievement.
- (xxi) Initiatives to generate, maintain, and strengthen parental and community involvement.
- (xxii) Programs and activities that expand learning opportunities through best practice models designed to improve classroom learning and teaching.
- (xxiii) Programs to provide same-gender schools and classrooms, consistent with applicable law and with guidelines published by the Secretary of Education in the May 8, 2002, *Federal Register* (67 FR 31101).
- (xxiv) Service learning activities.
- (xxv) School safety programs, including programs to implement the unsafe school choice policy described in section 9532 of the ESEA (20 USC 7912) and which may include payment of reasonable transportation and tuition costs.
- (xxvi) Programs that employ research-based cognitive and perceptual development approaches and rely on a diagnostic-prescriptive model to improve students' learning of academic content at the preschool, elementary, and secondary levels.
- (xxvii) Supplemental education services, as defined in section 1116(e) of the ESEA.

**B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section.

**C. Cash Management**

See ED Cross-Cutting Section.

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching – Not Applicable**

#### **2.1 Level of Effort – *Maintenance of Effort* (SEAs)**

The combined fiscal effort per child or the aggregate expenditures within the State for free public education for the preceding fiscal year must be at least 90 percent of the combined fiscal effort per child or aggregate expenditures for the second preceding fiscal year, unless specifically waived by the Secretary of Education for one fiscal year only.

Expenditures to be considered are State and local expenditures for free public education. These expenditures include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student activities. States may include in the maintenance of effort calculation expenditures of Federal funds for which no accountability to the Federal Government is required. Certain Impact Aid funds are an example of such funds. (However, Impact Aid funds for which there is a requirement of accountability to the Federal Government, such as those received for children with disabilities, cannot be included in the calculation.) States must be consistent in the manner in which they calculate maintenance of effort from year-to-year in order to ensure that the annual comparisons are on the same basis (i.e., calculations must consistently, from year-to-year, either include or exclude expenditures of Federal funds for which accountability to the Federal Government is not required). Expenditures not to be considered are any expenditures for community services, capital outlay, or debt service, and any expenditures of Federal funds for which accountability to the Federal Government is required. (Title V, Part A, section 5141(a) of the ESEA (20 USC 7217(a))).

#### **2.2 Level of Effort – *Supplement Not Supplant* (SEAs/LEAs)**

See ED Cross-Cutting Section.

### **3. Earmarking (SEAs)**

See also ED Cross-Cutting Section.

#### **a. *Minimum 85 Percent Distribution to LEAs***

An SEA must distribute at least 85 percent of the funds to its LEAs, based on relative enrollments in public and private, non-profit schools within the LEAs (Title V, Part A, section 5112(a) of the ESEA (20 USC 7211a(a))).

The calculation of relative enrollments must be based on the number of children currently enrolled in (1) public schools and (2) those private schools that participated in the Title V, Part A programs during the preceding fiscal year (FY). (For FY 2002 LEA allocations, the State will include in the calculation enrollment data for those private schools that participated in the former Title VI program during the FY 2001 fiscal year.) If current enrollment data is not available, an SEA may use enrollment data from the preceding year (Title V, Part A, section 5112(c) of the ESEA (20 USC 7211a(c))).

The SEA must adjust the relative enrollments to provide higher per-pupil allocations only to those LEAs that serve the greatest numbers or percentages of children living in areas with high concentrations of economically disadvantaged families; children from economically disadvantaged families; or children living in sparsely populated areas. The criteria for making these adjustments must be approved by the Secretary of Education (Title V, Part A, section 5112(c)(3) of the ESEA (20 USC 7211a(c)(3))).

b. *Remaining Reserved for State Use (Maximum of 15 Percent)*

Of the amount reserved for State use, no more than 15 percent may be used for State administration of Title V, Part A or transferred to a Consolidated Administration pool. See “III.A.1, “Activities Allowed or Unallowed - SEAs” for what is considered “administration” (Title V, Part A, section 5112(b) of the ESEA (20 USC 7211a(b))).

c. *Allocation of Increased Amounts*

In any fiscal year in which a State’s Title V, Part A allocation is larger than its FY 2002 Title V, Part A allocation, it must distribute the entire excess amount to its LEAs using the formula described above in III.G.3.a, “Matching, Level of Effort, Earmarking - Minimum 85 Percent Distribution to LEAs”). In any fiscal year in which the allocation to a small State (any State receiving a minimum allocation of one-half of one percent of the amount available for allocation to the States) exceeds the amount that it received in FY 2002, it must distribute at least 50 percent of the excess amount to its LEAs (Title V, Part A, section 5112(a)(2) of the ESEA (20 USC 7211a(a)(2))).

## **H. Period of Availability of Federal Funds**

See ED Cross-Cutting Section.

**L. Reporting****1. Financial Reporting**

See ED Cross-Cutting Section.

**2. Performance Reporting – Not Applicable****3. Special Reporting – Not Applicable****4. Section 1512 ARRA Reporting – Not Applicable****5. Subaward Reporting under the Transparency Act – Applicable****N. Special Tests and Provisions****1. Participation of Private School Children**

See ED Cross-Cutting Section.

**2. Schoolwide Programs (LEAs)**

See ED Cross-Cutting Section.

**3. Access to Federal Funds for New or Significantly Expanded Charter Schools**

See ED Cross-Cutting Section.

## DEPARTMENT OF EDUCATION

**CFDA 84.318** **EDUCATIONAL TECHNOLOGY STATE GRANTS** (Enhancing Education through Technology Program)

**CFDA 84.386** **EDUCATIONAL TECHNOLOGY STATE GRANTS, RECOVERY ACT** (Enhancing Education through Technology Program)

### I. PROGRAM OBJECTIVES

The primary goal of the Ed Tech program is to improve student academic achievement through the use of technology in elementary and secondary schools. It is designed to assist every student in becoming technologically literate by the end of eighth grade. The purpose of the program is, among other things, to assist States and localities in implementing and supporting a comprehensive system that effectively uses technology in elementary and secondary schools to improve student academic achievement.

### II. PROGRAM PROCEDURES

State educational agencies (SEAs) in the 50 States, the District of Columbia, Puerto Rico, the Outlying areas, and the Bureau of Indian Affairs (BIA) are eligible to participate in the program.

An “eligible local entity” is either a “high-need LEA” or an “eligible local partnership” (Section 2403(3) of the ESEA, as amended by the NCLB (20 USC 6753(1))).

A “high need LEA” is an LEA that (Section 2403(3) of the ESEA as amended by the NCLB (20 USC 6753(3))):

- (1) Is among those LEAs in the State with the highest numbers or percentages of children from families with incomes below the poverty line; and
- (2) Serves one or more schools identified for improvement or corrective action under Section 1116 of the ESEA, or has a substantial need for assistance in acquiring and using technology.

An “eligible local partnership” is a partnership that includes at least one high-need LEA and at least one of the following (Section 2403(3) of the ESEA, as amended by the NCLB (20 USC 6753(2))):

- (1) An LEA that can demonstrate that teachers in its schools are effectively integrating technology and proven teaching practices into instruction, based on a review of relevant research, and that integration results in improvement in classroom instruction and in helping students meet challenging academic standards.
- (2) An institution of higher education that is in full compliance with the reporting requirements of section 207(f) of the Higher Education Act of 1965, as amended, and that has not been identified by the State as low-performing under that act.

- (3) A for-profit business or organization that develops, designs, manufactures, or produces technology products or services or has substantial expertise in the application of technology in instruction.
- (4) A public or private nonprofit organization with demonstrated expertise in the application of educational technology in instruction.

In making competitive awards, an SEA must give priority to applications from LEAs that receive formula allocations too small to carry out the purposes of the program effectively. In addition, an SEA must ensure that competitive awards are of sufficient size and duration to carry out the purposes of the program effectively (Section 2412(b) of the ESEA, as amended by the NCLB (20 USC 6762(b))).

**Funds from the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) were distributed to the States on a formula basis by the Department of Education (ED). ARRA provided \$650 million in fiscal year (FY) 2009 funds for the Ed Tech program. The Ed Tech ARRA funds are a one-time source of funds that supplement the approximately \$265 million of Ed Tech funds made available under the regular FY 2009 appropriation. All Ed Tech ARRA funds are subject to the requirements in Title II, Part D, and Subpart 1 of the ESEA (Title II-D).**

### **Source of Governing Requirements**

The Ed Tech program is authorized by Title II, Part D, Subpart 1 of the ESEA, as amended by the NCLB (20 USC 6761 through 6766; Section 2411 *et seq.* of Pub. L. No. 107-110, 115 Stat. 1673, January 8, 2002); **and ARRA**. The Education Department General Administrative Regulations in 34 CFR Parts 76, 77, 79, 80, 81, 82, and 86 apply to this program.

### **Availability of Other Program Information**

Additional information about this program, including guidance relating to funding under ARRA, is available at <http://www.ed.gov/programs/edtech/legislation.html>.

## **III. COMPLIANCE REQUIREMENTS**

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements that apply to multiple ED programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements.

## A. Activities Allowed or Unallowed

See also ED Cross-Cutting Section.

### 1. SEAs

State-level activities and to assist local efforts to carry out the purpose of the program, including activities such as the following (Section 2415(a)(1) of the ESEA as amended by the NCLB (20 USC 6765(a)(1))):

- a. Developing or assisting the development and utilization of innovative strategies for the delivery of academic courses and curricula through the use of technology, including distance learning technologies, and providing other technical assistance with priority given to high-need LEAs.
- b. Establishing or supporting public-private partnerships to acquire educational technology for high-need LEAs.
- c. Providing professional development.
- d. Ensuring access to educational technology for students and faculty.
- e. Developing performance measurement systems.
- f. Collaborating with other State educational agencies on distance learning.

### 2. LEAs

Funds may be used for:

- a. *Professional Development* – To provide ongoing, sustained, and intensive, high-quality professional development (Section 2416(a) of the ESEA as amended by the NCLB (20 USC 6766(a))).
- b. *Other Activities* (Section 2416(b) of the ESEA as amended by the NCLB (20 USC 6766(b)))
  - (1) Increasing accessibility to technology, particularly through public-private partnerships, with special emphasis on accessibility for high-need schools.
  - (2) Adapting or expanding applications to technology to enable teachers to increase student academic achievement, including technology literacy, based on the review of relevant research and use of innovative distance learning strategies.
  - (3) Acquiring proven and effective courses and curricula that include integrated technology and that are designed to help student reach challenging academic standards.

- (4) Using technology to promote parental involvement and foster communication among students, parents, and teachers about curricula, assignments, and assessments.
- (5) Preparing one or more teachers in schools as technology leaders who will assist other teachers, and providing bonus payments to the technology leaders.
- (6) Enhancing existing technology and acquiring new technology to support education reforms and to improve student achievement.
- (7) Acquiring connectivity linkages, resources, and services to be used by students and school personnel to improve academic achievement.
- (9) Using technology to collect, manage, and analyze data to inform and enhance teaching and school improvement efforts.
- (10) Implementing enhanced performance measurement systems to determine the effectiveness of education technology programs funded with Ed Tech funds.
- (11) Developing, enhancing, or implementing information technology courses.

**B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section.

**C. Cash Management**

See ED Cross-Cutting Section.

**G. Matching, Level of Effort, Earmarking**

**1. Matching – Not Applicable**

**2.1 Level of Effort – *Maintenance of Effort***

See ED Cross-Cutting Section.

**2.2 Level of Effort – *Supplement Not Supplant (LEA)***

See ED Cross-Cutting Section.

### 3. Earmarking

See also ED Cross-Cutting Section.

- a. An SEA may retain no more than five percent of its annual allocation for State-level activities (Section 2412(a)(1) of the ESEA as amended by the NCLB (20 USC 6762(a)(1))). Of the amount retained for State-level activities, no more than 60 percent may be used for administrative purposes (Section 2404(d) of the ESEA as amended by the NCLB (20 USC 6754(d))).
- b. From the 95 percent or more remaining in its total allocation, an SEA must distribute:
  - (1) 50 percent by formula to eligible LEAs that have submitted applications to the State. The formula is based on each LEA's proportionate share of SEA funds allocated under Part A of Title I (Section 2412(a)(2)(A) of the ESEA, as amended by the NCLB (20 USC 6762(a)(2)(A))).
  - (2) 50 percent on a competitive basis to "eligible local entities" that have submitted applications to the State (Section 2412(a)(2)(B) of the ESEA, as amended by the NCLB (20 USC 6762(a)(2)(B))).
  - (3) Notwithstanding the requirement in paragraph b(1) above, up to 100 percent of fiscal year 2006 funds, but at least 50 percent, may be used for competitive subgrants under Section 2412(a)(2)(B) (Title III of Pub. L. No. 109-149, Department of Education Appropriations Act, 2006, 119 Stat. 2864).
- c. Unless an LEA can demonstrate to the satisfaction of its SEA that it already provides high-quality professional development in the integration of technology into curricula, it must use at least 25 percent of its funds for such professional development (Section 2416(a) of the ESEA as amended by the NCLB (20 USC 6766(a))).

### H. Period of Availability of Federal Funds

See ED Cross-Cutting Section.

1. Funds are available for obligation for a 15-month period starting July 1 of the fiscal year for which they are appropriated, plus a carryover period of one additional fiscal year. For example, funds appropriated for fiscal year 2006 are available for obligation from July 1, 2006 through September 30, 2008 (34 CFR section 76.709(a)).
2. **Ed Tech ARRA funds are available for obligation beginning with the date of enactment of ARRA, February 17, 2009. ARRA funds will remain available for obligation by States until September 30, 2011, which includes the one-**

**year carryover period authorized under section 421(b) of the General Education Provisions Act (20 USC 1225(b)) (Section 1603 of ARRA and 20 USC 1225(b)).**

**L. Reporting**

**1. Financial Reporting**

See ED Cross-Cutting Section.

**2. Performance Reporting – Not Applicable**

**3. Special Reporting – Not Applicable**

**4. Section 1512 ARRA Reporting – Applicable**

**5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds**

**N. Special Tests and Provisions**

**1. Participation of Private Schools**

See ED Cross-Cutting Section.

**2. Schoolwide Programs**

See ED Cross-Cutting Section.

**3. Access to Federal Funds for New or Significantly Expanded Charter Schools**

See ED Cross-Cutting Section.

## DEPARTMENT OF EDUCATION

### CFDA 84.365 ENGLISH LANGUAGE ACQUISITION GRANTS

#### I. PROGRAM OBJECTIVES

The objective of Title III, Part A of the Elementary and Secondary Education Act (ESEA) is to improve the education of limited English proficient (LEP) children and youths by helping them learn English and meet challenging state academic content and student academic achievement standards. The program also provides enhanced instructional opportunities for immigrant children and youths.

#### II. PROGRAM PROCEDURES

The Department of Education (ED) provides Title III, Part A funds to each State Educational Agency (SEA) on the basis of a statutory formula that takes into account the number of LEP and immigrant children and youth in each State. To receive funds, an SEA must submit to ED for approval either (1) an individual State plan as provided under Section 3113 of the ESEA (20 USC 6823), or (2) a consolidated plan that includes Part A of Title III in accordance with Section 9302 of the ESEA (20 USC 7842). The plan must be updated to reflect substantive changes.

SEAs use Title III, Part A funds for administration, to carry out State activities, and to make two types of subgrants to LEAs. The two types of subgrants are (1) for school districts that have experienced a significant increase in the number of immigrant children and youth in their schools, and (2) for school district to use to serve LEP children. In order to receive one of these subgrants, an LEA must submit to the SEA a plan under either Section 3116 of the ESEA (20 USC 6826) or an approved consolidated plan under Section 9305 of the ESEA (20 USC 7845) (20 USC 6821).

LEAs use their immigrant subgrants to pay for enhanced instructional opportunities for immigrant children and their LEP subgrants to support activities that increase the English proficiency and academic achievement of LEP children by providing high-quality language instruction educational programs that are based on scientifically based research (20 USC 6824). SEAs are required to develop annual measurable achievement objectives for LEP children concerning their development of English proficiency while meeting challenging State academic standards. SEAs are required to hold LEAs accountable if they failed to meet these annual achievement objectives (20 USC 6842). In addition, LEAs receiving subgrants under Part A of Title III are required to assess the English language proficiency and academic achievement of the LEP children they serve (20 USC 6823).

#### Source of Governing Requirements

This program is authorized by Title III, Part A of the ESEA, as amended by the No Child Left Behind Act (Pub. L. No. 107-110) (20 USC 6821 through 6871, 7011 through 7014). The Education Department General Administrative Regulations (EDGAR) at 34 CFR parts 76, 77, 81, and 82 also apply to this program.

## Availability of Other Program Information

Additional program information is available at <http://www.ed.gov/offices/OELA>.

### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements which apply to multiple ESEA programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

#### A. Activities Allowed or Unallowed

See also ED Cross-Cutting Section.

##### 1. SEA

- a. *Subgrants to LEAs* (20 USC 6821(b)(1)).
- b. *State administration* (20 USC 6821(b)(3)).
- c. *State activities* – Funds may be used carry out one or more of the following State activities for this program (20 USC 6821(b)(2)):
  - (1) Professional development and other activities that assist personnel in meeting State and local certification and licensing requirements for teaching LEP children.
  - (2) Planning, evaluation, administration, and interagency coordination related to LEA subgrants.
  - (3) Providing technical assistance and other forms of assistance to LEA subgrantees.
  - (4) Providing recognition, which may include providing financial awards, to subgrantees that have exceeded their annual measurable achievement objectives pursuant to 20 USC 6842.

2. **LEA** – There are two types of subgrants to LEAs:
  - a. **Immigrant Subgrants** – Subgrants to LEAs that have experienced significant increases in immigrant children and youth. LEAs receiving subgrants Section 3114 (20 USC 6824) shall use the funds awarded to pay for activities that provide enhanced instructional opportunities for immigrant children and youth. These activities include (20 USC 6825(e)):
    - (1) Family literacy, parent outreach, and training activities designed to assist parents to become active participants in the education of their children.
    - (2) Support for personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to immigrant children and youth.
    - (3) Provision of tutorials, mentoring, and academic or career counseling for immigrant children and youth.
    - (4) Identification and acquisition of curricular materials, educational software, and technologies to be used in the program carried out with funds.
    - (5) Basic instruction services that are directly attributable to the presence in the school district of immigrant children and youth, including the payment of costs of providing additional classroom supplies, costs of transportation, or such other costs as are directly attributable to such additional basic instruction services.
    - (6) Other instruction services that are designed to assist immigrant children and youth to achieve in elementary schools and secondary schools in the United States, such as programs of introduction to the educational system and civics education.
    - (7) Activities, coordinated with community-based organizations, institutions of higher education, private sector entities, or other entities with expertise in working with immigrants, to assist parents of immigrant children and youth by offering comprehensive community services.
  - b. **LEP Subgrants**
    - (1) **Administrative Costs** (20 USC 6825(b)).

- (2) *Required Activities* – An LEA is required to use LEP subgrant funds to (20 USC 6825e):
- (a) Increase the English proficiency of LEP children by providing high-quality language instruction educational programs that are based on scientifically based research demonstrating the effectiveness of the programs in increasing English proficiency and student academic achievement in the core academic subjects (20 USC 6825(c)(1)).
  - (b) Provide high-quality professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals, administrators, and other school or community-based organizational personnel (20 USC 6825(c)(2)).
- (3) *Authorized Activities* – An LEA receiving an LEP subgrant may, but is not required to, use those funds for the following activities (20 USC 6825(d)):
- (a) Upgrading program objectives and effective instruction strategies.
  - (b) Improving the instruction program for LEP children by identifying, acquiring, and upgrading curricula, instruction materials, educational software, and assessment procedures.
  - (c) Providing tutorials and academic or vocational education for LEP children and intensified instruction.
  - (d) Developing and implementing elementary school or secondary school language instruction educational programs that are coordinated with other relevant programs and services.
  - (e) Improving the English proficiency and academic achievement of LEP children.
  - (f) Providing community participation programs, family literacy services, and parent outreach and training activities to LEP children and their families to improve the English language skills of LEP children and to assist parents in helping their children to improve their academic achievement and becoming active participants in the education of their children.

- (g) Improving the instruction of LEP children by providing for (i) the acquisition or development of educational technology or instructional materials and (ii) access to, and participation in, electronic networks for materials, training, and communication; and incorporation of these resources into curricula and programs.

**B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section.

**C. Cash Management**

See ED Cross-Cutting Section.

**G. Matching, Level of Effort, Earmarking**

**1. Matching – Not Applicable**

**2.1 Level of Effort – *Maintenance of Effort***

See ED Cross-Cutting Section.

**2.2 Level of Effort – *Supplement Not Supplant***

See ED Cross-Cutting Section.

**3. Earmarking (SEAs)**

- a. *SEA Reserved Funds* – SEAs can reserve up to 5 percent of their entire grant to carry out State activities and for administration. (Please note, however, discussion under SEA administration below, which indicates that there are circumstances under which an SEA can have a reservation for administration that exceeds 5 percent) (20 USC 6821(b)(2)):

- (1) *State Activities* – SEA reserved funds not used for administration can be used to carry out one or more of the State activities (20 USC 6821(b)(2)).
- (2) *SEA Administration* – SEA's are authorized to reserve up to 3 percent of their grant, or \$175,000, whichever is greater, for the costs of administration. Because SEAs can use up to \$175,000 of their grant for administration, they may, because of that option, reserve more than 5 percent of their grant for administration (20 USC 6821(b)(3)).

- b. *Subgrants to LEAs* – A SEA must expend at least 95 percent for subgrants to LEAs that submit approvable plans under either Section 3116 of the ESEA, (20 USC 6826) or an approvable consolidated plan under Section 9305 of the ESEA (20 USC 7845) as follows (20 USC 6821):
- (1) *Immigrant Subgrants* – SEAs are required to reserve not more than 15 percent of their grants for subgrants to LEAs that have experienced a significant increase, as compared to the average of the 2 preceding fiscal years, in the percentage or numbers of immigrant children and youth, who have enrolled, during the fiscal year preceding the fiscal year for which the grant is made, in public and nonpublic elementary and secondary schools in the geographic areas served by the LEA. In awarding these subgrants, SEAs must equally consider LEAs that have limited or no experience in serving immigrant children and youth and the quality of the local plans that the LEAs submit under Section 3116 of the ESEA (20 USC 6826). SEAs have discretion to award these subgrants on a competitive, formula, or some other basis (20 USC 6824(d)).
  - (2) *LEP Subgrants* – SEAs are required by to use funds not used for State activities, SEA administration, and immigrant subgrants as described above, to award subgrants to LEAs to serve LEP children. SEAs shall allocate LEP subgrants to their LEAs on a formula basis. The formula is based on the number of LEP children in schools served by a particular LEA as a percentage of the number of such LEP children in the entire State. The SEA, however, shall not award a subgrant if the amount of the subgrant, under the statutory formula for LEP subgrants, would be less than \$10,000 (20 USC 6824).
- c. *LEA Administrative Costs* – An LEA receiving an LEP subgrant may use no more than 2 percent of that subgrant for administrative costs (20 USC 6825(b)).

## **H. Period of Availability of Federal Funds**

See ED Cross-Cutting Section.

## **L. Reporting**

### **1. Financial Reporting**

See ED Cross-Cutting Section.

### **2. Performance Reporting – Not Applicable**

### **3. Special Reporting – Not Applicable**

4. **Section 1512 ARRA Reporting** – Not Applicable
5. **Subaward Reporting under the Transparency Act** – Applicable

**N. Special Tests and Provisions**

**1. Participation of Private School Children**

See ED Cross-Cutting Section.

**2. Schoolwide Programs (LEAs)**

See ED Cross-Cutting Section.

**3. Access to Federal Funds for New or Significantly Expanded Charter Schools**

See ED Cross-Cutting Section.

## DEPARTMENT OF EDUCATION

### CFDA 84.366 MATHEMATICS AND SCIENCE PARTNERSHIPS

#### I. PROGRAM OBJECTIVES

The objective of the Mathematics and Science Partnerships program in Title II, Part B of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001 (NCLB) (Pub. L. No. 107-110), is to provide funds to State education agencies (SEAs) for improvement of the academic achievement of students in the areas of mathematics and science through partnerships comprised, at a minimum, of an engineering, mathematics, or science department of an institution of higher education (IHE) and a high-need local educational agency (LEA).

#### II. PROGRAM PROCEDURES

Mathematics and Science Partnerships grant funds are obtained by a State without the need to submit a program application. Except for funds that it retains for administrative costs, the SEA must award all of the program funds as competitive subgrants to eligible partnerships.

##### Source of Governing Requirements

This program is authorized by 20 USC 6661-6663. While there are no program regulations, the following parts of the Department of Education (ED) General Administrative Regulations apply to this program: 34 CFR parts 76 and 77. General ESEA requirements in 34 CFR part 299 also apply.

##### Availability of Other Program Information

There is no additional publicly available guidance on administration of the program.

#### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

**A. Activities Allowed or Unallowed**

See also ED Cross-Cutting Section.

**1. SEAs**

- a. *Subgrants to Eligible Partnerships* (20 USC 6662).
- b. *Administrative Costs.* An SEA may claim a reasonable and necessary amount of program funds for administrative costs (20 USC 6662).

**2. Eligible Partnerships**

- a. An eligible partnership project may focus one or more of the broad span of activities designed to improve the quality of instruction in mathematics and science in the State's elementary and secondary schools that are identified in 20 USC 6662(c).
- b. Eligible partnerships also may conduct a wide array of other projects designed to recruit qualified individuals to become mathematics and science teachers, or otherwise to enhance the proficiency of mathematics and science teachers who participate in project activities (20 USC 6662(c)).

**B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section.

**C. Cash Management**

See ED Cross-Cutting Section.

**E. Eligibility****1. Eligibility for Individuals – Not Applicable****2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable****3. Eligibility for Subrecipients**

- a. An eligible partnership must include both of the following:
  - (1) An engineering, mathematics, or science department of an institution of higher education, and
  - (2) A high-need LEA (as defined by the State; the ESEA contains no definition of this term, and ED has not established one) (20 USC 6661(b)(1)).

- b. An eligible partnership may include other entities, such as another engineering, mathematics, science, or teacher training department of an institution of higher education; additional LEAs, public charter schools, public or private elementary schools or secondary schools, or a consortium of such schools; a business; or a non-profit or for-profit organization of demonstrated effectiveness in improving the quality of mathematics and science teachers (20 USC 6661(b)(1)).
- c. Eligible partnerships apply to the SEAs for program funds on a competitive basis. The application must contain, at minimum:
  - (1) The results of a comprehensive assessment of the teacher quality and professional development needs of any schools, LEAs, and SEAs that comprise the eligible partnership with respect to the teaching and learning of mathematics and science;
  - (2) A description of how the activities to be carried out by the eligible partnership will be aligned with challenging State academic content and student academic achievement standards in mathematics and science and with other educational reform activities that promote student academic achievement in mathematics and science;
  - (3) A description of how the activities to be carried out by the eligible partnership will be based on a review of scientifically based research, and an explanation of how the activities are expected to improve student academic achievement and strengthen the quality of mathematics and science instruction;
  - (4) A description of:
    - (a) How the eligible partnership will carry out the authorized activities described in 20 USC 6662(c); and
    - (b) The eligible partnership's evaluation and accountability plan described in 20 USC 6662(e); and
  - (5) A description of how the eligible partnership will continue the activities funded under the program after the original grant or subgrant period has expired (20 USC 6662(a)(2) and 6662(b)).

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching – Not Applicable**

### **2.1 Level of Effort – *Maintenance of Effort* – Not Applicable**

**2.2 Level of Effort – Supplement Not Supplant** (SEAs/eligible partnerships)

See ED Cross-Cutting Section.

**3. Earmarking – Not Applicable****H. Period of Availability of Federal Funds**

See ED Cross-Cutting Section.

**L. Reporting****1. Financial Reporting**

See ED Cross-Cutting Section.

**2. Performance Reporting – Not Applicable****3. Special Reporting – Not Applicable****4. Section 1512 ARRA Reporting – Not Applicable****5. Subaward Reporting under the Transparency Act – Applicable****N. Special Tests and Provisions****1. Participation of Private School Children** (LEAs in eligible partnerships)

See ED Cross-Cutting Section.

**2. Competition** (SEAs)

**Compliance Requirement** – The SEA must select eligible partnerships for award on a competitive basis. No specific competition requirements have been established by ED. The State must follow its own requirements for competing subgrant awards (20 USC 6662(a)(2)(A)(ii)).

**Audit Objective** – Determine whether the SEA has selected applications for funding on the basis of a competitive process that follows State procedures.

**Suggested Audit Procedures**

- a. Review the SEA's procedures for competing subgrant awards.
- b. Review a sample of funded partnerships to determine if the SEA followed State competition procedures.

## DEPARTMENT OF EDUCATION

### CFDA 84.367 IMPROVING TEACHER QUALITY STATE GRANTS

#### I. PROGRAM OBJECTIVES

The objective of the Improving Teacher Quality State Grants program in Title II, Part A of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001 (NCLB) (Pub. L. No. 107-110), is to provide funds to State educational agencies (SEAs), local educational agencies (LEAs), State agencies for higher education (SAHEs), and partnerships comprised of institutions of higher education (IHEs), high-need LEAs and other entities to increase the academic achievement of all students by helping schools and school districts to (1) improve teacher and principal quality (including hiring teachers to reduce class size) and (2) ensure that all teachers are highly qualified.

#### II. PROGRAM PROCEDURES

Improving Teacher Quality State Grant funds are obtained by a State on the basis of the Department of Education's (ED) approval of either (1) an individual State plan as provided in Section 2112 of the ESEA (20 USC 2112), or (2) a consolidated application that includes the program, in accordance with Section 9302 of the ESEA (20 USC 7842). Separate grants are provided to SEAs and SAHEs.

##### **Equitable Service**

After timely and meaningful consultation with appropriate private school officials, LEAs must provide services to teachers and other appropriate staff in private schools that are equitable to the level of services provided to teachers and appropriate staff in the public schools the LEA administers. For more information about what constitutes equitable services for private school staff, and when their participation is equitable, see Section G of *Non-Regulatory Guidance: Improving Teacher Quality State Grants ESEA Title II, Part A*, which is available at <http://www2.ed.gov/programs/teacherqual/guidance.pdf>.

##### **ESEA Flexibility**

See also ED Cross-Cutting Section.

ED offered each SEA the opportunity to request flexibility on behalf of itself, its LEAs, and its schools regarding waivers of specific ESEA requirements in exchange for a comprehensive State-developed plan to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. Among the waivers that are part of this initiative, known as ESEA Flexibility, are certain requirements in Section 2141 of the ESEA (20 USC 6641) (see paragraph 8 on page 2 of *ESEA Flexibility* (June 7, 2012)).

## Source of Governing Requirements

This program is authorized by Title II, Part A, subparts 1-3 of the ESEA as amended by the NCLB (Pub. L. No. 107-110) (20 USC 2111 – 2134). The program purpose and definitions in Title II, Part A of the ESEA, Sections 2101 and 2102 (20 USC 6601 – 6602), and the accountability provisions in Title II, Part A, Subpart 4, Section 2141 (20 USC 6641) also apply to this program.

While there are no program regulations, the following parts of the ED General Administrative Regulations (EDGAR) apply to this program: 34 CFR parts 76, 77, 80, 82, and 86. General ESEA requirements in 34 CFR part 299 also apply. Rules governing the amount of funds available to both the SEA and to the SAHE for the costs of administration and planning were announced in a notice published in the *Federal Register* on May 22, 2002(67 FR 35967, 35977).

## Availability of Other Program Information

- Improving Teacher Quality State Grants – Non-Regulatory Guidance (October 5, 2006) (<http://www.ed.gov/programs/teacherqual/guidance.doc>)
- ESEA Flexibility (June 7, 2012) (<http://www.ed.gov/esea/flexibility/documents/esea-flexibility.doc>)
- ESEA Flexibility Frequently Asked Questions (August 3, 2012) (<http://www2.ed.gov/policy/eseaflex/esea-flexibility-faqs.doc>)

## III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the Department of Education (ED) Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

### A. Activities Allowed or Unallowed

See also ED Cross-Cutting Section.

#### 1. SEAs

- a. *Subgrants to LEAs* (Sections 2113(a)(1) of the ESEA; (20 USC 6613(a)(1))).
- b. *Subgrants to Eligible Partnerships* (Sections 2113(a)(2) of the ESEA; 20 USC 6613(a)(2)).

- c. *State Activities* – Allowable State-level activities are identified in Section 2113(c) of the ESEA. Examples of allowable activities include (1) developing or enhancing activities to encourage high-quality individuals to become teachers or principals through alternative routes for State certification; (2) carrying out activities that focus on increasing the subject matter knowledge of teachers and the instructional leadership skills of principals; (3) reforming and streamlining teacher licensure requirements as well as aligning licensure requirements with State content standards; (4) developing and expanding mentoring activities for new teachers and activities that help teachers use assessment data to guide instructional decisions; (5) implementing teacher testing to assess subject matter knowledge, and conducting activities to help teachers meet the requirements in Section 9101(23) (20 USC 7801(23)) to become “highly qualified;” (6) developing and expanding merit-based performance; and (7) developing systems to measure the effectiveness of professional development on student academic achievement (Section 2113(c) of the ESEA (20 USC 6613(c))).
- d. *Administrative costs* (Sections 2113(d) of the ESEA; 20 USC 6613(d)).

## 2. *LEAs*

Consistent with the LEA’s assessment of need for professional development and hiring, LEAs may use funds for a broad span of activities designed to improve teacher quality that are identified in Section 2123(a) of the ESEA. Examples of allowable activities include (1) providing “professional development” (as the term is defined in Section 9101(34) of the ESEA, 20 USC 6602(34)) to teachers, and, where appropriate, to principals and paraprofessionals in content knowledge and classroom practice; (2) developing and implementing a wide variety of strategies and activities to recruit, hire, and retain highly qualified teachers and principals; (3) developing and implementing initiatives to promote retention of highly qualified teachers and principals; (4) carrying out professional development programs to assist principals and superintendents in becoming outstanding managers and educational leaders; and (5) carrying out teacher advancement initiatives that promote professional growth and emphasize multiple career paths and pay differentiation, and establish programs and activities related to exemplary teachers. LEAs also may use funds to hire teachers to reduce class size (Sections 2101 and 2123(a) of the ESEA (20 USC 6601 and 6623(a))).

## 3. *Subrecipients of SAHEs – Eligible Partnerships*

Eligible Partnerships must use the funds for the following activities:

- a. Professional development activities (as the term is defined in Section 9101(34) of the ESEA (20 USC 6602(34)) in core academic subjects to ensure that teachers and “highly qualified paraprofessionals” (as the term is defined in Section 2102(4) of the ESEA (20 USC 6602(4))), and, if

appropriate, principals have subject matter knowledge in the academic subjects the teachers teach, and principals have instructional leadership skills that will help them work effectively with teachers (Sections 2101 and 2134(a)(1) of the ESEA (20 USC 6601 and 6634(a)(1))).

- b. Developing and providing assistance to LEAs and to their teachers, highly qualified paraprofessionals, or principals for sustained, high-quality professional development activities that (Sections 2101 and 2134(a)(2) of the ESEA (20 USC 6601 and 6634(a)(2)):
  - (1) Ensure the use of challenging State academic content standards, student achievement standards, and State assessments to improve instruction.
  - (2) May include intensive programs designed to prepare these individuals to return to school to provide instruction related to their professional development to others in the school.
  - (3) May include activities of partnerships between one or more LEAs, schools or IHEs in order to improve teaching and learning in low-performing schools, as the term is used in Section 1116 of the ESEA.

**B. Allowable Costs/Cost Principles (All grantees)**

See ED Cross-Cutting Section.

**C. Cash Management**

See ED Cross-Cutting Section.

**E. Eligibility**

**1. Eligibility for Individuals – Not Applicable**

**2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable**

**3. Eligibility for Subrecipients**

- a. A subgrant to an “Eligible Partnership” must be made on a competitive basis and the Eligible Partnership must include all of the following (Sections 2131(1)(A) and 2132(a) of the ESEA (20 USC 6631(1)(A) and 6632(a))):

- (1) A private or State IHE and the division of the institution that prepares teachers and principals.

- (2) A school of arts and sciences.
  - (3) A “high-need LEA” (as the term is defined in Section 2102(3) of the ESEA (20 USC 6602(3))).
- b. An Eligible Partnership may include other entities, such as an LEA that is not a high-need LEA, a public charter school, an elementary school or secondary school, an educational service agency, a non-profit educational organization, another IHE, a non-profit cultural organization, a teacher or principal organization, or a business (Section 2131(1)(B) of the ESEA (20 USC 6631(1)(B))).
- c. LEAs apply to the SEAs for program funds. The amount of each LEA’s allocation that an SEA provides reflects (1) a “hold-harmless” based on the amount of funds the LEA received in FY 2001 under the former Eisenhower Professional Development and Class-Size Reduction programs, and (2) the LEA’s share of any funds still remaining. In any year in which the amount available in the State for LEA grants exceeds the sum of the “hold-harmless” amounts for LEAs in the State, the SEA must distribute the excess funds based on the following formula (Section 2121(a) of the ESEA (20 USC 6621(a))):
- (1) 20 percent of the excess funds must be distributed to LEAs based on the relative population of children ages five through 17, as determined by the Secretary.
  - (2) 80 percent of the excess funds must be distributed to LEAs based on the relative numbers of individuals ages five through 17 from families with incomes below the poverty line, as determined by the Secretary.

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching (LEAs) – Not Applicable**

### **2.1 Level of Effort – *Maintenance of Effort* (SEAs/LEAs)**

See also ED Cross-Cutting Section

In calculating the amount of Title II, Part A funds that an LEA must reserve for equitable services (see II, “Program Procedures,” above) to teachers and other staff in private schools, an LEA must consider the relative numbers and needs of public and private school students. In doing so, an LEA may calculate the amount of Title II, Part A funds to be made available for equitable services on a per-pupil basis, considering only the relative enrollment of public and private school students, on the assumption that these numbers also accurately reflect the relative needs of students and teachers in public and private schools. An LEA also may use other factors relating to need and not base equal expenditures only on relative

enrollments, although it may not use relative poverty of the students alone as a factor. For more information on this calculation see Question G-2 of *Non-Regulatory Guidance: Improving Teacher Quality State Grants ESEA Title II, Part A*.

In addition, an LEA's calculations of the amount of Title II, Part A funds it must reserve for equitable services takes into consideration only the amount of the award that is used to provide professional development for public school teachers and staff. However, the amount that an LEA reserves for professional development of private school teachers and other staff under Title II, Part A must not be less than the aggregate amount of FY 2001 funds that the LEA used for professional development under the former Eisenhower Professional Development program and Class-Size Reduction program (Section 9501(a) and (b)(3)(B) of ESEA (20 USC 7881(a) and (b)(3)); 34 CFR section 299.7). For information about how ESEA flexibility affects equitable services, see Question B-22a in *ESEA Flexibility: Frequently Asked Questions*.

**2.2 Level of Effort – Supplement Not Supplant (SEAs/LEAs)**

See ED Cross-Cutting Section. Supplement Not Supplant is not applicable to the SAHEs and their subgrants to Eligible Partnerships (Section 2134 of the ESEA (20 USC 6634)).

**3. Earmarking**

See ED Cross-Cutting Section.

**H. Period of Availability of Federal Funds (All grantees)**

See ED Cross-Cutting Section.

**L. Reporting**

**1. Financial Reporting**

See ED Cross-Cutting Section.

**2. Performance Reporting – Not Applicable**

**3. Special Reporting – Not Applicable**

**4. Section 1512 ARRA Reporting – Not Applicable**

**5. Subaward Reporting under the Transparency Act – Applicable**

## N. Special Tests and Provisions

### 1. Participation of Private School Children (SEAs/LEAs)

See also ED Cross-Cutting Section.

In a State that has not received ESEA flexibility, an SEA may transfer up to 50 percent of its non-administrative Title II, Part A funds to other specified programs or to Title I, Part A. Likewise, an LEA (except an LEA identified for improvement or subject to corrective action under Section 1116(c)(9) of ESEA) may transfer up to 50 percent of its Title II, Part A funds to certain other programs. (There are special transferability rules governing LEAs identified for improvement or corrective action.) In a State that has received ESEA flexibility, an SEA or LEA may transfer up to 100 percent of its applicable Title II, Part A funds to other authorized programs (see paragraph 9 on page 2 of *ESEA Flexibility* (June 7, 2012)). However, as discussed in III.N.1 of the ED Cross-Cutting section, each SEA or LEA that transfers funds under these sections must consult with private school officials, in accordance with Section 9501 of ESEA, since such a transfer would move funds from a program that provides for the participation of private school students, teachers, or other educational personnel (Section 6123(e)(2) of ESEA (20 USC 7305b)). See also III.G.2 of this Supplement for discussion of a limitation on the amount that may be transferred due to the requirement to provide equitable services to private school teachers and other educational personnel.

### 2. Schoolwide Programs (LEAs)

See ED Cross-Cutting Section.

### 3. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

### 4. Assessment of Need (LEAs)

**Compliance Requirement** – To be eligible to receive a subgrant of Title II, Part A funds, an LEA must conduct an assessment of local needs for professional development and hiring, as identified by the LEA and school staff. The needs assessment must be conducted with the involvement of teachers, including teachers who work in Title I, Part A targeted assistance programs and schoolwide program schools (Sections 2122(b)(8) and (c) (20 USC 6622(b)(8) and (c))).

**Audit Objective** – Determine whether the LEA, with the required participation of teachers, conducted the required needs assessment.

**Suggested Audit Procedure (LEAs)**

Review documentation to ascertain if the LEA conducted the required needs assessment and if teachers, including Title I, Part A teachers from targeted assistance or schoolwide program schools, participated in the needs assessment.

## DEPARTMENT OF EDUCATION

**CFDA 84.377 SCHOOL IMPROVEMENT GRANTS** (Section 1003(g) of the ESEA)  
**CFDA 84.388 SCHOOL IMPROVEMENT GRANTS, RECOVERY ACT**

### I. PROGRAM OBJECTIVES

The objective of the School Improvement Grants (SIG) program is to dramatically turn around the academic achievement of students in the Nation's persistently lowest-achieving schools through the successful implementation of four school intervention models.

### II. PROGRAM PROCEDURES

The Department of Education (ED) provides SIG funds to State educational agencies (SEAs) through a statutory formula based on each State's combined share of allocations under Title I, Parts A, C, and D of the Elementary and Secondary Education Act of 1965 (ESEA). To receive SIG funds, an SEA must submit to ED for approval an application that meets the SIG final requirements. The SEA in turn must distribute, on a competitive basis, at least 95 percent of the SIG funds it receives to eligible local educational agencies (LEAs) that demonstrate the greatest need for the funds and the strongest commitment to ensure that the funds are used to substantially raise student achievement in the persistently lowest-achieving schools in the State.

Funds are primarily used by LEAs to implement one of the following four school intervention models—turnaround, restart, school closure, or transformation—which are defined as:

**Turnaround Model** - An LEA must do the following:

- Replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to fully implement a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates;
- Using locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students. Screen all existing staff and rehire no more than 50 percent; and select new staff;
- Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school;
- Provide staff ongoing, high-quality job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

- Adopt a new governance structure, which may include, but is not limited to, requiring the school to report to a new “turnaround office” in the LEA or SEA, hire a “turnaround leader” who reports directly to the Superintendent or Chief Academic Officer, or enter into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability;
- Use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next, as well as aligned with State academic standards;
- Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students;
- Establish schedules and implement strategies that provide increased learning time; and
- Provide appropriate social-emotional and community-oriented services and supports for students.

**Restart Model** – An LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process. A restart model must enroll, within the grades it serves, any former student who wishes to attend the school.

**School Closure Model** – An LEA closes a school and enrolls the students who attended that school in other schools in the LEA that are higher achieving. These other schools should be within reasonable proximity to the closed school and may include, but are not limited to, charter schools or new schools for which achievement data are not yet available.

**Transformation Model** – An LEA must do the following:

- Replace the principal who led the school prior to commencement of the transformation model;
- Use rigorous, transparent, and equitable evaluation systems for teachers and principals that —
  - (1) Take into account data on student growth as a significant factor as well as other factors, such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high school graduation rates; and
  - (2) Are designed and developed with teacher and principal involvement;
- Identify and reward school leaders, teachers, and other staff who, in implementing this model, have increased student achievement and high school graduation rates and

- identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so;
- Provide staff ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies; and
  - Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in a transformation model.

Funds were first available for the SIG program in Fiscal Year (FY) 2009 through the Consolidated Appropriations Act, 2009 and **the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5)**. These funds were used to support the implementation of SIG programs beginning in the 2010-2011 school year.

### **ESEA Flexibility**

See also ED Cross-Cutting Section.

ED offered each SEA the opportunity to request flexibility on behalf of itself, its LEAs, and its schools regarding specific ESEA requirements in exchange for a comprehensive State-developed plan to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. Among the waivers that are part of this initiative, known as ESEA flexibility, are certain requirements in Section 1003(g)(4) and the definition of a Tier I school in Section I.A.3 of the SIG final requirements (See *ESEA Flexibility* (June 7, 2012).

### **Source of Governing Requirements**

This program is authorized by Section 1003(g) of the ESEA (20 USC 6303(g)). It is governed by final requirements for School Improvement Grants authorized under Section 1003(g) of Title I of the ESEA, issued October 28, 2010 (75 FR 66363)(SIG final requirements).

### **Availability of Other Program Information**

ED has issued the following guidance documents:

- Guidance on School Improvement Grants Under Section 1003(g) of the Elementary and Secondary Education Act of 1965 (Revised June 29, 2010)  
(<http://www2.ed.gov/programs/sif/sigguidance05242010.pdf>)
- SIG Final Requirements (<http://www2.ed.gov/programs/sif/2010-27313.pdf>)
- Guidance on Fiscal Year 2010 School Improvement Grants Under Section 1003(g) of the Elementary and Secondary Education Act of 1965 (Revised March 1, 2012)  
(<http://www2.ed.gov/programs/sif/sigguidance03012012.doc>)

- *ESEA Flexibility* (June 7, 2012) (<http://www.ed.gov/esea/flexibility/documents/esea-flexibility.doc>)
- *ESEA Flexibility Frequently Asked Questions* (August 3, 2012) (<http://www2.ed.gov/policy/eseaflex/esea-flexibility-faqs.doc>).

### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

Certain compliance requirements that apply to multiple programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements.

#### A. Activities Allowed or Unallowed

See also ED Cross-Cutting Section.

##### 1. *Activities Allowed – SEAs*

An SEA may use SIG funds only for administration, evaluation, and technical assistance expenses (Section 1003(g)(8) of ESEA (20 USC 6303(g)(8)); Section II.D of SIG final requirements).

##### 2. *Activities Allowed – LEAs*

In general, an LEA must use SIG funds, both **ARRA** and non-ARRA funds, to implement one of the following four school intervention models—turnaround, restart, school closure, or transformation—in its Tier I and Tier II schools. In addition, an LEA may use SIG funds to continue to implement one of the school intervention models that it began to implement, in whole or in part, within the last 2 years.

An SEA that received ESEA Flexibility was granted a waiver to allow the SEA to award SIG funds to an LEA to implement one of the four SIG models in any school identified by the State as a priority school (see definition of “priority school,” on page 9 in *ESEA Flexibility*) even if the priority school is not a Tier I or Tier II school (see page 2, paragraph 10, of *ESEA Flexibility* (June 7, 2012)).

An LEA also may implement one of the models or another improvement strategy in its Tier III schools (Section II.A of SIG final requirements).

A school that receives SIG funds and Title I, Part A funds (CFDA 84.010) and implements one of the four school improvement models must do so as a schoolwide program school. (See the Cross-Cutting Section for details on schoolwide programs.) As part of the SIG application process, ED granted nearly all SEAs a waiver to allow their Title I, Part A SIG schools with less than 40 percent low-income children to operate a schoolwide program in order to implement one of the school intervention models (Section I.B.3 of SIG final requirements).

**B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section.

**C. Cash Management**

See ED Cross-Cutting Section.

**E. Eligibility**

**1. Eligibility for Individuals – Not Applicable**

**2. Eligibility of Group of Individuals or Area of Service Delivery – Not Applicable**

**3. Eligibility for Subrecipients**

- a. Excepted as noted in E.3.b. below regarding ESEA Flexibility, only schools on the SEA's Tier I, II, and III lists are eligible to receive SIG funds.

(1) *Tier I*

- (a) Any Title I school in improvement, corrective action, or restructuring that

- (i) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater, or
- (ii) is a high school that has had a graduation rate, as defined in 34 CFR section 200.19(b), that is less than 60 percent over a number of years.

- (b) At its option, an SEA also may identify as a Tier I school an elementary school that is eligible for Title I, Part A funds that
- (i) (A) has not made adequate yearly progress for at least 2 consecutive years, or
  - (B) is in the State’s lowest quintile of performance based on proficiency rates on the State’s assessments under Section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and
  - (ii) is no higher achieving than the highest-achieving school identified by the SEA under paragraph (a)(1)(i) of the definition of “persistently lowest-achieving schools” in Section I.A.3 of SIG final requirements.
- (2) *Tier II*
- (a) Any secondary school that is eligible for, but does not receive, Title I funds that
- (i) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or
  - (ii) is a high school that has had a graduation rate, as defined in 34 CFR section 200.19(b), that is less than 60 percent over a number of years.
- (b) At its option, an SEA may also identify as a Tier II school a secondary school that is eligible for Title I, Part A funds that
- (i) (A) has not made adequate yearly progress for at least 2 consecutive years, or
  - (B) is in the State’s lowest quintile of performance based on proficiency rates on the State’s assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

- (ii) (A) is no higher achieving than the highest-achieving school identified by the SEA under paragraph (a)(2)(i) of the definition of “persistently lowest-achieving schools” in Section I.A.3 of SIG final requirements; or
    - (B) is a high school that has had a graduation rate, as defined in 34 CFR 200.19(b), that is less than 60 percent over a number of years.
- (3) *Tier III*
  - (a) Any Title I school in improvement, corrective action, or restructuring that is not a Tier I school or Tier II school.
  - (b) At its option, an SEA may also identify as a Tier III school a school that is eligible for Title I, Part A funds that
    - (i) (A) has not made adequate yearly progress for a least 2 years, or
    - (B) is in the State’s lowest quintile of performance based on proficiency rates on the State’s assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and
  - (ii) does not meet the requirements to be a Tier I or Tier II school (Sections I.A, II.A.1, II.B.2 of SIG final requirements).
- b. *ESEA Flexibility* - An SEA that received ESEA Flexibility was granted a waiver to allow the SEA to award SIG funds to an LEA to implement one of the four SIG models in any school identified by the State as a priority school (see definition of “priority school,” on page 9 in *ESEA Flexibility*) even if the priority school is not a Tier I or Tier II school (see pages 18 and 26 of *ESEA Flexibility* (June 7, 2012)).

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching – Not Applicable**

#### **2.1 Level of Effort – *Maintenance of Effort* – Not Applicable.**

## 2.2 Level of Effort – Supplement Not Supplant

- a. *Title I Tier I, Tier II, and Tier III schools.* An LEA that uses SIG funds to serve one or more Title I Tier I, Tier II, or Tier III schools that operate a schoolwide program, may use SIG funds only to supplement the amount of non-Federal funds that the school would otherwise have received if it were not operating the schoolwide program, including those funds necessary to provide services required by law for students with disabilities and limited English proficient students. Tier I and Tier II schools must operate a schoolwide program to implement one of the SIG school intervention models. However, a school does not need to identify particular children as eligible to participate or demonstrate that SIG funds are used only for activities that supplement those the school would otherwise provide with non-Federal funds (Sections 1114(a)(2)(A)(ii) and (B) of ESEA (20 USC 6314(a)(2)(A)(ii) and (B))).
- b. If an LEA uses SIG funds to serve a Title I Tier III school that operates a targeted assistance program (i.e., a Tier III school that does not implement one of the four school intervention models), the supplement not supplant requirement in section 1120A(b) of ESEA does not apply to the use of SIG funds because they are not funds received under Title I, Part A (CFDA 84.010).
- c. *Non-Title I Tier I, Tier II, and Tier III schools.* An LEA that uses SIG funds to serve one or more Tier I, Tier II, or Tier III schools that do not receive Title I, Part A funds must ensure that each such school receives all of the State and local funds it would have received in the absence of the SIG funds (Section II.A.6 of SIG final requirements).

## 3. Earmarking (SEAs)

- a. An SEA must allocate at least 95 percent of the SIG funds it receives in a given fiscal year directly to eligible LEAs that submit an approvable application to the SEA, consistent with the carryover requirements in section II.B.9 of the SIG final requirements. With the approval of an LEA, the SEA may directly provide SIG activities to the LEA or arrange for their provision through other entities such as school support teams or educational service agencies (Section 1003(g)(7) (20 USC 6303(g)(7))).
- b. If an LEA has nine or more Tier I and Tier II schools, the LEA may not implement the transformation model in more than 50 percent of those schools (Section II.A.2(b) of SIG final requirements).
- c. An SEA must award to an eligible LEA a total grant of no less than \$50,000 and no more than \$2,000,000 per year for each Tier I, Tier II, and Tier III school that the LEA commits to serve (Section 1003(g)(5)(A) of ESEA (20 USC 6303(g)(5)(A)); Section II.B.5 of SIG final requirements).

## **H. Period of Availability of Federal Funds**

FY 2009 regular and **ARRA** SIG funds awarded through the SEA's FY 2009 SIG competition are available for obligation until September 30, 2013, based on a waiver ED granted to each SEA through the State FY 2009 application process (Section I.B.4 of SIG final requirements).

FY 2009 regular and **ARRA** SIG carryover funds, (i.e., funds that the SEA did not award as 3-year grants through its FY 2009 SIG competition) are available for obligation until September 30, 2014, based on a waiver ED granted to each SEA through the State FY 2010 application process (Section I.B.4 of SIG final requirements).

FY 2010 and FY 2011 SIG funds are available for obligation until September 30, 2012 and September 30, 2013, respectively. ED has granted a waiver to extend the period of availability to some SEAs with respect to FY 2010 and FY 2011 SIG funds.

## **L. Reporting**

### **1. Financial Reporting**

See ED Cross-Cutting Section.

### **2. Performance Reporting – Not Applicable**

### **3. Special Reporting – Not Applicable.**

### **4. Section 1512 ARRA Reporting – Applicable**

### **5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds only**

## **N. Special Tests and Provisions**

### **1. Schoolwide Programs (LEAs)**

See ED Cross-Cutting Section.

### **2. Access to Federal Funds for New or Significantly Expanded Charter Schools**

See ED Cross-Cutting Section.

## DEPARTMENT OF EDUCATION

### CFDA 84.395 STATE FISCAL STABILIZATION FUND (SFSF) – RACE-TO-THE-TOP INCENTIVE GRANTS, RECOVERY ACT

#### I. PROGRAM OBJECTIVES

The objectives of Race to the Top are to encourage and reward States and LEAs that are creating the conditions for education innovation and reform; achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates and ensuring student preparation for success in college careers; and implementing ambitious plans in the four assurance areas.

#### II. PROGRAM PROCEDURES

The Race to the Top program provides incentives to States and LEAs to implement large-scale, system-changing reforms that result in improved student achievement, narrowed achievement gaps, and increased graduation and college enrollment rates. Applications for Race to the Top funds must address the four assurance areas referenced in Section 14006(a)(2) of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5): enhancing standards and assessments; improving the collection and use of data; increasing teacher effectiveness and achieving equity in teacher distribution; and turning around struggling schools. Phases 1 and 2 of the program were funded by ARRA. The Department of Education Appropriations Act of 2012 (Pub. L. No. 112-74, 125 Stat. 1093, December 23, 2011) authorized a district-level Race to the Top competition for Fiscal Year 2012 Phase 3.

#### Source of Governing Requirements

The Race to the Top program is authorized by Section 14006 of ARRA.

#### Availability of Other Program Information

ED has issued non-regulatory guidance for the Race to the Top program that is available from links on ED's website at <http://www.ed.gov/programs/racetothetop>.

#### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

##### A. Activities Allowed or Unallowed

###### 1. Allowable Activities – States

A State must use the 50 percent of the funds that are not required to be subawarded to LEAs (See III.G.3. below) to implement its approved plan, for

State-level activities, for disbursement to LEAs, and for other purposes as the State may have proposed in its plan.

2. *Allowable Activities – LEAs*

An LEA must use the funds in a manner that is consistent with the State's plan and its agreement with the State. A State may establish more specific requirements for its LEAs' use of funds provided they are consistent with ARRA.

3. *Unallowable Activities*

a. An LEA may not use Race to the Top funds for:

- (1) Payment of facility maintenance costs;
- (2) Stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;
- (3) Purchases or upgrades of vehicles;
- (4) Improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities; or
- (5) School modernization, renovation, or repair of that is inconsistent with State law (Section 14003(b) and (c) of ARRA).

b. Race to the Top funds cannot be used to provide financial assistance to students to attend private elementary or secondary schools, unless the funds are used to provide special education and related services to children with disabilities as authorized by the Individuals with Disabilities Education Act (Section 14011 of ARRA).

c. Race to the Top funds may not be used to pay costs related to statewide summative assessments (Race to the Top Fund, November 18, 2009, *Federal Register*, (74 FR 59801)).

**B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section.

**C. Cash Management**

See ED Cross-Cutting Section.

**D. Davis-Bacon Act**

All construction, modernization, renovation, and repair activities are subject to the Davis Bacon Act (Section 1606 of ARRA).

**G. Matching, Level of Effort, Earmarking**

1. **Matching** – Not Applicable
2. **Level of Effort** – Not Applicable
3. **Earmarking** – Fifty percent of the State grants must be subgranted to LEAs based on their relative share of funding under Title I, Part A of the Elementary and Secondary Education Act (ESEA) (20 USC 6311 *et seq.*) for the most recent fiscal year (Section 14006(c) of ARRA).

**H. Period of Availability of Federal Funds**

Grantees have a 4-year project period, which begins at the time of the award, in which to implement their plans and spend the grant money (34 CFR section 75.250; Race to the Top Fund, April 14, 2010, *Federal Register*, (75 FR 19501)).

**L. Reporting**

1. **Financial Reporting**  
See ED Cross-Cutting Section.
2. **Performance Reporting** – Not Applicable
3. **Special Reporting** – Not Applicable
4. **Section 1512 ARRA Reporting** – Applicable for Phase 1 and Phase 2 awards
5. **Subaward Reporting under the Transparency Act** – Applicable for Phase 3 awards

## DEPARTMENT OF EDUCATION

### CFDA 84.410 EDUCATION JOBS FUND (Ed Jobs)

#### I. PROGRAM OBJECTIVES

The objective of the Ed Jobs program is to provide assistance to States to save or create education jobs for the 2010-2011 school year. Jobs funded under this program include those that provide educational and related services for early childhood, elementary, and secondary education.

#### II. PROGRAM PROCEDURES

States use Ed Jobs funds for administering the program and LEAs use Ed Jobs funds only for compensation and benefits and other expenses, such as support services, necessary to retain existing employees, to recall or rehire former employees, and to hire new employees, in order to provide early childhood, elementary, or secondary educational and related services.

The Department of Education (ED) determines the allocation of each State by formula on the basis of (1) its relative population of individuals who are aged 5 to 24, and (2) its relative total population. The amount of funding available to each State under the program is provided on the program website at <http://www2.ed.gov/programs/educationjobsfund/index.html>.

ED will reserve one half of one percent of the total Ed Jobs allocation for the Insular Areas (American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands) and one half of one percent to the Bureau of Indian Affairs (BIA) for schools operated or funded by BIA. ED determined the allocation of each Insular Area by formula on the basis of (1) its relative population of individuals who are age 5 to 24, and (2) its relative total population. The amount of funding available to each Insular Area under the program is provided on the program website at <http://www2.ed.gov/programs/educationjobsfund/index.html>.

- Governors submit applications that include, among other things, assurances that the State will comply with the maintenance-of-effort (MOE) requirements and, within 60 days of the date of the State's grant award, submit to the Department the most current applicable MOE data available.
- The State will make awards to LEAs on a timely basis so that funds are available for their use during the 2010-2011 school year.

The State will develop and implement a monitoring plan that will enable the State to ensure that its LEAs comply with all applicable programmatic and fiscal requirements. A Governor may not direct how an LEA may use its Ed Job funds. The State may not require an LEA to submit an application for Ed Jobs funds if the LEA has already submitted a State Fiscal Stabilization Fund (SFSF) application. LEAs that have not submitted an SFSF application must submit an Ed Jobs application to the State to receive funds. LEAs decide how to use Ed Jobs fund, consistent with applicable requirements.

## Source of Governing Requirements

The Ed Jobs program is authorized in Pub. L. No. 111-226, August 10, 2010. **The Ed Jobs program is administered under the terms and conditions of Sections 14001 through 14013, and Title XV of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5.**

## Availability of Other Program Information

The ED has issued non-regulatory guidance for the Ed Jobs program, including Initial Guidance for State on the Education Jobs Fund Program and Guidance Concerning the Applicability of the Education Jobs Fund Program to Charter Schools, that are available at <http://www2.ed.gov/programs/educationjobsfund/applicant.html>.

## III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.**

### A. Activities Allowed or Unallowed

See also ED Cross-Cutting Section.

#### 1. *Allowable Activities – States*

States may only use Ed Jobs funds for the costs of administering the program and making subawards to LEAs (Section 101(2)-(4) of Pub. L. No. 111-226).

#### 2. *Allowable Activities – LEAs*

An LEA must use its funds only for compensation and benefits and other expenses, such as support services, necessary to retain existing employees, to recall or rehire former employees, and to hire new employees, in order to provide early childhood, elementary, or secondary educational and related services. For purposes of this program, the phrase “compensation and benefits and other expenses, such as support services” includes, among other things, salaries, performance bonuses, health insurance, retirement benefits, incentives for early retirement, pension fund contributions, tuition reimbursement, student loan repayment assistance, transportation subsidies, and reimbursement for childcare expenses. An LEA may use the funds to pay the salaries of teachers and other employees who provide school-level educational and related services. In addition to teachers, employees supported with program funds may include, among others, principals, assistant principals, academic coaches, in-service teacher trainers, classroom aides, counselors, librarians, secretaries, social workers, psychologists, interpreters, physical therapists, speech therapists, occupational therapists, information technology personnel, nurses, athletic coaches, security officers,

custodians, maintenance workers, bus drivers, and cafeteria workers (see Questions D-2 and D-3 of Initial Guidance for State on the Education Jobs Fund Program) (Section 101(5) of Pub. L. No. 111-226).

3. *Unallowable Activities – States*

*A State may not use program funds, directly or indirectly, to establish, restore, or supplement a “rainy day” fund, or to supplant State funds in a manner that has this effect. Furthermore, a State may not use program funds, directly or indirectly, to reduce or retire debt obligations incurred by the State or to supplant State funds in a manner that has this effect* (Section 101(6) of Pub. L. No. 111-226).

4. *Unallowable Activities - LEAs*

- a. LEAs are prohibited from using Ed Jobs funds for general administrative expenses as that term is defined by the National Center for Education Statistics (NCES) in its Common Core of Data. These prohibited expenses are administrative expenditures related to the operation of the superintendent’s office or the LEA’s board of education, including the salaries and benefits of LEA-level administrative employees.
- b. LEAs are prohibited from using Ed Jobs funds for other LEA-level support services expenditures, as that term is defined in the Common Core of Data. These prohibited activities include the payment of expenditures for fiscal services, LEA program planners and researchers, and human resource services. For an individual with both LEA-level and school-level responsibilities, an LEA may use Ed Jobs funds to pay only that portion of the employee’s salary and benefits associated with the time spent on allowable (i.e., school-level) activities.
- c. A charter school LEA generally may not use Ed Jobs funds to pay for the compensation and benefits of employees of a charter management organization or an educational management organization who provide school-level educational and related services in the charter school as they would be considered equivalent to general administrative LEA-level support services (see Question 3 in Guidance Concerning the Applicability of the Education Jobs Fund Program to Charter Schools).
- d. An LEA, including charter school LEAs, may not use Ed Jobs funds to pay for contractual school-level services by individuals who are not employees of an LEA (e.g., janitors employed by an outside firm). However, an LEA that contracts with another LEA to provide educational and related services may use Ed Jobs funds to pay that portion of the contract associated with the salaries and benefits of the employees of the LEA providing the services (see Question D-7 of Initial Guidance for

State on the Education Jobs Fund Program) (Section 101(5) of Pub. L. No. 111-226).

**B. Allowable Costs/Cost Principles**

See ED Cross-Cutting Section.

**C. Cash Management**

See ED Cross-Cutting Section.

**G. Matching, Level of Effort, Earmarking**

**1. Matching - Not Applicable**

**2.1 Level of Effort - Maintenance of Effort**

See also ED Cross-Cutting Section.

A State must maintain fiscal effort for education for State fiscal year (FY) 2011 in one of the four ways identified below. Methods 3 and 4 are available only to States with State tax collections for calendar year 2009 that are less than State tax collections for calendar year 2006.

Under each method, the State must separately meet the MOE requirements for both elementary and secondary education and for public institutions of higher education (IHEs).

- **Method 1: Comparing FY 2011 Dollar Levels of Support with FY 2009 Levels**

**Elementary and Secondary Education MOE Requirement**

For State FY 2011, the State will maintain State support for elementary and secondary education (in the aggregate or on the basis of expenditures per pupil) at not less than the level of such support for State FY 2009;

**Public IHE MOE Requirement**

For State FY 2011, the State will maintain State support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at not less than the level of such support for State FY 2009.

- **Method 2: Comparing FY 2011 Percentages of Support with FY 2010 Percentages**

**Elementary and Secondary Education MOE Requirement**

For State FY 2011, the State will maintain State support for elementary and secondary education at a percentage of the total revenues available to the State that is equal to or greater than the percentage for State FY 2010.

**Public IHE MOE Requirement**

For State FY 2011, the State will maintain State support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at a percentage of the total revenues available to the State that is equal to or greater than the percentage for State FY 2010.

- **Method 3: Comparing FY 2011 Dollar Levels of Support with FY 2006 Levels**

**Elementary and Secondary Education MOE Requirement**

For State FY 2011, the State will maintain State support for elementary and secondary education (in the aggregate) at not less than the level of such support for State FY 2006. Note: Under Method 3, a State may not use the expenditures per pupil basis.

**Public IHE MOE Requirement**

For State FY 2011, the State will maintain State support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at not less than the level of such support for State FY 2006.

- **Method 4: Comparing FY 2011 Percentages of Support with FY 2006 Percentages**

**Elementary and Secondary Education MOE Requirement**

For State FY 2011, the State will maintain State support for elementary and secondary education at a percentage of the total revenues available to the State that is equal to or greater than the percentage for State FY 2006;

### **Public IHE MOE Requirement**

For State FY 2011, the State will maintain State support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at a percentage of the total revenues available to the State that is equal to or greater than the percentage for State FY 2006) (Section 101(10) of Pub. L. No. 111-226).

ED has provided guidance on calculating State tax collections, handling dedicated revenue, and handling deferred payments in Questions E-2, E-7, and E-9 of Initial Guidance for State on the Education Jobs Fund Program.

#### **2.2 Level of Effort - *Supplement Not Supplant***

See ED Cross-Cutting Section.

#### **3. Earmarking - State must award at least 98 percent of its allocation of Ed Jobs funds to LEAs (Section 101(2) of Pub. L. No. 111-226).**

### **H. Period of Availability of Federal Funds**

The Ed Jobs program supports educational and related services during the 2010-2011 and 2011-2012 school years. The funds are available for obligations that occur as of August 10, 2010 (the date of enactment of Pub. L. No. 111-226) through September 30, 2012. This period includes the additional year of fund availability authorized under the Tydings Amendment (Section 421(b)(b) of the General Education Provisions Act, 20 USC 1225(b)(1)) (Section 101(3) of Pub. L. No. 111-226).

### **L. Reporting**

#### **1. Financial Reporting**

See ED Cross-Cutting Section.

#### **2. Performance Reporting – Not Applicable**

#### **3. Special Reporting – Not Applicable**

#### **4. Section 1512 ARRA Reporting**

See ED Cross-Cutting Section.

#### **5. Subaward Reporting under the Transparency Act – Not Applicable**

### **N. Special Tests and Provisions**

#### **1. Schoolwide Programs**

See ED Cross-Cutting Section.

**2. Comparability**

See ED Cross-Cutting Section.

**3. Access to Federal Funds for New or Significantly Expanded Charter Schools**

See ED Cross-Cutting Section.