



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

Fact Sheet for Transferring State-and Local-Level Funds (Section 5103 of the ESEA)

April 29, 2020

In light of the impact of novel coronavirus disease 2019 (COVID-19), including extensive school closures, the U.S. Department of Education (Department) has received questions from State educational agencies (SEA) and local educational agencies (LEAs) about transferring Federal formula grant funds under the Elementary and Secondary Education Act of 1965 (ESEA), from one ESEA program to another in order to meet pressing educational needs. One of the most common questions is how the transferability provisions in ESEA section 5103—particularly provisions affecting Title II, Part A (Supporting Effective Instruction State Grants) and Title IV, Part A (Student Support and Academic Enrichment Grants) funds—can help SEAs and LEAs support distance learning, both through making necessary technology more readily available and by preparing educators to use technology to effectively facilitate distance and online learning.

To address these questions about transferability, the Department is re-releasing the information in the attached document, originally distributed to SEAs in 2017, about opportunities available under the ESEA for transferring certain ESEA formula grant funds used for State-level activities. The Department has updated the document and added information reminding SEAs that the ESEA also permits LEAs to transfer certain ESEA formula grant funds to better meet local needs. SEAs are encouraged to remind LEAs of these existing flexibilities and to ensure that LEAs are aware of what they must do to meet requirements associated with exercising transfers at the local level.

An SEA does not need approval from the Department to transfer funds from one authorized program to another. An SEA does, however, need to notify the Department of its intention to transfer funds 30 days prior to transfer. However, the Department recognizes that because of the national emergency caused by COVID-19, an SEA may be interested in transferring funds to support LEAs and schools more quickly. If an SEA wishes to transfer funds more quickly than the required 30-day notice allows, we encourage the SEA to contact the Department; we will work with you to facilitate your efforts, while still ensuring that necessary consultation with private schools about the provision of equitable services with State-level funds occurs.

Similarly, while the ESEA requires an SEA to modify its consolidated State plan to reflect changes caused by the transfer within 30 days, we do not intend for this to be a burdensome task; the Department expects only minimal updates to a State's plan. The Department encourages SEAs to exercise similar flexibility in working with LEAs on notifications and plan updates required by LEA transfers of funds.

Finally, please keep in mind that this flexibility to transfer funds is always permissible; an SEA can use it to transfer current fiscal year funds from one authorized program to another (consistent with the notice requirements described above). An SEA may also use it to transfer Fiscal Year

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2020 funds that you receive in July 2020. The Department encourages SEAs and LEAs to consider how such flexibility could inform the use of next fiscal year's Federal formula grant funds under the ESEA.

Please note that on April 3, 2020, pursuant to section 3511 of the CARES Act, the Department invited SEAs to request waivers of several fiscal requirements due to the widespread, extended school closures caused by the COVID-19 national pandemic (see: <https://oese.ed.gov/files/2020/04/invite-covid-fiscal-waiver-19-20.pdf>). Included in the invitation were the following two requirements of Title IV, Part A (Student Support and Academic Enrichment Grants):

- Section 4106(e)(2)(C), (D), and (E) of Title IV, Part A of the ESEA with respect to content-area spending requirements for FYs 2018 and 2019 Title IV, Part A funds.
- Section 4109(b) of Title IV, Part A of the ESEA with respect to the spending limitation for technology infrastructure for FYs 2018 and 2019 Title IV, Part A funds.

Through these waivers, the SEA would be able to permit an LEA or consortium of LEAs to use its Title IV, Part A funds to best meet its needs without regard to content-area spending requirements or the spending limits on technology infrastructure. Therefore, if the SEA requested and is granted this waiver, it would permit an LEA to use the procedures described in this document to transfer Title II, Part A funds to Title IV, Part A and then spend those funds on technology, even if doing so would lead the LEA to spend more than 15 percent of its total Title IV, Part A funds on technology. All 50 States, the District of Columbia, Puerto Rico, and the Bureau of Indian Education have requested and been granted this waiver.

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Attachment

Transferring State-level Funds

Under the ESEA, an SEA may transfer funds it receives by formula for State-level activities under certain programs to other programs to better address State and local needs. An SEA may make such transfers without prior approval from the Department. An SEA may transfer funds at any point during the 27-month period of availability of the grant into a grant award for the same fiscal year (e.g., a transfer from FY 2018 Title II, Part A funds into the SEA's FY 2018 Title IV, Part A funds). An SEA may only transfer funds into a program for which the State has received an allocation.

Section 5103(a)(1) of the ESEA permits SEAs to transfer funds allocated for State-level activities from the following programs:

- Title II, Part A – Supporting effective instruction state grants;
- Title IV, Part A – Student support and academic enrichment grants; and
- Title IV, Part B – 21st Century Community Learning Centers.

Section 5103(a)(2) allows SEAs to transfer State-level funds from the programs listed above to a State's allocation under any of the following programs:

- Title I, Part A – Improving basic programs operated by LEAs;
- Title I, Part C – Education of migratory children;
- Title I, Part D – Prevention and intervention programs for children and youth who are neglected, delinquent, or at risk;
- Title II, Part A – Supporting effective instruction state grants;
- Title III, Part A – State grants for English language acquisition and language enhancement;
- Title IV, Part A – Student support and academic enrichment grants;
- Title IV, Part B – 21st Century Community Learning Centers; and
- Title V, Part B – Rural education.

An SEA may transfer all or a portion of funds allocated for State-level activities under Title II, Part A; Title IV, Part A; or Title IV, Part B. The SEA may not, however, transfer administrative funds from these programs. Under each of these programs, an SEA allocates funds separately for authorized State-level activities and for program administration. An SEA may transfer only the funds it allocates for authorized State-level activities; it may not transfer funds that it separately allocates for administration. However, an SEA has discretion whether to set aside the full amount permitted to administer each program. That is, the SEA could choose not to set aside administrative funds and could transfer its full allotment for State-level activities. In such a case, the SEA would still be responsible for oversight of the ESEA requirements for that program.

When an SEA decides to transfer some or all of the funds allocated for State-level activities under the three eligible programs, it must take certain steps. The SEA must:

- (1) Engage in timely and meaningful consultation, in accordance with section 8501 of the ESEA, with appropriate private school officials (5103(e)(2)) because provision of equitable services with State-level funds is a requirement for Title II, Part A; Title IV, Part A; and Title IV, Part B;

- (2) Determine the program(s) from which funds are to be transferred and to which funds are to be transferred;
- (3) Determine the amount, and Federal fiscal year, of funds to be transferred;
- (4) Establish the effective date for the transfer;
- (5) Notify the U.S. Department of Education of each transfer at least 30 days before the effective date of each transfer (5103(d)(1)(C)); and
- (6) Submit, not later than 30 days after the date of such transfer, a copy of the SEA's modified plan to the Secretary.

A letter notifying the Department of a transfer should be mailed to the Director of the Office of State and Grantee Relations (SGR), Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202. A PDF version of the letter should also be submitted electronically to your State's SGR mailbox: [State].OESE@ed.gov.

An SEA should include the following information in its letter notifying the Department of a transfer:

- (1) The program(s) from which funds are to be transferred;
- (2) The amount, and Federal fiscal year, of funds to be transferred;
- (3) The program(s) to which the funds will be transferred;
- (4) The effective date for the transfer; and
- (5) A point of contact for the transferability authority.

In addition to notifying the Department of a transfer, the SEA must, per section 5103(d)(1)(A) and (B) of the ESEA, modify its consolidated State plan to account for the effects of the transfer and must provide the Department with a copy of its modified plan. This modification must occur not later than 30 days after the effective date of the transfer.

A modified State plan, including an updated signature page, should be submitted electronically to your State's SGR mailbox: [State].OESE@ed.gov. It would be helpful if the State could submit a redlined version of its previously approved consolidated State plan showing the changes made as a result of the transfer, in addition to the required clean copy of the revised plan.

If you have questions about the processes for notifying the Department of a transfer or for submitting an updated consolidated State plan, please contact OESE.SGR@ed.gov.

Transferring Local Funds

Like SEAs, an LEA has flexibility to transfer funds from one program to another.

Section 5103(b)(2) of the ESEA permits an LEA to transfer funds from the following programs:

- Title II, Part A – Supporting effective instruction state grants; and
- Title IV, Part A – Student support and academic enrichment grants.

Section 5103(b) allows an LEA to transfer local funds from the programs listed above to any of the following programs:

- Title I, Part A – Improving basic programs operated by LEAs;
- Title I, Part C – Education of migratory children;

- Title I, Part D – Prevention and intervention programs for children and youth who are neglected, delinquent, or at risk;
- Title II, Part A – Supporting effective instruction state grants;
- Title III, Part A – State grants for English language acquisition and language enhancement;
- Title IV, Part A – Student support and academic enrichment grants; and
- Title V, Part B – Rural education.

An LEA may transfer all or a portion of funds allocated under Title II, Part A and Title IV, Part A. Like SEAs, an LEA may transfer funds at any point during the 27-month period of availability of the grant into a grant award for the same fiscal year (e.g., a transfer from FY 2018 Title II, Part A funds into the LEA’s FY 2018 Title IV, Part A funds). An LEA may only transfer funds into a program for which that LEA is receiving an allocation.

When an LEA decides to transfer some or all of the funds allocated for local activities under the two eligible programs, it must take certain steps. The LEA must:

- (1) Engage in timely and meaningful consultation, in accordance with section 8501 of the ESEA, with appropriate private school officials (5103(e)(2));
- (2) Determine the program(s) from which funds are to be transferred and to which funds are to be transferred;
- (3) Determine the amount, and Federal fiscal year, of funds to be transferred;
- (4) Establish the effective date for the transfer;
- (5) Notify the SEA of each transfer at least 30 days before the effective date of the transfer (5103(d)(2)(C)); and
- (6) Submit, not later than 30 days after the date of such transfer, a copy of the LEA’s modified plans or applications for all programs affected by the transfer to the SEA (5103(d)(2)(B)).

The Department recommends that each SEA establish procedures for LEAs to notify the SEA about transfers, if the SEA has not done so already.