

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 (ESEA), or the program is subject to the General Education Provisions Act (GEPA), or both. 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
ESEA Programs		
84.010	Title I Grants to Local Educational Agencies (LEAs)	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
84.288	Bilingual Education—Program Development and Implementation Grants	
84.290	Bilingual Education—Comprehensive School Grants	Bilingual
84.291	Bilingual Education—Systemwide Improvement Grants	
84.298	State Grants for Innovative Programs	Title V, Part A
84.318	Education Technology State Grants	Ed Tech
84.357	Reading First State Grants	Reading First
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
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 Vocational Education--Basic Grants to States	Vocational Education
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

No Child Left Behind Act

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

Waivers and Expanded Flexibility

Under Title IX of the ESEA, States, Indian tribes, LEAs, and schools through their LEA may request waivers from ED of many of the statutory and regulatory requirements of programs authorized in ESEA. In addition, some States may have been granted authority to grant waivers of Federal requirements under the Education Flexibility Partnership Act of 1999. Auditors should ascertain from the audited State Education Agencies (SEAs) and LEAs whether the SEA or the LEA or its schools are operating under any waivers.

I. PROGRAM OBJECTIVES

The ESEA of 1965, as amended by the NCLB, provides for a comprehensive overhaul of Federal support for education, and restructures how these programs provide services. ESEA programs in this Supplement to which this section applies are shown above. Generally these requirements are applicable for fiscal years beginning after June 30, 2002.

Under the NCLB, Federal education programs authorized in the ESEA are designed to work in concert with each other, rather than separately. By emphasizing program coordination, planning, and service delivery among Federal programs and enhancing integration with State and local instructional programs, the ESEA reinforces comprehensive State and local educational reform efforts geared toward ensuring that all children can meet challenging State standards regardless of their background or the school they attend.

Program objectives for non-ESEA programs covered by this cross-cutting section and additional information on program objectives for the ESEA programs 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 educational service agencies 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, funds that are used in a schoolwide program are not subject to 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.

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.

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 on the Internet 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? (Dec. 2000) (<http://www.ed.gov/policy/elsec/guid/cschools/cguidedec2000.doc>); and
- [Title I Services to Eligible Private School Children \(Oct. 17, 2003\)](http://www.ed.gov/programs/titleiparta/psguidance.doc) (<http://www.ed.gov/programs/titleiparta/psguidance.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.

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); MEP (84.011); SDFSCA (except the Governor's Program authorized under Section 4114 (84.186)); CSP (84.282); Title V, Part A (84.298); Ed Tech (84.318); Reading First (84.357); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).

An SEA must use consolidated administrative funds for authorized administrative activities of the consolidating programs and may use such funds for administrative activities designed to enhance the effective and coordinated use of funds under 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.

If an LEA consolidates administrative funds, the LEA may not use any other funds from the consolidating programs for administration.

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 and 9203 of ESEA (20 USC 7821 and 7823)).

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

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010); MEP (84.011); SDFSCA (84.186) (including the Governor’s Program authorized under Section 4114); 21st CCLC (84.287); Bilingual (84.288, 84.290 and 84.291); Title V, Part A (84.298); Ed Tech (84.318); Reading First (84.357); Title III, Part A (84.365,); MSP (84.366); and Title II, Part A (84.367).

This section also applies to IDEA (84.027 and 84.173) and Vocational Education (84.048).

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 combined schoolwide funds for purposes of Type A program determination and presentation in the Schedule of Expenditures of Federal Awards.

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

ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318); and Title II, Part A (84.367).

SEAs may transfer 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 (84.010). Except for 21st CCLC (84.287), LEAs not identified for corrective action under Section 1116 of ESEA may also transfer funds from one or more of the listed applicable programs to another listed applicable program or to Title I, Part A. 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. LEAs identified for school improvement are required to use transferred funds for school improvement activities (Section 6123(e) of ESEA (20 USC 7305b(e))).

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 Schedule of Expenditures of Federal Awards.

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); Title V, Part A (84.298); Ed Tech (84.318); 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 Educational 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 four programs for local activities authorized under one or more of the following seven programs:

CFDA 84.010 Title I Grants to Local Education Agencies (LEAs) (Part A, Title I)

CFDA 84.186 Safe and Drug-Free Schools and Communities—State Grants (Part A, Title IV)

CFDA 84.287 Twenty-First Century Community Learning Centers (Part B, Title IV)

CFDA 84.298 Innovative Education Program Strategies (Part A, Title V)

CFDA 84.318 Education Technology State Grants (Part D, Title II)

CFDA 84.365 English Language Acquisition Grants (Title III)

CFDA 84.367 Improving Teacher Quality State Grants (Subpart 2, Part A, Title II);

(Sections 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 Schedule of Expenditures of Federal Awards.

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); MEP (84.011); SDFSCA (84.186); CSP (84.282); 21st CCLC (84.287); Bilingual (84.288, 84.290, 84.291); Title V, Part A (84.298); Ed Tech (84.318); Reading First (84.357); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).

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).

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); MEP (84.011); SDFSCA (except the Governor's Program authorized under Section 4114, operated by SEAs consolidating administrative funds)(84.186); CSP (84.282); 21st CCLC (84.287); Bilingual (schoolwide programs only)(84.288, 84.290 and 84.291); Title V, Part A (84.298); Ed Tech (84.318); Reading First (84.357); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).

This section also applies to IDEA (schoolwide programs only) (84.027 and 84.173) and Vocational Education (schoolwide programs only) (84.048).

- a. *Consolidated Administrative Funds* - An SEA or LEA that consolidates Federal administrative funds under 20 USC 7821 or 7823 is not required to keep separate records by individual program (20 USC 7821 and 7823). The SEA or LEA may treat the consolidated administrative cost objective as a "dedicated function." As a result, an employee who works solely on consolidated administrative activities may meet the semi-annual certification requirement under OMB Circular A-87, Attachment B, paragraph 8.h.(3), either by submitting semi-annual certifications to cover the consolidated activities or through time and attendance certifications accomplished under the State's or the LEA's normal standards for payroll documentation. For example, if

- (1) The standards for payroll documentation comply with the criteria in OMB Circular A-87, Attachment B, paragraphs 8.h.(5), (6), and (7),
- (2) Employees are coded to the dedicated function in the State's or the LEA's payroll system, and
- (3) Their potential assignment to multiple programs/activities is not within the authority or purview of the supervisor responsible for certifying time and attendance—then

the payroll certification shall be accepted in lieu of the semi-annual certification of time and effort.

However, if an employee works, in whole or in part, on a Federal program whose administrative funds have not been consolidated, or in part on activities funded from other revenue sources, the following applies:

- (1) An employee who works solely on a single cost objective (i.e., a single Federal program whose administrative funds have not been consolidated) must furnish a semi-annual certification that he/she has been engaged solely in activities supported by the applicable source 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., a single Federal program whose administrative funds have not been consolidated), and in part on consolidated Federal administrative activities or activities funded from other revenue sources, must maintain time and effort distribution records in accordance with OMB Circular A-87, Attachment B, paragraph 8.h.(4) documenting the portion of time and effort dedicated to:
 - (a) The single cost objective, and
 - (b) Each program or other cost objective supported by either consolidated Federal administrative funds or other revenue sources.

- b. *Schoolwide Programs* - Except as noted below, a school that consolidates Federal funds with State and local funds in a schoolwide program under 20 USC 6314 is not required to maintain separate records by program (20 USC 6314). (Note: Reading First funds cannot be consolidated—see *Federal Register*, Notice of Authorization and Exemption of Schoolwide Programs, July 2, 2004, 69 FR 40361-40362) The school may treat consolidated schoolwide funds as a “dedicated function.” As a result, an employee who works solely on activities supported with Federal, state, or

local funds consolidated in a schoolwide program may meet the semi-annual certification requirement under OMB Circular A-87, Attachment B, paragraph 8.h.(3), either by submitting semi-annual certifications for the consolidated activities or through time and attendance certifications accomplished under an LEA's normal standards for payroll documentation. For example, if:

- (1) The standards for payroll documentation comply with the criteria in OMB Circular A-87, Attachment B, paragraph 8.h.(5), (6), and (7),
- (2) Employees are coded to the dedicated function in the State's or the LEA's payroll system, and
- (3) Their potential assignment to multiple programs/activities is not within the authority or purview of the supervisor responsible for certifying time and attendance—then

the payroll certification shall be accepted in lieu of the semi-annual certification of time and effort.

However, if an employee works, in whole or in part, on activities supported with Federal funds that are not consolidated in a schoolwide program (and, therefore, the employee is subject to all of the specific requirements of the Federal program under which he or she is funded), the employee would follow the procedures under paragraph 2.a. above, depending on whether the employee's compensation is funded in whole or in part with Federal funds that are not consolidated (20 USC 6314). (Guidance is contained in the publication entitled *Policy Guidance for Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies* – April 1996. This publication is available on the Internet at: http://www.ed.gov/legislation/ESEA/Title_I/index.html.)

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

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010); MEP (84.011); CSP (84.282); 21st CCLC (84.287); Bilingual (84.288, 84.290, and 84.291); Title V, Part A (84.298); Ed Tech (84.318); Reading First (84.357); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).

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

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 subrecipients 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 the restricted indirect cost rate is as follows:

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

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).

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).

C. Cash Management

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010); MEP (84.011); SDFSCA (including the Governor's Program authorized under Section 4114) (84.186); CSP (84.282); 21st CCLC (84.287); Bilingual (84.288, 84.290 and 84.291); Title V, Part A (84.298); Ed Tech (84.318); Reading First (84.357); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).

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); Vocational Education (84.048); Vocational Rehabilitation (84.126); and IDEA, Part C (84.181).

Grantees draw funds using the Grant Administration and Payment System (GAPS). Grantees request funds by: (1) creating a payment request using the GAPS External Access System through the Internet; (2) calling the GAPS Payee Hotline; or (3) if the grantee is placed on a reimbursement basis for an award, submitting an SF-270, Request for Advance or Reimbursement, to an ED program or regional office. When creating a payment request in GAPS, the grantee enters the drawdown amounts, by award, directly into GAPS. Grantees can redistribute drawn amounts between grant awards by making adjustments in GAPS to reflect actual disbursements for each award. When requesting funds using the other two methods, the grantee provides drawdown information to the hotline operator, or on the SF-270.

To assist grantees in reconciling their internal accounting records with GAPS, grantees can use the GAPS External Access System (<http://e-grants.ed.gov/>) to obtain a GAPS Activity Report showing cumulative and detail information for each award. The GAPS Activity Report can be created and viewed on-line and a hard copy may be printed as well.

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); SDFSCA (except the Governor's Program authorized under Section 4114) (84.186); Ed Tech (84.318); 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.

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); MEP (84.011); SDFSCA (84.186); 21st CCLC (84.287); Bilingual (84.288, 84.290 and 84.291); Title V, Part A (84.298); Ed Tech (84.318); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).

General - 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)); Title III, Section 3115 of ESEA (20 USC 6825(f)); SDFSCA, Section 4113(a)(8) of ESEA (20 USC 7113(a)(8)); 21st CLCC, Section 4204 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)); MSP, 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 (except Bilingual) to provide services that the SEA or LEA was required to make available under other Federal, State or local laws.
- 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 Program - 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; (2) demonstrate that Federal funds are used only for specific target populations; or (3) separately track Federal program funds once they reach the school. Such a

school, however, is required to use funds available under Title I and under any other Federal programs that are combined to support its schoolwide program 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 of ESEA (20 USC 6314); MEP, Section 1306(b)(4) of ESEA (20 USC 6396(b)(4)); 34 CFR sections 200.25 through 200.29).

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).

Bilingual - This supplement not supplant requirement does not preclude an LEA from using Bilingual program funds for activities carried out under a Federal or State court order respecting services to be provided to limited English proficient (LEP) children, or to carry out a plan approved by the Secretary as adequate under Title VI of the Civil Rights Act of 1964 with respect to services to be provided to LEP children (Title VII, Section 7116(h)(4) of ESEA, prior to enactment of NCLB (20 USC 7426(h)(4))).

3. Earmarking

a. Administration (SEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010) 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. 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. For any SEA reserving \$400,000, the amount taken from each of Title I, Parts A, C, and D (Subpart 1) must be proportionate. An SEA is not required to use the same proportion of funds reserved from Parts A, C, and D for administrative activities related to those Parts.

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

(Title I, Section 1004 of ESEA (20 USC 6304); see also 34 CFR section 200.100(b)).

b. *Transferability* (SEAs and LEAs)

ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318); and Title II, Part A (84.367).

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 (84.010). Except for 21st CCLC (84.287), LEAs not identified for improvement or corrective action under Section 1116 of 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); MEP (84.011); SDFSCA (including the Governor's Program authorized under Section 4114) (84.186); CSP (84.282); Bilingual (84.288, 84.290 and 84.291); Title V, Part A (84.298); Ed Tech (84.318); Reading First (84.357); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).

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

All ESEA and other programs listed above except Bilingual, CSP, and subrecipients under Vocational Education - 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 (FY) 2004 appropriation initially became available on July 1,

2004 and can be obligated by the grantee and subgrantee through September 30, 2006. (Section 421(b) of GEPA (20 USC 1225(b)); 34 CFR sections 76.707 through 76.709).

Title I, Part A - An LEA that receives \$50,000 or more in Title I, Part A funds cannot 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 once every three years if the LEA's request is reasonable and necessary. An SEA may also grant a waiver in any fiscal year in which supplemental appropriations for Title I, Part A become available for obligation. (Section 1127 of ESEA (20 USC 6339)).

SDFSCA program - An LEA that receives SDFSCA funding cannot 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 4113(f)(2) of ESEA (20 USC 7113(f)(2))).

Bilingual and CSP programs - 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.

Further explanation of these expanded authorities may be obtained from the Grants Policy and Oversight Staff at <http://www.ed.gov/policy/fund/guid/gposbul/gpos19.html> (34 CFR sections 75.261, 75.253(c), 75.263, and 75.264).

Vocational Education program - In any academic year that a subrecipient does not obligate all of the amounts it is allocated under the Secondary, Postsecondary, and Adult Vocational Education programs for that year, it must return the unobligated amounts to the State to be reallocated under the Secondary, Postsecondary, and Adult Vocational Education Program, as applicable (Perkins III, section 133(b) (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:

IF AN OBLIGATION IS FOR --	THE OBLIGATION IS MADE --
(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 a final obligation. An SEA or other grantee may not reallocate grant funds from one subrecipient to another after the period of availability (Section 421(b) of GEPA (20 USC 1225(b)); 34 CFR sections 76.703 through 76.710).

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 in an attempt to offset audit disallowances. The disallowed costs must be refunded.

L. Reporting

1. Financial Reporting

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010); MEP (84.011); SDFSCA (including the Governor's Program authorized under Section 4114) (84.186); CSP (84.282); 21st Century (84.287); Bilingual (84.288, 84.290 and 84.291); Title V, Part A (84.298); Ed Tech (84.318); Reading First (84.357); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).

This section also applies to IDEA (84.027 and 84.173) and IDEA, Part C (84.181).

- a. SF-269, *Financial Status Report* - Not Applicable
- b. 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.
- c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* - Not Applicable
- d. SF-272, *Federal Cash Transactions Report* - Not Applicable
- e. LEAs and other subrecipients are generally required to report financial information to the pass-through entity. These reports should be tested during audits of LEAs.

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 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 ESEA. To determine its expenditures under Titles I and V, Part A of 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 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.

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); MEP (84.011); SDFSCA (except the Governor's Program authorized under Section 4114) (84.186); 21st CCLC (84.287), Bilingual (84.288, 84.290 and 84.291); Title V, Part A (84.298); Ed Tech (84.318); Reading First (84.357); 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 - An SEA, LEA, or any other educational service agency (or consortium of such agencies) 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 these programs. 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 (Section 9501 of ESEA (20 USC 7881); 34 CFR sections 299.6 through 299.9; Title I, Part A, Section 1120 of ESEA (20 USC 6320); 34 CFR sections 200.62 through 200.67; and Title V, Part A, Section 5142 of ESEA (20 USC 7217a)).

If an LEA uses funds to concentrate services on a particular “group, attendance area, or grade or age level,” private school children in that “group, attendance area, grade or age level” are to be assured equitable participation in projects.

Under Title I, Part A (i.e., CFDA 84.010) 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, the calculation must include children from low-income families who attend private schools. An LEA uses the funds generated by private school children from low-income families to provide services to eligible private school children (Section 1120 of ESEA (20 USC 6313(c)); 34 CFR section 200.78(a)(2)).

For programs other than Title 1, Part A, 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. (Section 9501 of ESEA (20 USC 7881); 34 CFR section 299.7)

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)*; *21st CCLC (84.287)*; *Title V, Part A (84.298)*; *Ed Tech (84.318)*; 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 their 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 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.
- d. 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.

2. Schoolwide Programs (LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010); MEP (84.011); SDFSCA (including the Governor's Program authorized under Section 4114) (84.186); 21st CCLC (84.287); Bilingual (84.288, 84.290 and 84.291); Title V, Part A (84.298); Ed Tech (84.318); Title III, Part A (84.365); and Title II, Part A (84.367).

This section also applies to IDEA (84.027 and 84.173) and Vocational Education (84.048).

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. To qualify for fiscal year 2002-2003 and subsequent years, 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.

- 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, and 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. In consolidating funds, a schoolwide program school must also ensure that its schoolwide program addresses the needs of children who are members of the target population of any Federal program that is included in the schoolwide program. 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.
 - (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.

- (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.

(Sections 1114, 1306(b)(4), and 7115(c) of ESEA (20 USC 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 (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 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 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); (2) excess costs of providing services to children with disabilities as determined by the LEA; and (3) supplemental State or local funds for programs that meet the intent and purposes of Title I, Part A or MEP (Title I, Section 1120A(c)-(d) of ESEA (20 USC 6321(c)-(d)); 34 CFR sections 200.79 and 200.88).

Each LEA must develop procedures for complying with the comparability requirements and implement the procedures annually. They 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 (Title I, Section 1120A(c) of ESEA (20 USC 6321(c))).

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 within two years of the end of the audit period 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); SDFSCA (except the Governor's Program authorized under Section 4114) (84.186); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318); Reading First (84.357); Title III, Part A (84.365); and Title II, Part A (84.367).

This section also applies to Adult Education (84.002); IDEA (84.027, 84.173); and Vocational Education (84.048).

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. 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 Objectives (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 five 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

Schoolwide Programs (LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010); MEP (84.011); SDFSCA (including the Governor's Program authorized under Section 4114) (84.186); 21st CCLC (84.287); Bilingual (84.288, 84.290 and 84.291); Title V, Part A (84.298); Ed Tech (84.318); Reading First (84.357); Title III, Part A (84.365); and Title II, Part A (84.367).

This section also applies to IDEA (84.027 and 84.173) and Vocational Education (84.048).

Since schoolwide programs are not separate Federal programs, as defined in OMB Circular A-133, amounts used in schoolwide programs should be included in the total expenditures of the program contributing the funds when determining Type A Programs and in the Schedule of Expenditures of Federal Awards. A footnote showing, by program, amounts used in schoolwide programs is encouraged.

Transferability (SEAs and LEAs)

ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318); 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 Schedule of Expenditures of Federal Awards. 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); Title V, Part A (84.298); Ed Tech (84.318); 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 Schedule of Expenditures of Federal Awards.

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.

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 content standards and 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 nonprofit 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, 82, and 85 apply to this program. Other requirements in 34 CFR part 200, subparts C (34 CFR sections 200.81 through 200.88) 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

Also see ED Cross-Cutting Section.

1. *SEAs* - SEAs may use funds to operate the program (directly or through contracts), make subgrants to LEA 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 200.41).

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.

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. *Migrant Child Count Report for State Formula Grant Migrant Education Programs under the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (OMB No. 1810-0519)*

(1) **Migrant Child Counts of 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 2004-2005, the *Migrant Child Count Report* to be audited is the report on school year 2003-2004 submitted to ED in January 2005.

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 offers further explanations of these definitions in non-binding guidance; i.e., guidance that represents an acceptable, but not necessarily the only, way to meet the legal requirements (Chapter II of *Title I, Part C, Education of Migratory Children: Draft Non-Regulatory Guidance*, available on the Internet at

<http://www.ed.gov/programs/mep/mepguidance2003.doc>). ED's non-binding guidance to SEAs also addresses quality control measures that represent an acceptable, but not necessarily the only, way to ensure that the numbers of migrant children they annually report to ED are accurate and unduplicated (Chapter III of *Title I, Part C, Education of Migratory Children: Draft Non-Regulatory Guidance*).

- (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 collect and maintain, 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 (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 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 on the Internet at <http://www.ed.gov/programs/mep/mepguidance2003.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 2004-2005, the Consolidated State Performance Report, Part II, to be audited would be the report on school year 2003-2004 submitted to ED in April 2005.

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

Part II, Section III, Education of Migratory Children, Table 1, Line B.1, Priority for Service, “Total.” (Information by age/grade level does not need to be tested.)

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 LEA 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 LEA or other local operating agencies)

- a. Review the SEA’s or LEA’s or other 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 III, Education of Migratory Children, Table 1, Line B.1.*
- d. Review the SEA or LEA 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 LEA or other local operating agencies, including LEAs. 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 to target MEP funds 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.

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, demonstrate to the Department of Education (ED) that it has in effect policies and procedures that ensure that all children with disabilities have the right to a FAPE.

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 three through five years residing in the State (20 USC 1419(b) and (c)).

Source of Governing Requirements

This program is authorized under the Individuals with Disabilities Education Act, Part B (IDEA-B) as enacted on June 4, 1997 (Pub. L. 105-17; 20 USC 1400 *et seq.*). Implementing regulations for these programs are 34 CFR parts 300 and 301.

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

Also see 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 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, home instruction, and instruction in other settings. 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. A portion of these funds, under conditions specified in the law, may also be used by the LEA for services and aids that also benefit nondisabled children and for the development and implementation of integrated and coordinated services systems (20 USC 1401(22) and (25); 20 USC 1413(a)(2) and (a) (4)).

LEAs must use subgrants for capacity building to assist them in providing direct services and in making systemic change to improve results for children with disabilities through one or more of the following activities: (1) direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools; (2) addressing needs or carrying out improvement strategies identified in the State’s Improvement Plan; (3) adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources;

(4) establishing, expanding, or implementing interagency agreements and arrangements between LEAs and other agencies or organizations concerning the provision of services to children with disabilities and their families; and (5) increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution (20 USC 1411(f)(4)).

- 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)).

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)

a. SEAs

A State may not, on either a total or per capita basis, 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)(19); 34 CFR section 300.154)

b. LEAs

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 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; or (d) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment and the construction of school facilities.

For any fiscal year for which amounts appropriated to carry out IDEA-B exceeds \$4,100,000,000, an LEA may treat as local funds, for the purpose of determining compliance with the maintenance-of-effort requirement, up to 20 percent of the IDEA-B funds it receives that exceeds the amount received the previous year. The SEA may prohibit the LEA from treating such funds as local funds if it determines the LEA is not meeting IDEA-B requirements and if it is authorized to do so by the State constitution or State statute (20 USC 1413(a)(2), 34 CFR sections 300.231 through 300.233).

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, other State-level activities, and capacity building grants to its LEAs.

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

- (1) *SEA set-aside (Overview):* The Secretary shall determine and report to the SEA an amount that is 25 percent of the amount the State received under this section for fiscal year 1998, cumulatively adjusted by the Secretary for each succeeding fiscal year. These funds may be used for administration (20 percent of the set-aside amount), other State-level activities, and subgrants to LEAs for capacity building (20 USC 1411(f)(1)).
- (a) *Administration:* 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(f)(2), 34 CFR sections 300.620 and 300.621).
- (b) *Other State-level activities:* SEA set aside funds not used for administration or capacity building subgrants to LEAs shall be used for any of the following activities: (1) support and direct services, including technical assistance and personnel development and training; (2) administrative costs of monitoring and complaint investigation, but only to the extent that those costs exceed the costs incurred for those activities during fiscal year 1985; (3) establishment and implementation of a mediation process, including providing for the costs of mediators and support personnel; (4) assistance to LEAs in meeting personnel shortages; (5) development of a State Improvement Plan; (6) activities at the State and local levels to meet the performance goals established by the State and to support implementation of the State Improvement Plan; and (7) supplementing other amounts 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 section (this system shall be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the State under Part C) (20 USC 1411(f)(3), 34 CFR section 300.370).
- (c) *Capacity Building subgrants to LEAs:* ED will inform SEAs of the amount of their IDEA-B grants that must be used for subgrants to LEAs for capacity building (20 USC 1411(f)(4)).

- (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 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(g)).

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 1998, 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)).
 - (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 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 if the SEA is the lead agency for the State under this part (20 USC 1419(e)).
 - (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) development of a State improvement plan;
 - (d) activities at the State and local levels to meet the performance goals established by the State and to

support implementation of the State improvement plan; or
(e) 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 (20 USC 1419(f)).

- (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) (20 USC 1419(g)).

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 in the jurisdiction of the LEA multiplied by the number of children participating in the schoolwide program (34 CFR section 300.234).

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 (34 CFR section 300.712(b)(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

- a. *Report of Children and Youth with Disabilities Receiving Special Education Under Part B of the Individuals With Disabilities Education Act, as amended (OMB No. 1820-0043)* - 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 either (1) provides them with both special education and related services or (2) provides them only with special education if they do not need related services to assist them in benefiting from that special education. The SEA may not, however, include in this count children with disabilities who: (1) are not enrolled in a school or program operated or supported by a public agency; (2) are not provided special education that meets State standards; (3) are not provided with a related service that they need to assist them in benefiting from special education; or (4) are receiving special education funded solely by the Federal Government—except that children in any of the age ranges three, four, five, eighteen, nineteen, twenty, or twenty-one, who fall into this category, may be counted if no local or State funds are available for non-disabled children in that same age range (34 CFR section 300.753).

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 300.754(a), (c), and (e)).

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

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 (FFEL) - (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, which includes the Federal Stafford Loan, Federal PLUS, Federal SLS and Federal Consolidation loan programs. 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. As part of these agreements, guaranty agencies (1) establish and maintain a Federal Student Loan Reserve Fund (Federal Fund) and the Agency Operating Fund; (2) service defaulted loans that have been submitted to them; (3) make timely claim payments to lenders on defaulted loans; (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.

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, or annually. Instructions for this report are available on the Internet at <http://www.fp.ed.gov/PORTALSWebApp/fp/proj1.jsp>

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 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," III.N.4, "Death, Disability, Closed Schools, False Certifications, Unpaid Refunds, and Bankruptcy Claims," and III.N.9, "Federal Fund and Operating Fund."

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 were posted to the guaranty agency's system to the date 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)).

For loans made prior to October 1, 1993 or transferred under a plan to transfer guarantees from an insolvent guaranty agency approved by ED, 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.

For loans made from October 1, 1993 to September 30, 1998, the above 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 HEA (20 USC 1078(c)(1))).

The Secretary uses the 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 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 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 cited 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. 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 servicing the loan in accordance with 34 CFR section 682.411 (34 CFR section 682.406(a)(1)).
- Did not include adequate documentation, including a collection and payment history, 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. (Note: The guaranty agency shall reject the claim based on due diligence or timely filing violations, unless it was cured by the lender in accordance with Cure Bulletin 88-G-138. See 34 CFR part 682, Appendix D) (34 CFR section 682.406(a)(5)).

- 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 45 days following payments 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)).
- Did not pay the lender prior to filing a request for payment from ED.

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. Review documentation supporting that the loans met the conditions of reinsurance.

4. Death, Disability, Closed Schools, False Certification, Unpaid Refunds, and Bankruptcy Claims

Compliance Requirements - If an individual borrower dies, the obligation of the borrower and any endorser to make any further payments on the loan is canceled, in accordance with 34 CFR sections 682.402(b)(2)-(5). 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 school closing, 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 may reimburse the holder of a loan for the amount of unpaid refunds in accordance with 34 CFR sections 682.402(l) through (p). If a borrower files a petition of 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 sections 682.402(f), (g), and (h). Exceptions to these regulations are identified 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).

Audit Objectives - Determine whether death, disability, closed school, false certification, unpaid refund, and bankruptcy 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, and bankruptcy 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 not 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. In consideration of such efforts, the guaranty agency receives a default aversion fee (34 CFR section 682.404(k)).

Calculating the Fee - In general, a guaranty agency may transfer a default aversion fee from its Federal Fund to its Operating Fund based on 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 three 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 three 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. 23 percent of borrower payments. (Section 428(c)(6) of HEA (20 USC 1078(c)(6))).

Loans that have been rehabilitated or paid by FFEL program consolidation loans are not covered by this requirement because the payoff amounts are not considered payments made by the borrower. For these loans, under separate authority, agencies are allowed to retain collection costs added to the borrower's balance, not to exceed 18.5 percent of the payoff (34 CFR sections 682.405(b)(1)(iv) and 682.401(b)(27)).

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 of receipt of those funds, minus any portion that the agency is authorized to deposit into the Operating Fund. Forty-eight hours means two (2) business days. "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 five 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 on loans.
- b. From any amounts paid on a defaulted loan, a percentage amount equal to the complement of reinsurance and the Secretary's equitable share of the collections (must be deposited within 48 hours of receipt).
- c. Insurance premiums collected.
- d. Amounts received for Supplemental Preclaim Assistance (SPA) activity performed prior to October 1, 1998.
- e. 70 percent of amounts received after enactment for Administrative Cost Allowance (ACA) for loans upon which insurance was issued prior to October 1, 1998.
- f. Earnings from investments of the Federal Fund.
- g. Other receipts as specified in regulations.

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

- a. To pay lender claims pursuant to sections 428(b)(1)(G), 428(j), 437, and 439(q) of HEA (20 USC 1078(b)(1)(G), 1078(j), 1087, and 1087-2(q)).
- b. To transfer default aversion fees into the Agency Operating Fund.

- c. To establish the Operating Fund, each guaranty agency may, with the Secretary's approval, transfer not more than 180 days' cash expenses for normal operating expenses (not including claim payments) as a working capital reserve as defined in Office of Management and Budget Circular A-87 from the Federal Fund for deposit into the Operating Fund for use in the performance of the guaranty agency's duties. Such transfers may occur during the first three years following the establishment of the Operating Fund. No guaranty agency may transfer in excess of 45 percent of the balance, as of September 30, 1998, of the guaranty agency's Federal Fund to the agency's Operating Fund during such three-year period. The guaranty agency shall ensure that sufficient funds remain in the Federal Fund to pay lender claims within the required time periods and to meet the reserve recall requirements (Section 422A(a)-(f) of the HEA (20 USC 1072a(a)-(f)); 34 CFR sections 682.419 and 682.421; 64 FR 58634-58635).

Agency Operating Fund

Amounts deposited into the Operating Fund shall be invested at the discretion of the guaranty agency in accordance with prudent investor standards. The guaranty agency shall deposit into the Operating Fund:

- a. Loan processing and issuance fees.
- b. 30 percent of ACA amounts received after date of enactment for loans upon which insurance was issued prior to October 1, 1998.
- c. Account maintenance fees.
- d. Default aversion fees.
- e. Amounts remaining from collection on defaulted loans held by the guaranty agency, after payment of Secretary's equitable share, excluding amounts deposited in the Federal Fund pursuant to section 422(c)(2) (34 CFR section 682.419(b)(5)).
- f. Other receipts as specified in regulations (34 CFR section 682.423).

Funds in the Operating Fund shall 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))).*

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.
- Unsupported expenses paid from reserve fund assets.
- Failure to report all credits to the reserve fund on ED Form 2000.
- Use of funds for other programs (e.g., SSIG and other State programs).
- Commingling of funds.
- Unreasonable allocation of indirect costs to the FFEL program or failure to prepare the cost allocation plan as required by 34 CFR section 682.418(c).

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. Earnings from the Federal Fund shall be the sole property of the Federal government. (Section 422A(b) of the HEA (20 USC 1072a(b))).

Audit Objective - 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 October 1, 2005– 25 percent of principal and interest; changes after October 1, 2005 are posted at: <http://www.fsacollections.ed.gov/contractors/ga/>).

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

- a. Borrowers who pay their defaulted loans by a Consolidation Loan may not be charged, for the payment received as proceeds of the Consolidation Loan, more than 18 ½ percent of the outstanding principal and interest on the defaulted loans (34 CFR section 682.401(b)(27)).
- b. Borrowers who complete the required 12 voluntary payments and whose loans are then rehabilitated by sale to an eligible lender may not be charged, for the payment derived from the sale proceeds, more than 18 ½ percent of the outstanding principal and interest on the loans being rehabilitated (34 CFR section 682.405(b)(1)(iv)).

- c. Borrowers who enter 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, may not be charged collection costs on payments made under that agreement (34 CFR section 682.410(b)(5)(ii)).
- d. The guaranty agency may waive or reduce collection cost charges as part of a compromise agreement (34 CFR section 682.401(d)(1)).

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 requirements and at a minimum, conduct biennial on-site program reviews of such 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 adopt procedures for identifying fraudulent loan applications, and 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 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 identifying fraudulent loan applications and 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.

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. 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, 77, and 86. 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

Also see 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

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.